

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CIVIL ACTION NO. 3:00CV-456-H

JUDITH EMBRY

PLAINTIFF

v.

WAL-MART STORES, INC.

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 on the law you are to apply to this case.

It is your duty as jurors to follow the law as stated in these instructions, and to apply that law to the facts you find from the evidence. Do not single out one instruction alone as stating the law, but rather 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, or by the opinion of some other expert, 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.

In this case it is the plaintiff's responsibility to persuade you that her claim is more likely true than not. If the plaintiff fails to persuade you on every essential element of her claim, then you should find for the defendant on that claim.

1. The Plaintiff, Judith Embry, claims that the Defendant, Wal-Mart, was negligent in its duty to maintain safe facilities. Under Kentucky law, a business is not absolutely liable to those it invites onto its premises, but it must exercise ordinary care to prevent injuries. Ordinary care means such care as you, 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 its premises in a reasonably safe condition, and that this failure was a substantial factor in causing Plaintiff to fall and sustain injury, then you will find for Plaintiff. Otherwise, you will find for Defendant.

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

2. If you find for Plaintiff in Part One of the Verdict Form, you may award her money damages to fairly and reasonably compensate her for any injury or injuries she suffered as a result of her fall. If proved, Plaintiff may recover the following:

(1) Medical expenses; and

(2) Pain and suffering.

In determining the amount of damages to award, you should be guided by logic and common sense, drawing reasonable inferences from the evidence. You may not award damages based on 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 Two of the Verdict Form.

3. It was the duty of Plaintiff, Judith Embry, to exercise ordinary care for her own safety and protection while at Wal-Mart. Ordinary care means such care as you, the jury, would expect an ordinarily prudent person to exercise under the same or similar conditions. If you are satisfied from the evidence that Plaintiff failed to comply with her duty and that such failure was a substantial factor in causing the accident and consequently her injuries, answer “Yes” in Part Three of the Verdict Form. Otherwise, answer “No.”

4. If you answer “Yes” in Part Three of the Verdict Form, you must determine what percentage of the total fault is attributable to each of the parties. In apportioning fault between Wal-Mart and Judith Embry you should consider both the nature of the conduct of each, and the extent of damages caused by that conduct. Please indicate your decision under this Instruction on Part Four of the Verdict Form.

Your 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 ONE**

**We, the Jury**, find for Judith Embry:

YES \_\_\_\_\_ NO \_\_\_\_\_

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

**PART TWO**

**We, the Jury**, make the following findings of damages under Instruction #2:

(1) Medical expenses \$ \_\_\_\_\_

(2) Pain and suffering \$ \_\_\_\_\_

TOTAL \$ \_\_\_\_\_

**PART THREE**

**We, the Jury**, find that Judith Embry failed to exercise ordinary care:

YES \_\_\_\_\_ NO \_\_\_\_\_

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

**PART FOUR**

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

- (1) Wal-Mart \_\_\_\_\_ %
- (2) Judith Embry \_\_\_\_\_ %

\_\_\_\_\_  
FOREPERSON

DATE: \_\_\_\_\_