

COMMONWEALTH OF KENTUCKY
BULLITT CIRCUIT COURT
CASE NO: 04-CI-00769

LOUISE OGBORN

PLAINTIFF

VS.

JURY INSTRUCTIONS

MCDONALD'S CORPORATION,
DONNA SUMMERS
and
KIM DOCKERY

DEFENDANTS

* * * * *

Your first responsibility upon retiring to the jury room will be to select a foreperson. Nine or more of you must agree to reach a verdict under any of those instructions. However, the nine or more who agree on one verdict need not be the same nine or more who agree on another verdict. If all twelve of you agree on a verdict, it need be signed only by your foreperson. If not unanimous, it must be signed by all nine or more who agree.

INSTRUCTION NO. 1
NEGLIGENCE AGAINST SUMMERS AND/OR DOCKERY

You will find for Louise Ogborn under this Instruction if, and only if, you are satisfied from the evidence that Donna Summers and/or Kim Dockery failed to meet their duty to treat Ogborn with ordinary care;
AND

That such failure was a substantial factor in causing injury to Ogborn.

"Ordinary Care" is that which a reasonably prudent person would exercise under similar circumstances.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more

than one cause, and there may be multiple "substantial factors" in causing any one injury.

If you are satisfied from the evidence that the actions by Summers and/or Dockery were meant to be in furtherance of the interests of McDonald's and that they were not acting from personal motives unrelated to the interest of McDonald's, then you shall find against McDonald's also.

If you find for Ogborn, you shall indicate by your verdict under this Instruction, which shall also include the persons against whom you have found; otherwise you will find for McDonald's, Summers or Dockery as the case may be.

Please use Verdict Form 1.

Proceed to the next instruction.

INSTRUCTION NO. 2
NEGLIGENCE AGAINST MCDONALD'S CORPORATION

You will find for Ogborn if, and only if, you are satisfied from the evidence that McDonald's Corporation failed to meet its duty to treat Ogborn with ordinary care

AND

That such failure was a substantial factor in causing injury to Ogborn.

"Ordinary Care" is that which a reasonably prudent corporation would exercise under similar circumstances.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more than one cause, and there may be multiple "substantial factors" in causing any one injury.

Please use Verdict Form 2.

Proceed to the next Instruction.

INSTRUCTION NO. 3
PREMISES LIABILITY

You will find for Ogborn if, and only if, you are satisfied from the evidence that McDonald's Corporation knew or should have known of the activities of a hoax caller or callers and/or the criminal activities of others which would have lead a reasonably prudent company to anticipate injury to its employees or guests,

AND

That McDonald's Corporation failed to take all reasonable steps to attempt to protect its employees or guests,

AND

That McDonald's Corporation was in control of the premises at the Mt. Washington McDonald's during the events concerning which you have heard evidence

AND

That such failure was a substantial factor in causing injury to Ogborn.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more than one cause, and there may be multiple "substantial factors" in causing any one injury.

Please use Verdict Form 3.

Proceed to the next Instruction.

INSTRUCTION NO. 4
FALSE IMPRISONMENT

You will find for Ogborn under this Instruction if, and only if, you are satisfied from the evidence that:

a) Summers and/or Dockery caused Ogborn to be detained;

AND

b) Summers and/or Dockery had no reasonable grounds to do so;

AND

c) That the length of time Ogborn was detained by Summers and/or Dockery and the manner in which she was treated and searched was unreasonable under the circumstances.

AND

That such failure was a substantial factor in causing injury to Ogborn.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more than one cause, and there may be multiple "substantial factors" in causing any one injury.

You may find either for or against Ogborn under this Instruction. If you find for Ogborn, you may find against Summers, and/or Dockery, and/or McDonald's Corporation.

If you are satisfied from the evidence that actions by Summers and/or Dockery were meant to be in furtherance of the interests of McDonald's Corporation, and that they were not acting from personal motives unrelated to the interests of McDonald's Corporation, then you shall find against McDonald's Corporation also.

**Please use Verdict Form 4.
Proceed to the next instruction.**

**INSTRUCTION NO. 5
INVASION OF PRIVACY**

You will find for Ogborn under this Instruction if, and only if, you are satisfied from the evidence that in conducting the strip search of Ogborn on April 9, 2004, Summers and/or Dockery intentionally intruded, physically or otherwise, upon the solitude or seclusion of Ogborn's private affairs or concerns without justification

AND

That said intrusion would be highly offensive to a reasonable person

AND

That it caused injury, damage, loss or harm

AND

That such failure was a substantial factor in causing injury to Ogborn.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more than one cause, and there may be multiple "substantial factors" in causing any one injury.

If you are satisfied from the evidence that actions by Summers and/or Dockery were meant to be in furtherance of the interests of McDonald's Corporation and that they were not acting from personal motives unrelated to the interests of McDonald's Corporation, then you shall find against McDonald's Corporation also.

Please use Verdict Form 5.

Proceed to the next instruction.

INSTRUCTION NO. 6
SEXUAL HARASSMENT AGAINST MCDONALD'S CORPORATION

You will find for Ogborn under this Instruction if, and only if, you are satisfied from the evidence that, on the evening of April 9, 2004, she was subjected, because of her sex, to unwelcome sexual advances or verbal or physical contact of a sexual nature,

AND

That such conduct was so severe and pervasive that it created a hostile and offensive work environment for a reasonable female employee,

AND

That such conduct caused injury to Ogborn

AND

That such failure was a substantial factor in causing injury to Ogborn.

A factor is a "substantial factor" if it contributed to the harm, that is, if reasonable minds can regard it as a cause of the harm. There may be more than one cause, and there may be multiple "substantial factors" in causing any one injury.

However, if you find that McDonald's took steps to prevent and promptly correct the behavior toward Ogborn.

AND

That Ogborn unreasonably failed to take advantage of any preventative or corrective opportunities to avoid harm, you will find for McDonald's.

Please use Verdict Form 6.

Proceed to the next Instruction.

INSTRUCTION NO. 7
COMPENSATORY DAMAGES

If you have found for Louise Ogborn under any previous Instruction, then you shall determine from the evidence the amount which will fully and fairly compensate Ogborn for such of the following damages as you believe from the evidence she has sustained or is reasonably certain to endure in the future as a result of the events of April 9, 2004. In making your award, state the total amount of damages awarded to Ogborn without regard to any apportionment of fault you shall later make under Instruction No. 8, below.

1. Ogborn's physical, mental and emotional pain and suffering, emotional distress, including loss of enjoyment of life, embarrassment, humiliation, and the like, past present and future, not to exceed One Hundred Million Dollars (\$100,000,000), the amount claimed.

2. Ogborn's reasonable expenses to be incurred in the future for medical, psychiatric and psychological care and services, not to exceed One Hundred Eleven Thousand Three Hundred Twelve Dollars (\$111,312), the amount claimed.

Your total award to Louise for compensatory damages shall not exceed One Hundred Million One Hundred Eleven Thousand Three Hundred Twelve Dollars (\$100,111,312), the amount claimed.

You shall use Verdict Form 7 to respond to this Instruction.

Proceed to the next Instruction.

INSTRUCTION NO. 8
ALLOCATION OF FAULT

If you have found for Ogborn against one or more of the parties, you shall apportion your verdict by deciding what percentage of the total fault was attributable to each, your total percentage to equal 100%.

It was Ogborn's duty to exercise ordinary care for her own welfare. If you are satisfied from the evidence that Ogborn failed in this duty, you shall apportion your verdict against her as well.

In determining the percentage of fault, you shall consider both the nature of the conduct of the parties and the extent of the causal relationship between their conduct and the damages sustained.

You shall use Verdict Form 8 to respond to this Instruction.

Proceed to the next Instruction.

INSTRUCTION NO. 9
PUNITIVE DAMAGES

If you find for Louise Ogborn and award her compensatory damages under any previous Instruction, and if you are further satisfied by clear and convincing evidence that McDonald's Corporation, in failing to comply with its duties, acted in reckless disregard for the safety, security and well-being of others, including Louise Ogborn, you may in your discretion award punitive damages against McDonald's Corporation in addition to the compensatory damages already awarded.

"Punitive Damages" are damages awarded against McDonald's Corporation for the purpose of punishing McDonald's Corporation for its misconduct in this case and deterring it and others from engaging in similar conduct in the future. McDonald's Corporation may be held responsible for

punitive damages for the conduct of Summers or Dockery only if McDonald's Corporation authorized or ratified or should have anticipated their conduct.

Your award, if any, of punitive damages should be guided by the following factors:

(a) the harm to Ogborn as established by the compensatory damages you have already awarded caused by the actions of McDonald's Corporation in this case.

(b) whether you have found from the evidence that the conduct of McDonald's Corporation was reprehensible, considering whether the potential of harm was physical and personal rather than economic, with personal harm being more egregious than economic; the degree to which McDonald's Corporation conduct evinced an indifference to or reckless disregard for the safety and well being of others; the degree to which McDonald's Corporation conduct involved repeated disregard as opposed to an isolated incident; the likelihood of repeated activity by hoax caller(s) and the degree to which McDonald's Corporation was aware of that likelihood; the profitability to McDonald's Corporation of failing to warn of the activities of the hoax caller; the duration of time for which these events continued to occur and McDonald's Corporation failure to reveal the same; and any actions or lack thereof by McDonald's Corporation to protect its employees and guests once the activities of the hoax caller became known to it.

(c) You may use evidence of McDonald's conduct inside Kentucky to award Ogborn punitive damages but otherwise you should not use evidence of conduct that occurred outside of Kentucky to award punitive damages but you are entitled to consider evidence of McDonald's Corporation's conduct

outside of Kentucky in determining whether the conduct that occurred here in Kentucky was reprehensible, and the degree of the reprehensibility of that conduct.

(d) 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, or bias, or prejudice with respect to any party to the case.

This Instruction is only against McDonald's Corporation. If you find for Louise Ogborn you shall indicate by your verdict under this Instruction and you shall state the amount separately, otherwise you will find for McDonald's Corporation. Please use Verdict Form 9.

JUDGE TOM MCDONALD
SPECIAL JUDGE, BULLITT CIRCUIT COURT

October 3, 2007

Check each item applicable:

**VERDICT FORM 1 – Negligence (General) Against Summers,
and/or Dockery**

____ We the Jury find for Louise Ogborn under Instruction Number 1, and we find in her favor against Donna Summers.

____ We the Jury find for Louise Ogborn under Instruction Number 1, and we find in her favor against Kim Dockery.

____ We the Jury find for Louise Ogborn under Instruction Number 1, and we find in her favor against McDonald's Corporation. (You may check this only if you have found against Summers and/or Dockery above.)

____ We the Jury find for McDonald's Corporation under Instruction Number 1, and award Louise Ogborn nothing.

____ We the Jury find for Donna Summers under Instruction Number 1, and award Louise Ogborn nothing against her.

____ We the Jury find for Kim Dockery under Instruction Number 1, and award Louise Ogborn nothing against her.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 1 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

Check each item applicable:

VERDICT FORM 2 – Negligence (General) Against McDonald's Corporation

____ We the Jury find for Louise Ogborn under Instruction Number 2 and we find in her favor against McDonald's Corporation.

____ We the Jury find for McDonald's Corporation under Instruction Number 2 and award Louise Ogborn nothing.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 2 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

Check each item applicable:

VERDICT FORM 3 – Premises Liability

____ We the Jury find for Louise Ogborn under Instruction Number 3 and we find in her favor against McDonald's Corporation.

____ We the Jury find for McDonald's Corporation under Instruction Number 3 and award Louise Ogborn nothing.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 3 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

Check each item applicable:

VERDICT FORM 4 – False Imprisonment

____ We the Jury find for Louise Ogborn under Instruction Number 4, and we find in her favor against Donna Summers.

____ We the Jury find for Louise Ogborn under Instruction Number 4, and we find in her favor against Kim Dockery.

____ We the Jury find for Louise Ogborn under Instruction Number 4, and we find in her favor against McDonald's Corporation. (You may check this only if you have found against Summers and/or Dockery above.)

____ We the Jury find for McDonald's Corporation under Instruction Number 4, and award Louise Ogborn nothing against her.

____ We the Jury find for Donna Summers under Instruction Number 4, and award Louise Ogborn nothing against her.

____ We the Jury find for Kim Dockery under Instruction Number 4 and award Louise Ogborn nothing against her.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 4 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON		
_____ JURY MEMBER	_____ JURY MEMBER	_____ JURY MEMBER
_____ JURY MEMBER	_____ JURY MEMBER	_____ JURY MEMBER
_____ JURY MEMBER	_____ JURY MEMBER	_____ JURY MEMBER

Check each item applicable:

VERDICT FORM 6 – Sexual Harassment

____ We the Jury find for Louise Ogborn under Instruction Number 6 and we find in her favor against McDonald's Corporation..

____, We the Jury find for McDonald's Corporation under Instruction Number 6 and award Louise Ogborn nothing.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 6 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

VERDICT FORM 7

Having found for Louise Ogborn under any previous Instruction, we
the Jury hereby award compensatory damages as follows:

**ENTER
AMOUNT AWARDED**

- 1. Ogborn's physical, mental and emotional pain and suffering, emotional distress, including loss of enjoyment of life, embarrassment, humiliation, and the like, past present and future, not to exceed One Hundred Million Dollars (\$100,000,000), the amount claimed. \$ _____

- 2. Ogborn's reasonable expenses to be incurred in the future for medical, psychiatric and psychological care and services, not to exceed One Hundred Eleven Thousand Three Hundred Twelve Dollars (\$111,312), the amount claimed. \$ _____

Your total award to Louise for compensatory damages shall not exceed One Hundred Million One Hundred Eleven Thousand Three Hundred Twelve (\$100,111,312), the amount claimed. \$ _____

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 7 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

VERDICT FORM 8 – Allocation of Fault

You shall apportion your verdict between the parties by deciding what percentage of the total fault was attributable to the fault of each, your total percentage to equal 100%. In determining percentages of fault, you shall consider both the nature of the conduct of the parties and the extent of the causal relationship between their conduct and the damages sustained:

McDonald's Corporation: _____ %
Donna Summers: _____ %
Kim Dockery: _____ %
Wes Nix: _____ %
Caller (s): _____ %
Louise Ogborn _____ %
TOTAL: _____ 100 _____ %

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 8 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

VERDICT FORM 9 – Punitive Damages

_____ We the Jury find for Louise Ogborn under Instruction Number 9 and award her punitive damages against McDonald's Corporation in the amount of \$ _____, not to exceed One Hundred Million Dollars (\$100,000,000) the amount claimed.

_____ We the Jury find for McDonald's Corporation under Instruction Number 9 and award Louise Ogborn nothing.

Nine or more of you must agree upon any verdict; if all twelve of you agree, this Verdict Form 9 need be signed only by your foreperson; otherwise the nine or more of you who agree must sign below:

FOREPERSON

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER

JURY MEMBER