

CAUSE NO. 16-0853-C

FILED
JAN 30 2018
LOUIS ROGERS
CLERK, 241ST JUDICIAL DISTRICT COURT, SMITH CO., TX
BY [Signature] DEPUTY

BILLY PIERCE

§ IN THE DISTRICT COURT

vs.

§ 241st JUDICIAL DISTRICT

§ EAST TEXAS MEDICAL CENTER dba
§ EAST TEXAS MEDICAL CENTER
§ TYLER, EAST TEXAS MEDICAL
§ CENTER REGIONAL HEALTHCARE
§ SYSTEM dba EAST TEXAS MEDICAL
§ CENTER TYLER, EAST TEXAS MEDICAL
§ CENTER dba ETMC DIGESTIVE
§ DISEASE CENTER, et al.

§ SMITH COUNTY, TEXAS

CHARGE OF THE COURT

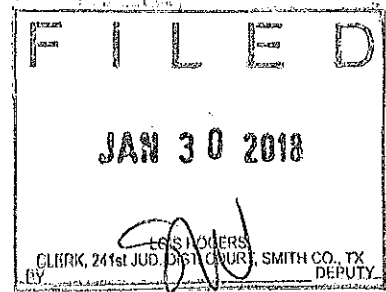
MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide the case, answer the questions that are attached, and reach a verdict. You may discuss the case with other jurors only when you are all together in the jury room.

Remember my previous instructions: Do not discuss the case with anyone else, either in person or by any other means. Do not do any independent investigation about the case or conduct any research. Do not look up any words in dictionaries or on the Internet. Do not post information about the case on the Internet. Do not share any special knowledge or experiences with the other jurors. Do not use your phone or any other electronic device during your deliberations for any reason. I will give you a number where others may contact you in case of an emergency.

Any notes you have taken are for your own personal use. You may take your notes back into the jury room and consult them during deliberations, but do not show or read your notes to your fellow jurors during your deliberations. Your notes are not evidence. Each of you should rely on your independent recollection of the evidence and not be influenced by the fact that another juror has or has not taken notes.

You must leave your notes with the bailiff when you are not deliberating. The bailiff will give your notes to me promptly after collecting them from you. I will make sure your notes are kept in a safe, secure location and not disclosed to anyone. After you complete your deliberations, the bailiff will collect your notes. When you are released from jury duty, the bailiff will promptly destroy your notes so that nobody can read what you wrote.



Here are the instructions for answering the questions.

1. Do not let bias, prejudice, or sympathy play any part in your decision.
2. Base your answers only on the evidence admitted in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not admitted in the courtroom.
3. You are to make up your own minds about the facts. You are the sole judges of the credibility of the witnesses and the weight to give their testimony. But on matters of law, you must follow all of my instructions.
4. If my instructions use a word in a way that is different from its ordinary meaning, use the meaning I give you, which will be a proper legal definition.
5. All the questions and answers are important. No one should say that any question or answer is not important.
6. Answer "yes" or "no" to all questions unless you are told otherwise. A "yes" answer must be based on a preponderance of the evidence unless you are told otherwise. Whenever a question requires an answer other than "yes" or "no," your answer must be based on a preponderance of the evidence unless you are told otherwise.

The term "preponderance of the evidence" means the greater weight of credible evidence presented in this case. If you do not find that a preponderance of the evidence supports a "yes" answer, then answer "no." A preponderance of the evidence is not measured by the number of witnesses or by the number of documents admitted in evidence. For a fact to be proved by a preponderance of the evidence, you must find that the fact is more likely true than not true.

A fact may be established by direct evidence or by circumstantial evidence or both. A fact is established by direct evidence when proved by documentary evidence or by witnesses who saw the act done or heard the words spoken. A fact is established by circumstantial evidence when it may be fairly and reasonably inferred from other facts proved.

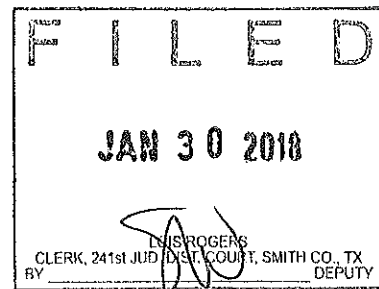
7. Do not decide who you think should win before you answer the questions and then just answer the questions to match your decision. Answer each question carefully without considering who will win. Do not discuss or consider the effect your answers will have.
8. Do not answer questions by drawing straws or by any method of chance.

9. Some questions might ask you for a dollar amount. Do not agree in advance to decide on a dollar amount by adding up each juror's amount and then figuring the average.

10. Do not trade your answers. For example, do not say, "I will answer this question your way if you answer another question my way."

11. Unless otherwise instructed, the answers to the questions must be based on the decision of at least ten of the twelve jurors. The same ten jurors must agree on every answer. Do not agree to be bound by a vote of anything less than ten jurors, even if it would be a majority.

As I have said before, if you do not follow these instructions, you will be guilty of juror misconduct, and I might have to order a new trial and start this process over again. This would waste your time and the parties' money, and would require the taxpayers of this county to pay for another trial. If a juror breaks any of these rules, tell that person to stop and report it to me immediately.



Definitions

You are instructed that a doctor under a Texas Medical Board order is a “probationer.”

“Negligence,” when used with respect to the conduct of East Texas Medical Center, means failure to use ordinary care, that is, failing to do that which a hospital of ordinary prudence would have done under the same or similar circumstances or doing that which a hospital of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care,” when used with respect to the conduct of East Texas Medical Center, means that degree of care that a hospital of ordinary prudence would use under the same or similar circumstances.

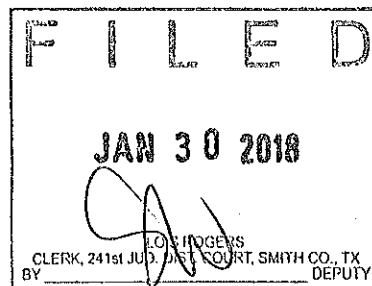
“Proximate cause,” when used with respect to the conduct of East Texas Medical Center, means a cause that was a substantial factor in bringing about an occurrence occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a hospital using ordinary care would have foreseen that the occurrence, or some similar occurrence, might reasonably result therefrom. There may be more than one proximate cause of an occurrence.

A hospital acts in the manner in which it follows its policies, procedures, rules, bylaws, and other governing protocols, whether express or implied.

“Negligence,” when used with respect to the conduct of Dr. Boyd, means failure to use ordinary care, that is, failing to do that which a gastroenterologist of ordinary prudence would have done under the same or similar circumstances or doing that which a gastroenterologist of ordinary prudence would not have done under the same or similar circumstances.

“Ordinary care,” when used with respect to the conduct of Dr. Boyd, means that degree of care that a gastroenterologist of ordinary prudence would use under the same or similar circumstances.

“Proximate cause,” when used with respect to the conduct of Dr. Boyd, means a cause that was a substantial factor in bringing about an occurrence, and without which cause such occurrence would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a gastroenterologist using ordinary care would have foreseen that the occurrence, or some similar occurrence, might reasonably result therefrom. There may be more than one proximate cause of an occurrence.



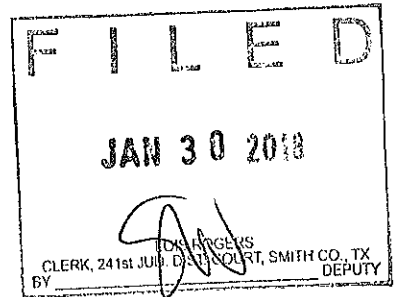
QUESTION 1

Did the negligence, if any, of those named below proximately cause the occurrence in question?

Answer "Yes" or "No" for each of the following:

1. East Texas Medical Center
2. Gary Boyd, M.D.

YES
YES



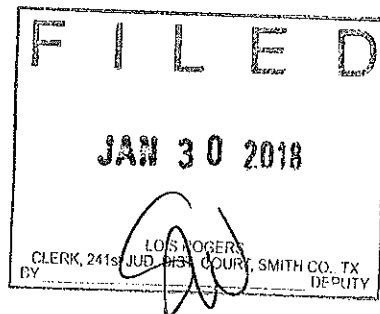
If you answered "Yes" to Question 1 for more than one of those named below, then answer the following question. Otherwise, do not answer the following question.

Assign percentages of responsibility only to those you found caused or contributed to cause the occurrence. The percentages you find must total 100 percent. The percentages must be expressed in whole numbers. The percentage of responsibility attributable to any one is not necessarily measured by the number of acts or omissions found. The percentage attributable to any one need not be the same percentage attributed to that one in answering another question.

QUESTION 2

For each of those named below that you found caused or contributed to cause the occurrence, find the percentage of negligence attributable to each:

- | | | | |
|----|---------------------------|------------|---|
| 1. | East Texas Medical Center | <u>90</u> | % |
| 2. | Gary Boyd, M.D. | <u>10</u> | % |
| | Total | <u>100</u> | % |



Answer Question 3 if you answered "Yes" for any of those named in Question 1. Otherwise, do not answer Question 3.

QUESTION 3

What sum of money, if paid now in cash, would fairly and reasonably compensate Billy Pierce for his injuries, if any, that resulted from the occurrence in question?

Consider the elements of damages listed below and none other. Consider each element separately. Do not award any sum of money on any element if you have otherwise, under some other element, awarded a sum of money for the same loss. That is, do not compensate twice for the same loss, if any. Do not include interest on any amount of damages you find.

Answer separately, in dollars and cents, for damages, if any. Any recovery will be determined by the court when it applies the law to your answers at the time of judgment.

1. Physical pain sustained in the past.

Physical pain means the conscious physical pain experienced by Billy Pierce.

Answer: \$1,000,000.00

2. Physical pain that, in reasonable probability, Billy Pierce will sustain in the future.

Answer: \$1,000,000.00

3. Mental anguish sustained in the past.

Mental anguish means the emotional pain, torment, and suffering experienced by Billy Pierce.

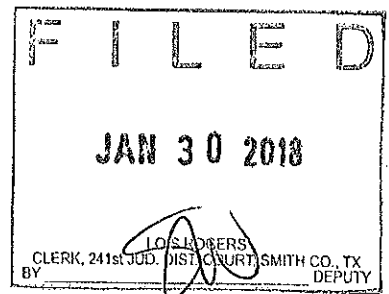
Answer: \$1,000,000.00

4. Mental anguish that, in reasonable probability, Billy Pierce will sustain in the future.

Answer: \$1,000,000.00

5. Loss of earning capacity sustained in the past.

Answer: \$1,500,000.00



6. Loss of earning capacity that, in reasonable probability, Billy Pierce will sustain in the future.

Answer: \$6,000,000.00

7. Disfigurement sustained in the past.

Answer: \$0.00

8. Disfigurement that, in reasonable probability, Billy Pierce will sustain in the future.

Answer: \$0.00

9. Physical impairment sustained in the past.

Answer: \$1,000,000.00

10. Physical impairment that, in reasonable probability, Billy Pierce will sustain in the future.

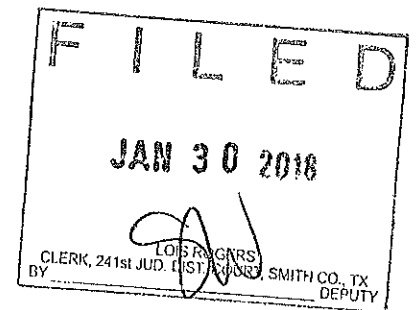
Answer: \$1,000,000.00

11. Medical care expenses paid or incurred by or on behalf of Billy Pierce in the past.

Answer: \$1,327,245.74

12. Medical care expenses that, in reasonable probability, Billy Pierce will incur in the future.

Answer: \$3,500,000.00



Answer the following question regarding East Texas Medical Center only if you unanimously answered "Yes" to Question 1 regarding East Texas Medical Center. Otherwise, do not answer the following question regarding East Texas Medical Center.

To answer "Yes" to any part of the following question, your answer must be unanimous. You may answer "No" to any part of the following question only upon a vote of ten or more jurors. Otherwise, you must not answer that part of the following question.

QUESTION 4

Do you find by clear and convincing evidence that the harm to Billy Pierce resulted from gross negligence attributable to East Texas Medical Center?

"Clear and convincing evidence" means the measure or degree of proof that produces a firm belief or conviction of the truth of the allegations sought to be established.

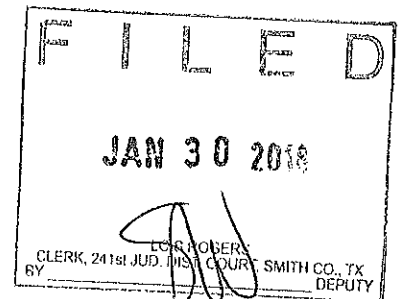
"Gross negligence" means an act or omission by East Texas Medical Center,

1. which when viewed objectively from the standpoint of East Texas Medical Center at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

2. of which East Texas Medical Center has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

Answer "Yes" or "No."

Answer: YES



Answer the following question regarding East Texas Medical Center only if you unanimously answered "Yes" to Question 4 regarding East Texas Medical Center. Otherwise, do not answer the following question regarding East Texas Medical Center.

QUESTION 5

You are instructed that you must unanimously agree on the amount of any award of exemplary damages.

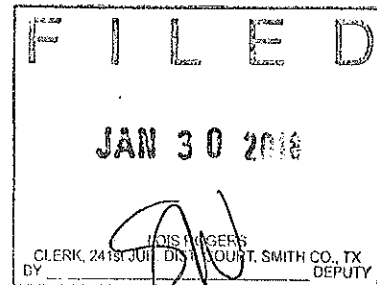
What sum of money, if any, should be assessed against East Texas Medical Center and awarded to Billy Pierce as exemplary damages for the conduct found in response to Question 4?

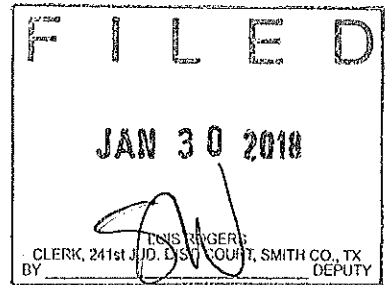
"Exemplary damages" means any damages awarded as a penalty or by way of punishment but not for compensatory purposes. Exemplary damages includes punitive damages. Factors to consider in awarding exemplary damages, if any, are—

1. The nature of the wrong.
2. The character of the conduct involved.
3. The degree of culpability of the wrongdoer.
4. The situation and sensibilities of the parties concerned.
5. The extent to which such conduct offends a public sense of justice and propriety.
6. The net worth of East Texas Medical Center.

Answer in dollars and cents, if any.

Answer: \$ 25,000,000.⁰⁰





Presiding Juror:

1. When you go into the jury room to answer the questions, the first thing you will need to do is choose a presiding juror.
2. The presiding juror has these duties:
 - a. have the complete charge read aloud if it will be helpful to your deliberations;
 - b. preside over your deliberations, meaning manage the discussions, and see that you follow these instructions;
 - c. give written questions or comments to the bailiff who will give them to the judge;
 - d. write down the answers you agree on;
 - e. get the signatures for the verdict certificate; and
 - f. notify the bailiff that you have reached a verdict.

Do you understand the duties of the presiding juror? If you do not, please tell me now.

Instructions for Signing the Verdict Certificate:

1. Unless otherwise instructed you may answer the questions on a vote of ten jurors. The same ten jurors must agree on every answer in the charge. This means you may not have one group of ten jurors agree on one answer and a different group of ten jurors agree on another answer.

2. If ten jurors agree on every answer, those ten jurors sign the verdict.

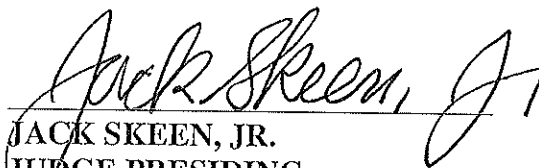
If eleven jurors agree on every answer, those eleven jurors sign the verdict.

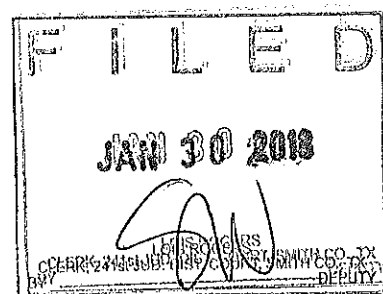
If all twelve of you agree on every answer, you are unanimous and only the presiding juror signs the verdict.

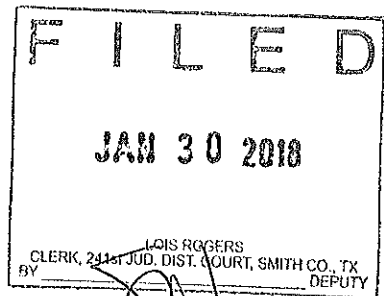
3. All jurors should deliberate on every question. You may end up with all twelve of you agreeing on some answers, while only ten or eleven of you agree on other answers. But when you sign the verdict, only those ten who agree on every answer will sign the verdict.

4. There are some special instructions before Questions 4 and 5 explaining how to answer that question. Please follow the instructions.

Do you understand these instructions? If you do not, please tell me now.


JACK SKEEN, JR.
JUDGE PRESIDING





Verdict Certificate

Check one:

Our verdict is unanimous. All twelve of us have agreed to each and every answer. The presiding juror has signed the certificate for all twelve of us.

Signature of Presiding Juror

Printed Name of Presiding Juror

Our verdict is not unanimous. Eleven of us have agreed to each and every answer and have signed the certificate below.

Our verdict is not unanimous. Ten of us have agreed to each and every answer and have signed the certificate below.

Signature

Name Printed

1. [Signature]

EDWARD HELLER

2. [Signature]

THOMAS KEY

3. [Signature]

STEPHEN SCHULIN

4. Walker Mcnright

Walker Mcnright

5. [Signature]

Joseph Phalan

6. Jordan Hortman

Jordan Hortman

7. Patricia D. Ford

Patricia D. Ford

8. Kira Smith

Kira Smith

9. Rhonda Anderson

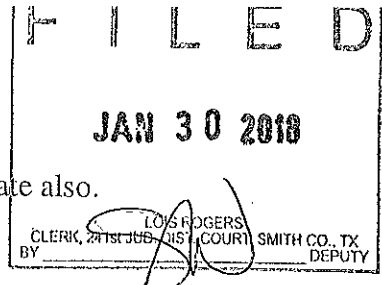
Rhonda Anderson

10. [Signature]

Deborah Coyne

11. Yolanda Wallace

Yolanda Wallace

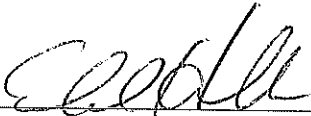


If you have answered Question No. 4, then you must sign this certificate also.

Additional Certificate

I certify that the jury was unanimous in answering the following questions. All twelve of us agreed to each of the answers. The presiding juror has signed the certificate for all twelve of us.

- Question No. 1
- Question No. 4
- Question No. 5



 Signature of Presiding Juror

EDWARD HELLER

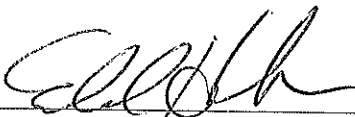
 Printed Name of Presiding Juror

Additional Certificate

I certify that the jury was unanimous in answering the following questions or parts of questions marked "yes" below. All twelve of us agreed to each of the answers marked "yes." The presiding juror has signed the certificate for all twelve of us.

Answer "yes" or "no" for each of the following:

- Question No. 1 YES
- Question No. 4 YES
- Question No. 5 YES



 Signature of Presiding Juror

EDWARD HELLER

 Printed Name of Presiding Juror