

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

MARQUIES DAVID WINSTON, a minor,
by his Guardian and Parent
ADRIANE B. WINSTON

PLAINTIFF

v.

CIVIL ACTION NO. 3:95CV-785-S

UNITED STATES OF AMERICA and
HELEN HOW, M.D.

DEFENDANTS

JURY INSTRUCTIONS

Ladies and Gentlemen:

Now that you have heard all of the evidence and the arguments 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.

You are not to single out one instruction alone as stating the law. You must consider the instructions as a whole.

You are not to 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.

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 statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you.

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 as to a matter in which he is versed and which is material to the case, and he may also state the reasons for such an opinion. You should consider such expert opinion 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 his or her opinion are not sound, or that his or her 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.

It was the duty of Ireland Army Hospital, in acting through its military personnel, to exercise toward the plaintiff that degree of care and skill which is expected of reasonably competent medical personnel acting under circumstances like or similar to those about which you have heard evidence in this case.

If you believe from the evidence that Ireland Army Hospital failed to comply with this duty and that such failure was a substantial factor in causing Marquies Winston's injuries, then you will find for the plaintiff. Otherwise, you will find for the defendant, United States of America.

You will fill out and sign Verdict Form A and proceed to the next instruction.

It was the duty of Helen How, M.D. to exercise toward the plaintiff that degree of care and skill which is expected of a reasonably competent obstetrician acting under circumstances like or similar to those about which you have heard evidence in this case.

If you believe from the evidence that Helen How, M.D. failed to comply with this duty and that such failure was a substantial factor in causing Marquies Winston's injuries, then you will find for the plaintiff. Otherwise, you will find for the defendant, Helen How, M.D.

You will fill out and sign Verdict Form B and proceed to the next instruction.

If you have found for the defendants on both Verdict Forms A and B, you will end your deliberations and return to the courtroom.

If you have found for the plaintiff on either Verdict Form A or B, or both of them, you will proceed to the remaining instructions.

If you have found for the plaintiff, you will find from the evidence what sum or sums of money will fairly and reasonably compensate Marquies Winston for such damages you believe he sustained by reason of his injuries, including:

1. Necessary and reasonable past medical expenses incurred, not to exceed \$175,553.37.
2. Necessary and reasonable future medical expenses reasonably certain to be incurred, not to exceed \$8,806,926.00.
3. Mental and physical pain and suffering he has endured or is reasonably certain to endure, not to exceed \$8,806,926.00.
4. Destruction of his power to labor and earn money, not to exceed \$3,075,532.00.

In determining the amount of damages, you will disregard the fault of any party or entity.

You will indicate these amounts on Verdict Form C and proceed to the next instruction.

If you believe from the evidence that both of the defendants, the United States and Helen How, M.D., failed to comply with their respective duties and that such failures were substantial factors in causing injury to Marquies Winston, then you will determine from the evidence what percentage of fault in causing this harm is to be allocated to each defendant.

In determining the percentage of fault for each person or entity, you will consider both the nature of the conduct of each person or entity at fault and the extent of the causal relationship between the conduct and the damages claimed. Your percentages must total 100%. You will indicate the percentages of fault on Verdict Form D.

Apportionment is necessary under this instruction only if you have found against both defendants. If you have found against only one defendant, but not the other, you need not fill out Verdict Form D.

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

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching 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 evidence solely because of the opinion of your fellow jurors or for the mere purpose of returning verdicts.

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 spokesman here in court.

Forms of verdict have been prepared for your convenience. You will take these forms to the jury room and, when you have reached unanimous agreement as to your verdicts, you will have your foreperson fill in, date and sign the forms which set forth the verdicts upon which you unanimously agree with respect to each issue in this case. You will then return with your verdicts to the courtroom.