

CAUSE NO. 07-02-01967

<b>B.B.,</b>	§	<b>IN THE DISTRICT COURT OF</b>
	§	
<b>Plaintiff,</b>	§	
	§	
<b>VS.</b>	§	<b>MONTGOMERY COUNTY, TEXAS</b>
	§	
<b>HAROLD R. NEWSOM, COUGAR RUN</b>	§	
<b>RANCH I, INC., COUGAR RUN</b>	§	
<b>RANCH II, INC., HAL NEWSOM</b>	§	
<b>AIRBOAT TOURS, INC. AND</b>	§	
<b>JASON RAY NEWSOM,</b>	§	
	§	
<b>Defendants.</b>	§	<b>9<sup>th</sup> JUDICIAL DISTRICT</b>

**CHARGE OF THE COURT**

LADIES AND GENTLEMEN OF THE JURY:

This case is submitted to you by asking questions about the facts, which you must decide from the evidence you have heard in this trial. You are the sole judges of the credibility of the witnesses and the weight to be given their testimony, but in matters of law, you must be governed by the instructions in this charge. In discharging your responsibility on this jury, you will observe all the instructions which have previously been given you. I shall now give you additional instructions which you should carefully and strictly following during your deliberations.

1. Do not let bias, prejudice or sympathy play any part in your deliberations.
2. In arriving at your answers, consider only the evidence introduced here under oath and such exhibits, if any, as have been introduced for your consideration under the rulings of the court, that is, what you have seen and heard in this courtroom, together with the law as given you by the court. In your deliberations, you will not consider or discuss anything that is not represented by the evidence in this case.
3. Since every answer that is required by the charge is important, no juror should state or consider that any required answer is not important.
4. You must not decide who you think should win, and then try to answer the questions accordingly. Simply answer the questions, and do not discuss nor concern yourselves with the effect of your answers.
5. You must not decide the answer to a question by lot or by drawing straws, or by any other method of chance. Do not return a quotient verdict. A quotient verdict means that the jurors agree to abide by the result to be reached by adding together each juror's figures and dividing by the number of jurors to get an average. Do not do any trading on your answers; that is, one juror should

not agree to answer a certain question one way if others will agree to answer another question another way.

6. Unless otherwise instructed, you may answer a question upon the vote of ten or more jurors. If you answer more than one question upon the vote of ten or more jurors, the same group of at least ten of you must agree upon the answers to each of those questions.

These instructions are given you because your conduct is subject to review the same as that of the witnesses, parties, attorneys and the judge. If it should be found that you have disregarded any of these instructions, it will be jury misconduct and it may require another trial by another jury; then all of our time will have been wasted.

The presiding juror or any other who observes a violation of the court's instructions shall immediately warn the one who is violating the same and caution the juror not to do so again.

When words are used in this charge in a sense that varies from the meaning commonly understood, you are given a proper legal definition, which you are bound to accept in place of any other meaning. You are instructed that:

"Negligence" means 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 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 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 of must be such that a person using ordinary care would have foreseen that the event, or some similar event, might reasonably result there from. There may be more than one proximate cause of an event.

"Plaintiffs" are BB, CC, DD and EE.

"The occurrence in question," with respect to a particular Plaintiff, means the sexual molestation of that Plaintiff by Jason Ray Newsom.

"Defendants" are Harold R. Newsom and Jason Ray Newsom.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence unless otherwise instructed. If you do not find that a preponderance of the evidence supports a "Yes" answer, then answer "No." The term "preponderance of the evidence" means the greater weight and degree of credible evidence admitted in this case. Whenever a question requires an answer other than "Yes," or "No," your answer must

be based on a preponderance of the evidence unless otherwise instructed.

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.

After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

It is the duty of the presiding juror –

1. to preside during your deliberations,
2. to see that your deliberations are conducted in an orderly manner and in accordance with the instructions in this charge,
3. to write out and hand to the bailiff any communications concerning the case that you desire to have delivered to the judge,
4. to vote on the questions,
5. to write your answers to the questions in the spaces provided, and
6. to certify to your verdict in the space provided for the presiding juror's signature or to obtain the signatures of all the jurors who agree with the verdict if your verdict is less than unanimous.

You should not discuss the case with anyone, not even with other members of the jury, unless all of you are present and assembled in the jury room. Should anyone attempt to talk to you about the case before the verdict is returned, whether at the courthouse, at your home, or elsewhere, please inform the judge of this fact.

When you have answered all the questions you are required to answer under the instructions of the judge and your presiding juror has placed your answers in the spaces provided and signed the verdict as presiding juror or obtained the signatures, you will inform the bailiff at the door of the jury room that you have reached a verdict, and then you will return into court with your verdict.

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**JUDGE PRESIDING**

**QUESTION NO. 1**

Was the negligence, if any, of Harold R. Newsom a proximate cause of the occurrence in question with respect to those named below?

Answer "yes" or "no" for each of the following:

BB    yes

CC    yes

DD    yes

EE    yes

*Buchanan v. Rose*, 138 Tex. 390, 391-92, 159 S.W.2d 109, 110 (1942); *Golden Spread Council, Inc. # 562 of the Boy Scouts of Am. v. Akins*, 926 S.W.2d 287, 290-92 (Tex. 1996).

**QUESTION NO. 2**

Was the negligence *per se*, if any, of Harold R. Newsom a proximate cause of the occurrence in question with respect to those named below?

You are instructed that, in order to answer this question “yes” with respect to a Plaintiff named below, you must find that Harold R. Newsom committed a criminally negligent act or omission that placed the Plaintiff in imminent danger of death, bodily injury, or physical or mental impairment, and that Harold R. Newsom’s act or omission occurred at a time when the Plaintiff was 15 years of age or younger. (*Tex. Pen. Code § 22.041*). For purposes of this paragraph, you are further instructed as follows:

- a. “Bodily injury” means physical pain, illness, or any impairment of physical condition. (*Tex. Pen. Code § 1.07(8)*).
- b. A person acts with “criminal negligence,” with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor’s standpoint. (*Tex. Pen. Code § 6.03(d)*).
- c. “Omission” means failure to act. (*Tex. Pen. Code § 1.07(34)*).

Answer “yes” or “no” for each of the following:

- BB    yes
- CC    yes
- DD    yes
- EE    yes

**QUESTION NO. 3**

Were Jason Ray Newsom and Harold R. Newsom engaged in a joint enterprise at the time of the occurrence in question with respect to each of those named below?

A "joint enterprise" exists if the persons concerned have (1) an agreement, either express or implied, with respect to the enterprise or endeavor; (2) a common purpose; (3) a community of pecuniary interest in the common purpose of the enterprise, among the members of the group; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right of control.

Answer "yes" or "no" for each of the following:

BB    no

CC    no

DD    no

EE    no

PJC 7.11

**QUESTION NO. 4**

Were Jason Ray Newsom and Harold R. Newsom engaged in a joint venture at the time of the occurrence in question with respect to each of those named below?

A “joint venture” exists if the persons concerned have an agreement, either express or implied, that (1) they will have a community of interest in the venture; (2) they will share the profits of the venture; (3) they will share the losses of the venture; and (4) they will have a mutual right of control or management of the venture.

Answer “yes” or “no” for each of the following:

BB    no

CC    no

DD    no

EE    no

PJC 7.11; *Blackburn v. Columbia Medical Center of Arlington Subsidiary, L.P.*, 58 S.W.3d 263, 273 (Tex. App.—Fort Worth 2001, pet. denied).



**QUESTIONS 5-10 WERE NOT ANSWERED SINCE THEY WERE DEPENDENT ON A YES ANSWER TO QUESTIONS 3 OR 4. SKIP TO QUESTION 10**

Answer Question No. 5 only for those Plaintiffs named below as to whom you answered “yes” to either Question No. 3 or Question No. 4.

**QUESTION NO. 5**

Was the negligence, if any, of Harold R. Newsom in retaining Jason Ray Newsom as his agent or supervising Jason Ray Newsom a proximate cause of the occurrence in question with respect to each of those named below?

Jason Ray Newsom was Harold R. Newsom’s agent if: (a) in response to Question No. 3, you found that Harold R. Newsom and Jason Ray Newsom were engaged in a joint enterprise or (b) in response to Question No. 4, you found that Harold R. Newsom and Jason Ray Newsom were engaged in a joint venture .

You are instructed that you may answer this question “yes” with respect to a Plaintiff named below only if you find that (a) Harold R. Newsom knew or, in the exercise of ordinary care, should have known that Jason Ray Newsom was incompetent, unfit, or otherwise dangerous, and nevertheless placed Jason Ray Newsom in a position that foreseeably created a peculiar risk of harm to others because of Jason Ray Newsom’s particular duties as Harold R. Newsom’s agent, and (b) the harm to the Plaintiff was brought about by reason of the joint enterprise or joint venture that you have found to exist or was in some manner related to the joint enterprise or joint venture.

Answer “yes” or “no” for each of the following:

BB \_\_\_\_\_

CC \_\_\_\_\_

DD \_\_\_\_\_

EE \_\_\_\_\_

*Shoemaker v. Estate of Whistler*, 513 S.W.2d 10, 14 (Tex. 1974); *Heritage Housing Development, Inc. v. Carr*, 199 S.W.3d 560, 566 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2006, no pet.); *Capece v. Navisite, Inc.*, No. 03-02-00113-CV, 2002 WL 31769032, at \*4, \*6 (Tex. App.—Austin Dec. 12, 2002, no pet.) (not designated for publication).

Answer Question No. 6 only for those Plaintiffs named below as to whom you answered “yes” to Question No. 3. Otherwise, do not answer Question No. 6.

**QUESTION NO. 6**

Was Jason Ray Newsom aided in the accomplishment of the occurrence in question with respect to those named below by his status as a participant in the joint enterprise that you found to exist in response to Question No. 3?

You are instructed that you may answer “yes” to this question only if the joint enterprise’s delegation of authority to Jason Ray Newsom empowered Jason Ray Newsom to inflict the harm upon the Plaintiff.

Answer “yes” or “no” for any of the following for whom you answered “yes” to Question Number 3.

Answer:

BB \_\_\_\_\_

CC \_\_\_\_\_

DD \_\_\_\_\_

EE \_\_\_\_\_

*Hastings v. Hancock*, 842 F. Supp. 1315, 1319 (D. Kan. 1993); RESTATEMENT (SECOND) OF AGENCY § 219(2)(d) (1958).

Answer Question No. 7 only for those Plaintiffs named below as to whom you answered “yes” to Question No. 4. Otherwise, do not answer Question No. 7.

**QUESTION NO. 7**

Was Jason Ray Newsom aided in the accomplishment of the occurrence in question with respect to those named below by his status as a participant in the joint venture that you found to exist in response to Question No. 4?

You are instructed that you may answer “yes” to this question only if the joint venture’s delegation of authority to Jason Ray Newsom empowered Jason Ray Newsom to inflict the harm upon the Plaintiff.

Answer “yes” or “no” for any of the following for whom you answered “yes” to Question Number 4.

Answer:

BB \_\_\_\_\_

CC \_\_\_\_\_

DD \_\_\_\_\_

EE \_\_\_\_\_

*Hastings v. Hancock*, 842 F. Supp. 1315, 1319 (D. Kan. 1993); RESTATEMENT (SECOND) OF AGENCY § 219(2)(d) (1958).

Answer Question No. 8 only for those Plaintiffs named below as to whom you answered “yes” to Question No. 3. Otherwise, do not answer Question No. 8.

**QUESTION NO. 8**

At the time of the occurrence in question, was each of those named below an employee or business patron of the joint enterprise that you found to exist in response to Question No. 3?

An “employee” is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

Answer “yes” or “no” for each Plaintiff named below with respect to whether that Plaintiff was an employee or a business patron of the joint enterprise.

- A. Bryan Quinn
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- B. CC
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- C. DD
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- D. EE
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_

Answer Question No. 9 only for those Plaintiffs named below as to whom you answered “yes” to Question No. 4. Otherwise, do not answer Question No. 9.

**QUESTION NO. 9**

At the time of the occurrence in question, was each of those named below an employee or business patron of the joint venture that you found to exist in response to Question No. 4?

An “employee” is a person in the service of another with the understanding, express or implied, that such other person has the right to direct the details of the work and not merely the result to be accomplished.

Answer “yes” or “no” for each Plaintiff named below with respect to whether that Plaintiff was an employee or a business patron of the joint venture.

- A. Bryan Quinn
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- B. CC
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- C. DD
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_
- D. EE
  - (i) Employee:  
Answer:\_\_\_\_\_
  - (ii) Business patron:  
Answer:\_\_\_\_\_

**QUESTION NO. 10**

Did Jason Ray Newsom commit an assault against those named below?

A person commits an assault if he (1) intentionally, knowingly, or recklessly causes bodily injury to another; (2) intentionally or knowingly threatens another with imminent bodily injury; or (3) intentionally or knowingly causes physical contact with another when he knows or should reasonably believe that the other will regard the contact as offensive or provocative.

Answer "yes" or "no" for each of the following.

Answer:

BB YES

CC YES

DD YES

EE YES

PJC 6.6

**QUESTION NO. 11**

Did Jason Ray Newsom intentionally inflict severe emotional distress on those named below?

Intentional infliction of emotional distress occurs when the defendant acts intentionally or recklessly with extreme and outrageous conduct to cause the plaintiff emotional distress and the emotional distress suffered by the plaintiff was severe.

“Extreme and outrageous conduct” occurs only when the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.

Answer “yes” or “no” for each of the following.

Answer:

BB YES

CC YES

DD YES

EE YES

PJC 6.5

Answer Question No. 12 only for those Plaintiffs named below for whom you answered “yes” to at least one of the following Questions: No. 1, 2, 5, 10 or 11. Otherwise, do not answer Question No. 12 as to that Plaintiff.

**QUESTION NO. 12**

What sum of money, if any, if paid now in cash, would fairly and reasonably compensate those named below for their 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.

Do not include any amount for any condition not resulting from the occurrence in question. Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Answer in dollars and cents, if any, for the following elements of damage for each of those named below for whom you answered “yes” to at least one of the following Questions: 1, 2, 5, 10 or 11 :

a. Physical pain and suffering in the past:

BB            \$250,000.00

CC            \$250,000.00

DD            \$250,000.00

EE            \$250,000.00

b. mental anguish in the past:

BB    \$500,000.00

CC    \$500,000.00

DD    \$500,000.00

EE    \$500,000.00

c. Physical pain and suffering that, in reasonable probability, will be sustained in the future:



BB 0

CC 0

DD 0

EE 0

d. mental anguish that, in reasonable probability, will be sustained in the future:

BB \$1,250,000.00

CC \$1,250,000.00

DD \$1,250,000.00

EE \$1,250,000.00

PJC 8.2

Answer Question 13 only with respect to those Plaintiffs named below for whom: (i) you answered “yes” to at least one of the following Questions: Nos. 1, 2, or 5; *and* (ii) you also answered “yes” to *either* Question No. 10 *or* Question No. 11. Otherwise, do not answer Question 13 with respect to that Plaintiff.

**QUESTION 13**

Find the percentage of responsibility of those Defendants named below for the personal injury, if any, suffered by each of the Plaintiffs named below as a result of the conduct you found to have occurred in Questions 1, 2, 5, 10 and/or 11.

“Percentage of responsibility” means the percentage attributed to the Defendants named below with respect to causing or contributing to cause, by virtue of the conduct you found each Defendant to have committed in response to Questions 1, 2, 5, 10 and/or 11, the personal injury for which recovery of damages is sought by each of the Plaintiffs named below.

The percentages you find with respect to each Plaintiff named below must total 100 percent. The percentages must be expressed in whole numbers. The responsibility attributable to any one Defendant named below is not necessarily measured by the number of acts or omissions found.

A. Find the percentage of responsibility of those Defendants named below for the personal injury, if any, suffered by BB:

Harold R. Newsom:	20%
Jason Ray Newsom	80%
Total:	<u>100%</u>

B. Find the percentage of responsibility of those Defendants named below for the personal injury, if any, suffered by CC:

Harold R. Newsom:	20% %
Jason Ray Newsom	80%
Total:	<u>100%</u>

C. Find the percentage of responsibility of those Defendants named below for the personal injury, if any, suffered by DD:

Harold R. Newsom:	20%
Jason Ray Newsom	80%
Total:	<u>100%</u>

D. Find the percentage of responsibility of those Defendants named below for the personal injury, if any, suffered by EE:

Harold R. Newsom:	20%
Jason Ray Newsom	80%
Total:	<u>100%</u>

PJC 4.3

**QUESTION NO. 14**

Do you find from a preponderance of the evidence that any of the persons named below acted with actual intent to hinder, delay or defraud any of the Plaintiffs?

You are instructed that in determining "actual intent" you may consider the following factors:

- 1) whether the transfer was to an insider;
- 2) whether the debtor retained possession or control of the property transferred after the transfer;
- 3) whether the transfer was concealed;
- 4) whether before the transfer was made, the debtor had been sued or threatened with suit;
- 5) whether the transfer was of substantially all the debtor's assets;
- 6) whether the debtor absconded or tried to hide;
- 7) whether the debtor removed or concealed assets;
- 8) whether the value of the consideration received by the debtor was reasonably equivalent to the value of the assets transferred;
- 9) whether the debtor was insolvent or became insolvent shortly after the transfer was made;
- 10) whether the transfer occurred shortly before or shortly after a substantial debt was incurred; and
- 11) whether the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

Answer "yes" or "no" as to each of the following.

Answer:

Harold Newsom:     yes

Jason Ray Newsom:  yes

**QUESTION NO. 15**

What monetary value, if any, did the property described below have at the time of its transfer by Jason Ray Newsom?

You are instructed that the value of the asset transferred is not to be adjusted to include the value of improvements made by a good faith transferee, including:

- (A) physical additions or changes to the asset transferred;
- (B) repairs to the asset;
- (C) payment of any tax on the asset;
- (D) payment of any debt secured by a lien on the asset that is superior or equal to the rights of a voiding creditor under this chapter; and
- (E) preservation of the asset.

Answer in dollars in cents, if any, for each of the following:

- a) transfer of 27 acres of land, more or less, situated in the CHRISTOPHER BRYAN SURVEY, Abstract No. 75, Montgomery County, Texas.

Answer:       \$181,000.00

**Certificate**

We, the jury, have answered the above and foregoing questions as herein indicated, and herewith return same into court as our verdict.

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