

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO: 3:02CV-198-H

BELYNDA COLLINS

PLAINTIFF

V.

MARSHALL JOHNSON, M.D., et al.

DEFENDANTS

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 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, 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 Plaintiff's responsibility to persuade you that Plaintiff's claim is more likely true than not. If Plaintiff fails to persuade you on every essential element of Plaintiff's claim, then you should find for the Defendant on that claim.

It was the duty of Defendant, Marshall Johnson, M.D., in treating Plaintiff, to exercise the degree of care and skill expected of a reasonably competent general surgeon performing the laparoscopic cholecystectomy and acting under similar circumstances. If you are satisfied from the evidence that (1) Dr. Johnson failed to comply with this duty, and that (2) such failure was a substantial factor in causing injury to Plaintiff, then you will find for Plaintiff; otherwise you will find for the Defendant, Dr. Johnson.

Please indicate your decision under this Instruction in the space provided in Part 1 of the Verdict Form. If you find for Plaintiff under this Instruction, proceed to Instruction 2.

If you find for Plaintiff in Instruction 1, you must determine from the evidence the sums of money that will fairly and reasonably compensate her for such of the following damages as you believe from the evidence she has sustained by reason of Dr. Johnson's negligence. The categories of damages may include, if proven by the evidence: (a) past and future medical expenses; and (b) past and future pain and suffering.

Please indicate your decision in the space provided in Part 2 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.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO: 3:02CV-198-H

BELYNDA COLLINS

PLAINTIFF

V.

MARSHALL JOHNSON, M.D., et al.

DEFENDANTS

VERDICT

PART 1

We, the jury, find for Plaintiff 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 under Instruction No. 2:

(a) past and future medical expenses \$ _____

(b) past and future pain and suffering \$ _____

TOTAL: \$ _____

DATE

FOREPERSON