

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 Carah Beth Clark Whalen were carrying on as co-owners of a business, Falling Rock Park, for profit.

Yes

3

No

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Victoria Harkness

Victoria Harkness

JURY MEMBER

Daniel J. Hawkins

Daniel J. Hawkins

JURY MEMBER

Tyler Morrison

Tyler Morrison

JURY MEMBER

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Carah Beth Clark Whalen

JURY MEMBER

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Verkaat Tippana

JURY MEMBER

Heather L. Hansen

JURY MEMBER

FOREPERSON (Only if Unanimous)

Deborah A. Clark

JURY MEMBER

Cary D. Beaz

JURY MEMBER

Supanne M. Thorndyke

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 Carah 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, <sup>including Nicholas Snoddy,</sup> to drink distilled spirits, wine, or  
malt beverages on the premises of the business.

Yes

12

No

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Megan Sawyer  
FOREPERSON (Only if Unanimous)

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JURY MEMBER

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JURY MEMBER

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

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Megan Saylor  
FOREPERSON (Only if Unanimous)

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JURY MEMBER

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JURY MEMBER

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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 Carah 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 Carah 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 Carah Beth Clark Whalen.]

Please proceed to Interrogatory No. 4

INTERROGATORY NO. 4

Are you satisfied from the evidence that Joe Clark [and Carah 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 Carah Beth Clark Whalen] and his/their employees failed to take reasonable precautions to prevent such an occurrence.

Yes

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No

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Megan Saylor  
FOREPERSON (Only if Unanimous)

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JURY MEMBER

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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 Sawyer  
FOREPERSON (Only if Unanimous)

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JURY MEMBER

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JURY MEMBER

Please proceed to Instruction 8. *7a*

**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

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No

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Megan Saylor  
FOREPERSON (Only if Unanimous)

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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 No. 5, <sup>and/or 5a</sup> 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]

20 %

Nicholas Snoddy

50 %

Bradley Brotzge

30 %

TOTAL

100%

Megan Saylor  
JURY MEMBER

JURY MEMBER

*Alysa Kuntz*  
JURY MEMBER

JURY MEMBER

Victor Vukobrat  
JURY MEMBER

JURY MEMBER

Dana F. W. A. C.  
JURY MEMBER

JURY MEMBER

Tepler Morrison  
JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

FOREPERSON (Only if Unanimous)

T. V. Vaidyanathan

JURY MEMBER

HEATHER L. HADGE  
JURY MEMBER

JURY MEMBER

Donna Clark  
JURY MEMBER

JURY MEMBER

Cathy D. Booy  
JURY MEMBER

JURY MEMBER

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/or 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)

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JURY MEMBER

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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)

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JURY MEMBER

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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 Padgett  
JURY MEMBER

Victor Dukutz  
JURY MEMBER

Daniel J. Barker  
JURY MEMBER

Ernest H. O.  
JURY MEMBER

Timothy Reed  
JURY MEMBER

Heather L. Hays  
JURY MEMBER

Deborah A. Clark  
JURY MEMBER

Cary D. Boy  
JURY MEMBER

Suzanne M. Thornberry  
JURY MEMBER

Quinn Charles Taylor  
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 Sayler  
JURY MEMBER

Alyssa Rindler  
JURY MEMBER

Victoria Hutness  
JURY MEMBER

Daniel J. Klein  
JURY MEMBER

Gregory N. D.  
JURY MEMBER

Travis Reed  
JURY MEMBER

Heather L. Hargis  
JURY MEMBER

Deborah A. Clark  
JURY MEMBER

Amy D. Bray  
JURY MEMBER

Suzanne M. Thornburg  
JURY MEMBER

Seidat Reedman Tipton  
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 or*  
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 Sawyer  
JURY MEMBER

Alyssa Rendlett  
JURY MEMBER

Victor Nicks  
JURY MEMBER

Daniel J. Barker  
JURY MEMBER

Tyler Klein  
JURY MEMBER

Erin N. J.  
JURY MEMBER

Heather L. H. Jr.  
JURY MEMBER

Deborah A. Clark  
JURY MEMBER

Gay D. Bay  
JURY MEMBER

Stephanie M. Thorbeck  
JURY MEMBER

Shirley Parker Taylor  
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 <sup>themselves</sup> 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 <sup>their</sup> misconduct in this case and deterring him and others from <sup>them</sup> engaging in similar conduct in the future.

[and Cara 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  
Cara Beth Clark Whelen] not to exceed \$5,000,000.00)

# 1) Estate Punitive Award

Alyssa Pundlich  
JURY MEMBER

Victoria Hartness  
JURY MEMBER

Daniel J. Harkin  
JURY MEMBER

Tyler [Signature]  
JURY MEMBER

[Signature]  
JURY MEMBER

[Signature]  
JURY MEMBER

FOREPERSON (Only if Unanimous)

Deborah A. Clark  
JURY MEMBER

Cary D. Boy  
JURY MEMBER

Suzanne M. Thornberg  
JURY MEMBER

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JURY MEMBER

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JURY MEMBER

Punitive Award to  
# 2 Patricia Klosterman

Other signatures of jurors:

Alyssa Pundlich  
Victoria Hartness  
Daniel J. Harkin  
Tyler [Signature]  
[Signature]

Foreperson (if unanimous)

[Signature]  
Deborah A. Clark  
Cary D. Boy  
Suzanne M. Thornberg

Proceed to Verdict Form B

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<sup>35</sup>]:                      \$ 10,528,211.35

Megan Saylor  
FOREPERSON (Only if Unanimous)

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JURY MEMBER

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JURY MEMBER

Please notify the Sheriff's Deputy that you are <sup>ready to</sup> return to the courtroom.