

IN THE CIRCUIT COURT OF THE 16TH
JUDICIAL CIRCUIT IN AND FOR
MONROE COUNTY, FLORIDA

JENNIFER WINDISCH,
Plaintiff,

CIVIL DIVISION

CASE NO: 2007-CA-1174-K

v.

JOHN SUNDIN, M.D., RHODA SMITH,
M.D., LAURRAURI & KLITENICK, P.A.,
KEY WEST HMA, INC. d/b/a LOWER
KEYS MEDICAL CENTER and BAPTIST
HOSPITAL OF MIAMI, INC. d/b/a
BAPTIST HOSPITAL OF MIAMI
Defendants.

PLAINTIFF'S PROPOSED JURY INSTRUCTIONS

The Plaintiff, JENNIFER WINDISCH, by and through undersigned counsel, and pursuant to all applicable rules of civil procedure, hereby file this, Proposed Jury Instructions.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail and fax on _____, 2011 on all counsel on the attached service list.

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By: _____

Stuart N. Ratzan
Florida Bar No.: 911445
G. Scott Vezina
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INTRODUCTION

Members of the jury, you have now heard and received all of the evidence in this case. I am now going to tell you about the rules of law that you must use in reaching your verdict. You will recall at the beginning of the case I told you that if, at the end of the case I decided that different law applies, I would tell you so. These instructions are (slightly) different from what I gave you at the beginning and it is these rules of law that you must now follow. When I finish telling you about the rules of law, the attorneys will present their final arguments and you will then retire to decide your verdict.

Florida Standard Jury Instruction 402.1

Granted _____

Denied _____

Withdrawn _____

SUMMARY OF CLAIMS

The claims and defenses in this case are as follows. Plaintiff Jennifer Windisch claims that Defendant Rhoda Smith, M.D. was negligent in her care and treatment which caused harm.

The plaintiff must prove all claims by the greater weight of the evidence. I will now define some of the terms you will use in deciding this case.

Florida Standard Jury Instruction 402.2

Granted _____

Denied _____

Withdrawn _____

GREATER WEIGHT OF THE EVIDENCE

“Greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

Florida Standard Jury Instruction 402.3

Granted _____

Denied _____

Withdrawn _____

MEDICAL NEGLIGENCE

Negligence is the failure to use reasonable care. Reasonable care on the part of a physician is that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by similar and reasonably careful physicians. Negligence on the part of a physician is doing something that a reasonably careful physician would not do under like circumstances or failing to do something that a reasonably careful physician would do under like circumstances.

Florida Standard Jury Instruction 402.4

Granted _____

Denied _____

Withdrawn _____

LEGAL CAUSE

a. Legal cause generally:

Negligence is a legal cause of loss injury or damage if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss injury or damage, so that it can reasonably be said that, but for the negligence, the loss injury or damage would not have occurred.

b. Concurring cause:

In order to be regarded as a legal cause of loss injury or damage negligence need not be the only cause. Negligence may be a legal cause of loss injury or damage even though it operates in combination with the act of another, some natural cause or some other cause if the negligence contributes substantially to producing such loss injury or damage.

c. Intervening cause:

Negligence may also be a legal cause of loss injury or damage even though it operates in combination with the act of another some natural cause or some other cause occurring after the negligence occurs if such other cause was itself reasonably foreseeable and the negligence contributes substantially to producing such loss injury or damage or the resulting loss injury or damage was a reasonably foreseeable consequence of the negligence and the negligence contributes substantially to producing it.

Florida Standard Jury Instruction 402.6

Granted _____

Denied _____

Withdrawn _____

PREEMPTIVE CHARGES

The Court has determined and now instructs you that Laurrauri & Klitenick, P.A. is responsible for any negligence of Dr. Smith

Florida Standard Jury Instruction 402.8

Granted _____

Denied _____

Withdrawn _____

ISSUES ON MAIN CLAIM

The issue you must decide on Jennifer Windisch's claim against Dr. Smith is:

Whether Dr. Smith was negligent in her care and treatment of Jennifer Windisch and, if so, whether that negligence was a legal cause of the loss injury or damage to Jennifer Windisch.

Florida Standard Jury Instruction 402.11

Granted _____

Denied _____

Withdrawn _____

BURDEN OF PROOF ON MAIN CLAIM

If the greater weight of the evidence does not support the Jennifer Windisch’s claim, then your verdict should be for Dr. Smith on this claim.

However, if the greater weight of the evidence supports the Jennifer Windisch’s claim, then your verdict should be for the Jennifer Windisch and against Dr. Smith on this claim.

Florida Standard Jury Instruction 402.13

Granted _____

Denied _____

Withdrawn _____

PERSONAL INJURY AND PROPERTY DAMAGES: INTRODUCTION

If your verdict is for Dr. Smith, you will not consider the matter of damages. But, if your verdict is for Jennifer Windisch, you should award Jennifer Windisch an amount of money that the greater weight of the evidence shows will fairly and adequately compensate her for her loss, injury or damage, including any damage Jennifer Windisch is reasonably certain to incur or experience in the future. You shall consider the following elements:

Florida Standard Jury Instruction 501.1

Granted _____

Denied _____

Withdrawn _____

PERSONAL INJURY AND PROPERTY DAMAGES: ELEMENTS

a. *Injury, pain, disability, disfigurement, loss of capacity for enjoyment of life:*

Any bodily injury sustained by Jennifer Windisch and any resulting pain and suffering, disability or physical impairment, disfigurement, mental anguish, inconvenience or loss of capacity for the enjoyment of life experienced in the past or to be experienced in the future. There is no exact standard for measuring such damage. The amount should be fair and just in the light of the evidence.

b. *Medical expenses:*

Care and treatment of claimant:

The reasonable value or expense of hospitalization and medical and nursing care and treatment necessarily or reasonably obtained by Jennifer Windisch in the past or to be so obtained in the future.

c. *Lost earnings, lost time, lost earning capacity:*

When lost earnings or lost working time shown:

Any earnings and any working time lost in the past and any loss of ability to earn money in the future.

Florida Standard Jury Instruction 501.2

Granted _____

Denied _____

Withdrawn _____

OTHER CONTRIBUTING CAUSES OF DAMAGES

a. Aggravation or activation of disease or defect:

If you find that the Dr. Smith caused a bodily injury, and that the injury resulted in an aggravation of an existing disease or physical defect or activation of a latent disease or physical defect, you should attempt to decide what portion of Jennifer Windisch's condition resulted from the aggravation or activation. If you can make that determination, then you should award only those damages resulting from the aggravation or activation. However, if you cannot make that determination, or if it cannot be said that the condition would have existed apart from the injury, then you should award damages for the entire condition suffered by Jennifer Windisch.

Florida Standard Jury Instruction 501.5

Granted _____

Denied _____

Withdrawn _____

MORTALITY TABLES

If the greater weight of the evidence shows that Jennifer Windisch has been permanently injured, you may consider her life expectancy. The mortality tables received in evidence may be considered in determining how long Jennifer Windisch may be expected to live. Mortality tables are not binding on you but may be considered together with other evidence in the case bearing on Jennifer Windisch's health, age and physical condition, before and after the injury, in determining the probable length of her life.

Florida Standard Jury Instruction 501.6

Granted _____

Denied _____

Withdrawn _____

REDUCTION OF DAMAGES TO PRESENT VALUE

Any amount of damages which you allow for future medical expenses or any other future economic loss which is subject to reduction to present value should be reduced to its present money value and only the present money value of these future economic damages should be included in your verdict.

The present money value of future economic damages is the sum of money needed now which, together with what that sum will earn in the future, will compensate Jennifer Windisch for these losses as they are actually experienced in future years.

Florida Standard Jury Instruction 501.7

Granted _____

Denied _____

Withdrawn _____

COLLATERAL SOURCE RULE

a. Tort actions generally:

You should not reduce the amount of compensation to which Jennifer Windisch is otherwise entitled on account of medical insurance payments or other benefits which the evidence shows Jennifer Windisch received from her insurance company or some other source. The court will reduce as necessary the amount of compensation to which Jennifer Windisch is entitled on account of any such payments.

Florida Standard Jury Instruction 501.7

Granted _____

Denied _____

Withdrawn _____

WEIGHING THE EVIDENCE

In deciding this case, it is your duty as jurors to answer certain questions I ask you to answer on a special form, called a verdict form. You must come to an agreement about your verdict.

The evidence in this case consists of the sworn testimony of the witnesses, all exhibits received in evidence and all facts that were admitted or agreed to by the parties, and any fact of which the court has taken judicial notice.

In reaching your verdict, you must think about and weigh the testimony and any documents, photographs, or other material that has been received in evidence. You may also consider any facts that were admitted or agreed to by the lawyers. Your job is to determine what the facts are. You may use reason and common sense to reach conclusions. You may draw reasonable inferences from the evidence. But you should not guess about things that were not covered here. And, you must always apply the law as I have explained it to you.

Florida Standard Jury Instruction 601.1

Granted _____

Denied _____

Withdrawn _____

BELIEVABILITY OF WITNESSES

a. General considerations:

Let me speak briefly about witnesses. In evaluating the believability of any witness and the weight you will give the testimony of any witness, you may properly consider the demeanor of the witness while testifying; the frankness or lack of frankness of the witness; the intelligence of the witness; any interest the witness may have in the outcome of the case; the means and opportunity the witness had to know the facts about which the witness testified; the ability of the witness to remember the matters about which the witness testified; and the reasonableness of the testimony of the witness, considered in the light of all the evidence in the case and in the light of your own experience and common sense.

b. Expert witnesses:

You have heard opinion testimony on certain technical subjects from persons referred to as expert witnesses. Some of the testimony before you was in the form of opinions about certain technical subjects.

You may accept such opinion testimony, reject it, or give it the weight you think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed, and all the other evidence in the case.

Florida Standard Jury Instruction 601.2

Granted _____

Denied _____

Withdrawn _____

CONCLUDING INSTRUCTION (BEFORE FINAL ARGUMENT)

That is the law you must follow in deciding this case. The attorneys for the parties will now present their final arguments. When they are through, I will have a few final instructions about your deliberations.

Florida Standard Jury Instruction 601.2

Granted _____

Denied _____

Withdrawn _____

CLOSING INSTRUCTIONS

Members of the jury, you have now heard all the evidence, my instructions on the law that you must apply in reaching your verdict and the closing arguments of the attorneys. You will shortly retire to the jury room to decide this case. Before you do so, I have a few last instructions for you.

You will have in the jury room all of the evidence that was received during the trial. In reaching your decision, do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial.

Any notes you have taken during the trial may be taken to the jury room for use during your discussions. Your notes are simply an aid to your own memory, and neither your notes nor those of any other juror are binding or conclusive. Your notes are not a substitute for your own memory or that of other jurors. Instead, your verdict must result from the collective memory and judgment of all jurors based on the evidence and testimony presented during the trial.

At the conclusion of the trial, the bailiff will collect all of your notes and immediately destroy them. No one will ever read your notes.

In reaching your verdict, do not let bias, sympathy, prejudice, public opinion, or any other sentiment for or against any party to influence your decision. Your verdict must be based on the evidence that has been received and the law on which I have instructed you.

Reaching a verdict is exclusively your job. I cannot participate in that decision in any way, and you should not guess what I think your verdict should be from something I may have said or done. You should not think that I prefer one verdict over another. Therefore, in reaching your verdict, you should not consider anything that I have said or done, except for my specific instructions to you.

Pay careful attention to all the instructions that I gave you, for that is the law that you must follow. You will have a copy of my instructions with you when you go to the jury room to deliberate. All the instructions are important, and you must consider all of them together. There are no other laws that apply to this case, and even if you do not agree with these laws, you must use them in reaching your decision in this case.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

When you go to the jury room, the first thing you should do is choose a presiding juror to act as foreperson during your deliberations. The foreperson should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. I will now read the form to you: (read form of verdict)

Your verdict must be unanimous, that is, your verdict must be agreed to by each of you. When you have agreed on your verdict, your foreperson must write the date and sign it at the bottom and return the verdict to the bailiff.

If any of you need to communicate with me for any reason, write me a note and give it to the bailiff. In your note, do not disclose any vote or split or the reason for the communication.

You may now retire to decide your verdict.

Florida Standard Jury Instruction 700

Granted _____

Denied _____

Withdrawn _____