

ORIGINAL

**COMMONWEALTH OF KENTUCKY
FAYETTE CIRCUIT COURT
FOURTH DIVISION**

SHARAI KINGSTON

PLAINTIFF

vs.

20-CI-1463

COSTCO WHOLESALE CORPORATION

DEFENDANT

JURY INSTRUCTIONS

GENERAL INSTRUCTIONS

Immediately upon retiring to the jury room, you shall elect a foreperson. To reach a verdict, nine or more jurors must agree on the answer to each of the questions herein. The nine or more jurors who agree on the answer to one question, however, need not be the same who agree on the answer to another. If all twelve agree on the answer to a question, the foreperson alone needs to sign the answer. If less than twelve, but nine or more agree, then all of those who agree must sign the answer.

Please proceed to Instruction No. 1.

INSTRUCTION NO. 1

The term “ordinary care” when referring to Defendant, Costco Wholesale Corp., as used in these instructions means that degree of care the jury would expect an ordinarily prudent person engaged in the same type of business to exercise under similar circumstances in this case.

The term “ordinary care” when referring to Plaintiff, Sharai Kingston, as used in these instructions means that degree of care the jury would expect an ordinarily prudent person to exercise under similar circumstances.

Please proceed to Instruction No. 2.

INSTRUCTION NO. 3

It was the duty of Defendant, Costco Wholesale Corp., by and through its employees to exercise ordinary care, as defined in Instruction No. 1, which specifically includes a duty to act reasonably to keep foreign substances, including but not limited to liquids, off the floor of the food court or to warn customers of the presence of any foreign substance that is on the floor of the food court so that the floor of the food court is kept in a reasonably safe condition for the use of business invitees, including customers like Sharai Kingston. If you believe from the evidence presented to you that Defendant failed to comply with any duty it owed and that such failure was a substantial factor in causing Plaintiff's fall, you will find for Plaintiff. Otherwise, you will find for Defendant.

Based on the evidence, do you believe there was a substance on the floor that Costco failed to clean up or otherwise warn against and that Costco's failure(s) was a substantial factor in causing Ms. Kingston's injuries?

Answer: Yes _____ No X

Tanner Knight
Foreperson, if unanimous

Nine or more who agree, if not unanimous:

Please proceed to Instruction No. 4.

INSTRUCTION NO. 4

On the date in question, it was the duty of Plaintiff, Sharai Kingston, to exercise ordinary care for her own safety and protection.

Do you believe from the evidence that Plaintiff, Sharai Kingston, violated her duty as set forth above, and that such violation was a substantial factor in causing her fall?

Answer: Yes _____ No X

Tanner Knight
Foreperson, if unanimous

Nine or more who agree, if not unanimous:

Please proceed to Instruction No. 5.

INSTRUCTION NO. 5

If you answered "Yes" to both Instruction No. 3 and Instruction No. 4 above, thus finding from the evidence that both the Plaintiff and the Defendant violated one or more of their duties, then you will also determine from the evidence and state below what percentage of the total fault was attributable to each of the parties. In determining percentages of fault, you shall consider both the nature of the conduct of each party and the extent of the causal connection between the conduct and the damages claimed. If you answered "No" to either Instruction No. 3 or Instruction No. 4, above, then the number in the corresponding blank for that party that you found not to have violated a duty should be "0".

What percentage of fault do you attribute to each party?

Defendant, Costco Wholesale Corp.

0 %

Plaintiff, Sharai Kingston

0 %

TOTAL

100%

Tanner Knight
Foreperson, if unanimous

Nine or more who agree, if not unanimous:

Please proceed to Instruction No. 6.

INSTRUCTION NO. 6

If you find for Plaintiff, Sharai Kingston, you will determine from the evidence and fix a sum or sums of money that will fairly and reasonably compensate Plaintiff for such of the following damages as you believe from the evidence she has sustained directly by reason of the accident:

- | | |
|---|------------------------------|
| (a) Past Medical Expenses
(not to exceed \$267,468.07) | Jury's Answer \$ <u>0.00</u> |
| (b) Future Medical Expenses
(not to exceed \$275,000.00) | Jury's Answer \$ <u>0.00</u> |
| (c) Past Pain and Suffering
(not to exceed \$1,500,000.00) | Jury's Answer \$ <u>0.00</u> |
| (d) Future Pain and Suffering
(not to exceed \$1,500,000.00) | Jury's Answer \$ <u>0.00</u> |
| (e) Past and Future Impairment to Ability to Earn
(not to exceed \$509,400.00) | Jury's Answer \$ <u>0.00</u> |
|
TOTAL |
\$ <u>0.00</u> |

Tanner Knight
Foreperson, if unanimous

Nine or more who agree, if not unanimous:

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Please proceed to Instruction No. 7.

INSTRUCTION NO. 7

Punitive damages have been requested by the Plaintiff. Punitive damages are damages to be awarded for the purpose of punishing the Defendant for its alleged misconduct in this case and deterring it and others from engaging in similar conduct in the future. Under Kentucky law, a plaintiff shall only recover punitive damages upon proving, by clear and convincing evidence, that the defendant(s) from whom such damages are sought acted toward the plaintiff with fraud or malice.

The term "fraud" means an intentional misrepresentation, deceit, or concealment of material fact known to the Defendant and made with the intention of causing injury to the Plaintiff.

The term "malice" means conduct that was specifically intended by the Defendant to cause tangible or intangible injury to the Plaintiff.

If you answered "YES" to Instruction No. 3, and awarded Plaintiff, Sharai Kingston, a sum or sums under Instruction No. 6, you may determine whether an award of punitive damages is proper based upon clear and convincing evidence of fraud or malice, as defined above. Whether you make an award of punitive damages in addition to the compensatory damages you previously awarded is a matter entirely within your discretion. If you award punitive damages, they must be fixed with calm discretion and sound reason, and must never be either awarded or fixed in amount, because of any sympathy, bias, or prejudice with respect to any party to the case.

Please proceed to the next page.

INSTRUCTION NO. 7 (CONTINUED)

If you determine punitive damages should be awarded to the Plaintiff, you will determine the amount of punitive damages that are to be awarded in addition to compensatory damages to discourage the Defendant and others from similar conduct in the future. In determining the amount of punitive damages to be assessed, you should consider the following factors:

- a. The likelihood at the relevant time that serious harm would arise from the Defendant's alleged misconduct;
- b. The degree of the Defendant's awareness of that likelihood;
- c. The profitability of the Defendant's alleged misconduct;
- d. The duration of the Defendant's alleged misconduct; and,
- e. Any actions by the Defendant to remedy the alleged misconduct once it became known.

If you award punitive damages, you will state the amount separately from the sum or sums awarded under Instruction No. 6.

Please proceed to the next page.

INSTRUCTION NO. 7 (CONTINUED)

We, the Jury, award Plaintiff punitive damages against Defendant in the following amount
(not to exceed \$2,000,000.00):

Jury's Answer \$ 0.00

Tanner Knight
Foreperson, if unanimous

Nine or more who agree, if not unanimous:

Please stop and tell the Bailiff your verdict is complete.