

CAUSE NO. 22-001652-CV-472

<b>B.S</b>	§	<b>IN THE DISTRICT COURT</b>
<b>Plaintiff</b>	§	
	§	
<b>v.</b>	§	<b>BRAZOS COUNTY, TEXAS</b>
	§	
<b>DAVID A. HAMMOND; MATTHEW P. HAMMOND; JIMMIE HAMMOND, III; AND THE FOUNDATION LOUNGE, LLC</b>	§	<b>472<sup>nd</sup> JUDICIAL DISTRICT</b>

**CHARGE OF THE COURT**

MEMBERS OF THE JURY:

MEMBERS OF THE JURY:

After the closing arguments, you will go to 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 device 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 taken 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 deliberations. 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 unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a 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.

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.

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 answers 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 answers 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.

**QUESTION 1:**

Did David Hammond commit assault against

*the plaintiff*  
?

A person commits assault if the person (1) 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; OR (2) intentionally, knowingly, or recklessly causes bodily injury to another.

A person acts "knowingly," or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person acts "intentionally," or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

Answer "Yes" or "No."

Answer: Yes

*NAME of The plaintiff removed by WTKW NEWS.*

**QUESTION 2:**

*the plaintiff?*

Did David Hammond commit sexual assault against

A person commits sexual assault if the person intentionally or knowingly (1) causes the penetration of the anus or sexual organ of another person by any means, without that person's consent; (2) causes the penetration of the mouth of another person by the sexual organ of the actor, without that person's consent; OR (3) causes the sexual organ of another person, without that person's consent, to contact the mouth, anus or sexual organ of another person, including the actor.

A person acts "knowingly," or with knowledge, with respect to the nature of his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or that the circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

A person acts "intentionally," or with intent, with respect to the nature of his conduct or to a result of his conduct when it is his conscious objective or desire to engage in the conduct or cause the result.

Answer "Yes" or "No."

Answer: Yes

*Name of the plaintiff removed by WTAW News*

Answer Question 3 only if you answered "Yes" to Question 1 and/or Question 2. Otherwise, do not answer Question 3.

**QUESTION 3:**

Was David Hammond a Vice-Principal of The Foundation Lounge at the time of the occurrence in question?

You are instructed that:

A person is a Vice-Principal if:

1. that person has authority to employ, direct, and discharge an employee; OR
2. The Foundation Lounge has confided to that person the management of the whole or a department or division of the business.

Answer "Yes" or "No."

Answer: Yes

Answer Question 4 only if you answered "Yes" to Question 3. Otherwise, do not answer Question 4 and move on to Question 5.

**QUESTION 4:**

Is liability for David Hammond's assault of the plaintiff imputed to The Foundation Lounge?

You are instructed that, regardless of whether an employee acts within the scope of his employment, his status as a vice-principal of the company will impute liability to his employer for his actions in the workplace.

Answer "Yes" or "No."

Answer: Yes

*name of the plaintiff removed by WTKR News*

Answer Question 5 regardless of how you answered the prior questions.

**QUESTION 5:**

Did the negligence, if any, of The Foundation Lounge proximately cause the occurrence in question?

“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 a 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.

Answer “Yes” or “No”

Answer: Yes

Answer Question 6 only if you answered "Yes" to Question 1, 2, and/or 5. Otherwise, do not answer Question 6.

**QUESTION 6:**

What sum of money, if paid now in cash, would fairly and reasonably compensate <sup>The plaintiff</sup> for her injuries and damages 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.

You are instructed that Defendant is not responsible for any condition that existed before the occurrence in question, except to the extent such condition, if any, was aggravated by the occurrence.

Do not include damages caused by causes other than the occurrence in question.

Answer separately, in dollars and cents, for damages, if any.

- a. Mental anguish sustained in the past.

ANSWER: \$ 15 million

- b. Mental anguish that, in reasonable probability, Bethany Swerdloff will sustain in the future.

ANSWER: \$ 5 million

- c. Impairment sustained in the past.

ANSWER: \$ 5 million

- d. Impairment that, in reasonable probability, Bethany Swerdloff will sustain in the future.

ANSWER: \$ 5 million

- e. Physical pain sustained in the past.

ANSWER: \$ 1 million

name of the plaintiff removed by UTAW laws.

Answer Question 7 only if you unanimously answered "Yes" to Question 1 and/or Question 2.

**QUESTION 7:**

Do you find by clear and convincing evidence that the harm to The Plaintiff resulted from gross negligence attributable to David Hammond?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission:

1. which when viewed objectively from the standpoint of David Hammond at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which David Hammond had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: Yes

name of the plaintiff removed by WJTV News

Answer Question 8 regarding *David Hammond* only if you unanimously answered “Yes” to Question 2 and/or 7. Otherwise, do not answer Question 8.

**QUESTION 8:**

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against *David Hammond* and awarded to <sup>the plaintiff</sup> \_\_\_\_\_ as exemplary damages for the conduct found in response to Question 1 and/or Question 2?

“Exemplary damages” means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of *David Hammond*.

Answer in dollars and cents, if any.

Answer: \$ 50 million

name of the plaintiff removed by WTXW News

Answer Question 9 only if you unanimously answered "Yes" to Question 5. Otherwise, do not answer Question 9.

To answer "Yes" to the following question, your answer must be unanimous.

**QUESTION 9:**

Do you find by clear and convincing evidence that the harm to The plaintiff resulted from gross negligence of *The Foundation Lounge*?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

"Gross negligence" means an act or omission by *The Foundation Lounge*,

1. which when viewed objectively from the standpoint of *The Foundation Lounge* at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
2. of which *The Foundation Lounge* has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: No

name of the plaintiff removed by WTRW plus.

Answer Question 10 regarding *The Foundation Lounge* only if you unanimously answered "Yes" to Questions 2, 3, and 4, OR Questions 1, 2 and 9. Otherwise, do not answer Question 10.

**QUESTION 10:**

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

What sum of money, if any, should be assessed against *The Foundation Lounge* and awarded to the PLAINTIFF as exemplary damages for the conduct found in response to Question 7 and/or Question 9?

"Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages.

Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of *The Foundation Lounge*.

Answer in dollars and cents, if any.

Answer: \$50 million

NAME of the plaintiff removed by WTTW NEWS.

### **Presiding Juror:**

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror 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 answers 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.
4. There are some special instructions before Questions 3 and 4 explaining how to answer those questions. Please follow the instructions. If all twelve of you answer those questions, you will need to complete a second verdict certificate for those questions. Do you understand these instructions? If you do not, please tell me now.

  
JUDGE PRESIDING

**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.

X \_\_\_\_\_ Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

*Signatures and names removed  
by WTTW News*