STANDARD CIVIL JURY CHARGES
(MEDICAL MALPRACTICE)
FOR JUDGE MARILYN CASTLE

I will instruct the jury in a civil case at the beginning of the trial as well as at the end. This procedure is authorized by Code of Civil Procedure Article 1792(A) and I believe it to be helpful in focusing the jury on their duties early on and providing them with a basic understanding of why certain evidence and testimony will be presented to them. Just before opening statements, I will instruct the jury on their function and duties, as well as the duties of the attorneys and the court, and cover certain other areas of law I feel are important for the jury to be aware of at the beginning of trial.

At the end of the trial, I will repeat the applicable law of the case and any other instructions that I or the attorneys feel should be repeated. I will also instruct on damages and how the jury is to conduct its deliberations.

The following standard jury instructions in a medical malpractice case will be given at the beginning of the trial unless inapplicable to the case:

Duty of the Jury
Duty of the Attorneys
Duty of the Judge
The Order of Trial
Burden of Proof
Duty-Risk (or other theory of recovery)
Cause in Fact
Defendant Not Required To Show Cause Of Injury
Standard of Care
Informed Consent
Medical Review Panel
Kinds of Evidence
Evaluation of Witnesses
Expert Testimony
Medical Testimony
Treating Physician Testimony
Depositions

After closing arguments or summation, I will repeat the instructions on all matters, except Duty of Jury, Duty of Attorneys, Duty of Judge an Order of Trial. Then I will add instructions as appropriate regarding:

Sympathy
Special Damages
General Damages
Award Not Subject to Tax
Loss of Earning Capacity
Loss of Consortium
Victim Fault
Custody
Pre-existing Condition
How to Conduct Deliberations and Reach a Verdict
Prohibition Against Quotient Verdicts

JURY INSTRUCTION

DUTY OF JURY

As we begin this trial, you need to know and clearly understand your duty as jurors. As the judge, I will give you the law which you must follow in this case. You must apply the law as I give it to you. As to the facts, you will be judges of the facts, and applying the facts as you determine them to the law, you will decide the outcome of this lawsuit. Your duty is to listen carefully to the witnesses and to evaluate their testimony. It is your job to search for the truth. In doing so, you must sort out all of the evidence in this case and determine which facts are probably true. You are searching for the truth so that, when the trial is over, you can return a true and correct verdict. You must pay close attention to the witnesses and the evidence presented during the trial. You are permitted to take notes, but they must be kept confidential during the trial. They will be collected and kept by the court during each recess and returned to you when the recess is over. They will be destroyed by the court after you have returned a verdict. You are not permitted to ask questions of any witness during the trial.

You must keep an open mind throughout the trial, and not make up your mind until the very end, and only after you have exchanged views with your fellow jurors. In order for you to keep an open mind and remain impartial, it is important that you avoid any contact with the attorneys, parties or witnesses involved in this trial whether in or out of the courtroom. Do not talk to the parties, witnesses or attorneys, not even to exchange pleasantries. In this way all parties can be assured of the absolute impartiality of you as jurors. You must not discuss the case among yourselves or with anyone else while the trial is going on. You must not permit anyone to talk about the case in your presence, and you must remove yourself immediately from any situation where the case is being discussed. If anyone discusses the case in your presence, despite your telling them not to, report that fact to the Court as soon as you can.

DUTY OF ATTORNEYS

You have already met the attorneys and their clients. They have come to court to resolve a dispute between them. The duty of the attorneys is to bring to the courtroom the witnesses and evidence that best support their clients' side of the case. They are not called upon to be impartial

or neutral. Each side presents its version of the facts and argues the law most favorable to its position. During the trial you will hear the attorneys object to certain testimony or evidence. It is their duty to object anytime they think evidence is improper or inadmissible. When an objection comes up, I may call the attorneys aside to discuss it out of your hearing, or I may simply make a ruling. If I overrule the objection, it means that I feel that the testimony or evidence is admissible and you will be permitted to consider it. If I sustain the objection, it means that I feel that the evidence is not admissible, and you will not be permitted to hear or consider it. In this instance, you must disregard the question and you must not speculate about what the answer to the question may have been. You should not become prejudiced against an attorney or the attorney's client because they make objections. In fact, you should never hold anything an attorney does against the client. Attorneys sometimes become overzealous in the heat of a trial, and it is my duty to keep the trial controlled and dignified. This is the purpose of my rulings and any admonitions I may direct to the attorneys. You should not interpret any of my rulings during the trial as a reflection of the merits of the case. They have nothing to do with the outcome, which only you can decide. It is the duty of the attorneys to address you at the beginning and the end of the trial. You should listen carefully to their comments about the law and the evidence, but you must keep in mind that the attorneys are not witnesses and their statements are not evidence. These comments are designed to persuade you and to direct toward a particular verdict, and you should consider them. Nevertheless, you must not substitute any attorney's argument for your own careful analysis of the facts.

DUTY OF JUDGE

You must each decide the outcome of this case for yourself after an exchange of views with one another. Under Louisiana Law, in a jury trial the judge is not permitted to comment on, or express any opinion about the case of the evidence. If, during the trial I say or do anything that suggests any opinion as to what the facts of the case are, you should disregard it. I am not the judge of the facts in this case. You alone are the judge of the facts. My main duty in a jury trial is to instruct you as to the law that you must apply in reaching your verdict. You are required to accept the law as I explain it to you even if you do not agree with it, and even if it means you must render a verdict that is different from the one you would prefer. You are not

free to determine the correctness or the fairness of the law. You must simply accept it and apply it. You must follow the law as a whole. You cannot accept some parts of the law and reject others. The order in which I discuss the points of law applicable to this case has no significance as to their importance. It is also the judge's duty to make sure that the trial is conducted according to the rules of evidence and procedure. The law is very specific about what kinds of evidence is proper for your consideration, and there is often disagreement about the admissibility of evidence. I must settle these disagreements without exposing you to improper or inadmissible evidence, so I will conduct all discussions about evidence out of your presence. You must not feel that anything is being hidden from you. The purpose of all the rules of proper evidence and procedure is to ensure that both sides get a fair trial and to prevent you from making your decision on unreliable or unfair evidence.

ORDER OF TRIAL

There is a particular order to be followed in every trial. First, the attorneys for the plaintiff and the defendant will each make an opening statement to you. The purpose of the opening statement is to introduce you to the issues that are in dispute. It should be an outline of the evidence that you will hear, a roadmap, if you will, of the case. After the opening statements comes the presentation of evidence. During this time, you will hear the testimony of witnesses, and you will examine documents and other exhibits that are relevant to the case. When all of the evidence has been presented, the attorneys will address you again in closing argument or summation. At that time, it is proper for the attorneys to comment on both the facts and the law, and to state to you their opinions about the evidence. After the closing arguments, I will give you some final instructions and then you will deliberate. During deliberation you will discuss the case among yourselves, exchange views with one another, and agree on a verdict.

BURDEN OF PROOF

The fact that a person has filed a lawsuit and is in this court seeking damages creates no inference or presumption that he is entitled to a judgment for any amount at all. Anyone may make a claim, and the mere making of a claim in no way establishes plaintiff's entitlement to any recovery.

The law places the burden of proof on the plaintiff to establish the facts upon which the case is based by the greater weight of the evidence. In this regard the plaintiffs must meet the burden of what is referred to as "a preponderance of the evidence." If in your judgment the weight of all the evidence presented tips the scales in favor of the plaintiff, however slightly, then your verdict must be favorable to the plaintiff. If the evidence fails to tip the scales in favor of the plaintiff's case, or even if the scales remain evenly balanced when you place all of the evidence on them, then your verdict must be in favor of the defendant. In other words, the law requires the plaintiff to satisfy you that the facts the plaintiff is trying to prove are more probable than not. It is not the number of witnesses that prove the case, because you may believe some and not others. The test is not which side brings the greater number of witnesses before you or presents the greater quantity of evidence, but, rather, which witnesses and which evidence you believe to be the most accurate and convincing. It is the weight of the evidence that makes the difference. If the plaintiff fails to prove or establish any essential element of his case by this preponderance of the evidence, then you must find she has failed to prove her case sufficiently to recover.

This is a malpractice suit against a doctor and a hospital.

As against the doctor in this case, the plaintiff has the burden of proving by a preponderance of the evidence:

1. the degree of knowledge or skill possessed or the degree of care ordinarily exercised by physicians practicing in the same medical specialty as that in which the defendant practices;
2. that the defendant lacked this degree of knowledge or skill or failed to use reasonable care and diligence, along with his or her best judgment in the application of that skill, and
3. that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care, plaintiff suffered injuries that would not otherwise have been incurred.

As against the hospital in this case, the plaintiff alleges the hospital committed malpractice through the actions of its nurses. A hospital may be liable for the negligence of a

nurse if the nurse violated the legal standards of negligence applicable to nurses. In determining whether the hospital, through its nurses, violated the standard of care, you may consider whether the hospital's own written rules, regulations or policies were violated. Hospitals are bound to exercise the requisite amount of care toward a patient that the particular patient's condition may require.

As against the hospital in this case (through its employee[s]), the plaintiff has the burden of proving by a preponderance of the evidence:

1. the degree of knowledge or skill possessed or the degree of care ordinarily exercised by members of the nursing or health care profession.
2. that the nurses lacked this degree of knowledge or skill or failed to use reasonable care and diligence, along with his or her best judgment in the application of that skill, and
3. that as a proximate result of this lack of knowledge or skill or the failure to exercise this degree of care, plaintiff suffered injuries that would not otherwise have been incurred.

Injury alone does not raise a presumption of the physician's or hospital's negligence.

If you find that the physician, or the hospital through its employee[s], exercised the degree of skill ordinarily employed under similar circumstances by the members of their profession in good standing in the same medical specialty and used reasonable care and diligence along with their best judgment in the application of their skill to the case, then you are to return a verdict in favor of the defendant in whose behalf you make such findings.

If you find that the physician or the hospital through its employee[s] failed to exercise the degree of skill ordinarily employed under similar circumstances by the members of their profession in good standing in the same medical specialty and failed to use reasonable care and diligence along with their best judgment in the application of their skill to the case, then you are to return a verdict in favor of the plaintiff and against the defendant or defendants against whom behalf you make such findings.

DUTY-RISK ANALYSIS

This is a lawsuit to recover damages that the plaintiff claims the conduct of the defendant(s) caused. The basic law in Louisiana regarding this type of suit is Article 2315 and 2316 of the Louisiana Civil Code. Article 2315 states: "Every act whatsoever of man that causes damage to another obliges him by whose fault it happened to repair it." The word fault is a key word in the law. Fault is also called negligence, and it refers to conduct which one should not engage in -- that one has acted as he should not have acted or has failed to do something he should have done. Article 2316 states: "Every person is responsible for the damage he occasions not merely by his act, but by his negligence, his imprudence, or his want of skill." The law sets standards that we must all apply to our activities involving other people. A standard set by law is also known as a duty. How strict a standard or duty the law imposes on a person's conduct varies according to the kind of activity in which he is engaged and the circumstances surrounding the activity. In our complex society people engage in all sorts of different activities. The appropriate standard of care for each activity may be set by the legislature in statutes or laws, by local governing authorities in ordinances or regulations, or by the courts in instances where no specific law has been enacted. In a lawsuit for damages, the plaintiff must prove by the weight of the evidence: (1) That the defendant had a legal duty or responsibility to act according to a certain standard of care set by the law under the circumstances; (2) That the defendant failed to act according to the standard of care set by the law under the circumstances; (3) That the conduct of the defendant was an actual cause of injury or damage to the plaintiff; (4) That the conduct of the defendant is the kind of activity that the legal duty or standard is designed to protect against, and therefore makes the defendant liable for any injury or damage that comes to others; and, (5) That the plaintiff actually sustained injury or damage. The duty or standard of care owed by a defendant under the circumstances of a particular case is set by law. The law regarding the duty of the defendants in this case is: As to the physician defendant a requirement that the defendant exercise the degree of care or degree of knowledge or skill ordinarily exercised by a physician practicing (name of specialty). Therefore, in determining whether or not Dr. _____ possessed and met the required standard of knowledge, skill and care in this case, you must be guided by the views and opinions of expert witnesses who are physicians and who are qualified to testify on this subject. As to the hospital, through its employee[s], the

duty requires that the defendant exercise the degree of knowledge or skill ordinarily exercised by the individuals practicing in that area of the health care profession.

CAUSE IN FACT

The plaintiff must prove that any damage claimed was caused by the defendant's conduct. Similarly, if the defendant claims that the plaintiff is partially to blame for her own damages or that some third party is to blame, then the defendant must prove that the plaintiff's damage was caused by the plaintiff's conduct or that of a third party. Conduct is considered a cause in fact if it is a substantial factoring bringing about the damage. You must decide whether the damage was caused by the conduct of the defendant, the plaintiff or some third party. If you find that the plaintiff probably would not have suffered the damages claimed except for the conduct of the defendant, then you must conclude that the defendants conduct caused the damage. If you find, on the other hand, that the plaintiff probably would have suffered the damages claimed regardless of the conduct of the defendant, then you must conclude that the defendant's conduct did not cause the damage.

If you conclude that both the plaintiff and the defendant were negligent, and that the negligence of each was a proximate cause of the accident and plaintiff's injuries, then you must assign percentages of fault to each one.

DEFENDANT NOT REQUIRED TO SHOW CAUSE OF INJURY

A defendant in a malpractice action is not charged with the burden of showing the cause of the occurrence which gave rise to injury and damage. The fact that an unforeseen event occurs in the course of treatment does not of itself show fault or negligence on the part of the physician.

STANDARD OF CARE

In deciding this case, must consider is whether the defendants' conduct was below the standard applicable to his or its activities. In this case, a doctor and a hospital are involved. You may find that the doctor and the hospital are free from fault, or you may find that the doctor and

the hospital are at fault or that only one of them is at fault. These are facts which you, the jury, must determine.

This type of case is referred to as a "malpractice" case. "Mal" simply means wrong, and wrong practice merely means conduct which was below the standard applicable to the doctors' and/or hospital's activities. I will now explain the standard applicable to doctors and hospitals. A doctor who holds himself out as a specialist, and who undertakes service in a special branch of medical or surgical science, owes to his patient the duty of possessing that degree of learning and skill ordinarily possessed by specialists of good standing practicing in the same special field of medicine, under similar circumstances. As to Dr. _____, the fields involved are _____.

A hospital through its nurses (or other employee) owes its patients the duty to possess the degree of knowledge or skill ordinarily exercised by the nursing or health care profession in which the employee functions.

A physician or nurse (or other hospital employee) is not required to exercise the highest degree of skill and care possible. He or she is not an insurer or guarantor of results, in the absence of an express agreement to that effect. When a doctor undertakes the treatment of a case, he undertakes to use that skill and care ordinarily exercised by physicians in the same field of medical specialty as that in which he practices. When a nurse (or other hospital employee) undertakes the treatment of a case, she undertakes to use that degree of knowledge or skill ordinarily exercised by the nursing or health care profession in which the employee practices.

The fact that a bad result, injury, or complication follows medical treatment does not in and of itself raise a presumption of the physician's or nurse's negligence. If the doctor and/or nurses in this case exercised the degree of care, skill and judgment required, they cannot be found to have practiced substandard medicine on the basis of complications or injuries sustained by the patient.

A doctor is not negligent if he fails to follow a course of treatment which, at a later date, may be proven to be the wiser course. The doctor is only responsible for exercising his best judgment and administering reasonable medical care under the circumstances that face him at that time. Information and equipment which was not available at the time of treatment of the patient, but later becomes available, is not to be considered in deciding whether or not the

physician deviated from the standard of care. Making a diagnosis is an act of physician judgment. Simply because a diagnosis may have been in error, does not in and of itself prove a breach of standard of care on the part of a physician, nor does it raise an inference of negligence.

A physician or surgeon, upon undertaking an operation or treatment, is under the duty, in the absence of an agreement limiting the service, to continue his attendance after the operation or first treatments, as long as the case requires attention.

If a patient consults a doctor and accepts the professional skill of a doctor, yet fails to follow the doctor's advice or interferes with the course of treatment and something unusual happens to the patient which would not otherwise have happened, or which was not the result of the doctor's negligence, the doctor would not be liable.

I have told you that the general standard to which the physician in a medical specialty must conform is that degree of skill ordinarily employed under similar circumstances by the members of his profession in good standing in the same medical specialty. In some instances, that duty may extend to the responsibility to inform the patient of the dangers present in the proposed treatment, and the disclosure of material facts reasonably necessary to permit the patient to decide whether to consent to an operation or not.

INFORMED CONSENT

Pursuant to the doctrine of informed consent physicians are required to provide patients with sufficient information to permit the patient to make an informed and intelligent decision on whether to submit to a proposed course of treatment. The doctor's duty is to disclose all risks which are "material". A risk is material when a reasonable person in what the doctor knows or should know to be the patient's position, would be likely to attach significance to the risk or cluster of risks in deciding whether or not to forego the proposed therapy.

The factors contributing significance to a medical risk are the incidence of injury and the degree of the harm threatened. If the harm threatened is great, the risk may be significant even though the statistical possibility of its taking effect is very small. But if the chance of harm is slight enough, and the potential benefits of the therapy or the detriments of the existing malady great enough, the risk involved may not be significant even though the harm threatened is very great.

The determination of materiality of a risk is a two-step process. The first step is to define the existence and nature of the risk and the likelihood of its occurrence. The second prong of the materiality test is for the trier of fact to decide whether the probability of that type harm is a risk which a reasonable patient would consider in deciding on treatment. The focus is on whether a reasonable person in the patient's position probably would attach significance to the specific risk and whether a reasonable patient in the plaintiff's position would have consented to the treatment or procedure had the material information and risks been disclosed.

Encompassed in the definition of material risks is the concept that in order for a patient to make an informed, intelligent decision, he must be advised of any alternatives to the proposed procedure. When faced with several acceptable courses of treatment, a physician is not negligent for failing to choose a course of treatment which, at a later time, may be shown to be a wiser course.

It is not, however, incumbent upon the physician to advise a patient of every conceivable possibility that may stem from the physician's treatment. If the possibility is one that can reasonably be anticipated and fall within the expertise of the treating physician, then the treating physician should so inform his patient, and failure to do so may permit you to reach the conclusion that the physician was negligent. If a patient is already informed of a risk because the risk is obvious or already known to the patient, further disclosure by the physician is not necessary.

MEDICAL REVIEW PANEL

Under Louisiana law, claims against physicians or hospitals must first be submitted to a medical review panel for review. The panel consists of a non-voting lawyer chairman and three physicians. The lawyer is chosen from a list selected at random by the Clerk of the Supreme Court. Each side may select a physician, and those two select a third physician in order to complete the panel. Both the plaintiff and the defendant then present their evidence to the panel for its consideration. After doing so, the panel renders a decision as to whether the doctor was negligent, i.e., whether he has breached the standard of care required of him in treating the patient. The panel is also required to render a decision as to whether the conduct of the doctor or

hospital was causally related to the injuries or damages which may have been suffered by the patient.

The decision of the panel is not binding upon you but is to be considered by you, along with the other evidence which has been presented, in reaching your decision.

You should understand, however, and I charge you that not only must there be (1) a causal relationship between the treatment given the patient and the injuries sustained, but (2) the physician and/or the hospital must also have been guilty of negligence, i.e. conduct which falls below the standard of care, in treating the patient. If either is lacking, the plaintiff is not entitled to recover.

KINDS OF EVIDENCE

You will reach your verdict based on the evidence you heard in this case. The only evidence you may consider is what was presented to you in this courtroom. There are two kinds of evidence - direct evidence and circumstantial evidence. Direct evidence tends to establish a fact all on its own, such as the testimony of an eyewitness. Circumstantial evidence does not establish a fact all on its own, but may point to a fact. An example of circumstantial evidence is wet ground, which maybe evidence that it has been raining, even if you did not actually see the rain. You should consider all of the evidence presented to you, both direct and circumstantial.

The evidence which you are to consider consists of the testimony of witnesses, either live or by deposition, the documents admitted into evidence and any fair inferences and reasonable conclusions which you can draw from the evidence submitted to you. The evidence may also include stipulations of counsel. Stipulations are agreements that certain facts are true without the requirement of further proof. When counsel agree by stipulation you are to accept those facts as true for purposes of this case.

EVALUATION OF WITNESSES

You will evaluate and weigh the testimony in this case. You must listen very carefully to each witness and pay attention to his or her demeanor on the witness stand. Use your common sense, your intuition, and your experience in life to decide the credibility and reliability of each witness. Consider which ones may have an interest in the outcome of this lawsuit and which

ones have nothing to gain one way or the other. Listen for consistency or inconsistency in the testimony of each witness, and pay attention to how the witness may have come to know the facts about which he or she is testifying. If you believe that a witness is trying to deceive you by falsifying any part of the testimony, then you have the right to reject that witness' entire testimony as being unworthy of belief. A witness, including a plaintiff or defendant, may be discredited or impeached by contradictory or inconsistent evidence; or by evidence that at some other time the witness has said or done something which is inconsistent with the witness' present testimony. You do not have to accept any statement as true just because it is made under oath. You are free to accept as true or reject as false any statement of any witness according to the way that you are impressed with the truthfulness of the witness.

EXPERT TESTIMONY

Normally, witnesses must testify only from first-hand knowledge, that is personal observation, and are not permitted to give an opinion about any part of the case. One exception to this rule is expert testimony. If a witness qualifies as an expert in a particular field, then the witness is permitted to express an opinion as long as the opinion is on a matter within the witness' field of expertise. The witness must be able to back the opinion up with technical data, experience or other information normally relied on by people in that field. You should consider each expert opinion given in this case, and give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient information, that the reasons given in support of the opinion are not sound, or that it is outweighed by other evidence, you have the right to give it little or no weight, or to disregard it entirely. The purpose of expert testimony is to help you understand highly technical matters that may have a bearing on the case, and about which your knowledge may be limited. It is designed to assist you in determining the facts and arriving at the truth, but it should not replace your own judgment. Your decision should be based on all of the evidence in the case, not just the expert testimony.

You, as members of the jury, are instructed that you are necessarily dependent on those versed in medical science and practice in matters not within the common knowledge of laymen. Even though the testimony of experts in the field of medicine is not conclusive on your verdict, it must be accepted and followed by you whenever the subject under consideration is one involving

standard of skill and care within the knowledge of such medical experts only, and not within the common knowledge of laymen. Under such circumstances, you are not at liberty to set up lay standards and disregard the prevailing medical standards as presented through medical expert witnesses.

MEDICAL TESTIMONY

Doctors and other health care providers normally testify as expert witnesses and given their opinion about the condition of a patient. The opinion may be based on objective symptoms, subjective symptoms or a combination. Objective symptoms are those which can be seen in examinations, tests and treatment. Subjective symptoms are those which cannot be observed but are based on statements made by the patient to the doctor or other health care provider. To the extent that any opinion is based on statements made by the patient, you are entitled to consider the truthfulness of the patient's statements in deciding how much weight to give to the medical opinion.

TREATING PHYSICIAN

The testimony of a treating physician who has seen a patient repeatedly may be given greater weight than that of a physician who has only conducted an examination of the patient.

DEPOSITIONS

Most witnesses will come to the courtroom to testify, but the law does permit testimony to be presented by deposition, which is a series of questions and answers recorded under oath, but before the trial. Sometimes a deposition is recorded on videotape.

Depositions are commonly used if the witness is not able to come to trial, or if the witness is a physician who has patients or surgery scheduled on the day of trial. You should evaluate the testimony of witnesses presented by deposition in the same way that you evaluate those who testify in person.

PRESUMPTION REGARDING WITNESSES

If a party has the ability to produce a witness or witnesses who possess knowledge of critical facts regarding this case, but the party fails to call such witness or witnesses, it is presumed that the testimony of such uncalled witness or witnesses would have been unfavorable. This presumption does not apply if the party has exercised due diligence in attempting to produce the witness, but has been unable to do so due to circumstances beyond the party's control.

DAMAGES

It will be your duty to decide first whether the defendant(s) have any liability at all in this case. If you decide that the defendant(s) are liable in damages, then and only then, will you consider and determine the amount of damages actually sustained.

It is my duty to instruct you as to all of the law that may be applicable in this case, depending on how you decide certain issues. This includes instructions on how damages are to be computed if you decide to award damages. I do not intend by these instructions, however, to express any opinion at all as to whether damages should be awarded, or if so, the amount that should be awarded. These are matters that must be decided only by you.

The award of damages is designed to fully and fairly compensate the plaintiff for her injuries, if you find that she has suffered injuries. The award of damages is not designed to punish the defendant, make the defendant an example or prevent other accidents and these factors should not enter into any damage award.

The burden of proving both existence of injuries and the causal connection between them and the defendants' actions rests with the parties claiming such damages.

Because a plaintiff must prove that her injuries were caused by the negligent act of the defendant, a verdict awarding no damages is a valid verdict where plaintiff does not prove her damages were caused by the defendant even though you find the defendant at fault.

SYMPATHY CANNOT BE A FACTOR

You must not allow sympathy or personal preference to influence your verdict on either the question of liability or the amount of damages. You must not allow yourself to be influenced

by the status of the parties in this case. All parties are entitled to equal justice in our courts, rich or poor, individuals or corporations. All persons are equal in the eyes of the law and must be treated as equals by you, as jurors.

AWARDS NOT SUBJECT TO TAX; DIMINISHING PURCHASING POWER

Damage awards are normally not subject to federal or state income tax, except for the portion that may be given for loss of income. The fact that an award or part of it is tax free may be considered by you in deciding the amount.

You may also take into consideration the diminishing purchasing power of the dollar in recent years when you compute an award.

Any award you may decide to make must not include any amount for attorney's fees, court costs, or interest. The court will consider these items.

SPECIAL DAMAGES

If you find in favor of the plaintiff, you must consider what special damages have been proved by the weight of the evidence. Special damages are those which can be documented through invoices or calculated with mathematical certainty. The exact amount of special damages must be proved. They may include past and future medical expenses, past and future lost earnings or income, and any other damages supported by invoices or mathematical calculations. You should not award an amount for medical expenses merely because they have been incurred. Rather, you should first determine whether the medical expenses were incurred for injuries caused by this accident and whether the plaintiff acted reasonably in choosing a particular course of treatment.

GENERAL DAMAGES

If you find for the plaintiff and award special damages, such as medical expenses incurred for actual treatment, then you must consider and award general damages. General damages cannot be documented exactly or calculated mathematically. They include past and future pain and suffering, both physical and mental; past and future disability; disfigurement; and loss of enjoyment of life. While it is not possible to establish the exact amount of general

damages, the plaintiff must still prove by the weight of the evidence that such damages were actually sustained or will be sustained in the future. You must not award damages that are merely speculative, those that you think might have been suffered or might be suffered in the future. Since the amount of these damages cannot be supported by exact evidence, you must determine the award for such damages by applying your experiences in life, your sound discretion and your common sense. Remember, if you award an amount for special damages as described above, you must award general damages as well.

LOSS OF WAGES

Plaintiff claims that she lost wages as a result of this accident. The burden is on the plaintiff to prove that she suffered a loss of income and that he would have been earning wages but for the negligence of the defendant. Past lost earnings are susceptible of mathematical calculation from proof offered at trial and requires such proof as reasonably establishes the claim. However, the plaintiff may not establish a claim for lost wages based upon her own testimony alone without corroboration from any other source.

LOSS OF EARNING CAPACITY

If you determine that the plaintiff is entitled to an award of damages for loss of future earnings, you must determine the plaintiff's loss of earning capacity. Earning capacity is not necessarily determined by actual lost wages. It can be the loss of what the plaintiff could have earned despite the fact that she never could, or never saw fit to, take advantage of that capacity. You are not absolutely bound by the opinion of any expert. You may also consider plaintiff's physical condition before and after the accident, her work record, previous earnings and similar other factors. In this case, the evidence has been presented on the calculation of the value of lost wages through the testimony of actuarial experts, or economists. So, if you determine that the plaintiff is entitled to an award for loss of future earnings, you must give substantial consideration to the testimony of the economists, if you find that their testimony was based on sufficient information and supported by good reasons. The amount calculated to cover a future loss of earnings is more valuable to the plaintiff if she received the entire amount today, than if she received the same amount over the years in the future. So, if you decide to award the

plaintiff an amount for lost future earnings, it must be an amount that is discounted to present value by considering what return would be realized on a relatively risk free investment program.

LOSS OF CONSORTIUM

The plaintiffs in this case seek an award to compensate them for loss of consortium. Loss of consortium is damage sustained as the result of injury to a loved one. Loss of consortium includes damage for any negative effect the injury has on the relationship between family members, including love, affection, mutual comfort, companionship and shared enjoyment of life. For a husband or wife, it also includes loss of sexual enjoyment and physical affection. Like any other element of damages, loss of consortium must be proved by a preponderance of the evidence.

COLLATERAL SOURCE NOT TO BE CONSIDERED

If you find that certain medical bills were sustained by the plaintiff as a result of this incident and that the plaintiff is entitled to recover these expenses, you are not to consider the fact that some of these bills may have been paid by plaintiff's health insurance company. In other words, you are not to reduce any award because of any payments made by plaintiff's own health insurance company.

PRE-EXISTING CONDITION

Under the law, the tort feasor takes the victim as he finds her and if a tort feasor's negligence aggravates a pre-existing condition, then the defendant is responsible for the consequences of that aggravation. However, the burden of proof is upon plaintiff to prove: (1) the prior existing condition, and (2) the extent of the aggravation. In this case, the plaintiff has the burden of proving that her condition is a natural consequence of this accident and the defendant is only responsible for the damages which are related to the aggravation.

If you find from the evidence that the plaintiff was suffering from any preexisting condition, then you may consider whether this condition was aggravated or activated by any defendants' negligence. The rule that you must follow is that the party is entitled to recover damages that arise when the defendant's negligence causes the preexisting condition to flare up

or become more serious. In assessing damages when there is a preexisting condition, you may only consider damages directly caused by the defendant's negligence, and the defendant is not responsible for damages caused by ailments or injuries that existed before the accident.

QUOTIENT VERDICTS PROHIBITED

If your verdict is for the plaintiff, you are instructed not to determine the amount of the award by using a quotient verdict, which is one where you each write down a figure to be added together and divided by twelve to arrive at an average or quotient to use as the amount of your award. A verdict calculated in this manner is invalid.

VICTIM FAULT

A person using a thing or place has the duty to see and to avoid obvious hazards. Again, you must consider all of the circumstances in deciding whether the plaintiff was at fault in causing her own injury. If you conclude that the plaintiff's own conduct was not what you would normally expect of a reasonable prudent person, and that the plaintiff's conduct contributed to the injury, then you must assign a percentage of responsibility to the plaintiff in making your verdict. The defendant has the burden of proving by a preponderance of the evidence that the plaintiff acted without reasonable care for her own safety. In other words, the defendant has the burden of establishing, by a preponderance of the evidence, that the plaintiff in this case failed to exercise reasonable care for her own safety and by such failure, contributed to her own injury. If the defendant convinces you of that, then you must take into account the degree of fault attributable to the injured person in returning your verdict. I will give you some questions to answer which will seek this information.

If the defendant does not convince you that the plaintiff was also at fault, and the plaintiff has otherwise proven her case by a preponderance of the evidence, then you should return a verdict for the plaintiff without assigning any percentage of fault to her.

Louisiana law requires that you divide the total responsibility for this incident among all those who were involved in it. You should do this by assigning percentages of fault to the various involved persons, which will total 100%. You are free to assign whatever percentage

you feel appropriate, and you should do so by answering the questions, which will be provided to you on a special verdict form.

It is the duty of the jury to determine the total dollar amount of damages the plaintiff has sustained. Do not increase or decrease this amount based on the percentages you have determined. I will make the proper calculations after your return of the verdict.

In assigning degrees or percentages of fault to the various persons involved in this incident, keep in mind the standard previously mentioned by the court.

You are instructed that a victim has a duty to mitigate damages. Our law seeks to fully repair injuries which arise from a legal wrong, but a victim has a duty to exercise reasonable diligence and ordinary care to minimize her damages after the injury has been inflicted. She need not make extraordinary or impractical efforts, but she must undertake those which would be pursued by a person of ordinary prudence under the circumstances.

Finally, let me say that the fact that I have given you these statements about the law of damages does not in any way imply or suggest that I feel or do not feel that any damages are due in this case. Whether or not damages are due is solely for you to determine.

DELIBERATIONS

When I release you in a few moments to go to the jury room, your first order of business will be to elect a foreperson who will be responsible for presiding over your deliberations so that your discussions and voting will be conducted in a fair and orderly manner.

(At this time the alternate jurors are released from duty.)

You will remember that I told you at the beginning of the trial that you were not to discuss the case among yourselves. I now remove that restriction. It is now your duty to consult with one another and to deliberate, with a view toward reaching agreement, if you can do so without violence to your individual judgment. You each must decide the case for yourself, but you should do so only after a consideration of the case with your fellow jurors, and you should not hesitate to change an opinion when you are convinced that you are wrong. However, you should not be influenced to vote in any way on any question which you have to decide by the fact that a majority of your fellow jurors favor such a decision. In other words, you should not

surrender your honest convictions for the mere purpose of returning a verdict or solely because of the opinion of other jurors.

As the remainder of you begin your deliberations and work toward reaching a fair and impartial verdict in this case, you will rely on your memories for the most part. Testimony of any witness can be repeated or read to you under certain circumstances. You may use any notes that you have taken to refresh your memory. During your deliberations, you have the right to have with you any object or document received in evidence in this case, except depositions. You will also be provided with a copy of all the instructions that I have given you during this trial.You will be given a Verdict Form that has been prepared for this case. On it are questions that you must discuss, vote on and answer. There are instructions as well, and these should be fully understood before you begin your discussion. The foreperson should read aloud the entire Verdict Form to you and take responsibility for making sure that everyone understands it the same way. If you have any questions about the Verdict Form, or about how your deliberations should be conducted, feel free to have the foreperson write the question out, date and sign it, and knock on the door of the jury room. The bailiff will retrieve the question, and I will consider it.

Follow the same procedure if you would like for me to repeat any of the instructions that I have given you.

In order to answer any question on the Verdict Form, nine (9) of you must agree on the answer. You cannot answer any question or reach any verdict unless nine (9) of you agree.

You will soon begin your deliberations. As you do so, consult with one another. Consider each other's views with an open mind and discuss the evidence and law in this case so that you can, together, reach a just verdict.

The verdict that you return should completely satisfy your mind and your conscience that you have, to the very best of your ability and in keeping with the oath that you have taken, interpreted the facts and applied the law truly, correctly and impartially. Your sworn duty is to seek the truth and to reach a verdict that is consistent with the truth.

Remember that you are not champions or advocates for either side in this case. You are jurors, and you are responsible to this court and to your community for reaching a verdict that is not based on anything whatsoever except the evidence and the law in this case.

Don't vote until you have discussed the case thoroughly. Open your mind to the views and opinions of your fellow jurors and share your thoughts with them. When you have considered all of the evidence, these instructions on the law, and the opinions of your fellow jurors, then vote your conscience.

You will go to the jury room where you will remain until you have reached a verdict in this case.