

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

ISAAC BERNARD DARGAN,

Plaintiff,

VS.

TRW VEHICLE SAFETY SYSTEMS,  
INC.,

Defendant.

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CIVIL ACTION NO. 2:08CV-300-TJW

**PLAINTIFF’S MOTION FOR NEW TRIAL DUE TO JUROR MISCONDUCT AND  
REQUEST FOR EVIDENTIARY HEARING**

**TO THE HONORABLE UNITED STATES JUDGE OF SAID COURT:**

COMES NOW, Plaintiff, by and through undersigned counsel, and respectfully asks the Court to grant a new trial, as authorized by Federal Rule of Civil Procedure 59. Additionally, due to the items presented herein, Plaintiff’s counsel respectfully requests an evidentiary hearing. In support hereof, Plaintiff would state and show as follows.

**I. INTRODUCTION**

1. The Plaintiff in this matter is Isaac Bernard Dargan; the Defendant is TRW Vehicle Safety Systems, Inc. (“TRW”).

2. Plaintiff filed suit against Defendant on theories of product liability and negligence. The case arises out of an automobile accident which occurred on March 4, 2007. At that time, Plaintiff Isaac Bernard Dargan was driving his 1995 GMC Sonoma when another vehicle driven by David Aaron Dunham disregarded a stop sign and struck the right passenger side of Mr. Dargan’s vehicle. The vehicle rolled over, and Mr. Dargan was ejected from the vehicle, suffering paralyzing injuries.

3. Plaintiff alleged that at the time of the accident, Isaac Bernard Dargan was properly wearing his 3-point seat belt, but that despite being properly restrained, Isaac Bernard Dargan received paralyzing injuries when his seatbelt buckle released such that his restraint system failed to protect him.

4. After a trial on the merits, the Court submitted the case to the jury.

5. The jury returned a verdict for Defendant TRW Vehicle Safety Systems, Inc.

6. The jury deliberated for approximately sixty-seven (67) minutes without ever asking for one piece of evidence.

7. Based upon the attached evidence, following the verdict, juror number 5 sought out TRW's counsel. They met in the hallway between Ms. Anderson's office and the clerk's window. Counsel for Plaintiff, Melissa Smith, along with attorney David Dobbs and others, were standing just around the corner and overheard juror number 5 bragging about herself and her role in the jury deliberations.

## II. JUROR MISCONDUCT

8. A court should grant a new trial if a juror engages in misconduct, the misconduct was material, and the misconduct had a prejudicial effect on the outcome. *See Mayhue v. St. Francis Hosp., Inc.*, 969 F.2d 919, 924-26 (10th Cir. 1992); *Yarbrough v. Sturm, Ruger & Co.*, 964 F.2d 376, 380 (5th Cir. 1992).

9. Following the trial, juror number 5 spoke with counsel for TRW out in the hall for approximately an hour. During this conversation, juror number 5 admitted that she "had experience picking juries", she indicated that she had already made up her mind for TRW after opening, and that she was a leader in the jury room to the point that she took over and never let

anyone else get a word in because she was smarter than everyone else in the room. *See* Affidavits of Melissa Smith, David Dobbs and E. Todd Tracy.

10. Juror number 5 never told anyone during voir dire that she had any prior legal experience despite the written voir dire question from Plaintiff's counsel seeking to know if anyone had any past experience with the legal profession. Picking juries would have certainly qualified as being prior legal experience. Further, another catch-all question was asked by Plaintiff's counsel as to whether there is anything either party should know about that might affect the juror's ability to sit on the panel. Experience picking juries would certainly qualify. Yet, again, juror number 5 failed to respond.

11. Based upon the attached affidavits, juror number 5 also failed to abide by the Court's daily instructions about not making up one's mind until after all the evidence had been heard. Juror number 5 made up her mind after opening statement, before any evidence was heard.

12. The Court should grant a new trial because material juror misconduct was brought to bear on juror deliberations. *See Waldorf v. Shuta*, 3 F.3d 705, 713 (3d Cir. 1993). Specifically, juror number 5 became the only voice in deliberations that mattered. She manipulated the other jurors because she convinced them that she was smarter than them and knew about these types of lawsuits. She also suggested that counsel for Mr. Dargan was trying to fool everyone. She became the leader in the jury room because juror number 5 had such a strong personality and wouldn't let anyone else get a word in edgewise. *See* Affidavit of E. Todd Tracy

13. The Court should grant a new trial because the jury was coerced into reaching a verdict by the actions of a juror that never would have been on the panel to begin with and, had she been honest during voir dire, would have been stricken either for cause or by Plaintiff's

counsel with one of his strikes. *Witco Chem. Corp. v. Peachtree Doors, Inc.*, 787 F.2d 1545, 1548-49 (Fed. Cir. 1986).

14. In addition to Plaintiff's motion for a new trial, Plaintiff's counsel would request that the Court hold an evidentiary hearing. *See Vezina v. Theriot Marine Service, Inc.*, 554 F.2d 654, 656 (5<sup>th</sup> Cir. 1977). At this evidentiary hearing, Plaintiff's counsel would request that juror number 5 be present.

### III. EVIDENCE

15. In support of his motion for a new trial, Plaintiff includes the following evidence in the attached appendix, and incorporates it by reference:

**Exhibit A:** Affidavit of Melissa R. Smith;

**Exhibit B:** Affidavit of David E. Dobbs; and

**Exhibit C:** Affidavit of E. Todd Tracy.

### IV. CONCLUSION AND PRAYER

16. The legal system cannot function properly if prospective jurors, during voir dire, are not honest or when jurors misrepresent or intentionally conceal information.

17. Additionally, the legal system cannot function properly if jurors do not abide by the instructions of the Court, or when jurors are, in effect, stealth advocates who have an agenda for or against a party..

18. Due to juror number 5's dishonesty and her hidden agenda, Plaintiff Isaac Dargan has been denied a fair trial, he has been prejudiced, and he deserves a trial with fair and impartial jurors.

19. Plaintiff seeks a hearing with juror number 5 present.

20. Plaintiff seeks a New Trial so that justice may be served.

Respectfully submitted,

**The TRACY firm**

/s/ E. Todd Tracy

E. Todd Tracy (Lead Counsel)

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**And**

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(903) 934-9257 Fax

**ATTORNEYS FOR PLAINTIFF**

**CERTIFICATE OF SERVICE**

I hereby certify that on the 9<sup>th</sup> day of June, 2009, I caused to be electronically submitted the foregoing document with the clerk of court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the Court. I hereby certify that I have caused to be served all counsel of record electronically or by another manner as authorized by the Federal Rules of Civil Procedure.

David R. Tippetts  
David B. Weinstein  
Deborah A. Clinebell  
**WEINSTEIN TIPPETTS & LITTLE LLP**  
7660 Woodway, Suite 500  
Houston, Texas 77063  
(713) 244-0801 Telecopier

*Attorneys for Defendant TRW Vehicle Safety Systems, Inc.*

/s/ E. Todd Tracy \_\_\_\_\_

E. Todd Tracy  
Andrew G. Counts

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AFFIDAVIT

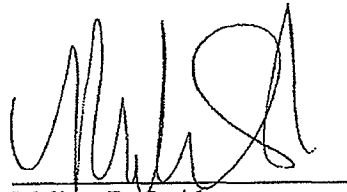
STATE OF TEXAS

COUNTY OF HARRISON

Before me, the undersigned authority, personally appeared Melissa R. Smith, who being by me duly sworn, deposed as follows:

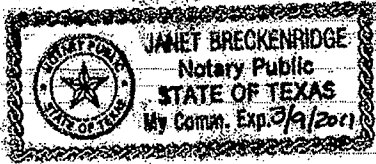
I, the undersigned, am over twenty-on (21) years of age, of sound mind, capable of making this Affidavit, and personally acquainted with the facts herein stated.

Following the jury trial of the above matter juror, Lori Shepherd, commented to opposing counsel, David Tibbets, that she had prior experience selecting juries and that she was a leader in deliberations even though she was not selected as the foreperson. She additionally stated that she was far more educated than the rest of the jurors.

  
Melissa R. Smith



SWORN AND SUBSCRIBED before me, this 9<sup>th</sup> day of June, 2009, to certify which witness my hand and seal of office.



*Janet Breckenridge*  
Notary Public, State of Texas

My commission expires: 3/9/2011




also said that she thought that Mr. Dargan was not wearing his seatbelt and made the comment:  
'You had me at the opening statement.'

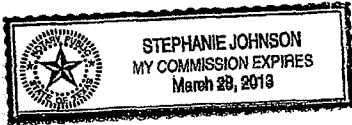
She spoke for an extended period of time to the defense team and seemed to be very proud of her role in delivering a defense verdict."

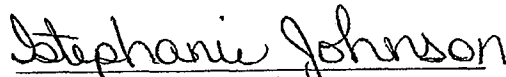
Further affiant sayeth not.

DATED this 9<sup>th</sup> day of June, 2009

  
\_\_\_\_\_  
David E. Dobbs

SUBSCRIBED AND SWORN TO before me this 9<sup>th</sup> day of June 2009.



  
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Notary Public, State of Texas

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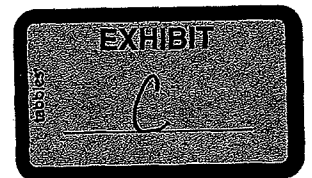
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AFFIDAVIT OF E. TODD TRACY

STATE OF TEXAS        )  
                                  )  
COUNTY OF DALLAS    )

BEFORE ME, the undersigned authority, personally appeared E. Todd Tracy, known to me to be the person whose name is subscribed hereto, and under oath deposed and stated as follows:

1. My name is E. Todd Tracy. I reside in Southlake, Texas. I am an adult, competent to testify, and have personal knowledge of the facts recited in this affidavit.
2. After the jury verdict, while taking large exhibits to my vehicle, I was approached by juror number 9.
3. Juror number 9 told me that juror number 5 (whose name he mentioned but that I won't repeat in the affidavit) told the panel, I know about these things and you need to just listen to what I have to say because that lawyer for Dargan is trying to fool all of us.

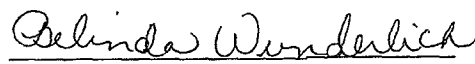


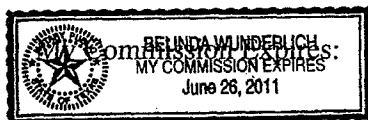
4. Juror number 9 said that juror number 5 bragged about being educated and that she knew from the beginning that Dargan wasn't belted because he would have testified that way had he worn his seatbelt.
5. Juror number 9 said no one could get a word in edgewise and that juror number 5's personality was very powerful.
6. Had juror number 5 been honest in voir dire, I would have had her called up to the bench and learned about this prior legal experience she had picking juries and would have used a peremptory at worst and depending on her answers, may have gotten her off for cause. However, since she was not honest in voir dire, there was no way to learn about her prior legal experience picking juries.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
E. Todd Tracy

SUBSCRIBED AND SWORN TO BEFORE ME THIS 9<sup>th</sup> DAY OF June, 2009.

  
\_\_\_\_\_  
Notary Public  
State of Texas



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**ORDER ON PLAINTIFF'S MOTION FOR NEW TRIAL**

After considering Plaintiff's Motion For New Trial, and Defendant's Response, and after a review of the record, the Court **GRANTS** Plaintiff's Motion.