

ORIGINAL

FILED
CAUSE NO. DC-16-15296

**BENJAMIN THOMAS REAVIS,
KRISTI CAROL REAVIS,**

VS.

**TOYOTA MOTOR SALES, U.S.A.,
INC.; TOYOTA MOTOR
CORPORATION; MICHAEL STEVEN
MUMMAW**

IN THE DISTRICT COURT

**FELICIA PITRE
DISTRICT CLERK
DALLAS CO., TEXAS**

**DEPUTY
134TH JUDICIAL DISTRICT**

DALLAS COUNTY, TEXAS

JURY CHARGE

LADIES AND GENTLEMEN OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are included in this Jury Charge, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I have previously given you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.

Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in Court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.

3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.

4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.

5. All the questions and answers are important. No one should say that any question or answer is not important.

6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.

8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.

DEFINITIONS AND INSTRUCTIONS

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

The "Plaintiffs" refer to Benjamin and Kristi Reavis, individually and on behalf of their children, Emily and Owen.

The "Plaintiffs' injuries" refers to the injuries allegedly sustained by the Plaintiffs in question. Specifically, for Emily and Owen, the term refers to the specific injuries, if any, that they allege to have incurred. For Benjamin and Kristi Reavis, the term refers to the injuries, if any, that they incurred as bystanders.

The "Automobile" refers to the 2002 Lexus ES300 owned and driven by the Plaintiffs during the occurrence in question.

"Producing cause" means a cause that was a substantial factor in bringing about the injury, and without which the injury would not have occurred. There may be more than one producing cause.

"Proximate cause" means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained off must be such that a person using the degree of care required of him would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

The "Plaintiffs' injuries" refers to any injuries that you may find in response to Questions 5, 6, 7, or 8.

"Earning capacity" means the ability and fitness to work in gainful employment for any type of remuneration, including salary, commissions, and other benefits, whether or not the person is actually employed.

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

STIPULATION

The parties stipulate that the reasonable and necessary medical expenses in the past for Emily Reavis total \$575,680.69.

The parties stipulate that the reasonable and necessary medical expenses in the past for Owen Reavis total \$560,568.02.

JURY QUESTIONS

QUESTION NO. 1:

Was there a design defect in the Automobile at the time it left the possession of Toyota Motor Corporation that was a producing cause of the Plaintiffs' injuries?

A "design defect" is a condition of the product that renders it unreasonably dangerous as designed, taking into consideration the utility of the product and the risk involved in its use. For a design defect to exist there must have been a safer alternative design.

It is presumed that the Defendants are not liable if the Defendants establish that the Automobile's design complied with mandatory safety standards or regulations adopted and promulgated by the federal government, or an agency of the federal government, that were applicable to the product at the time of manufacture and that governed the product risk that allegedly caused harm.

The Plaintiffs may rebut any such presumption by establishing that:

(1) the mandatory federal safety standards or regulations applicable to the product were inadequate to protect the public from unreasonable risks of injury or damage; or

(2) Toyota Motor Corporation, before or after marketing the product, withheld or misrepresented information or material relevant to the federal government's or agency's determination of adequacy of the safety standards or regulations at issue in the action.

"Safer alternative design" means a product design other than the one actually used that in reasonable probability—

(1) would have prevented or significantly reduced the risk of the injury in question without substantially impairing the product's utility and

(2) was economically and technologically feasible at the time the product left the control of Toyota Motor Corporation by the application of existing or reasonably achievable scientific knowledge.

Answer "Yes" or "No" for each of the following:

1. Emily Reavis yes
2. Owen Reavis yes

QUESTION NO. 2:

Was there a defect in the warnings at the time the Automobile left the possession of Toyota Motor Corporation that was a producing cause of the Plaintiffs' injuries?

A "defect in the warnings" means the failure to give adequate warnings of the product's dangers that were known or should have been known by the application of reasonably developed human skill and foresight, and which rendered the product unreasonably dangerous as marketed.

An "adequate warning" means a warning given in a form that could reasonably be expected to catch the attention of a reasonably prudent person in the circumstances of the product's use; and the content of the warnings must be comprehensible to the average user and must convey a fair indication of the nature and extent of the danger and how to avoid it in the mind of a reasonably prudent person.

When a manufacturer fails to give adequate warnings or instructions, a rebuttable presumption arises that the user would have read and heeded such warnings or instructions.

An "unreasonably dangerous" product is one that is dangerous to an extent beyond that which would be contemplated by the ordinary user of the product with the ordinary knowledge common to the community as to the product's characteristics.

Answer "Yes" or "No" for each of the following:

1. Emily Reavis yes
2. Owen Reavis yes

QUESTION NO. 3:

Is Toyota Motor Sales, U.S.A., Inc. liable as the nonmanufacturing seller of a defective product?

A "seller" is a person who is engaged in the business of distributing or otherwise placing, for any commercial purpose, in the stream of commerce for use or consumption a product or any component part thereof.

To find that Toyota Motor Sales, U.S.A., Inc. is liable as a nonmanufacturing seller, you must find that either:

1. Toyota Motor Sales, U.S.A., Inc.
 - a. actually knew of a defect to the Automobile at the time it sold the Automobile; and
 - b. Plaintiffs' injuries resulted from the defect; or,
2. Toyota Motor Sales, U.S.A., Inc.
 - a. exercised substantial control over the content of a warning or instruction that accompanied the Automobile;
 - b. the warning or instruction was inadequate; and
 - c. Plaintiffs' injuries resulted from the inadequacy of the warning or instruction.

Answer "Yes" or "No" for each of the following:

1. Emily Reavis yes
2. Owen Reavis yes

QUESTION NO. 4:

Did the negligence, if any, of the parties named below proximately cause the injuries in question?

“Negligence” means the failure to use ordinary care, that is, failing to do that which a person of ordinary prudence would have done under the same or similar circumstances or doing that which a person of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary Care” means that degree of care that would be used by a person of ordinary prudence under the same or similar circumstances.

“Proximate Cause” means a cause that was a substantial factor in bringing about an occurrence and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result therefrom. There may be more than one proximate cause of an event.

If a person is confronted by an emergency arising suddenly and unexpectedly, which was not proximately caused by any negligence on his/her part and which, to a reasonable person, requires immediate action without time for deliberation, his/her conduct in such an emergency is not negligence or failure to use ordinary care if, after such emergency arises, he/she acts as a person of ordinary prudence would have acted under the same or similar circumstances.

Answer “Yes” or “No” for each of the following:

	Emily Reavis	Owen Reavis
1. Michael Mummaw	<u>yes</u>	<u>yes</u>
2. Benjamin Reavis	<u>no</u>	<u>no</u>
3. Kristi Reavis	<u>no</u>	<u>no</u>

If you answered "yes" as to Emily Reavis in response to Question Nos. 1, 2, 3, or 4, above, then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 5:

What sum of money, if paid now in cash, would fairly and reasonably compensate Emily for her injuries in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

You are instructed that any monetary recovery is not subject to federal income taxes.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any of the Plaintiffs. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Physical pain and mental anguish sustained by Emily in the past.

Answer: \$ 1,000,000.00

- b. Physical pain and mental anguish that, in reasonable probability, Emily will sustain in the future.

Answer: \$ 2,500,000.00

- c. Loss of earning capacity that, in reasonable probability, Emily will sustain in the future.

Answer: \$ 2,800,000.00

- d. Disfigurement sustained by Emily in the past.

Answer: \$ 250,000.00

- e. Disfigurement that, in reasonable probability, Emily will sustain in the future.

Answer: \$ 750,000.00

- f. Physical impairment sustained by Emily in the past.

Answer: \$ 500,000.00

- g. Physical impairment that, in reasonable probability, Emily will sustain in the future.

Answer: \$ 18,750,000.00

h. Medical care expenses that, in reasonable probability, Emily will incur in the future after she reaches the age of 18.

Answer: \$ 20,696,000.00

i. Medical care expenses that, in reasonable probability, Emily will incur in the future, until Emily reaches the age of 18.

Answer: \$ 804,000.00

If you answered "yes" as to Owen Reavis in response to Question Nos. 1, 2, 3, or 4, above, then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 6:

What sum of money, if paid now in cash, would fairly and reasonably compensate Owen for his injuries in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

You are instructed that any monetary recovery is not subject to federal income taxes.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any of the Plaintiffs. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Physical pain and mental anguish sustained by Owen in the past.

Answer: \$ 1,000,000.00

- b. Physical pain and mental anguish that, in reasonable probability, Owen will sustain in the future.

Answer: \$ 2,500,000.00

- c. Loss of earning capacity that, in reasonable probability, Owen will sustain in the future.

Answer: \$ 2,800,000.00

- d. Disfigurement sustained by Owen in the past.

Answer: \$ 250,000.00

- e. Disfigurement that, in reasonable probability, Owen will sustain in the future.

Answer: 0

- f. Physical impairment sustained by Owen in the past.

Answer: \$ 500,000.00

- g. Physical impairment that, in reasonable probability, Owen will sustain in the future.

Answer: \$ 18,000,000.00

h. Medical care expenses that, in reasonable probability, Owen will incur in the future after he reaches the age of 18.

Answer: \$ 18,069,000.00

j. Medical care expenses that, in reasonable probability, Owen will incur in the future, until Owen reaches the age of 18.

Answer: \$ 931,000.00

If you answered "yes" to Question Nos. 1, 2, 3, or 4, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 7:

What sum of money, if paid now in cash, would fairly and reasonably compensate Benjamin Reavis for his injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any of the Plaintiffs. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Mental anguish sustained in the past.

Answer: \$ 1,000,000.00

- b. Mental anguish that, in reasonable probability, Benjamin Reavis will sustain in the future.

Answer: \$ 2,000,000.00

If you answered "yes" to Question Nos. 1, 2, 3, or 4, answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 8:

What sum of money, if paid now in cash, would fairly and reasonably compensate Kristi Reavis for her injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of any of the Plaintiffs. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

- a. Mental anguish sustained in the past.

Answer: \$ 1,000,000.00

- b. Mental anguish that, in reasonable probability, Kristi Reavis will sustain in the future.

Answer: \$ 2,000,000.00

If you answered "yes" to Question Nos. 1, 2, 3, or 4 for one or more of the parties named below, then answer the following Question. Otherwise, do not answer the following Question.

QUESTION NO. 9:

For each party you found caused or contributed to cause the Plaintiffs' injuries, find the percentage of responsibility attributable to each:

Assign percentages of responsibility only to those you found caused or contributed to cause the Plaintiffs' injuries. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to a party is not necessarily measured by the number of acts, omissions, or product defects found.

	Emily Reavis	Owen Reavis	Benjamin Reavis	Kristi Reavis
a. Toyota Motor Corporation	90	90	90	90
b. Toyota Motor Sales, U.S.A., Inc.	5	5	5	5
c. Michael Mumshaw	5	5	5	5
d. Benjamin Reavis	0	0	0	0
e. Kristi Reavis	0	0	0	0
	100%	100%	100%	100%

Answer Question No. 10 for Toyota Motor Corporation only if you unanimously answered "yes" to Question Nos. 1 or 2. Otherwise, do not answer Question No. 10 for Toyota Motor Corporation.

Answer Question No. 10 for Toyota Motor Sales, U.S.A., Inc. only if you unanimously answered "yes" to Question No. 3. Otherwise, do not answer Question No. 10 for Toyota Motor Sales, U.S.A., Inc.

To answer "Yes" to the following question for any Defendant, your answer must be unanimous. You may answer "No" to the following question for any Defendant only upon a vote of ten or more jurors. Otherwise, you must not answer the following question for that Defendant.

QUESTION NO. 10:

Do you find by clear and convincing evidence that the harm to the Plaintiffs resulted from gross negligence on the part of one or both of the following Defendants?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission,

(a) which when viewed objectively from the standpoint of the Defendant at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(b) of which the Defendant has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No" for each of the following:

- | | |
|-------------------------------------|------------|
| a. Toyota Motor Corporation | <u>yes</u> |
| b. Toyota Motor Sales, U.S.A., Inc. | <u>yes</u> |

Answer Question No. 11 regarding a Defendant only if you unanimously answered "yes" to the preceding Question for that Defendant.

QUESTION NO. 11:

What sum of money if paid now in cash, should be assessed against the Defendants listed below and awarded to Plaintiffs as exemplary damages, if any, for the conduct found in response to Question No. 10?

"Exemplary damages" means any damages awarded in your discretion as a penalty or by way of punishment. Exemplary damages include punitive damages.

In determining the amount of exemplary damages, you shall consider evidence, if any, relating to:

- a) the nature of the wrong;
- b) the character of the conduct involved.
- c) the degree of culpability of the wrongdoer.
- d) the situation and sensibilities of the parties concerned.
- e) the extent to which such conduct offends a public sense of justice and propriety; and,
- f) the Defendant's net worth.

You must unanimously agree on the amount of any award of exemplary damages.

Answer in dollars and cents, if any, for the following Defendants:

- a. Toyota Motor Corporation \$ 129,600,000.00
- b. Toyota Motor Sales, U.S.A., Inc. \$ 14,400,000.00

Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed, you may answer the questions on a vote of 10 jurors. The same 10 jurors must agree on every answer in the charge. This means you may not have one group of 10 jurors agree on one answer and a different group of 10 jurors agree on another answer.
2. If 10 jurors agree on every answer, those 10 jurors sign the verdict.
If 11 jurors agree on every answer, those 11 jurors sign the verdict.
If all 12 of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.
3. All jurors should deliberate on every question. You may end up with all 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.
4. There are some special instructions before Question Nos. 10 and 11 explaining how to answer Question Nos. 10 and 11. Please follow the instructions.

Do you understand these instructions? If you do not, please tell me now.


JUDGE PRESIDING

Verdict Certificate

Check one:

Our verdict is unanimous. All 12 of us have agreed to each and every answer.
The presiding juror has signed the certificate for all 12 of us.

Joseph Howe
Signature of Presiding Juror

Joseph Howe
Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer
and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer
and have signed the certificate below.

SIGNATURE

NAME PRINTED

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	_____	_____

Additional Certificate

I certify that the jury was unanimous in answering Question No. 10. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Joseph Howe
Signature of Presiding Juror

Joseph Howe
Printed Name of Presiding Juror

Additional Certificate

I certify that the jury was unanimous in answering Question No. 11. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

Joseph Howe
Signature of Presiding Juror

Joseph Howe
Printed Name of Presiding Juror