

Case No. 05-C-534

FILED FOR RECORD
CASS COUNTY, TEXAS

2007 MAR -6 PM 1:53

BILLY RAY JOHNSON)
through Next Friend)
Lue Wilson,)

Plaintiff,)

v.)

CHRISTOPHER COLT AMOX,)
JAMES CORY HICKS, and)
JOHN WESLEY OWENS.)

Defendants.)

IN THE DISTRICT COURT

DECKY WILBANKS
DISTRICT CLERK
BY _____ DEPUTY

OF CASS COUNTY, TEXAS

5th JUDICIAL DISTRICT

THIRD AMENDED ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff **BILLY RAY JOHNSON** by and through his next friend, **LUE WILSON**, and files his Third Amended Original Petition against Defendants, **CHRISTOPHER COLT AMOX, JAMES CORY HICKS, and JOHN WESLEY OWENS**, and for cause of action would show unto the Court as follows:

DISCOVERY CONTROL PLAN

1. Plaintiff requests that discovery be conducted under Level 3 and specifically tailored to the case. A Pretrial Docket Control Order and Discovery Plan will be submitted after the parties have been served and appear.

VENUE

2. This is a petition seeking damages for personal injury that is derivative of intentional and negligent conduct that took place in Cass County, Texas. Therefore, pursuant to the applicable venue rules, venue is proper in Cass County district court.

THE PARTIES

3. Plaintiff **BILLY RAY JOHNSON** is a 45-year-old African-American man with severe mental and physical disabilities. He is a resident and citizen of the Texarkana Nursing Center in Bowie County, Texas. Prior to residing in the nursing home and during all times relevant to this case, he was a citizen and resident of Linden, in Cass County, Texas.

4. Billy Ray Johnson's Next Friend, **LUE WILSON**, is the plaintiff's cousin and a resident and citizen of Linden, in Cass County, Texas.

5. Defendant **CHRISTOPHER COLT AMOX** ("Amox") is a resident and citizen of Avinger, Texas. At all times relevant to this Petition, he was a resident and citizen of Linden, in Cass County, Texas.

6. Defendant **JAMES CORY HICKS** ("Hicks") is a resident and citizen of Diana, Texas. At all times relevant to this Petition, he was a resident and citizen of Linden, in Cass County, Texas.

7. Defendant **JOHN WESLEY OWENS** ("Owens") is a resident and

citizen of Linden in Cass County, Texas, and was so at all times relevant to this Petition.

STATEMENT OF FACTS

8. On the evening of September 27, 2003, defendant Owens, who is white, hosted a "pasture party" on his father's property, where Owens resided. Approximately fifteen young white people (including all of the defendants) attended the party, which began at approximately 10:30 p.m. The guests gathered around a bonfire and drank beer.

9. At approximately 12:00 a.m. on September 28, 2003, Owens left his party to go to a local convenience store called the "Country Store." Owens saw the plaintiff – a 42-year-old mentally-challenged African-American man – in the parking lot of the convenience store and invited him to the party. Owens had known the plaintiff for approximately ten years and was aware that the plaintiff was mentally challenged. Owens knew or should have known that the plaintiff's presence at the party could cause trouble. Initially, the plaintiff refused to go because he was waiting for a ride, but Owens insisted, repeatedly promising to return the plaintiff to the Country Store in time for his ride. Owens then drove the plaintiff to the party.

10. When Owens returned to the party with the plaintiff, he supplied the plaintiff with beer and began dancing with him around the campfire. Several

of the partygoers laughed at and taunted the plaintiff, and several shouted "nigger" and "crazy nigger" at him. Defendant Hicks, who arrived shortly thereafter, asked someone why Owens had brought a "stupid nigger" to the party.

11. Several of the guests were offended by the exploitation, ridicule, and harassment of the plaintiff and left the party. By approximately 2:00 a.m., only six people remained at the party: the plaintiff, Lacy Dorgan, Dallas Stone and defendants Amox, Hicks, and Owens.

12. Defendant Hicks stated that "[s]omeone needs to whip the shit out of Billy Ray" and encouraged defendant Amox and Dallas Stone to do so. Defendant Owens heard this threat and also heard Dallas Stone encouraging defendant Amox to hit the plaintiff. However, defendant Owens did nothing to help, protect or warn the plaintiff. Instead, despite the mounting danger, defendant Owens chose to leave the plaintiff alone with the other defendants and went off to join Lacy Dorgan in her car twenty feet away.

13. When it became clear that defendant Amox was going to hit the plaintiff, either Dallas Stone or defendant Hicks found defendant Owens and told him that an assault on the plaintiff was imminent. Defendant Owens got out of the car and returned to the scene.

14. Dallas Stone told the plaintiff to "leave before the KKK comes and

gets you." Defendant Owens heard defendant Amox telling the plaintiff to leave and saw Dallas Stone knock the beer can out of the plaintiff's hand when the plaintiff asked if he could finish his beer.

15. Despite his knowledge that the plaintiff was unaware of the danger he was in and was incapable of protecting himself without help, defendant Owens took no action to warn the plaintiff, stop the assault or in any way protect the plaintiff – his invited guest – from attack.

16. At no point in the evening did the plaintiff ever threaten any of the defendants or anyone else in any way. At no time did he behave in an aggressive manner. He had no weapon of any kind.

17. Without any reasonable provocation, defendant Amox punched the plaintiff in his face, causing the plaintiff to fall backward and hit his head on the ground.

18. While lying unconscious on the ground, the plaintiff began to vomit and make gurgling sounds. Despite the plaintiff's injury and his obvious need for immediate medical attention, none of the defendants took any action to help him or to call for medical assistance. Instead, all of the defendants simply stood around the plaintiff's unconscious body for at least an hour. At one point, Lacy Dorgan checked the plaintiff's pulse and breathing to determine if he was alive. Defendant Owens picked up the plaintiff's unconscious body, tried to

stand him on his feet, and then negligently shook him to try and wake him and let him drop to the ground.

19. Defendant Hicks told the other defendants that he would lose his job as a jailer and lose custody of his children if they called the authorities. Defendant Hicks dissuaded Lacy Dorgan from driving the plaintiff to the hospital on the basis that the plaintiff's blood would stain her car seats.

20. During all of this time, the defendants had access to cellular telephones that could have been used to call for help. They also had access to at least three trucks that could have been used to drive the plaintiff to the nearby hospital, located approximately four miles away.

21. After an hour of standing around the plaintiff's unconscious body, the defendants decided to take action. Rather than seeking medical attention for the plaintiff, the defendants decided to dump the plaintiff on a dark, deserted road in Cass County (County Road 1620). Acting without reasonable care for the plaintiff's condition and how it might be worsened, defendant Amox and Dallas Stone loaded the plaintiff's body into the bed of Amox's truck, drove to County Road 1620, and placed the plaintiff's body approximately six to eight feet from the side of the road – a location several miles farther away from the local hospital than the location of the party. Although it was only 50 degrees outside, the defendants made no effort to protect the plaintiff from the cold and left him in

the t-shirt and jeans that he had been wearing when defendant Owens brought him to the party.

22. After leaving the plaintiff's body by the side of the road, the four defendants went to a local car wash and washed the plaintiff's vomit and blood from the bed of defendant Amox's truck.

23. Defendants Owens and Hicks later returned to the location where they had dumped the plaintiff's body and saw that he was still unconscious.

24. At approximately 5:00 a.m., defendant Hicks – who was employed by the Cass County Sheriff at the time – phoned the Sheriff's office to report that he had seen a body lying on the side of the road. He did not provide the dispatcher with any information as to the plaintiff's condition, his need for medical assistance, or the cause of his injuries.

25. Defendants Hicks and Owens met a deputy sheriff at an intersection near the location of the plaintiff's body and directed him there. They did not provide the deputy with any information about the assault that had occurred a few hours earlier, nor did they mention the plaintiff's need for medical assistance.

26. Upon examining the plaintiff's unconscious body and observing his condition, the deputy sheriff immediately called for an ambulance to take the plaintiff to the hospital, located four miles away.

27. At the time defendant Hicks called the Sheriff, the plaintiff had already been unconscious for more than two hours. Because defendants Hicks and Owens failed to tell the authorities that the plaintiff had been assaulted and that he required medical attention, an additional hour elapsed between the time defendant Hicks called the sheriff's dispatcher and the arrival of the paramedics to the scene. Defendants Hicks and Owens also failed to tell the paramedics or the hospital staff that the plaintiff had been assaulted.

28. When the plaintiff finally arrived at the hospital, he was in a coma as a result of the defendants' tortious acts. Among other injuries, he had suffered a subarachnoid hemorrhage ("SAH") – i.e., bleeding in the brain; aspiration pneumonia caused by breathing vomit into his lungs; a fractured clavicle; and numerous abrasions, cuts, and ant bites. The SAH caused brain damage affecting the plaintiff's mental ability, balance, and speech. He remained in a comatose or semi-comatose state for several days. After approximately three weeks at the local hospital, during which time he was unable to walk without assistance, he was transferred to a rehabilitation hospital. He remained at the rehabilitation hospital for an additional three weeks before being moved to a nursing home, where he remains to this day.

29. As a direct result of the injuries caused by the defendants' conduct, the plaintiff suffered substantial pain not only on the night of the assault, but also

throughout his recovery from those injuries. Even after the plaintiff's rehabilitation began, doctors recommended twenty-four-hour supervision as he underwent speech therapy, occupational therapy, and physical therapy. Despite extensive therapy, the plaintiff's speech was severely affected.

30. Because of his confinement in a nursing home located fifty miles from his home, the plaintiff's contact with his mother and the rest of his family is extremely limited, causing him severe emotional distress.

**COUNT I - CAUSE OF ACTION AGAINST
AMOX AND HICKS FOR ASSAULT**

31. Plaintiff states a cause of action against defendants AMOX and HICKS under the common law of the State of Texas for assault.

32. The conduct of defendant Amox was intentional, knowing, or reckless, and involved infliction of bodily injury on plaintiff. Defendant Hicks substantially assisted and encouraged defendant Amox to assault the plaintiff by imploring him and egging him on to do so.

33. The conduct of the defendants as set forth above proximately caused damages to the plaintiff.

34. The conduct of the defendants constituted aggravated assault in violation of Section 22.02 of the Texas Penal Code because they caused serious bodily injury to the plaintiff.

**COUNT II - CAUSE OF ACTION AGAINST AMOX AND
HICKS FOR CIVIL CONSPIRACY TO COMMIT ASSAULT**

35. Pleading further and/or in the alternative, plaintiff states a cause of action against defendants AMOX and HICKS under the common law of the State of Texas for civil conspiracy to commit assault.

36. Defendants Amox and Hicks willfully and maliciously conspired to assault the plaintiff. Defendant Hicks conspired with defendant Amox to assault the plaintiff and substantially assisted and encouraged defendant Amox to assault the plaintiff by imploring him and egging him on to do so. As a result of the conspiracy, the plaintiff was knocked unconscious, fell backward, and struck his head on the ground.

37. The conduct of the defendants as set forth above was intentional, knowing, or reckless, and involved infliction of bodily injury on plaintiff.

38. The conduct of the defendants as set forth above proximately caused damages to the plaintiff.

39. The conduct of the defendants constituted aggravated assault in violation of Section 22.02 of the Texas Penal Code because they caused serious bodily injury to the plaintiff.

**COUNT III – CAUSE OF ACTION FOR
PREMISES LIABILITY AGAINST DEFENDANT OWENS**

40. Pleading further and/or in the alternative, plaintiff states a cause of

action against defendant OWENS under the common law of the State of Texas for premises liability.

41. Upon information and belief, defendant Owens was the possessor or occupier of the premises where plaintiff was assaulted and/or was put in control of the premises by his father, the landowner.

42. Defendant Owens owed a duty to the plaintiff – his licensee – to either warn the plaintiff of, or to make reasonably safe, a dangerous condition of which defendant Owens was aware.

43. Defendant Owens had actual knowledge of the existence of a dangerous condition on the premises that posed an unreasonable risk of harm to the plaintiff – namely, that defendants Hicks and Amox and Dallas Stone were threatening to harm the plaintiff.

44. The plaintiff was not aware of the danger, and defendant Owens knew or should have known that the plaintiff was unaware of the danger.

45. Defendant Owens failed to exercise ordinary care to protect the plaintiff from danger. Specifically, defendant Owens failed to warn the plaintiff or do anything to make the plaintiff reasonably safe.

46. The conduct of the defendant as set forth above proximately caused damages to the plaintiff.

**COUNT IV - CAUSE OF ACTION FOR
NEGLIGENCE AGAINST DEFENDANT OWENS**

47. Pleading further and/or in the alternative, the plaintiff states a cause of action against defendant OWENS under the common law of the State of Texas for negligence.

48. Defendant Owens knew the plaintiff was mentally disabled, knew or should have known that bringing the plaintiff to the party might put the plaintiff in harm's way, knew or should have known of the increasing danger to the plaintiff as the night progressed, knew that the plaintiff was being racially taunted, harassed and threatened, chose not to return the plaintiff to the Country Store as he had originally promised, left the plaintiff alone with the other defendants, knew or should have known that the plaintiff could not appreciate the danger he faced, and knew that the plaintiff was about to be attacked immediately beforehand.

49. Having negligently created this dangerous situation, defendant Owens had a duty to do something to prevent injury to the plaintiff because it reasonably appeared or should have appeared that the plaintiff may have been harmed thereby.

50. Despite his actual knowledge of the risk of harm to the plaintiff, defendant Owens breached his duty by failing to protect the plaintiff from danger.

51. The negligent conduct of the defendant as set forth above proximately caused damages to the plaintiff.

**COUNT V - CAUSE OF ACTION FOR
NEGLIGENCE AGAINST ALL DEFENDANTS**

52. Pleading further and/or in the alternative, Plaintiff states a cause of action against defendants OWENS, AMOX, and HICKS under the common law of the State of Texas for negligence.

53. After the plaintiff was assaulted and lay unconscious on the ground, the defendants, acting together, voluntarily embarked on an affirmative course of action affecting the interests of the plaintiff. Having done so, the defendants owed a duty to the plaintiff to act with reasonable care and to avoid any affirmative act that might worsen the plaintiff's condition. The defendants breached this duty by: (a) moving the unconscious plaintiff without any medical training or assistance from emergency personnel; (b) placing him in the bed of a pickup truck; (c) leaving the plaintiff's unconscious body along the side of a dark, deserted road near an ant bed; (d) failing to drive the plaintiff to a hospital where he could receive medical attention; and (e) failing to inform the authorities, the paramedics, or the hospital staff that the plaintiff had been assaulted. Defendant Owens also breached this duty in his attempt to revive the plaintiff by trying to stand the plaintiff on his feet, negligently shaking the plaintiff in an attempt to wake him and then letting the plaintiff drop to the

ground.

54. The negligent conduct of the defendants as set forth above proximately caused damages to the plaintiff.

**COUNT VI - CAUSE OF ACTION FOR NEGLIGENCE
PER SE AGAINST ALL DEFENDANTS**

55. Pleading further and/or in the alternative, Plaintiff states a cause of action against defendants OWENS, HICKS, and AMOX for negligence per se.

56. The defendants breached their duty to care for a disabled person, the Plaintiff, as imposed by Texas Penal Code § 22.04 (Injury to a Disabled Individual by Omission).

57. The defendants intentionally, knowingly, or recklessly by omission caused bodily injury to plaintiff after having assumed care, custody or control of the plaintiff, a disabled individual.

58. Defendant Owens pled guilty to a violation of this statute. Defendant Hicks was convicted of a violation of this statute. Defendant Amox also violated this statute.

59. The defendants' violation of the statute proximately caused damages to the plaintiff.

DAMAGES

60. The acts of the defendants as set forth above proximately caused damages to be suffered by the plaintiff. Plaintiff has suffered physical and

psychological injury, physical pain, mental anguish as well as physical and mental impairment and, in reasonable probability will suffer such for the indefinite future. Further, Plaintiff has incurred medical expenses in the past and, in reasonable probability, will incur same in the future. Accordingly, the plaintiff seeks fair, reasonable and adequate compensation for his damages in an amount in excess of the minimum jurisdictional limits of this Court.

REQUEST FOR DISCLOSURE

61. Plaintiff requests each defendant to disclose those matters specified in Rule 194.2, Texas Rules of Civil Procedure.

JURY DEMAND

62. Plaintiff demands a trial by jury. The jury fee is tendered with the filing and service fees of this action.

PRAYER

63. Plaintiff prays that defendants be cited to appear and answer herein, in the terms of the law; and that upon final hearing the plaintiff has judgment of and from defendants, jointly and severally for their damages, statutory, and equitable remedies, as herein alleged, for pre-judgment and post-judgment interest as provided by law; and for such other and further relief as the court may deem proper.

Respectfully submitted,

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By: 
Kelley M. Bruner

This 6th day of March, 2007

CERTIFICATE OF SERVICE

By my signature below, I hereby certify that a true and correct copy of the **Third Amended Original Petition** has been served on all parties of record on this the 6th day of March, 2007, as follows:

G.F. Stovall, Esq.

Stovall & Shelton

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Via Hand Delivery

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*Via Hand Delivery or
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Requested*



Kelley M. Bruner