

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

CIVIL ACTION NO. 3:97CV-311H

OSSIE WADE-WELLS
ANTHONY LAMAR WELLS
TONI TERESA WELLS

PLAINTIFFS

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 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, 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.

1. It was the duty of Wal-Mart Stores, Inc. through its employees to exercise ordinary care and maintain the store premises in a reasonably safe condition for the use of its business customers including Ossie Wade-Wells. 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

a. Wal-Mart Stores, Inc.'s employees caused a foreign substance to be on the floor or failed to reasonably discover a foreign substance on the floor

AND

b. such substance caused an unsafe condition,

AND

c. that such substance caused Ossie Wade-Wells to slip and fall, injuring herself, then you will find for Mrs. Wade-Wells and award such damages as you believe appropriate. Otherwise you will find for Wal-Mart Stores, Inc.

Please indicate your decision under this Instruction in the space provided in Part 1 of the Verdict Form and follow the instructions in the Verdict Form.

2. If you find for Ossie Wade-Wells in Instruction 1, you will determine from the evidence and award her a sum or 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 the fall. If proven, Mrs. Wade-Wells may recover the following categories of damages:

- (1) Medical expenses;
- (2) Past mental and physical suffering from the time of the accident to her discharge from Ireland Army Hospital. Mrs. Wade-Wells may not recover any amounts for

mental suffering due to her infant's condition.

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

3. If you find for Mrs. Wade-Wells under Instruction 1 and are additionally satisfied that the fall sustained contributed to the premature delivery of Toni Teresa Wells and that such premature birth resulted in Toni Teresa's hospital expenses and pain and suffering then you will find for Toni Teresa Wells and award such damages as you believe appropriate. Otherwise you will find for Wal-Mart Stores, Inc.

Please indicate your decision under this Instruction in the space provided in Part 3 of the Verdict Form.

4. If you find for Toni Teresa Wells in Instruction 3, you will determine from the evidence and award her a sum or 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 the premature birth. If proven, Toni Teresa Wells may recover the following categories of damages:

(1) Medical expenses;

(2) Mental and physical suffering during the hospital stay.

Please indicate the amount of damages, if any, in Part 4 of the Verdict Form.

5. If you find for Ossie Wade-Wells under Instruction 2 and are additionally satisfied that as a result of her injuries, Anthony Lamar Wells has been deprived of the society and services of his wife, then you will find for Anthony Lamar Wells and award such damages as you believe appropriate. Otherwise you will find for Wal-Mart Stores, Inc.

Please indicate your decision under this Instruction in the space provided in Part 5 of the Verdict Form.

6. If you find for Anthony Lamar Wells in Instruction 5, you will determine from the evidence and award him a sum or sums of money that will fairly and reasonably compensate him for such of the following damages as you believe from the evidence he has sustained by reason of Mrs. Wade-Wells' fall. If proven, Anthony Lamar Wells may recover the following categories of damages:

(1) Loss of consortium.

Please indicate the amount of damages, if any, in Part 6 of the Verdict Form.

7. It was the duty of Ossie Wade-Wells while in the Wal-Mart 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. Wade-Wells 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 7 of the Verdict Form, otherwise answer "No."

8. If you answer "Yes" in Part 7 of the Verdict Form, you will determine what percentage of the total fault was attributable to each of the parties. In apportioning fault between Wal-Mart Stores, Inc. and Ossie Wade-Wells 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 8 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 Ossie Wade-Wells 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 Ossie Wade-Wells under Instruction

No. 2:

- | | | |
|-----|--|----------|
| (1) | Medical expenses | \$ _____ |
| (2) | Past mental and physical suffering from the time of the accident to her discharge from Ireland Army Hospital | \$ _____ |
| | TOTAL | \$ _____ |

PART 3

We, the Jury, find for Toni Teresa Wells under Instruction No. 3:

YES _____ NO _____

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

PART 4

We, the Jury, make the following findings as to Toni Teresa Wells under Instruction

No. 4:

(1)	Medical expenses	\$ _____
(2)	Mental and physical suffering during the hospital stay	\$ _____
	TOTAL	\$ _____

PART 5

We, the Jury, find for Anthony Lamar Wells under Instruction No. 5:

YES _____ NO _____

If you answered "NO," do not answer Part 6.

PART 6

We, the Jury, make the following findings as to Anthony Lamar Wells under Instruction

No. 6:

(1)	Loss of consortium	\$ _____
	TOTAL	\$ _____

PART 7

We, the Jury, find the following finding under Instruction No. 7:

Yes _____ No _____

If you answered "No," do not answer Part 8.

PART 8

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

(1)	Wal-Mart Stores, Inc.	% _____
(2)	Ossie Wade-Wells	% _____
	TOTAL	100%

DATE: _____

FOREPERSON