

VELMA CARR, AS AN HEIR AT  
LAW AND THE REPRESENTATIVE  
OF THE ESTATE OF RAYMOND  
CARR, DECEASED

VS.

HERITAGE HOUSING  
DEVELOPMENT, INC. f/k/a  
HERITAGE GERIATRIC HOUSING  
DEVELOPMENT, INC.;  
HERITAGE GERIATRIC HOUSING  
DEVELOPMENT VIII, INC.;  
HERITAGE SAM HOUSTON  
GARDENS, IN IT ASSUMED OR  
COMMON NAME; CHANDRA WHITE,  
INDIVIDUALLY; LINDA RUTH  
WILLIAMS, INDIVIDUALLY; AND  
JOHN HODNETT, INDIVIDUALLY

IN THE DISTRICT COURT OF  
  
OF HARRIS COUNTY, TEXAS

**F I L E D**  
CHARLES BACARISSE  
District Clerk

JUL 28 2003

Harris County, Texas  
By *Charles Bacarisse*  
Deputy

152ND JUDICIAL DISTRICT

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 questions another way.

6. You may render your verdict only upon the vote of ten or more members of the jury. The same ten or more of you must agree upon all of the answers made and to the entire verdict. You will not, therefore, enter into an agreement to be bound by a majority or any other vote of less than ten jurors. If the verdict and all of the answers in it are reached by unanimous agreement, the presiding juror shall sign the verdict for the entire jury. If any juror disagrees as to any answer made by the verdict, those jurors who agree to all findings shall each sign the verdict.

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."

"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.

"Negligence," when used with respect to the conduct of the defendants means failure to use ordinary care, that is, failing to do that which a nursing home, administrator, director of nurses, or unit manager of ordinary prudence would have done under the same or similar circumstances or doing that which a nursing home, administrator, director of nurses, or unit manager 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 nursing home, administrator, director of nurses, or unit manager of ordinary prudence under the same or similar circumstances, taking into consideration Raymond Carr's known mental and physical condition.

"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 nursing home, administrator, director of nurses, or unit manager 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.

A corporation acts through its officers, agents, and employees. In other words, the acts of the officers, agents, and employees of a corporation are the acts of the corporation itself, unless the acts are outside of the scope of the actor's employment.

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.

Now, bearing in mind these definitions and explanatory instructions and such explanations and definitions as may later be given, you will answer the following questions:

QUESTION NO. 1

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

Answer "Yes" or "No" for each of the following:

- |    |   |            |
|----|---|------------|
| 1. | Heritage Housing Development, Inc.                | <u>yes</u> |
| 2. | Heritage Geriatric Housing Development VIII, Inc. | <u>yes</u> |
| 3. | Chandra White, individually                       | <u>yes</u> |
| 4. | Linda Ruth Williams, individually                 | <u>yes</u> |
| 5. | John Hodnett, individually                        | <u>yes</u> |

If, in answer to Question No. 1, you have found that the negligence of one or more of those named below proximately caused the injury in question, then answer the following question. Otherwise, do not answer the following question.

### QUESTION NO. 2

What percentage of the negligence that caused the injury in question do you find to be attributable to each of those found by you in your answer to Question No. 1 to have been negligent?

The percentages you find must total one hundred percent (100%). The percentages must be expressed in whole numbers. The negligence attributable to those named below is not necessarily measured by the number of acts or omissions found.

1.	Heritage Housing Development, Inc.	<u>45%</u>
2.	Heritage Geriatric Housing Development VIII, Inc.	<u>40%</u>
3.	Chandra White, individually	<u>10%</u>
4.	Linda Ruth Williams, individually	<u>3%</u>
5.	John Hodnett, individually	<u>2%</u>

If, in answer to Question No. 1, you have found that the negligence of one or more of those named proximately caused the injury, then answer Question No. 3. Otherwise, do not answer Question No. 3.

### QUESTION NO. 3

What sum of money would fairly and reasonably compensate Raymond Carr for:

Answer in dollars and cents for damages, if any.

Element a. Pain and mental anguish.

"Pain and mental anguish" means the conscious physical pain and emotional pain, torment, and suffering experienced by Raymond Carr before his death as a result of the injury in question.

Answer: \$ 2,000,000.00

Element b. Medical expenses.

"Medical expenses" means the reasonable expense of the necessary medical and hospital care received by Raymond Carr for treatment of injuries sustained by him.

Answer: \$ 1,24,000.00

Element c. Disfigurement.

Answer: \$ 80,000.00

If, in answer to Question No. 1, you have found that the negligence of one or more of those named below proximately caused the injury, then Answer Question No. 4.

QUESTION NO. 4

Do you find from clear and convincing evidence that the harm suffered by Raymond Carr resulted from malice?

"Malice" means:

- a) A specific intent by the Defendant(s) to cause substantial injury to Raymond Carr; or
- b) an act or omission by the Defendant(s):
  - i) which when viewed objectively from the standpoint of the Defendant(s) at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
  - ii) of which the Defendant(s) had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to the rights, safety, or welfare of others.

"Clear and convincing evidence" means a degree of proof that produces a firm belief on conviction of the truth of the allegation(s) sought to be established.

Answer "Yes" or "No"

- |    |   |            |
|----|---|------------|
| 1. | Heritage Housing Development, Inc.                | <u>yes</u> |
| 2. | Heritage Geriatric Housing Development VIII, Inc. | <u>yes</u> |
| 3. | Chandra White, individually                       | <u>yes</u> |
| 4. | Linda Ruth Williams, individually                 | <u>yes</u> |
| 5. | John Hodnett, individually                        | <u>yes</u> |



If, in answer to Question No. 4, you have found that one or more of those named below acted with malice, then answer Question No. 5 as to that party. Otherwise, do not answer Question No. 5.

QUESTION NO. 5

What sum of money, if any, should be assessed against one or more of those named below as exemplary damages for the occurrence?

"Exemplary damages" means any damages awarded as a penalty or by way of punishment 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 the conduct offends a public sense of justice and propriety.
6. The net worth of the Defendant(s).

Answer in dollars and cents, if any.

- |    |   |                |
|----|---|----------------|
| 1. | Heritage Housing Development, Inc.                | \$1,750,000.00 |
| 2. | Heritage Geriatric Housing Development VIII, Inc. | \$1,500,000.00 |
| 3. | Chandra White, individually                       | \$8,500.00     |
| 4. | Linda Ruth Williams, individually                 | \$6,000.00     |
| 5. | John Hodnett, individually                        | \$5,000.00     |


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 space 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 our 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

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 unanimous.)

\_\_\_\_\_  
PRESIDING JUROR

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

#1 - Emily Bullard	#7 <del>Vivian C. Shaw</del>
#2 - Mary Porter	#8 Kelley M. Bennett
#3 Annora Wilkins	#9 Edwina J. King
#4 Eugenia Sara	#11 <del>Y. J. King</del>
(5) Clifton Wells	_____
#6 <del>Pedro A. King</del>	_____