

STATEMENT OF THE ISSUES

I. **Is Plaintiff entitled to a new trial on the basis of the jury instructions?**

Because the jury instructions, when construed as a whole, contained a full and correct statement of the applicable law, the trial court properly instructed the jury. Plaintiff filed a notice of appeal before the trial court ruled on Plaintiff's motion for new trial.

II. **Is Plaintiff entitled to a new trial on the basis of the trial court's evidentiary rulings?**

The trial court's evidentiary rulings, which Plaintiff challenges, do not constitute an abuse of discretion. Plaintiff filed a notice of appeal before the trial court ruled on Plaintiff's motion for new trial.

III. **Is Plaintiff entitled to a new trial on the basis of irregularities in the proceedings?**

Although Plaintiff did not timely object and give the trial court an opportunity to rule on the alleged irregularities in the proceedings Plaintiff challenges on appeal, these matters, Defendants' closing argument and cross examination of Huntington, are not a basis for a new trial. Plaintiff filed a notice of appeal before the trial court ruled on Plaintiff's new trial motion.

IV. **Did the trial court err in denying Plaintiff's motion for mistrial?**

In addition to properly denying Plaintiff's motion for mistrial, the trial court invited Plaintiff to propose and gave a cautionary instruction to the jury.

V. **Did the trial court err in overruling Defendants' objection and permitting Huntington to testify about collateral matters?**

The trial court erred in overruling Defendants' objection to Huntington's testimony, and Defendants raised this issue in a Notice of Review.

STATEMENT OF THE ISSUES

I. WHETHER THE JURY INSTRUCTIONS DENIED PLAINTIFF A FAIR TRIAL.

The trial court overruled plaintiff's objections at trial. Plaintiff's motion for a new trial on this ground was deemed denied by operation of statute.

II. WHETHER THE TRIAL COURT ERRED IN PERMITTING DEFENSE EXPERT DR. GILBERT TO OFFER OPINIONS THAT AMOUNTED TO PREVIOUSLY UNDISCLOSED EXPERT TESTIMONY, THEREBY DENYING PLAINTIFF A FAIR TRIAL.

The trial court overruled plaintiff's objections at trial. Plaintiff's motion for a new trial on this ground was deemed denied by operation of statute.

III. WHETHER THE TRIAL COURT ERRED IN ALLOWING DR. O'BRIEN TO TESTIFY AND INTRODUCE EVIDENCE REGARDING HIS "TRACK RECORD" IN PERFORMING THE MINI-LOOP GASTRIC BYPASS SURGERY, THEREBY DENYING PLAINTIFF A FAIR TRIAL.

The trial court overruled plaintiff's objections at trial. Plaintiff's motion for a new trial on this ground was deemed denied by operation of statute.

IV. WHETHER THE TRIAL COURT ERRED IN REFUSING TO ALLOW PLAINTIFF TO PRESENT EVIDENCE OF MEDICAL EXPENSES IN EXCESS OF THE SETTLEMENT WITH VEITH'S INSURER, RATHER THAN THE REASONABLE VALUE AS REFLECTED BY THE BILLED AMOUNT, THEREBY DENYING PLAINTIFF A FAIR TRIAL.

The trial court granted defendants' motion in limine and denied plaintiff's offer of proof at trial.

V. WHETHER THE PLAINTIFFS WERE DENIED A FAIR TRIAL BY THE DEFENDANTS VIOLATION OF AN ORDER IN LIMINE PROHIBITING THE MENTION OF OTHER LAWSUITS AGAINST DR. O'BRIEN.

Plaintiff's motion for a new trial on this ground was deemed denied by operation of statute.

VI. WHETHER THE PLAINTIFFS WERE DENIED A FAIR TRIAL AS THE RESULT OF INFLAMMATORY AND PREJUDICIAL STATEMENTS DURING CLOSING ARGUMENT.

The trial court overruled plaintiff's objections at trial. Plaintiff's motion for a new trial on this ground was deemed denied by operation of statute.

VII. WHETHER THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION FOR A MISTRIAL.