

NO. 221,753-B

**ANGELA BISHOFF and
HEATH BISHOFF**

VS.

**ROADHOUSE OF TEMPLE, LTD.,
d/b/a TEXAS ROADHOUSE & TEXAS
ROADHOUSE, INC.**

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IN THE DISTRICT COURT

BELL COUNTY, TEXAS

146TH JUDICIAL DISTRICT

FILED

2008 OCT 23 AM 8:36

SHELKA NORMAN
DISTRICT CLERK
BELL COUNTY, TX

BY: *[Signature]*

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 follow 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 will 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.

Answer "Yes" or "No" to all questions unless otherwise instructed. A "Yes" answer must be based on a preponderance of the evidence. 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.

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.

You are instructed that deposition testimony is testimony taken under oath before an official court reporter out of court which can be used in court and has the same force and effect as live testimony given in court.

During trial it was permissible for you to take notes. You may carry those notes to the jury room for your personal use during deliberation on the court's charge. You may not share these notes with other jurors. Your personal recollection of the evidence takes precedence over any notes you have taken. A juror may not rely on the notes of another juror. If you disagree about the evidence, the presiding juror may apply to the court and have the court reporter's notes read to the jury.

"Texas Roadhouse" means Roadhouse of Temple, LTD., d/b/a Texas Roadhouse and Texas Roadhouse, Inc.

QUESTION 1

Did the negligence, if any, of those named below proximately cause the occurrence in question?

With respect to the condition of the premises, Texas Roadhouse was negligent if—

- a. the condition posed an unreasonable risk of harm, and
- b. Texas Roadhouse knew or reasonably should have known of the danger, and
- c. Texas Roadhouse failed to exercise ordinary care to protect Angela Bishoff from the danger, by both failing to adequately warn Angela Bishoff of the condition and failing to make that condition reasonably safe.

“Ordinary care,” when used with respect to the conduct of Texas Roadhouse as an owner or occupier of a premises, means that degree of care that would be used by an owner or occupier of ordinary prudence under the same or similar circumstances.

“Negligence,” when used with respect to the conduct of Angela Bishoff, 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,” when used with respect to the conduct of Angela Bishoff, 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 therefrom. There may be more than one proximate cause of an event.

Answer “Yes” or “No” for each of the following:

- a. Texas Roadhouse YES
- b. Angela Bishoff YES

If you have answered "Yes" to Question 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The negligence attributable to any one named below is not necessarily measured by the number of acts or omissions found. The percentage attributable to a party need not be the same percentage attributed to that party in answering another question.

QUESTION 2

What percentage of the negligence that caused the occurrence do you find to be attributable to each of those listed below and found by you, in your answers to Question 1, to have been negligent?

a.	Texas Roadhouse	<u>50</u>	%
b.	Angela Bishoff	<u>50</u>	%
	Total	<u>100</u>	%

Answer Question 3 and 4 if you answered "Yes" for Texas Roadhouse to Question 1 and answered:

- (1) "No" for Angela Bishoff to Question 1, or
- (2) 50 percent or less for Angela Bishoff to Question 2.

Otherwise, do not answer Question 3 and 4.

QUESTION 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Angela Bishoff for her 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.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Angela Bishoff.

- a. Physical pain and mental anguish sustained in the past.

Answer: \$ 25,000.00

- b. Physical pain and mental anguish that, in reasonable probability, Angela Bishoff will sustain in the future.

Answer: \$ 25,000.00

- c. Loss of earning capacity sustained in the past.

Answer: \$ 4,000.00

- d. Loss of earning capacity that, in reasonable probability, Angela Bishoff will sustain in the future.

Answer: \$ 1,500.00

- e. Disfigurement sustained in the past.

Answer: \$ 10,000.00

f. Disfigurement that, in reasonable probability, Angela Bishoff will sustain in the future.

Answer: \$ 10,000.00

g. Physical impairment sustained in the past.

Answer: \$ 25,000.00

h. Physical impairment that, in reasonable probability, Angela Bishoff will sustain in the future.

Answer: \$ 25,000.00

i. Medical care expenses incurred in the past.

Answer: \$ 38,000.00

j. Medical care expenses that, in reasonable probability, Angela Bishoff will incur in the future.

Answer: \$ 20,000.00

QUESTION 4

What sum of money, if paid now in cash, would fairly and reasonably compensate Heath Bishoff for injuries, if any, to his wife, Angela Bishoff, 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.

Answer separately, in dollars and cents, for damages, if any. Do not reduce the amounts, if any, in your answers because of the negligence, if any, of Angela Bishoff.

- a. Loss of household services sustained in the past.

“Household services” means the performance of household and domestic duties by a spouse to the marriage.

Answer: \$ 5,000.00

- b. Loss of household services that, in reasonable probability, Heath Bishoff will sustain in the future.

Answer:

- c. Loss of consortium sustained in the past.

“Consortium” means the mutual right of the husband and wife to that affection, solace, comfort, companionship, society, assistance, sexual relations, emotional support, love, and felicity necessary to a successful marriage.

Answer: \$ 5,000.00

- d. Loss of consortium that, in reasonable probability, Heath Bishoff will sustain in the future.

Answer:

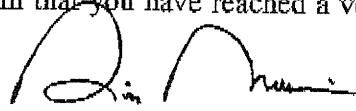
After you retire to the jury room, you will select your own presiding juror. The first thing the presiding juror will do is to have this complete charge read aloud and then you will deliberate upon your answers to the questions asked.

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.



JUDGE PRESIDING

Certificate

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

(To be signed by the presiding juror if the jury is unanimous.)

PRESIDING JUROR

Printed Name of Presiding Juror

(To be signed by those rendering the verdict if the jury is not unanimous.)

Jurors' Signatures

Joyce A. Bailey
Thomas H. Gavin
J. Willie Plummer
Edward Barnes
Melanie Teague
Jo Ann Gomez
Jerris R. Watkins
Adela T. Ortiz
Darlene Hickey
Fred E. Funder
Jeannette Curtice

Jurors' Printed Names

Joyce A. Bailey
Thomas H. Gavin
J. Willie Plummer
Edward Barnes
Melanie Teague
Jo Ann Gomez
JERRIS R. WATKINS
Adela T. Ortiz
Darlene Hickey
Fred E. Funder
Jeannette Curtice

Fax Cover Sheet

**Bell County
District Court Coordinators
P.O. Box 324
Belton Texas 76513
1-800-460-2355 Ext# 5247
Or
254-933-5247**

Name: Lisa
Fax: 512-372-8140
Phone:
From: Joanna Staton
Date: October 27, 2008
Subject: Bishoff v Roadhouse
Pages: 11 (including cover sheet)

Comments: [Comments]

From the desk of...Joanna Staton
P.O. Box 324
Belton, Tx 76513