

MARCELA AND JOSE BUSTAMANTE,  
AS NEXT FRIENDS OF DANIELLA  
BUSTAMANTE,

Plaintiffs,

v.

JORGE FABIO LLAMAS-SOFORO,  
M.D., JORGE FABIO LLAMAS  
SOFORO, M.D., P.A. D/B/A EL PASO  
EYE CARE CENTER; ENRIQUE N.  
PONTE, JR., M.D.; PEDIATRIX  
MEDICAL SERVICES, INC., AND  
PEDIATRIX MEDICAL GROUP, INC.

Defendants.

FILED  
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CLERK  
DALLAS CO., TEXAS  
DEPUTY

ORIGINAL

OF DALLAS COUNTY

101<sup>ST</sup> JUDICIAL DISTRICT

**CHARGE OF THE COURT**

MEMBERS OF THE JURY:

After the closing arguments, you will go to the jury room to decide this case, answer the questions in this charge, 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 cell phone or any other electronic device during your deliberations for any reason.

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 what was presented in court and on the law that is in these instructions and questions. Do not consider or discuss any evidence that was not presented 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.

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 you are otherwise instructed, the answers to the questions must be based on the decision of at least 10 of the 12 jurors. The same 10 or more jurors must agree on every answer. Do not agree to be bound by a vote of anything less than 10 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.

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.

### **DEFINITIONS**

"Dr. Llamas" means Defendant Jorge Fabio Llamas-Soforo, M.D.

"Dr. Ponte" means Defendant Enrique N. Ponte, Jr., M.D.

"Negligence," when used with respect to Dr. Llamas, means failure to use ordinary care.

That is, failing to do that which an ophthalmologist of ordinary prudence would have done under

the same or similar circumstances or doing that which an ophthalmologist of ordinary prudence would not have done under the same or similar circumstances.

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

“Negligence,” when used with respect to Del Sol 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 Dr. Llamas, means that degree of care that an ophthalmologist of ordinary prudence would use under the same or similar circumstances.

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

“Ordinary care,” when used with respect to the conduct of Del Sol 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 Dr. Llamas, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that an ophthalmologist using ordinary care would have foreseen that the event, or some similar event, was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

“Proximate cause,” when used with respect to the conduct of Dr. Ponte, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event would not have occurred. In order to be a proximate cause, the act or omission complained of must be such that a neonatologist using ordinary care would have foreseen that the event or some similar event was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

“Proximate cause,” when used with respect to the conduct of Del Sol Medical Center, means that cause which, in a natural and continuous sequence, produces an event, and without which cause such event 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 event, or some similar event, was reasonably likely to result therefrom. There may be more than one proximate cause of an event.

You are instructed that a professional association can only act by and through its employees. The Defendants have stipulated that Dr. Llamas was an employee of Jorge Fabio Llamas-Soforo, M.D., P.A. d/b/a El Paso Eye Center, acting in the course and scope of his employment during his care and treatment of Daniella Bustamante. The Defendants have stipulated that Dr. Ponte, was an employee of Pediatrix Medical Services, Inc. acting in the course and scope of his employment during his care and treatment of Daniella Bustamante.

**QUESTIONS**

**QUESTION NO. 1:**

Did the negligence, if any, of Dr. Llamas proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

**QUESTION NO. 2:**

Did the negligence, if any, of Dr. Ponte proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

If you answered "yes" to Question No. 1, Question No. 2, or both, then answer Question No. 3. Otherwise, do not answer any more questions.

**QUESTION NO. 3:**

Did the negligence, if any, of Del Sol Medical Center proximately cause the injury in question?

Answer "Yes" or "No."

ANSWER: Yes

If you answered "Yes" to more than one of Question No. 1, Question No. 2 and Question No. 3, then answer the following question. Otherwise, do not answer the following question.

**QUESTION NO. 4:**

For each of those named below that you found caused or contributed to cause the injury, find the percentage of responsibility attributable to each.

Assign percentages of responsibility only to those you found caused or contributed to cause the injury. 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.

Assign percentages of responsibility to:

- a. Dr. Llamas 45%
  
- b. Dr. Ponte 45%
  
- c. Del Sol Medical Center 10%

Total: 100 %

**QUESTION NO. 5:**

What sum of money, if paid now in cash, would fairly and reasonably compensate Daniella Bustamante for her damages, if any, that resulted from the injury 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.

Do not include any amount for any condition existing before the occurrence in question, except to the extent, if any, that such other condition was aggravated by any injuries that resulted from the occurrence in question.

Answer separately, in dollars and cents, for damages, if any, for:

- a. Mental anguish sustained in the past by Daniella Bustamante:

Answer: \$ 6,000.00

- b. Physical pain and mental anguish that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 104,000.00

- c. Medical care expenses that, in reasonable probability, Daniella Bustamante will sustain in the future after age 18:

Answer: \$ 962,000.00

- d. Attendant care expenses that, in reasonable probability, Daniella Bustamante will sustain in the future after age 18:

Answer: \$ 988,000.00

- e. Disfigurement sustained in the past by Daniella Bustamante

Answer: \$ 6,000.00

- f. Disfigurement that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 52,000.00

- g. Physical impairment sustained in the past by Daniella Bustamante:

Answer: \$ 6,000.00

- h. Physical impairment that, in reasonable probability, Daniella Bustamante will sustain in the future:

Answer: \$ 0.00

Answer the following question regarding Dr. Llamas only if you unanimously answered “Yes” to Question No.1 regarding Dr. Llamas. Otherwise, do not answer the following question regarding Dr. Llamas.

Answer the following question regarding Dr. Ponte only if you unanimously answered “Yes” to Question No.2 regarding Dr. Ponte. Otherwise, do not answer the following question regarding Dr. Ponte.

You are instructed that, in order 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 NO. 6:**

Do you find by clear and convincing evidence that the harm to Daniella Bustamante resulted from gross negligence on the part of those named below?

“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 Defendant,

- (a) which when viewed objectively from the standpoint of Defendant at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and
- (b) of which Defendant 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” for each of the following:

- a. Dr. Llamas \_\_\_\_\_
- b. Dr. Ponte \_\_\_\_\_

**Instructions Regarding the 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 this complete charge read aloud if it will be helpful to your deliberations.
- b. Preside over your deliberations. This means the presiding juror will 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. Sign or get the signatures for the verdict certificate.
- 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. You may answer the questions on a vote of 10 or more jurors. The same 10 or more jurors must agree on every answer in the charge. This means you may not have one group of 10 or more jurors agree on one answer and a different group of 10 or more jurors agree on another answer.

2. If 10 or 11 jurors agree on every answer, those 10 or 11 jurors sign the verdict. If all 12 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 12 of you agreeing on some answers, while only 10 or 11 of you agree on other answers. But when you sign the verdict, only those 10 or 11 who agree on every answer will sign the verdict.

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

  
JUDGE PRESIDING

**CERTIFICATE**

Check one:

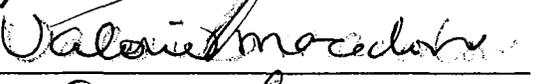
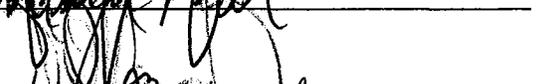
\_\_\_ Our verdict is unanimous. All 12 of us have agreed to each and every answer. The presiding juror has signed this certificate for all 12 of us.

\_\_\_\_\_  
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.

Jurors' Signatures

- 1. 
- 2. 
- 3. Valerie Maccedon 
- 4. Vicki Glenn 
- 5. Stacy Fryer 
- 6. Janice L. Spiper 
- 7. Andrea Hill 
- 8. 
- 9. Nicole J. Hewick 
- 10. Dawn C. Strickland 
- 11. \_\_\_\_\_

Jurors' Printed Names

- Jaymik Patel \_\_\_\_\_
- Luclen Lafayette \_\_\_\_\_
- Valorie Maccedon \_\_\_\_\_
- Vicki Glenn \_\_\_\_\_
- STACY FRYER \_\_\_\_\_
- Janice L. Spiper \_\_\_\_\_
- Andrea Hill \_\_\_\_\_
- Traciya Vasquez \_\_\_\_\_
- Nicole J. Hewick \_\_\_\_\_
- Dawn C. Strickland \_\_\_\_\_
- \_\_\_\_\_