

CAUSE NO. 21-0667

FILED
AT 9:52 O'CLOCK A M.
~~IN THE DISTRICT COURT~~
SHERRY GRIFFIS
CLERK DISTRICT COURT
HARRISON COUNTY, TEXAS
BY [Signature]
DEPUTY CLERK

KRISTINA SMITH, Individually and as §
Representative of the Estate of JENNIPHER §
SMITH, and as Next Friend of NEVIYA §
JACKSON AND BRODERICK JACKSON §
Plaintiffs, §

VS. §

TEXAS DEPARTMENT OF §
TRANSPORTATION and VULCAN §
MATERIALS COMPANY §
Defendants. §

71ST JUDICIAL DISTRICT

HARRISON COUNTY, TEXAS

CHARGE OF THE COURT

MEMBERS OF THE JURY:

After the closing arguments, you will go the jury room to decide the case, answer the questions that are attached 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 devise during your deliberations for any reason. [I will give you a number where others may contact you in case of an emergency.]

Any notes you have take 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 deliberation. 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. 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 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 answer 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. The answer to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten 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

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.

PRESIDING JUROR:

1. When you go into the jury room to answer the questions, the first thing you need to do is choose a presiding juror.
2. The presiding jury 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 answer 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. You may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.
2. If ten jurors agree on every answer, those ten jurors sign the verdict. If eleven jurors agree on every answer, those eleven jurors sign the verdict.

If all twelve 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 twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

Cause No. 21-0067; *Kristina Smith, et al v. TxDOT and Vulcan Materials Company*
--Charge of Court--

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



JUDGE PRESIDING

CAUSE NO. 21-0667

**KRISTINA SMITH, Individually and as
Representative of the Estate of JENNIPHER
SMITH, and as Next Friend of NEVIYA
JACKSON AND BRODERICK JACKSON
*Plaintiffs,***

VS.

**TEXAS DEPARTMENT OF
TRANSPORTATION and VULCAN
MATERIALS COMPANY
*Defendants.***

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IN THE DISTRICT COURT

71ST JUDICIAL DISTRICT

HARRISON COUNTY, TEXAS

VERDICT FORM

QUESTION 1

Was there a manufacturing defect in the limestone rock aggregate (LRA) at the time it left VULCAN MATERIALS COMPANY that was a producing cause of the injury or occurrence in question?

A “manufacturing defect” means that the product deviated in its construction or quality from its specifications or planned output in a manner that renders it unreasonably dangerous.

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

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.”

Answer: no

QUESTION 2

Was there a defect in the warnings involving the limestone rock aggregate (LRA) at the time it left **VULCAN MATERIALS COMPANY** that was a producing cause of the injury or occurrence in question?

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

"Adequate" warnings mean warnings 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 and instructions 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 to the mind of a reasonably prudent person.

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.

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

Answer "Yes" or "No."

Answer: yes

QUESTION 3

Did the negligence, if any, of **THOSE NAMED BELOW** proximately cause the occurrence or injury in question?

With respect to the condition of the road, **TEXAS DEPARTMENT OF TRANSPORTATION** was negligent if:

- a. The condition of the premises posed an unreasonable risk of harm; and
- b. The Texas Department of Transportation had actual knowledge of the danger, if any, presented by said condition; and
- c. Jennipher Smith did not have actual knowledge of the danger presented by said condition, if any; and
- d. The Texas Department of Transportation failed to exercise ordinary care to protect Jennipher Smith from danger, by both failing to adequately warn her of any unreasonable risk of harm caused by said condition, if any, and by failing to make any such condition reasonably safe.

“Ordinary care” means that degree of care that a company of ordinary prudence would use under the same or similar circumstances.

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

Jennipher Smith

With respect to **JENNIPHER SMITH**, "Negligence" means failure to use "Ordinary Care," that is to say, failure 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 a person of ordinary prudence would use under the same or similar circumstances.

Alexis Smith

With respect to **ALEXIS SMITH**, "Negligence" means failure to use "Ordinary Care," that is to say, failure 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 a person of ordinary prudence would use under the same or similar circumstances.

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

a. Texas Department of Transportation:

Yes

b. Jennipher Smith:

NO

c. Alexis Jean Smith:

NO

If you answered "Yes" to Questions 1, 2 or 3 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 4

For each person you found caused or contributed to cause the occurrence, find the percentage of responsibility attributable to each:

1.	TEXAS DEPARTMENT OF TRANSPORTATION	<u>75</u>	%
2.	VULCAN MATERIALS COMPANY	<u>25</u>	%
3.	JENNIPHER SMITH	<u>0</u>	%
4.	ALEXIS SMITH	<u>0</u>	%
TOTAL		100%	

Answer the following questions only if you answered "Yes" to Question 1, 2, or 3.

Otherwise, do not answer remaining questions.

QUESTION 5

What sum of money, if paid now in cash, would fairly and reasonably compensate NEVIYA JACKSON (MINOR) for her own 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 otherwise, 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 NEVIYA JACKSON (MINOR). Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Physical pain sustained in the past.

Answer: \$50,000.00

2. Physical pain that, in reasonable probability, NEVIYA JACKSON (MINOR) will sustain in the future.

Answer: 0

3. Mental anguish sustained in the past.

"Mental anguish" means the emotional pain, torment, and suffering experienced by NEVIYA JACKSON (MINOR)

Answer: \$100,000.00

4. Mental anguish that, in reasonable probability NEVIYA JACKSON (MINOR) will sustain in the future.

Answer: \$300,000.00

QUESTION 6

What sum of money, if paid now in cash, would fairly and reasonably compensate **NEVIYA JACKSON (MINOR)** for *her* damages, if any, resulting from the death of her mother, **JENNIPHER SMITH**?

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 otherwise, 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 **JENNIPHER SMITH**. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Pecuniary loss sustained in the past.

"Pecuniary loss" means the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that NEVIYA JACKSON (MINOR), in reasonable probability, would have received from JENNIPHER SMITH had she lived.

Answer: ϕ

2. Pecuniary loss that, in reasonable probability, NEVIYA JACKSON (MINOR) will sustain in the future.

Answer: ϕ

3. Loss of companionship and society sustained in the past.

"Loss of companionship and society" means the loss of the positive benefits flowing from the love, comfort, companionship, and society that NEVIYA JACKSON (MINOR), in reasonable probability, would have received from JENNIPHER SMITH had she lived.

Answer: \$300,000. 00

4. **Loss of companionship and society that, in reasonable probability, NEVIYA JACKSON (MINOR) will sustain in the future.**

Answer: \$500,000.00

5. **Mental anguish sustained in the past.**

"Mental anguish" means the emotional pain, torment, and suffering experienced by NEVIYA JACKSON (MINOR) because of the death of JENNIPHER SMITH.

Answer: \$250,000.00

6. **Mental anguish that, in reasonable probability, NEVIYA JACKSON (MINOR) will sustain in the future.**

Answer: \$2,000,000.00

In determining damages for elements 3, 4, 5, and 6, you may consider the relationship between NEVIYA JACKSON (MINOR) and JENNIPHER SMITH, their living arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

7. **Loss of inheritance.**

"Loss of inheritance" means the loss of the present value of the assets that the deceased, in reasonable probability, would have added to the estate and left at natural death to NEVIYA JACKSON (MINOR).

Answer: \$100,000.00

QUESTION 7

What sum of money, if paid now in cash, would fairly and reasonably compensate **BRODERICK JACKSON, JR. (MINOR)** for *his* damages, if any, resulting from the death of his mother, **JENNIPHER SMITH**?

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 otherwise, 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 **JENNIPHER SMITH**. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Pecuniary loss sustained in the past.

*“Pecuniary loss” means the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value, excluding loss of inheritance, that **BRODERICK JACKSON, JR. (MINOR)**, in reasonable probability, would have received from **JENNIPHER SMITH** had she lived.*

Answer: ϕ

2. Pecuniary loss that, in reasonable probability, *BRODERICK JACKSON, JR. (MINOR)* will sustain in the future.

Answer: ϕ

3. Loss of companionship and society sustained in the past.

*“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that **BRODERICK JACKSON, JR. (MINOR)**, in reasonable probability, would have received from **JENNIPHER SMITH** had she lived.*

Answer: \$300,000 . 00

4. Loss of companionship and society that, in reasonable probability, **BRODERICK JACKSON, JR. (MINOR)** will sustain in the future.

Answer: \$500,000.00

5. Mental anguish sustained in the past.

“Mental anguish” means the emotional pain, torment, and suffering experienced by BRODERICK JACKSON, JR. (MINOR) because of the death of JENNIPHER SMITH.

Answer: \$250,000.00

6. Mental anguish that, in reasonable probability, **BRODERICK JACKSON, JR. (MINOR)** will sustain in the future.

Answer: \$2,000,000.00

In determining damages for elements 3, 4, 5, and 6, you may consider the relationship between BRODERICK JACKSON, JR. (MINOR) and JENNIPHER SMITH, their living arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

7. Loss of inheritance.

“Loss of inheritance” means the loss of the present value of the assets that the deceased, in reasonable probability, would have added to the estate and left at natural death to BRODERICK JACKSON, JR. (MINOR).

Answer: \$100,000.00

QUESTION 8

What sum of money, if paid now in cash, would fairly and reasonably compensate **KRISTINA SMITH** for her damages, if any, resulting from the death of her daughter, **JENNIPHER SMITH**?

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 otherwise, 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 **JENNIPHER SMITH**. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Pecuniary loss sustained in the past.

*“Pecuniary loss” means the loss of the care, maintenance, support, services, advice, counsel, and reasonable contributions of a pecuniary value that **KRISTINA SMITH**, in reasonable probability, would have received from **JENNIPHER SMITH** had she lived.*

Answer: \$3,000.00

2. Pecuniary loss that, in reasonable probability, Kristina Smith will sustain in the future.

Answer: \$20,000.00

3. Loss of companionship and society sustained in the past.

*“Loss of companionship and society” means the loss of the positive benefits flowing from the love, comfort, companionship, and society that **KRISTINA SMITH**, in reasonable probability, would have received from **JENNIPHER SMITH** had she lived.*

Answer: \$300,000.00

4. **Loss of companionship and society that, in reasonable probability, *KRISTINA SMITH* will sustain in the future.**

Answer: \$100,000.00

5. **Mental anguish sustained in the past.**

"Mental anguish" means the emotional pain, torment, and suffering experienced by KRISTINA SMITH because of the death of JENNIPHER SMITH.

Answer: \$250,000.00

6. **Mental anguish that, in reasonable probability, *KRISTINA SMITH* will sustain in the future.**

Answer: \$1,000,000.00

In determining damages for elements 3, 4, 5, and 6, you may consider the relationship between JENNIPHER SMITH and her parent(s), their living arrangements, any extended absences from one another, the harmony of their family relations, and their common interests and activities.

Verdict Certificate

Check one:

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



Signature of Presiding Juror



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. _____	_____