

NO. 12-CI-00857

OLDHAM CIRCUIT COURT
JUDGE KAREN CONRAD

PATRICIA L. KLOSTERMAN as Administratrix
of the ESTATE OF CHARLES A. KLOSTERMAN
and
PATRICIA L. KLOSTERMAN, Individually

PLAINTIFFS

v.

JURY INSTRUCTIONS

FALLING ROCK PARK a/k/a JOE'S QUARRY
a/k/a FALLING ROCK QUARRY, et. al.

DEFENDANTS

* * * * *

INSTRUCTION NO. 1

Upon return to the jury room the jurors shall elect a foreperson. Thereafter, nine (9) or more jurors must agree to make a verdict. If the verdict is unanimous it need only be signed by the foreperson. Otherwise, it shall be signed by the nine (9) or more jurors who agree to it.

DATE: 10/22/015

Karen Conrad

KAREN A. CONRAD, JUDGE
OLDHAM CIRCUIT COURT, DIV. I

Please go to Instruction 2.

INSTRUCTION NO. 2

Under Kentucky law, KRS 362.175, a partnership is defined as an association between two or more people carrying on as co-owners of a business for profit.

Please proceed to Interrogatory No. 1

INTERROGATORY NO. 1

Are you satisfied from the evidence that Joe Clark and Sarah Beth Clark Whalen were carrying on as co-owners of a business, Falling Rock Park, for profit.

Yes

3

No

9

Victoria Hawkins
Victoria Hawkins
JURY MEMBER
Daniel F. Jenkins
Daniel J. Hawkins
JURY MEMBER
Tyler Monson
Tyler Monson
JURY MEMBER
NO
Carrie A. Danner
JURY MEMBER
Priscilla Deaderick
Venkat Tippurao
JURY MEMBER
Heather L. Hayden
JURY MEMBER

FOREPERSON (Only if Unanimous)

Deborah A. Clark

JURY MEMBER

Carrie D. Beaz

JURY MEMBER

Suzanne M. Thornbury

JURY MEMBER

JURY MEMBER

JURY MEMBER

Please proceed to Instruction No. 3

INSTRUCTION NO. 3

Under Kentucky statute, KRS 243.020(3) a person, conducting a place of business patronized by the public, who does not hold a license to sell distilled spirits, wine, or malt beverages, shall not permit any person to sell, barter, loan, give away, or drink distilled spirits, wine, or malt beverages on the premises of his or her place of business.

Please proceed to Interrogatory No. 2.

INTERROGATORY NO. 2

Are you satisfied from the evidence that Defendants, Joe Clark [and Sarah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] violated KRS 243.020(3) because he/they 1) conducted a place of business patronized by the public, 2) did not hold a license to sell distilled spirit, wine, or malt beverages, and 3) permitted people ^{including Nicholas Snoddy, Jr.} to drink distilled spirits, wine, or malt beverages on the premises of the business.

Yes

12

No

0

Megan Sawyer
FOREPERSON (Only if Unanimous)

Please proceed to Instruction 4.

INSTRUCTION NO. 4

“Ordinary care” as applied to Defendants, Joe Clark [and Carah Beth Clark Whalen if you answered “yes” to Interrogatory No. 1] and his/their employees, means such care as the jury would expect an ordinarily prudent person engaged in the same type of business to exercise under similar circumstances.

Please proceed to Instruction No. 5

INSTRUCTION NO. 5

It was the duty of Joe Clark [and Carah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] and his/their employees to exercise ordinary care for the safety and protection of the public, including Charley Klosterman in the operation of Falling Rock Park. You will find for the Plaintiffs if you are satisfied from the evidence that Defendant[s] failed to satisfy that duty and that such failure was a substantial factor in causing Plaintiff's injuries upon the occasion here in question. Otherwise you will find for the Defendants, Joe Clark [and Carah Beth Clark Whalen]

Please proceed to Interrogatory No. 3.

INTERROGATORY NO. 3

Are you satisfied from the evidence that Defendants, Joe Clark [and Carah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] and his/their employees failed to exercise ordinary care for the safety and protection of the public, including Charley Klosterman, and that such failure was a substantial factor in causing the injury and death of Charley Klosterman?

Yes

12

No

0

Megan Saylor
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please proceed to Instruction No. 6.

INSTRUCTION NO. 6

In the exercise of ordinary care it was the duty of Joe Clark [and Sarah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] and his/their employees to reasonably foresee the danger that a driver using public roadways in Oldham County, Kentucky would be injured by another person leaving Falling Rock Park under the influence of alcohol and that Joe Clark [and Sarah Beth Clark Whalen] if you answered "yes" to Interrogatory No. 1] and his/their employees had a duty to take reasonable precautions to prevent such an occurrence. You will find for the Plaintiffs if you are satisfied from the evidence that Defendants failed to satisfy that duty and that such failure was a substantial factor in causing Plaintiff's injuries upon the occasion here in question. Otherwise you will find for the Defendants, Joe Clark [and Sarah Beth Clark Whalen.]

Please proceed to Interrogatory No. 4

INTERROGATORY NO. 4

Are you satisfied from the evidence that Joe Clark [and Sarah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] and his/their employees breached their duty to reasonably foresee the danger that a driver using public roadways in Oldham County, Kentucky would be injured by another person leaving Falling Rock Park under the influence of alcohol and that Joe Clark [and Sarah Beth Clark Whalen] and his/their employees failed to take reasonable precautions to prevent such an occurrence.

Yes

12

No

8

Megan Sayler
FOREPERSON (Only if Unanimous)

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

Please proceed to Instruction No. 7 if you found for Plaintiffs by answering "Yes" to Interrogatory No. 2, Interrogatory No. 3 and/or Interrogatory No. 4. Please proceed to Verdict Form A only if you found for Defendants by answering "No" to Interrogatory No. 2 and Interrogatory No. 3 and Interrogatory No. 4.

INSTRUCTION NO. 7

It was the duty of Defendant, Nicholas Snoddy, in driving his vehicle to exercise ordinary care for the safety of other persons using the roadway. If you are satisfied from the evidence that Defendant, Nicholas Snoddy, failed to comply with his duty, you will find for the Plaintiffs. Otherwise, you will find for Defendants.

Please proceed to Interrogatory No. 5

INTERROGATORY NO. 5

Are you satisfied from the evidence that Defendant, Nicholas Snoddy, in driving his vehicle failed to exercise ordinary care for the safety of other persons using the roadway and that such failure was a substantial factor in causing the injury and death of Charley Klosterman?

Yes

12

No

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Megan Snyder
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please proceed to Instruction 8. *7 a*

INSTRUCTION NO. 7A

It was the duty of Bradley Brotzge to exercise ordinary care in granting permission to Nicholas Snoddy to operate his vehicle. If you find for Plaintiffs against Nicholas Snoddy, and if you are further satisfied from the evidence (a) that at the time of the accident Nicholas Snoddy was under the influence of intoxicants, (b) that his being under the influence was a substantial factor in causing the accident, (c) that at the time of the accident Bradley Brotzge gave Nicholas Snoddy permission to use his automobile, and (d) that when Bradley Brotzge gave Nicholas Snoddy such permission he knew, or had knowledge of facts from which by the exercise of ordinary care he should have known, that Nicholas Snoddy was or was likely to be under the influence of intoxicants while using the automobile you will find for Plaintiffs against both Nicholas Snoddy and Bradley Brotzge, otherwise you will find for Bradley Brotzge.

Please proceed to Interrogatory No. 5A

INTERROGATORY NO. 5A

Are you satisfied from the evidence that Bradley Brotzge, in granting permission to Nicholas Snoddy to use his automobile, failed to exercise ordinary care for the safety of other persons using the roadway and that such failure was a substantial factor in causing the injury and death of Charley Klosterman?

Yes

12

No

0

Megan Saylor
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please proceed to Instruction 8.

INSTRUCTION NO. 8

If you have found for the Plaintiffs by answering "Yes" under Interrogatory Nos. 2, 3, 4 and/or 5, you must now determine from the evidence and indicate in the spaces below, the percentage of the total fault to be attributed to each of the parties against whom you have found. In considering the percentage of fault attributable to any given party, you shall consider both the nature of the conduct of that party and the extent of the causal relation between that conduct and the damages claimed.

Joe Clark [and Carah Beth Clark Whalen]	<u>20</u> %
Nicholas Snoddy	<u>50</u> %
Bradley Brotze	<u>30</u> %
TOTAL	100%

Megan Saylor
JURY MEMBER

Alysa Paul
JURY MEMBER

Victor Duhnows
JURY MEMBER

Donna J. Walker
JURY MEMBER

Tyler Morrison
JURY MEMBER

John X. O'Connor
JURY MEMBER

FOREPERSON (Only if Unanimous)
John W. McGehee
JURY MEMBER

Heather L. Hayes
JURY MEMBER

Deborah A. Clarke
JURY MEMBER

Cathy D. Booy
JURY MEMBER

JURY MEMBER

Please proceed to Instruction 9.

INSTRUCTION NO. 9

If you found for the Plaintiffs by answering "Yes" under Interrogatory Nos. 2, 3, 4 and/or ~~and for 5a~~ No. 5, you will now determine from the evidence the sum or sums of money that will fairly and reasonably compensate them for any of the following damages you believe from the evidence have been sustained in this action without regard to fault.

1. Funeral & Burial expenses
(not to exceed \$16,400.92)

\$ 16,400.92

Megan Saylor
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please proceed to Next Page

INSTRUCTION NO. 9 CONTINUED

2. Medical expenses
(not to exceed \$1,474,842.33)

\$ 1,474,842.33

Megan Saylor
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please continue to next page

INSTRUCTION NO. 9 CONTINUED

3. Lost wages
(not to exceed \$536,968.10)

\$ 536,968.10

FOREPERSON (Only if Unanimous)

Megan Saylor
JURY MEMBER

Alyssa Pendleton
JURY MEMBER

Victoria Nichols
JURY MEMBER

Daniel J. Hartin
JURY MEMBER

Angie H. D.
JURY MEMBER

Amber Neely
JURY MEMBER

Heather L. Hodge
JURY MEMBER

Deborah A. Clark
JURY MEMBER

Cary D. Bay
JURY MEMBER

Suzanne M. Thorberg
JURY MEMBER

Debra Parker Layton
JURY MEMBER

Please continue to the Next Page.

INSTRUCTION NO. 9 CONTINUED

4. Charley's mental and physical pain and suffering
(not to exceed \$5,000,000.00)

\$ 1,000,000.00

FOREPERSON (Only if Unanimous)

Megan Saylor
JURY MEMBER

Alysa Pindler
JURY MEMBER

Victoria Hiltz
JURY MEMBER

Daniel Densin
JURY MEMBER

George N. J.
JURY MEMBER

James Reed
JURY MEMBER

Heather L. Hiltz
JURY MEMBER

Deborah A. Clark
JURY MEMBER

Amy D. Boa
JURY MEMBER

Suzanne M. Thornberry
JURY MEMBER

Leviel DeLoach Taylor
JURY MEMBER

Please continue to Instruction No. 10.

INSTRUCTION NO. 10

If you find for Patricia Klosterman by answering "Yes" under Interrogatory Nos. 2, 3, 4
and/or 5 a
and/or No. 5 you will determine from the evidence and award her a sum of money that will fairly
and reasonably compensate her for whatever loss of services, assistance, aid, society,
companionship and conjugal relationship of her husband you believe from the evidence she has
sustained or is reasonably certain to sustain in the future as a direct result of his injuries. *and/or death.*

Patricia's loss of the love and affection of Charley
(not to exceed \$5,000,000.00)

\$ 5,000,000.00

FOREPERSON (Only if Unanimous)

Megan Saylor
JURY MEMBER

Heather L. Hager
JURY MEMBER

Alyssa Pendleton
JURY MEMBER

Deborah A. Clark
JURY MEMBER

Victoria Nichols
JURY MEMBER

Ray D. Box
JURY MEMBER

Danusia D. Hawke
JURY MEMBER

Suzanne M. Thorburn
JURY MEMBER

Taylor M. Martin
JURY MEMBER

Reidell Parker Taylor
JURY MEMBER

Emilia M. Saylor
JURY MEMBER

Please go to Instruction 11.

INSTRUCTION NO. 11

If you find for the Plaintiffs and award them a sum or sums in damages under Instruction No. 9 and/or Instruction No. 10 and if you are further satisfied from the evidence that Defendants Joe Clark, [Carah Beth Clark Whalen if you answered "yes" to Interrogatory No. 1] and his/their employees acted in reckless disregard for the lives, safety or property of others, including Charley Klosterman, you may in your discretion award punitive damages against Joe Clark [and Carah Beth Clark Whalen], as owner[s] of the business known commonly as Falling Rock Park, in addition to the damages awarded under Instruction No. 9 and/or Instruction No. 10.

Your discretion to determine and award an amount, in any, of punitive damages is limited to the following factors:

1. The harm to Plaintiff as measured by the damages you have awarded under Instruction No. 9 and/or Instruction No. 10 caused by Joe Clark's [and Carah Beth Clark Whalen's] and his/their employees' failure to comply with their duties;
2. The degree, if any, to which you have found from the evidence that Joe Clark's [and Carah Beth Clark Whalen's] and his^{their} employees' failure to comply with their duties was reprehensible, considering
 - a. The degree to which Joe Clark's [and Carah Beth Clark Whalen's] and his/their employees' conduct under Interrogatory No. 2, Interrogatory No. 3 and/or Interrogatory No. 4 evinced an indifference to or a reckless disregard to the health or safety of others.

Instruction No. 11 continued on next page.

"Punitive damages" are damages awarded for the purpose of punishing Joe Clark, as owner of Falling Rock Park, for his ^{their} misconduct in this case and deterring him and others from engaging in similar conduct in the future.

[and Cera Beth Whelen]

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 9 and/or Instruction No. 10.

1) Punitive damages awarded to Estate \$ 1,875,000.00
2) Punitive damages awarded to Patricia Klosterman \$ 625,000.00
(Total punitive damages assessed against Joe Clark [and
Sarah Beth Clark Whelen] not to exceed \$5,000,000.00)

1) Estate Punitive Award

Alyssa Pendleton

JURY MEMBER

Victoria Neffus

JURY MEMBER

Daniel J. Denkler

JURY MEMBER

Tyler Wren

JURY MEMBER

Gregory D. Boag

JURY MEMBER

Deborah A. Clark

JURY MEMBER

Stephanie Neely

JURY MEMBER

Punitive Award to
2 Patricia Klosterman

Other signatures of jurors:

Alyssa Pendleton

Victoria Neffus

Daniel J. Denkler

Tyler Wren

Gregory D. Boag

FOREPERSON (Only if Unanimous)

Deborah A. Clark

JURY MEMBER

Gregory D. Boag

JURY MEMBER

Suzanne M. Thornberry

JURY MEMBER

JURY MEMBER

JURY MEMBER

Foreperson (if unanimous)

Deborah A. Clark

Gregory D. Boag

Suzanne M. Thornberry

VERDICT FORM B

We, the Jury, award the following damages to the Plaintiffs, Patricia L. Klosterman, as Administratrix of the Estate of Charley Klosterman and Patricia L. Klosterman, Individually.

A. Actual Damages to Estate [not to exceed \$7,028,211.35]: \$3,028,211.35
(Total of Instruction No. 9)

B. Actual Damages to Patricia Klosterman \$5,000,000.00
[not to exceed \$ 5,000,000.00]

C. Punitive Damages [not to exceed \$5,000,000.00]: \$2,500,000.00

TOTAL AWARD [not to exceed \$ 17,028,211.35]: \$10,528,211.35

Megan Saylor
FOREPERSON (Only if Unanimous)

JURY MEMBER

Please notify the Sheriff's Deputy that you are *ready to* return to the courtroom.