

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:97CV-730-H

GLORIA JEAN COIN

PLAINTIFF

V.

WAL-MART, INC., d/b/a
SAM'S CLUB

DEFENDANT

JURY INSTRUCTIONS

Members of the Jury, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not to single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits

which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion and the reasons for such an opinion. You should consider this evidence and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by the expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case, then you may reject the opinion of such expert in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

1. It was the duty of Defendant through its employees to exercise ordinary care to maintain the Sam's Club premises in a reasonably safe condition for the use of its customers including Gloria Jean Coin. Ordinary care means such care as the jury would expect an ordinarily prudent company to exercise under the same or similar circumstances.

If you are satisfied from the evidence that Defendant failed to exercise ordinary care to maintain the Sam's Club premises in a reasonably safe condition thus causing Gloria Coin to fall and injure herself, then you will find for Gloria Coin. Otherwise you will find for Defendant.

Please indicate your decision under this Instruction in Part 1 of the Verdict Form.

2. If you find for Gloria Coin in Instruction 1, you may award her money damages to fairly and reasonably compensate her for harms she sustained by reason of the fall. If proven, Gloria Coin may recover the following categories of damages:

- (1) Medical expenses;
- (2) Lost earnings; and
- (3) Mental and physical suffering.

In determining the amount of any damages awarded, you should be guided by logic and common sense, drawing reasonable inferences from the evidence. You may not award damages based on sympathy, speculation, or mere guesswork; however, the law does not require a plaintiff to prove damages with mathematical precision.

Please indicate the amount of damages, if any, in Part 2 of the Verdict Form.

3. It was the duty of Gloria Coin while in the Sam's Club store to exercise ordinary care for her own safety and protection. Ordinary care means such care as the jury would expect an ordinarily prudent person to exercise under the same or similar circumstances. If you are

satisfied from the evidence that Mrs. Coin failed to comply with her duty and that such failure was a substantial factor in causing the accident and her injuries, answer “Yes” in Part 3 of the Verdict Form. Otherwise, answer “No.”

4. If you answer “Yes” in part 3 of the Verdict Form, you must determine what percentage of the total fault was attributable to each of the parties. In apportioning fault between Defendant and Gloria Coin you should consider both the nature of the conduct of each person at fault and the extent of damages caused by that conduct. Please indicate your decision under this Instruction in the spaces provided in Part 4 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case; you will then return with your verdict to the courtroom.

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VERDICT FORM

PART 1

We, the Jury, find for Gloria Jean Coin under Instruction No. 1:

YES _____ NO _____

If you answered "NO," sign and return the Verdict Form.

If you answered "YES," proceed to Part 2.

PART 2

We, the Jury, make the following findings as to Gloria Jean Coin under Instruction

No. 2:

(1)	Medical expenses	\$ _____ (not to exceed \$16,192.79)
(2)	Lost earnings	\$ _____ (not to exceed \$5,887)
(3)	Mental and physical suffering	\$ _____
	TOTAL	\$ _____

PART 3

We, the Jury, find the following finding under Instruction No. 3:

YES _____ NO _____

If you answered "NO," do not answer Part 4.

PART 4

We, the Jury, find the percentage of total fault attributable to the parties as follows:

(1)	Defendant	_____ %
(2)	Gloria Jean Coin	_____ %
	TOTAL	100%

FOREPERSON

DATE: _____