STANDARD CIVIL JURY INSTRUCTIONS

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OPENING INSTRUCTIONS

Members of the Jury:

RESPECTIVE ROLES OF JURORS AND JUDGE

You've been chosen as jurors for this case, and you've taken an oath to decide the facts in an impartial manner. As we begin the trial, I'm going to give you instructions to help you understand what will take place and what your role is. When you think about my instructions, both now and at the end of the case, consider them together. Don't single out any individual sentence or idea and ignore the others.

As members of the jury, you will decide the facts. As the judge, I will decide all questions of law and courtroom procedure. When you've listened to all of the evidence, I'll give you closing instructions, including the rules of law that you must follow in making your decision.

Keep an open mind throughout the trial. Don't decide any fact until you have considered all of the evidence and my final instructions. You will do this in what we call deliberations at the end of the trial, and then only when all of you are together in the jury room. That is when you'll have a chance to share your views with the other members of the jury and hear their views as well.

Because you are to decide the facts, you must pay close attention to the testimony and to the other evidence that you may see, such as documents or photographs. You will have to rely on your memory of what was said in the courtroom and on any notes you may take. Although exhibits that have been allowed into evidence will be available to you for further study during your deliberations, you should concentrate on the evidence as it is being presented.

You've been given a pen and notebook to take notes if you want to do that, but you don't have to. If you do take notes, just be careful not to get so involved in your note-taking that you become distracted and miss part of the testimony. When we take breaks during the day, you can leave your notes on your chair. No one will disturb them or look at them. When we finish for the day, the court staff will take up your notebooks and then return them to you the next day. No one will read your notes. They will remain confidential. When all of the evidence has been presented, you will be able to take your notebooks into the jury room with you. After you return your verdict, the notes will be destroyed.

When you begin your deliberations, I will give you a copy of the opening and closing

instructions and any special instructions I might have given you.

Because it is so important to all of us that you listen to and understand the evidence presented to you, if you can't hear what someone is saying, please raise your hand and I will see that the situation is corrected. If you have any other issues, such as needing to take a break, just raise your hand, and I will consider your request.

IDENTITY OF PARTIES

The party bringing the claim, in this case, [insert plaintiff's name], will sometimes be referred to as Plaintiff. The parties against whom the claim is made, in this case, [insert defendant's name], will sometimes be referred to as Defendants.

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.

COURTROOM PROCEDURE

Every now and then, a lawyer may "object" to a particular question asked to a witness or to a particular exhibit. The lawyer is doing that because there are rules that control the evidence that can be presented. These rules are designed to make sure that the evidence is the most reliable evidence that is available. If I agree with an objection to a question, I will sustain the objection and not permit the witness to answer it. You should ignore the question altogether and don't speculate as to what the witness might have said. If I disagree with an objection, I will overrule it and that means that I'm allowing that evidence to be presented.

Sometimes, I may say that certain evidence that has been presented should now be kept out or "stricken from the record." The rules of evidence require that you not consider that evidence because your decision can only be based on evidence that is properly admissible.

Don't attach any importance to the fact that a lawyer has objected or to my ruling. The lawyer is only doing his or her job, and I'm only applying the rules of evidence. When I rule on an objection, I'm not expressing an opinion on the merits or favoring one side or the other. I don't favor one side or the other.

Under Louisiana law, I'm not allowed to comment or express any opinion about the evidence. If it seems to you that I've expressed any opinion during the trial, don't consider that in your decision. But also remember that one of my jobs is to instruct you on the law, and you will have to follow the rules of law that I give you whether you agree with them or not.

The arguments that the lawyers will make to you in opening and closing statements aren't evidence. Your decision on the facts must be based on the testimony and the evidence that you hear and see.

During the trial, I might have to confer with the lawyers here at the bench on matters of law or courtroom procedure that you don't need to hear. Some people call these "side-bar" conversations, or the lawyer might ask me if he can "approach the bench" for such a discussion. At times, you'll simply stay in your seats and when we are finished, the presentation of evidence will resume. At other times, I may excuse you from the courtroom for a short break. I will try to limit these interruptions as much as I can.

I may have to caution one of the lawyers who, out of zeal in representing his or her client, does something that's not in keeping with the rules of evidence or procedure. Don't hold that against the lawyer or the client; again, he or she is just trying to do the best for the client.

Louisiana law doesn't allow you to ask questions of the witnesses or the lawyers or to make any comments during the presentation of evidence.

RULES FOR JURORS TO FOLLOW

The law requires that you decide the facts on the basis of what you hear and see in this courtroom. In order to do that, there are some basic common-sense rules that you have to follow, especially in today's world where there are so many sources of information available to you. Please be sure that you follow these rules, which will help you do your job of deciding the facts on the

basis of what happens in this courtroom and concentrating on what occurs here:

(1) Don't conduct your own research about this case, either by yourself or as a group. This means that you are prohibited from using Google or any other search mechanism to look for information about the case or the people involved in the case, including the lawyers and the judge. These sources are not reliable and could lead you to an unfair verdict. The information that you get about the case in this courtroom will be the most reliable information to help you do your job.

(2) Don't use dictionaries, other books, the Internet, or any other resources, such as Facebook, Twitter, or similar social networks to gather information about the issues. And don't get other people to do that for you. Don't allow your spouse, family member, friend, or anyone else to do something for you that you are prohibited from doing yourself. For example, you may not ask your friend to conduct research about this case and tell you about the results. Also, do not post or tweet anything concerning your jury selection or about this case, the parties, or the attorneys.

(3) Don't try to get any special knowledge about the case other than what you hear and see in this courtroom.

(4) Don't accept any help in deciding the case from any source outside this courtroom. You and your fellow jurors have to do this work together without outside help.

(5) Don't use cell phones, smart phones, laptops, or any similar devices in the courtroom or in the jury room during your discussions. I'll give you breaks from time to time to allow you to make any necessary contacts that you need to make.

(6) Don't read, watch, or listen to anything about this case from any source outside this courtroom. Your decision must be based solely on what you hear and see in this courtroom. It wouldn't be fair for you to base your decision on some reporter's opinion or on information that you get from a source that your fellow jurors didn't have or that can't be questioned or cross-examined by the parties.

(7) Don't visit or look at the scene of any event involved in this case because we can't be sure that the place will be in the same condition that it was in on the day of the events in this case.

(8) Obviously, don't consume any alcohol or use any drugs that could affect your ability to stay alert or to hear and understand the evidence that will be presented.

LIMITATIONS ON COMMUNICATIONS ABOUT CASE

To be sure that you reach your decision only on the basis of what you see and hear in this courtroom, the law also requires you to limit your communications with others about the case and to be free of any communications from them to you. So I have to tell you some additional things that you must do about your discussions from now until the end of the trial:

(1) Don't talk to anyone else about this case, including others who are a part of the pool of potential jurors. That means your family, your friends, the parties, their lawyers, any of the witnesses, or members of the media. You can tell people that you are a juror, but don't tell them anything else about the case. If anyone tries to talk to you about this case, tell the bailiff or me immediately. You might come into contact with the lawyers, parties, or witnesses in the hallway or in the elevator. Though it is a normal human tendency to chat with people in those circumstances, during the time you serve on this jury, please don't talk to any of the parties or their attorneys or witnesses, whether you are in or out of the courtroom. Not only don't talk to them about the case, but don't talk to them at all, even to pass the time of day. They are under strict instructions not to talk to you about anything, even if it doesn't concern the case. Please don't feel offended if they don't exchange the pleasantries of saying hello or discussing the weather, sports, or food with you. The reason for these restrictions is that in talking about the case to others and hearing what they may have to say, you might be influenced to form an opinion about the case. This would compromise the right of the parties to have a verdict rendered only by you and based only on the evidence you hear and see in this courtroom. After you are discharged as a juror, you may talk to anyone you wish about this case. Until that time, I ask you to control your natural desire to discuss the case here, at home, or anywhere else.

(2) Don't communicate in any other way about this case with anyone. You may not post information about this case on the Internet or share it in any way, including text messages, e-mail, chat rooms, blogs, or social websites, such as Facebook, Twitter, or any brand new social network that may be created while we are actually in trial.

(3) You may only discuss the case with the other members of the jury when you begin deliberations on your verdict and all other members of the jury are present. Until you reach a verdict at the end of the trial, don't communicate about your discussions with anyone else.

I want you to understand why all of these rules that I have given you are important. Only you have taken an oath to be fair—no one else has made that promise. All of the rules I've given you are intended to help us be sure that there is a fair trial—which you have all agreed to do and which we have a responsibility to help you do. I know that you intend to give these parties a fair trial, and in accord with your oath, I know you will do that.

ADVANCE INSTRUCTIONS

Before we start the trial, I think it would be helpful if I told you certain things that I will almost certainly tell you again when you have heard all of the evidence. These things will help you understand better what is happening and what your role is.

BRIEF OVERVIEW OF THE NATURE OF THIS CASE

I find it helpful to tell you even before we start just a little bit about this case so you can keep it in mind as we proceed. This is a case in which the plaintiff contends that he has been injured, and that the defendant was at fault in causing that injury. The plaintiff seeks fair compensation for his injuries. The defendant, of course, has a different view and will be defending himself against the plaintiff's claims.

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.

One of the first things for you to keep in mind as the trial begins is that the plaintiff has to prove his or her case by what the law calls a "preponderance of the evidence." This means that the evidence shows that the facts the plaintiff are seeking to prove are more likely true than not true. [In this case, the plaintiff must prove both the existence of injuries and the causal connection between the injuries and the accident.]

"Preponderance of the evidence" is different from a standard of proof described as "beyond a reasonable doubt." Proof beyond a reasonable doubt applies in criminal cases, but not in civil cases such as this one.

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(s). In other words, the law requires the plaintiff to satisfy you that the facts that the plaintiff is trying to prove are more probable than not.

KINDS OF EVIDENCE

You will reach your verdict based on the evidence you hear in this case. The only evidence you may consider is what is presented to you in this courtroom. There are two kinds of evidence - direct evidence and circumstantial evidence.

A fact may be proven either by direct evidence or by circumstantial evidence, or perhaps by both. Direct evidence is testimony by a witness as to what he or she saw or heard, or physical evidence of the fact itself. Circumstantial evidence is proof of certain circumstances from which you are entitled to conclude that another fact is true. For example, if the weather in a certain area was rainy at a time close to an accident and the road surface is wet, you might conclude that rain made the road surface wet. The law treats direct evidence and circumstantial evidence as equally reliable.

This paragraph is optional, if it applies. [Some of the evidence that may be presented will be in the form of what lawyers call a "deposition." A deposition is the written transcript or a video of a question-and-answer session with a witness that took place before this trial when the witness was under oath and responded to questions from the lawyers about the case. 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.

Although it is testimony outside the courtroom, the law permits you to consider it under certain circumstances. You may consider and evaluate this testimony just as you would if it were being given live in front of you today.]

This paragraph is optional, if it applies. [Sometimes a deposition might be used to ask a witness who is here testifying whether he might have given prior answers which seem different from his testimony here in the courtroom. A lawyer may read from a deposition and ask the witness whether what he said in his deposition is different from what he is saying now. We allow this to

help you evaluate the credibility of his testimony before you. Whether or not the prior statements by the witness are different from his live testimony is entirely for you to decide.]

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.

The evidence that you will be considering consists of the facts that the parties have agreed are true (which the law calls stipulated facts), the testimony of the witnesses, and the documents, if any, that will be admitted into evidence, as well as any reasonable inferences or conclusions that you can draw from the evidence presented to you. The arguments by the lawyers, as well as any comment or ruling I may make during the trial, are not part of the evidence.

EVALUATION OF WITNESSES

An important part of your role is to judge the credibility of a witness who is testifying. The law presumes that a witness is telling the truth about facts that are within his/her knowledge. But this presumption may be overcome by contradictory evidence, by the manner in which the witness testifies, by the character of his testimony, or by evidence that tells you about his motives.

When you are weighing the credibility of a witness, you should consider the interest, if any, that the witness may have in the outcome of this case. You should consider the ability of the witness to know, remember, and tell the facts to you. You should consider his or her manner of testifying, as to sincerity and frankness. And you should consider how reasonable the witness's testimony seems to be in light of all of the other evidence.

You don't have to accept all of the testimony of a witness as being true or false. You might accept and believe those parts of the testimony that you consider logical and reasonable, and you may choose not to believe those parts that seem impossible or unlikely.

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 what 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 or her case by a preponderance of the evidence, then you must find that he/she failed to prove his/her case sufficiently to recover.

You must decide the facts without emotion or prejudice for or against any party. You

should consider the case as an action between people of equal standing in the community. Every party stands equal before the law, and every party is to be dealt with as an equal in this court. A private citizen and a business or insurance company are equally entitled to a fair trial. [In deciding this case, you shouldn't consider or speculate about whether any party has insurance. Deciding whether a party has insurance isn't part of your role as a juror.]

DUTY-RISK ANALYSIS

The basic law in Louisiana on this kind of case states that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." The word "fault" is a key word. "Fault" means acting as you should not have acted or failing to do something which you should have done. The law regards those actions as being below the standard which applies to the defendant's activities.

The standard which the law applies to the defendant's actions will change according to the surrounding circumstances. These standards are sometimes set by the legislature in statutes, and sometimes they are set by the courts. At the end of the trial, I will tell you the standards which apply to the defendant's conduct in this particular suit, and you will have to accept those standards. Your job will then be to decide whether the plaintiff has proved that it is more likely true than not true that the defendant's actions fell below those standards. In legal terms, that would mean that the defendant is "at fault." In this particular case, the plaintiff says that the defendant has committed the kind of fault that the law calls "negligence."

A reasonably prudent person will avoid creating an unreasonable risk of harm. In deciding whether the defendant violated this standard of conduct, you should weigh the likelihood that someone might have been injured by his conduct and the seriousness of that injury if it should occur against the importance to the community of what the defendant was doing and the advisability of the way he was doing it under the circumstances.

Insert instructions about specific statutory standards if appropriate. If there are specific statutory standards, then an instruction such as the following should also be included: [A reasonably prudent person will normally obey the statutes that apply to his conduct. But in exceptional circumstances, even a violation of a statute might nonetheless be reasonable conduct. You will have to consider, in light of all the circumstances, whether a reasonably prudent person in the defendant's situation would have violated the statute.]

But this is only one part of the plaintiff's case. The other parts of the plaintiff's case are:

(1) that the injury which he says he suffered was caused in whole or in part by the conduct of the defendant; and

(2) that there was damage to the plaintiff's person or his property.

The plaintiff must establish that all of these essential parts of his case are more likely true than not true. Questions addressed to all of these parts of the case will be given to you in the "verdict form" that you will receive at the end of the case and that you will take with you to fill out as a part of your deliberations.

When I say that the plaintiff has to prove that the defendant's actions were a cause of his injury, I don't mean that the law recognizes only one cause of an injury.

For cases in which there is only one alleged tortfeasor: [You will have to decide whether the plaintiff would have suffered injury if the defendant had not done what he did. If, more likely than not, the plaintiff **would** have suffered injury no matter what the defendant did or did not do, then you should decide that the injury was not caused by the defendant, and render a verdict for the defendant. If, on the other hand, the plaintiff more likely than not **would not** have suffered injury but for what the defendant did or did not do, then you should decide that the defendant's conduct did play a part in the plaintiff's injury and you should proceed to the next part of the plaintiff's case.]

For cases in which there are two or more alleged tortfeasors: [You will have to decide, as to each defendant, whether his conduct was a contributing factor in causing this incident. To make this determination, you should consider whether it is more likely than not that the defendant's conduct created a force or series of forces which remain in continuous and active operation up to the time of the harm.]

The next part of the plaintiff's case that you'll have to consider is whether the defendant's actions were below the standard required under the law for his actions. In this case, the basic standard is that the defendant should have acted as a reasonably prudent person would have acted under the same or similar circumstances. The standard of care is not that of an extraordinarily cautious individual or an exceptionally skilled person, but rather that of a reasonably prudent person acting in the same or similar circumstances.

CAUSE IN FACT

The plaintiff must prove that any damage claimed was caused by the defendant's conduct. You must decide whether the damage was caused by the conduct of the defendant. If you find that the plaintiff probably would not have suffered the damages claimed except for the conduct of the defendant(s), then you must conclude that the defendant(s) 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(s), then you must conclude that the defendant(s) conduct did not cause the damage. Cause-in-fact or legal cause is usually determined by using the "but for" test. In other words, if the plaintiff would not have been injured "but for" the conduct, the cause-in-fact or legal cause determination is met. The determination of legal cause may also be made by utilizing the "substantial factor" test. To determine whether conduct was a substantial factor in producing the damage, the fact finder must examine the role the conduct played in causing the damage. When multiple causes are alleged, cause-in-fact exists if the plaintiff's harm would not have occurred absent the specific defendant's conduct. However, when there is more than one action that allegedly precipitated an accident, the determination of legal cause may also be made by utilizing the "substantial factor" test. To determine whether conduct was a substantial factor in producing the accident, the fact finder must examine the role the conduct played in causing the accident and whether the conduct was a breach of duty that was continuously and actively operating until the time of the accident. However, even if the breach of duty is found to be continuously and actively operating until the time of the accident, the conduct may be found not to be a cause-in-fact or legal cause if an intervening cause superseded the original negligence and alone produced the injury.

You must assign percentages of fault to each party whose fault you determine to be a proximate cause of the injury.

DEPOSITIONS

Some of the evidence that may be presented will be in the form of what lawyers call a "deposition." A deposition is the written transcript or a video of a question-and-answer session with a witness that took place before this trial when the witness was under oath and responded to questions from the lawyers about the case. 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.

Although it is testimony outside the courtroom, the law permits you to consider it under certain circumstances. You may consider and evaluate this testimony just as you would if it were being given live in front of you today.

Sometimes a deposition might be used to ask a witness who is here testifying whether he might have given prior answers which seem different from his testimony here in the courtroom. A lawyer may read from a deposition and ask the witness whether what he said in his deposition is different from what he is saying now. We allow this to help you evaluate the credibility of his testimony before you. Whether or not the prior statements by the witness are different from his live testimony is entirely for you to decide.

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's 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's 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 WITNESSES

Some of the witnesses that you will hear are called "expert witnesses." Unlike ordinary witnesses who must testify only about facts within their knowledge and cannot offer opinions about assumed or hypothetical situations, expert witnesses are allowed to express opinions because their education, expertise, or experience in a particular field or on a particular subject might be

helpful to you. 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 their opinions and give them the weight that you think they deserve. If you decide that the opinion of an expert witness is not based on sufficient education, expertise, or experience or that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely—even though I have permitted the person to testify.

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.

ORDER OF PROCEEDING

I want to give you an idea of how the trial will be conducted. In just a minute, the lawyers for each of the parties will be allowed to make an opening statement. After those opening statements, the plaintiff's lawyer will call witnesses and present evidence. When the plaintiff finishes, or "rests" as we say in the law, the lawyer for the defendant will then call witnesses and present evidence. After that, the plaintiff may be allowed to call additional witnesses or present additional evidence in rebuttal. The plaintiff proceeds first, and may reply at the end, because the plaintiff has the burden of proof. When the evidence portion of the trial is finished, the lawyers will make their closing arguments. After that, I will instruct you on the law and you will then begin your deliberations.

*If there is more than one plaintiff or more than one defendant:***:** [Remember that just because you think one plaintiff should recover, that does not mean you have to conclude that all of the plaintiffs should recover. And the same is true of the defendants. If you think one defendant is at fault,that does not mean that you have to conclude that all of the defendants are at fault.]

We are now ready for the lawyers to make opening arguments. Remember that the statements that the lawyers make now, as well as their closing arguments, are not evidence and they are not the instructions on the law that I have told you I will give you at the end of the trial. They are intended to help you understand the issues you are going to hear about, the evidence that you will probably hear and the positions that the parties have in this case. Statements by any of the

lawyers expressing a view about what amount should or should not be given for pain and suffering or similar claims are also not evidence. The decision about an amount to be given, if any, is solely your job; and your decision must be based upon the evidence presented to you.

(end of opening instructions prior to opening statements)

INTERIM INSTRUCTIONS

INSTRUCTIONS AT FIRST RECESS

We're going to take our first break in the trial, and I want to remind you about what I told you when we started. Until the trial is over, don't discuss this case with anyone other than the other members of the jury, and then only when you begin your deliberations. If anyone tries to talk to you about the case, don't talk to that person or to your fellow jurors; tell the bailiff or me immediately. Don't read or listen to any news reports about the trial. And remember to keep an open mind until all of the evidence is complete and until you have heard the views of the other members of the jury. If you need to speak with me about anything, just give a note to the bailiff to give to me.

I might not repeat this each time we take a break, but keep it in mind throughout the trial and especially whenever we take a break.

JUDICIAL NOTICE

This instruction to be given only if judicial notice is being taken of certain facts.

[I'm going to take what is called "judicial notice" of certain facts. That means that I've accepted certain facts as true because they were easy to determine, generally accepted and not subject to reasonable dispute. I'm doing that to save all of us time during the trial. Specifically, I am taking judicial notice of _____. You must accept these facts as true, just as if they had been conclusively proven to you here in court.]

INSTRUCTION IF A "MARY CARTER" AGREEMENT IS AT ISSUE

If applicable, this instruction can be given on an interim basis when the issue is presented. It could also be considered as a part of optional opening instructions, if the issue seems certain to arise in the case.

[_____, one of the original defendants, has settled with the plaintiff, not admitting liability but paying a sum of money in exchange for the plaintiff's dismissal of the claims against _____. In addition, _____ and the plaintiff agreed that _____ now has a financial interest in this suit and will receive a portion of any judgment which the plaintiff might receive against the remaining defendants. The amount of money which _____ paid in settlement and the amount of its share of any judgment that might be recovered by the plaintiff are not relevant to your deliberations, but you are entitled to know that there is such

an agreement when you weigh the testimony of _____ through its officers and employees. In effect, the settlement means that some of the original parties have been re-aligned in the case and that _____ is now on plaintiff's side.]

INSTRUCTION IF SETTLING PERSON IS A WITNESS

If applicable, this instruction is optional and can be given on an interim basis when the issue is presented.

[You've heard testimony that (a witness) who was also involved in this incident settled his claim *[or settled the claim against him]*. This testimony was presented only to show that this witness might be biased or might have a particular interest in the outcome of this case, although you may decide the contrary. You must not consider the settlement as evidence in this case.]

NO UNFAVORABLE INFERENCE FROM EXERCISE OF PRIVILEGE

This instruction will not be necessary if, as would probably often be the case, any privilege that a witness might invoke to avoid testifying has been resolved prior to trial and would not be claimed in the presence of the jury. But in the unlikely event that this has occurred, this instruction should be given. In the event the privilege invoked is based on the Fifth Amendment to the U. S. Constitution, further instruction might be needed.

[You have heard (a witness) assert that he does not have to testify about certain things on the basis of a privilege. *Describe privilege.* The law of evidence allows a witness to claim that privilege under these circumstances. Don't assume anything with respect to the use of the privilege, in particular what you think the answer to the question might have been. And don't assume anything about the credibility of the witness because of the use of that privilege.]

CLOSING INSTRUCTIONS

GENERAL CLOSING INSTRUCTIONS

Members of the jury, it is now time for me to tell you the law that applies to this case. As I mentioned at the beginning of the trial, you must follow the law as I state it to you.

You've been chosen from the community to decide the facts. What the community expects of you, and what I expect of you, is the same thing that you would expect if you were a party to this suit: an impartial deliberation and conclusion based on all the evidence, and on nothing else.

You must decide the facts without emotion or prejudice for or against any party. You should consider the case as an action between people of equal standing in the community. Every party stands equal before the law, and every party is to be dealt with as an equal in this court. A private citizen and a business or insurance company are equally entitled to a fair trial. [In deciding this case, don't consider or speculate about whether any party has insurance. Deciding whether a party has insurance isn't part of your role as a juror.]

Above all, the community wants you to achieve justice. You'll succeed in doing that if all of you seek the truth from the evidence presented in this courtroom, and reach a verdict using the rules of law that I give to you.

If I have said or done anything during this trial which has suggested to you that I favor the claims or position of either party, you should disregard it. If I have indicated in any way that I have any opinion as to what the facts in this case are or should be, you should disregard that. I am not the judge of the facts. You are.

Before I tell you about the law, you should understand several things about these instructions. As I mentioned earlier, you must follow the law as I state it to you, whether or not you agree with it.

When you think about my instructions, consider them together. Don't single out any individual sentence or idea and ignore the others.

BURDEN OF PROOF

As I mentioned to you at the start of the trial, the plaintiff has to prove his case by a preponderance of the evidence. [In this case, the plaintiff must prove both the existence of injuries and the causal connection between the injuries and the accident].

Preponderance of the evidence means that the evidence shows that the facts the plaintiff is

seeking to prove are more likely true than not true. 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(s). 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..

But remember: "preponderance of the evidence" is different from a standard of proof described as "beyond a reasonable doubt." Proof beyond a reasonable doubt applies in criminal cases, but not in civil cases such as this one. [*If some or all of the facts require proof by clear and convincing evidence, such an instruction should be fashioned from that language in the Opening Instructions.*]

KINDS OF EVIDENCE

You will reach your verdict based on the evidence you have 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.

A fact may be proven either by direct evidence or by circumstantial evidence, or perhaps by both. Direct evidence is testimony by a witness as to what he or she saw or heard, or physical evidence of the fact itself. Circumstantial evidence is proof of certain circumstances from which you are entitled to conclude that another fact is true. For example, if the weather in a certain area was rainy at a time close to an accident and the road surface is wet, you might conclude that rain made the road surface wet. The law treats direct evidence and circumstantial evidence as equally reliable.

The evidence that you may consider consists of stipulated facts, the testimony of the witnesses, and the documents, if any, that were admitted into evidence, as well as any reasonable inferences or conclusions that you can draw from the evidence presented to you. The arguments by the lawyers, as well as any comment or ruling I made during the trial, are not part of the evidence.

EVALUATION OF WITNESSES

An important part of your role is to judge the credibility of a witness who has testified. The

law presumes that a witness is telling the truth about facts that are within his knowledge. But this presumption may be overcome by contradictory evidence, by the manner in which the witness testifies, by the character of his testimony, or by evidence that tells you about his motives.

When you are weighing the credibility of a witness, you should consider the interest, if any, that the witness may have in the outcome of this case. You should consider the ability of the witness to know, remember, and tell the facts to you. You should consider his or her manner of testifying, as to sincerity and frankness. And you should consider how reasonable the witness's testimony seems to be in light of all of the other evidence.

You don't have to accept all of the testimony of a witness as being true or false. You might accept and believe those parts of the testimony that you consider logical and reasonable, and you may choose not to believe those parts that seem impossible or unlikely. You also have the right to reject a witness' entire testimony as being unworthy of belief if you believe that a witness is trying to deceive you by falsifying any part of the testimony.

I like to say that witnesses are weighed and not counted. By that I mean that you are not required to decide any fact according to the number of witnesses presented to you on that particular point. The test is not which party brought forward the most witnesses or presented the greater quantity of evidence. The test is which witnesses and which evidence appeal to your mind as being the most accurate and the most persuasive.

EXPERT WITNESSES

Some of the witnesses that you heard are called "expert witnesses." Unlike ordinary witnesses who must testify only about facts within their knowledge and cannot offer opinions about assumed or hypothetical situations, expert witnesses are allowed to express opinions because their education, expertise, or experience in a particular field or on a particular subject might be helpful to you. You should consider their opinions and give them the weight that you think they deserve. If you decide that the opinion of an expert witness is not based on sufficient education, expertise, or experience or that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely—even though I have permitted the person to testify.

DUTY-RISK ANALYSIS

The basic law in Louisiana on this kind of case states that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." The word "fault" is a key word. "Fault" means acting as you should not have acted or failing to do something which you should have done. The law regards those actions as being below the standard which applies to the defendant's activities.

The standard that the law applies to defendant's actions will change according to the surrounding circumstances. These standards are sometimes set by the legislature in statutes, and sometimes they are set by the courts. At the end of the trial, I will tell you the standards which apply to the defendant's conduct in this particular suit, and you will have to accept those standards. Your job will then be to decide whether the plaintiff has proved that it is more likely true than not true that defendant's actions fell below those standards. In legal terms, that would mean that they are "at fault." *In this particular case, the plaintiff says that the defendants have committed the kind of fault that the law calls "negligence."*

The standard of care is that defendant should have acted as a reasonably prudent person would have acted under the same or similar circumstances. The standard of care is not that of an extraordinarily cautious individual or an exceptionally skilled person, but rather that of a reasonably prudent person acting in the same or similar circumstances.

A reasonably prudent person will avoid creating an unreasonable risk of harm. In deciding whether the defendant violated this standard of conduct, you should weigh the likelihood that someone might have been injured by the defendant's conduct and the seriousness of that injury if it should occur against the importance to the community of what the defendant was doing and the advisability of the way the defendant was doing it under the circumstances.

[A reasonably prudent person will normally obey the statutes that apply to his conduct. But in exceptional circumstances, even a violation of a statute might nonetheless be reasonable conduct. You will have to consider, in light of all the circumstances, whether a reasonably prudent person in the defendant's situation would have violated the statute.]

But this is only one part of the plaintiff's case. The other parts of the plaintiff's case are that:

(1) the injury that plaintiff suffered was caused in whole or in part by the conduct of the defendant(s); and

(2) there was damage to the plaintiff's person or property.

The plaintiff must establish that all of these essential parts of his/her case are more likely true than not true. Questions addressed to all of these parts of the case will be given to you in the "verdict form" that you will receive at the end of the case and that you will take with you to fill out as a part of your deliberations.

When I say that the plaintiff has to prove that the defendant's actions were a cause of the injury, I don't mean that the law recognizes only one cause of an injury.

You will have to decide whether the plaintiff would have suffered injury if the defendant had not done what he did. If, more likely than not, the plaintiff **would** have suffered injury no matter what the defendant did or did not do, then you should decide that the injury was not caused by the defendant, and render a verdict for the defendant. If, on the other hand, the plaintiff more likely than not **would not** have suffered injury but for the defendant did or did not do, then you should decide that the defendant's conduct did play a part in the plaintiff's injury and you should proceed to the next part of the plaintiff's case.

CAUSE IN FACT

The plaintiff must prove that any damage claimed was caused by the defendant's conduct. You must decide whether the damage was caused by the conduct of defendant. 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 defendant's 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. *Cause-in-fact or legal cause is usually determined by using the "but for" test. In other words, if the plaintiff would not have been injured "but for" the conduct, the cause-in-fact or legal cause determination is met. The determination of legal cause may also be made by utilizing the "substantial factor" test. To determine whether conduct was a substantial factor in producing the damage, the fact finder must examine the role the conduct played in causing the damage. When multiple causes are alleged, cause-in-fact exists if the plaintiff's harm would not have occurred absent the specific defendant's conduct. However, when there is more than one action that allegedly precipitated an accident, the determination of legal cause may also be made by utilizing the "substantial factor" test. To determine whether conduct was a substantial factor in producing*

the accident, the fact finder must examine the role the conduct played in causing the accident and whether the conduct was a breach of duty which was continuously and actively operating until the time of the accident. However, even if the breach of duty is found to be continuously and actively operating until the time of the accident, the conduct may be found not to be a cause-in-fact or legal cause if an intervening cause superseded the original negligence and alone produced the injury.

You must assign percentages of fault to each party whose fault you determine to be a proximate cause of the injury.

GOVERNMENT REGULATIONS

While statutory regulations are not in and of themselves definitive of civil liability, they may be guidelines for the court in determining standards by which civil liability is determined.

EXPERT WITNESSES

Some of the witnesses testified as "expert witnesses." Unlike ordinary witnesses who must testify only about facts within their knowledge and cannot offer opinions about assumed or hypothetical situations, expert witnesses are allowed to express opinions because their education, expertise, or experience in a particular field or on a particular subject might be helpful to you. 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 their opinions and give them the weight that you think they deserve. If you decide that the opinion of an expert witness is not based on sufficient education, expertise, or experience or that the reasons given in support of the opinion are not sound, or if you feel that it is outweighed by other evidence, you may disregard the opinion entirely—even though I have permitted the person to testify.

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.

DAMAGES

It will be your duty to decide first whether the defendant has any liability at all in this case. If you decide that the defendant is 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 his/her injuries, if you find that he/she suffered injuries. The award of damages is not designed to punish the defendant, make the defendant an example, or prevent other accidents; 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 accident rests with the parties claiming such damages.

Because a plaintiff must prove that his injuries were caused by the negligent act of the defendant, a verdict awarding no damages is a valid verdict where plaintiff did not prove his/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 proven. 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. To recover future medical expenses, plaintiff must demonstrate, by a preponderance of the evidence, that medical treatment will be necessary in the future and that plaintiff will seek such 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 he lost wages as a result of this accident. The burden is on the plaintiff to prove that he 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 his 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 he 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, his 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 he received the entire amount today than if he 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 plaintiff in this case seeks an award to compensate him/her 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.

FUTURE MEDICAL

To recover future medical expenses, plaintiff must demonstrate, by a preponderance of the

evidence, that medical treatment will be necessary in the future and that plaintiff will seek such treatment. An award of future medical expenses is, in great measure, speculative. However, future medical expenses should not be denied because it is impossible to establish the exact nature and extent of the treatment that will be required, or the exact cost of it, so long as it has been established within a reasonable degree of certainty the treatment will be necessary and that it will be incurred.

PRE-EXISTING CONDITION

Under the law, the tortfeasor takes the victim as he finds him; if a tortfeasor'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 the accident did, in fact, aggravate or affect his pre-existing condition. The plaintiff has the burden of proving that the aggravation of his condition is a consequence of this accident and that the defendant is only responsible for the damages that 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 the accident. The rule that you must follow is that the party is entitled to recover damages that arise when the accident causes the preexisting condition to flare up or become more serious. The burden of proof is upon plaintiff to prove (1) the prior existing condition and (2) the extent of the aggravation. In assessing damages when there is a preexisting condition, you may only consider damages directly caused by the accident, and the defendant is not responsible for damages caused by ailments or injuries that existed before the accident or for damages due to the natural and normal progression of a preexisting condition.

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.

MITIGATION OF DAMAGES

You are instructed that an accident victim has a duty to mitigate damages. Our law seeks

to fully repair injuries which arise from a legal wrong, but an accident victim has a duty to exercise reasonable diligence and ordinary care to minimize his damages after the injury has been inflicted. He need not make extraordinary or impractical efforts, but he must undertake those which would be pursued by a man 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.

FINAL INSTRUCTIONS PRIOR TO DELIBERATION

This completes my remarks on the applicable law. In summary, let me remind you of the essence of my remarks, many of which have just been were given to you or were given to you in my opening instructions. The plaintiff has the burden of proving the following elements by a preponderance of the evidence, which means that the facts the plaintiff is seeking to prove are more likely true than not true. He has to demonstrate:

(1) that the injury which he says he suffered was caused in whole or in part by the conduct of the defendant;

(2) that the conduct of the defendant was below the standards which I have told you are applicable to the defendant's conduct; and

(3) that there was damage to the plaintiff's person or his property.

If you believe that the plaintiff has established that these elements discussed above are more likely true than not true, then the plaintiff is entitled to recover and you should return a verdict for the plaintiff. If the plaintiff has failed to establish that these elements of the case are more likely true than not true, then you should return a verdict for the defendant. [Although there are three defendants, that does not mean that, if you find that one is at fault, you must decide that all are at fault. You should decide the case as to each defendant according to the instructions that I have given you.]

Louisiana law requires that you divide the total responsibility for this incident among all those who were involved in it if you find that any of the defendants were at fault. You should do this by assigning percentages of fault to the various involved persons, which will total 100%. Of course, if you do not find any of the defendants are at fault, you will not have to assign any percentages. You are free to assign whatever percentage you feel appropriate, and you should do

so by answering the questions that 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 standards I have explained.

If you decide to return a verdict for the plaintiff, then you should award an appropriate amount of money to the plaintiff according to the instructions which I have given you on the subject of damages.

You may not decide on a percentage of fault or an amount of damages by agreeing in advance to an average of various amounts suggested by individual jurors. You must reach these conclusions by your own independent consideration and judgment. Nine of you must ultimately agree on the percentage or the amount in question, or on a denial of an award altogether.

Remember that I told you at the beginning of the trial that you—and not I—are the judges of the facts. I've told you the law that you must use to decide this case. You should not treat my instructions as indicating which party is entitled to a verdict in this case.

When you leave the courtroom to deliberate, you will take with you a complete copy of all of my instructions. You may also ask to have in the jury room any document or object that has been admitted into evidence if a physical examination of that document or object will help you reach a verdict.

The first thing you should do when you go to the jury room is to choose a person to represent you in returning the verdict. This person is called the foreperson and will be responsible for presiding over your deliberations so that your discussions and voting will be conducted in a fair and orderly manner. When you have reached a verdict, the foreperson will record that verdict in its entirety on the appropriate form. He or she should then sign the form, date it, and notify the bailiff that you have reached a verdict.

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.

Louisiana law requires that nine or more of you agree in order to answer a question on this jury verdict form. When nine or more of you agree about a question you have to answer, that should end your deliberation on that question. You should consider each question separately. The same nine jurors do not have to agree on every question, but nine of you do have to agree on each separate question. When you have answered all the questions, your job is done.

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. You should now consult with one another and deliberate with a view toward reaching agreement on a fair and impartial verdict. 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're wrong. However, don't be influenced to vote in any way on any issue by the fact that a majority of your fellow jurors favor a certain point of view. In other words, don't surrender your honest convictions for the mere purpose of returning a verdict or solely because of the opinion of the other jurors.

It's usually not a good idea for you as a juror, when you first enter the jury room, to make an emphatic expression of your opinion on the case or announce a determination to hold out for a certain verdict. When you do that at the outset, your sense of pride may be at issue, and you may hesitate to back down from an announced position, even if you're shown to be wrong. Remember that you aren't advocates for any party in this matter, but rather you're judges. The final test of the quality of your service will be in the verdict which you return, not in the opinions any of you may hold as you go to the jury room. Your contribution to the judicial system will be to arrive at an impartial verdict. To that end, I remind you that in your deliberations there can be no triumph except to find and declare the truth.

If you recess during your deliberations, or if your deliberations should last more than one day, you must follow all of the instructions that I have given you about your conduct during the trial. Don't discuss the case with anyone outside of the jury room, even another juror. Discuss the case with your fellow jurors only in the jury room and only when all of your fellow jurors are present. If you want to send a message to me at any time, give a written message or question to the bailiff, who will be nearby, and he will bring it to me. I will then respond as promptly as possible

by having you come back into the courtroom. I have to tell the lawyers what your message or question is and what my reply is going to be before I answer your question.

The community appreciates your service on this jury, and at the same time expects you to reach an impartial verdict. At this time, I dismiss the alternate jurors who are not allowed to participate in deliberations, and I thank them very much for their service.

Members of the jury, you will now retire to deliberate. Please follow the directions of the bailiff and other court employees as you leave.

OTHER ADDITIONAL CHARGES:

INTENTIONAL ACT

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 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." Normally fault is defined as negligence. However, in this case, you will not make any determinations concerning any negligence aspects of this case. In order for you to return a verdict in favor of plaintiff in this case, plaintiff must prove, by a preponderance of the evidence, that he was injured as a result of an intentional act. A finding that the defendants were negligent or even grossly negligent is not sufficient for purposes of your verdict. You must find by a preponderance of the evidence that plaintiff was injured as a result of an intentional act. The meaning of intentional is that the defendant either desired to bring about the physical result of his act or believed they were substantially certain to follow from what he did. It is not limited to consequences which are desired. If the defendant knew the consequences were certain or substantially certain to result from his act, and he still commits the act, he is treated by the law as if he had, in fact, desired the result. Substantially certain requires more than a reasonable probability that an injury will occur, and certain has been defined to mean "inevitable" or "incapable of failing." Mere violations of safety standards or failing to provide a safe work environment or safety equipment do not constitute intentional acts unless the defendant desired to bring about injury to the plaintiff or knew the plaintiff was substantially certain to be injured. Believing that someone may, or even probably will, eventually get hurt in a certain work environment does not constitute an intentional act. A battery is an intentional act. A harmful or offensive contact with a person, resulting from an act intended to cause the plaintiff to suffer such a contact is a battery. The intention need not be malicious nor need it be an intention to inflict actual damage. It is sufficient if the actor intends to inflict either a harmful or offensive contact without the others consent. In this lawsuit for damages, the plaintiff must prove by the weight of the evidence: (1) That the defendant committed an intentional act; (2) That the intentional act of the defendant was an actual cause of injury or damage to the plaintiff; and, (3) That the plaintiff actually sustained injury or damage.

COLLATERAL SOURCE NOT TO BE CONSIDERED

If you find that certain medical bills were sustained by the plaintiff as a result of this accident 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.

FAULT STIPULATED

It has already been established and you should accept as proven, that the accident of [insert date] was caused by the fault of [insert defendant]. What is disputed is what damages, if any, were sustained by [plaintiff] as a result of the accident and who may be responsible for the payment of such damages.

SUDDEN EMERGENCY DOCTRINE

The sudden emergency doctrine is available to one who finds himself in a position of imminent peril, through no fault of his own, without sufficient time to consider and weigh all the circumstance or the best means to adopt in order to avoid an impending danger. A person in such a sudden emergency is not guilty of negligence if he fails to adopt what subsequently and upon reflection may appear to be the better method to avoid the danger, unless the emergency is brought about by his own negligence**.**

VIOLATION OF TRAFFIC LAW AS NEGLIGENCE PER SE

It is well established that under Louisiana law the violation of a traffic ordinance is negligence per se but this presumption is rebuttable. For such negligence to provide for recovery, the violation of the ordinance must have been a proximate cause of the resulting collision. The violation of a safety statute does not in and of itself constitute actionable negligence; it must also be shown that the action which contravenes a statute is unreasonable under the circumstances and causes the harm of which plaintiff complains. We determine legal cause by first determining whether the act complained of was a substantial factor in causing the accident, then by determining what duty was imposed and whether the risk created by a breach of that duty was one for which the statute intended to offer protection and finally by determining whether there was a breach of that duty.

Every act leading up to an accident is not a cause-in-fact; to be deemed a legal cause, the act must be a substantial factor without which the accident would not have occurred

UNCONTROLLED INTERSECTIONS

Unless otherwise directed by a law enforcement officer, when a traffic-control signal is not functioning at an intersection, the intersection shall revert to an all-way stop and traffic shall proceed in accordance with the provisions of LA R.S. 32:121(A). R.S. 32:121(A) provides that when two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left, shall yield the right of way to the vehicle on the right. A motorist who approaches an uncontrolled intersection with a street of equal dignity has the duty to determine that he can cross safely before proceeding into the intersection. When two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left, shall yield the right of way to the vehicle on the right.

The lack of view inherent in blind or partially blind intersection on private property imposes, under general tort law, a heavy duty of care on the part of all motorist.

LEAVING PARKED POSITION

A motorist, in leaving a parked position on the side of the traveled portion of a street, must observe whether or not his maneuver might interfere with normal traffic and must refrain from moving his vehicle until such movement can be made in safety.

CHANGE OF LANES

When there is a change of lanes by a motorist immediately preceding an accident, the burden of proof is on the motorist changing lanes to show that he first ascertained that his movement could be made safely.

STOP SIGNS

Except when directed to proceed by a police officer or traffic-control signal, every driver and operator of a vehicle approaching a stop intersection indicated by a stop sign shall stop before entering the cross walk on the near side at a clearly marked stop line, but if none, then at the point nearest the intersecting roadway where the driver has a view of approaching traffic on the intersecting roadway before entering the intersection. After having stopped, the driver shall yield

the right of way to all vehicles which have entered the intersection from another highway or which are approaching so closely on said highway as to constitute an immediate hazard.

DUTY OF FAVORED MOTORIST

When a motorist approaches an intersection on the favored roadway he has the right to assume that others will stop in obedience to the stop sign. However, preferences on favored streets created by statutes, signal, or signs, do not relieve the driver traveling on the favored street from ordinary care. The favored driver can still be found comparatively negligent if his substandard conduct contributed to the cause of the accident. A favored motorist is not obligated to look to the left or right before entering the intersection but is required to maintain a general observation of the intersection. If a motorist fails to see what he should have seen, then the law charges him with having seen what he should have seen, and the court examines his subsequent conduct on the premises that he did see what he should have seen. The favored motorist in this situation is held accountable only if the accident could have been avoided with the exercise of the slightest degree of care.

FOLLOWING MOTORIST

The standard of care imposed upon a following motorist is that it shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the preceding vehicle and the traffic upon and the condition of the highway. A following motorist may, however, rebut a presumption of negligence by proving that the driver of the lead vehicle negligently created a hazard which the following driver could not reasonably avoid.

TURNING VEHICLE

No person shall turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety. Whenever a person intends to make a right or left turn which will take her vehicle from the highway it is then traveling, she shall give a signal of such intention and such signal shall be given continuously during not less than the last one hundred (100) feet traveled by the vehicle before turning. No person shall stop or suddenly decrease the speed of the vehicle without first giving an appropriate signal to the driver of any vehicle immediately to the rear when there is an opportunity to give such a signal.

LEFT TURNING MOTORIST

The driver of a vehicle within an intersection intending to turn to the left shall yield the right of way to all vehicles approaching from the opposite direction which are within the intersection or so close thereto as to constitute an immediate hazard.

A left turn is generally a dangerous maneuver which must not be undertaken until the turning motorist ascertains that the turn can be made in safety. A left turning motorist is required to exercise a high degree of care due to the dangerous nature of the maneuver. This duty includes properly signaling an intention to turn left, and keeping a proper lookout for both oncoming and overtaking traffic in order to ascertain that the left turn can be made with reasonable safety. A motorist attempting to turn left must make certain the turn can be made without danger to normal overtaking or oncoming traffic and he must yield the right of way to such vehicles. He must refrain from making the left turn unless the way is clear, and if a collision occurs while he is attempting such a maneuver the burden is upon him to show that he was free from negligence.

However, if the left turning motorist was in a no passing zone, the left turning motorist has the right to assume that there would not be overtaking traffic.

HOUSEHOLD EXPENSES

Louisiana law allows, as an element of damages, reasonable housekeeping expenses necessitated by the incapacity of an injured person. The award of such damages is subject to the requirement that they not be speculative in nature and are proven by a preponderance of the evidence.

VEHICLE RENTAL EXPENSES

Louisiana law provides that whenever a property damage claim is made on a personal vehicle by a third party claimant and the third party claimant is deprived of the use of his or her personal vehicle for more than five (5) days as a direct consequence of the inactions of the insurance company and the third party claimant's loss, the insurance company responsible for the payment of the claim shall pay for reasonable expenses incurred by the party in obtaining alternative transportation for the entire period of time in which they were without use of their personal vehicle.

DAMAGES FOR TOTAL LOSS OF VEHICLE

Damages for loss of use of a "totaled" automobile are recoverable only for a reasonable time after the plaintiff learns that the car is a total loss. For purposes of damages for loss of use of a "totaled" automobile, a period of thirty days after discovering that one's car is a total loss is generally deemed a reasonable time to replace the automobile.

When an automobile is a total loss, the owner is entitled to recover the market value of the vehicle before the accident, less the salvage value after the accident, if any. Where the plaintiff fails to put on evidence that the vehicle was so badly damaged in the accident that the cost of repairs exceed the value of the vehicle before the accident, the plaintiff is not entitled to market value less salvage, but, rather, her recovery is limited to the cost of repairs.

VICARIOUS LIABILITY

Normally one person is not responsible for the conduct of another person who may have caused damage to someone. But in certain situations, the law imposes responsibility upon a person or entity for the conduct of another, if they are in a relationship which can serve as an appropriate basis for imposing such responsibility. The law calls this "vicarious liability," which simply means that one person may be liable for the acts of another even though that first person is not himself at fault.

An employer is liable for the damages caused by the fault of his employee, if the incident occurs while the employee is exercising the functions for which he was employed. Sometimes we shorten this principle to the statement that the employee must have been in the course and scope of his employment. Plaintiff contends that_____, as the employer of _____, is liable for the damages caused by _____'s fault.

In this case, to recover against [Employer], plaintiff must prove by a preponderance of the evidence that:

(1) _____was an employee of [Employer]; and

(2) The accident occurred during the exercise of the functions for which [Employee] was employed by [Employer].

An employer is liable for the negligence of his employee which is committed in the course and scope of his employment. Such negligence is in the course and scope of employment if it is so closely connected in time, place and causation to his employment duties as to be regarded as a risk

of harm fairly attributable to the employer's business, as compared with conduct motivated by purely personal considerations entirely extraneous to the employer's business.

To determine whether the conduct of an employee is related to his employment, you should look to several factors: the payment of wages by the employer, the employer's power of control, the employee's duty to perform the particular act, the time, place and purpose of the act in relation to service of the employer, the relationship between the employee's act and the employer's business, the benefits received by the employer from the act, the motivation of the employee for performing the act, and the reasonable expectation that the employee would perform the act.

As a general rule, accidents causing injury to an employee which occur while the employee is on his way to or from work are not considered to have occurred within the course of employment. This rule is premised on the theory that ordinarily the employment relationship is suspended from the time the employee leaves his work to go home until he resumes his work.

However, there are some exceptions to that rule and an employee may be deemed to be within the course and scope of employment if one or more of the following circumstances is present:

1) If the accident happened on the employer's premises;

2) If the employee was deemed to be on a specific mission for the employer, such as making a trip in the interest of his employer's business or pursuant to his employer's order;

3) If the employer had interested himself in the transportation of the employee as an incident to the employment agreement either by contractually providing transportation or reimbursing the employee for his travel expenses if the providing of transportation or the reimbursement of travel expenses is an incident of the contract of hiring and not an occasional occurrence;

4) If the employee was doing work for his employer under circumstances where the employer's consent could be fairly implied;

5) If the employee was hurt while traveling to and from one work site to another;

6) If the employee was injured in an area immediately adjacent to his place of employment and that area contained a distinct travel risk to the employee, also known as the threshold doctrine;

7) If the operation of a motor vehicle was the performance of one of the duties of the employment of the employee; and

8) If the employee was "on call" and subject to being called back to the workplace or to another location by the employer.

If you determine that the employee was on a purely personal mission at the time of the incident which was unrelated to his employment, then he was not in the course and scope of his employment and the employer is not liable for his conduct.

FAILURE TO PAY INSURANCE CLAIM (22:1892)

An uninsured motorist carrier is required to pay its insured for any legitimate claim within 30 days after the insured adequately proves his loss. An adequate proof of loss is one which fully informs the insurance carrier of the claim. Ordinarily, the insured would be required to prove that (1) the driver of the other vehicle involved in this accident did not have enough liability insurance to pay for the insured's damages; (2) the driver of other vehicle was at fault; and (3) the other driver's fault caused damages, and how much those damages were.

If the uninsured motorist carrier fails to pay the claim within that period and its failure is arbitrary, capricious or without probable cause, it is subjected to a penalty (in addition to the amount of the loss itself) of 50% of the unpaid amount or $1,000.00, whichever is greater, plus reasonable attorney's fees and costs to be set by the court. You must determine whether the uninsured motorist carrier received satisfactory proof of loss, whether the uninsured motorist carrier failed to pay within the thirty-day period, and whether the uninsured motorist carrier's failure was arbitrary, capricious or without probable cause.

Whether the uninsured motorist carrier's failure was arbitrary, capricious or without probable cause is a question of fact to be determined in light of the facts and circumstances of a particular case. The phrase "arbitrary, capricious, or without probable cause" is synonymous with vexatious, and a vexatious refusal to pay means unjustified, without reasonable or probable cause or excuse. When an insurer has a reasonable basis for the refusal of a claim or legitimate doubts about coverage, the insurer has the right to litigate a questionable claim without being subjected to damages and penalties.

FAILURE TO PAY INSURANCE CLAIM (22:1973)

Our law requires that an insurer owes its insured a duty of good faith and fair dealing. It has an affirmative duty to make a reasonable effort to settle claims with its insured. An insurer which breaches this duty is liable for any damages sustained as a result of this breach.

You must determine whether the duty has been breached. In this case, it is claimed that the following breach of duty occurred: failing to pay the amount of any claim due any person insured by the contract within sixty days after receipt of satisfactory proof of loss from the claimant when such failure is arbitrary, capricious, or without probable cause.

Whether the uninsured motorist carrier's failure was arbitrary, capricious or without

probable cause is a question of fact to be determined in light of the facts and circumstances of a particular case. The phrase "arbitrary, capricious, or without probable cause" is synonymous with vexatious, and a vexatious refusal to pay means unjustified, without reasonable or probable cause or excuse.

The insured has to prove by a preponderance of the evidence that this duty has been breached. If it has been breached, the insured may be awarded, in addition to any general or special damage to which he is entitled for the breach, a penalty of two times the damage sustained or $5,000.00, whichever is greater.

When an insurer has a reasonable basis for the refusal of a claim or legitimate doubts about coverage, the insurer has the right to litigate a questionable claim without being subjected to damages and penalties.

"DYNAMITE" OR *ALLEN* CHARGE—FORMAL VERSION

To be given only if the court determines that the state of deliberations requires it.

[As you know, this is an important case. If you don't agree on a verdict, the case is left undecided. I don't see any reason that the case can be tried again better, or more exhaustively, than it has been. Any future jury would be selected as you have been selected. So there's no reason to believe that the case would ever be submitted to twelve people more intelligent, more impartial, or more competent to decide it, or that clearer evidence could be produced on behalf of either side.

Please understand that I don't want any juror to surrender his beliefs. As I told you when I sent you out to deliberate, don't surrender your honest convictions as to the weight or effect of evidence solely because of the opinion of the other jurors, or for the mere purpose of returning a verdict.

But I want to repeat that it is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement. Each of you must decide the case for yourself, but you should do this only after consideration of the evidence with your fellow jurors. And in the course of your deliberations, don't hesitate to change your opinion, when you're convinced you're wrong. To return a verdict, you must examine the questions submitted to you with candor and frankness and with prior deference to, and regard for, the opinions of each other. Each of you should pay attention and respect to the views of others and listen to each other's arguments with an open mind.]

ALLEN CHARGE—INFORMAL VERSION

[This is a time when a lot of patience and understanding is required. Please don't get mad at each other; nobody else is mad at you so why should you get mad at each other? Just be as patient with each other as you possibly can. Remember that this is a very serious matter. We are going to abide by your decision, whatever it is. If you cannot decide this case, the next time you come back I will accept that, but we would all be very grateful to you if you can reach a decision. Please try once more.]

NEGLIGENT SUPERVISION

A person who undertakes the control and supervision of a child has a duty to use reasonable care to protect the child from injury. Such a person is not the insurer of the safety of the child, but is required to use reasonable care commensurate with the reasonably foreseeable risk of harm. In situations where children are injured, the known characteristics and instincts of children must be considered in determining whether a person has exercised reasonable care.

BYSTANDER DAMAGES

Our law permits certain people to recover damages for mental anguish or emotional distress that they may have suffered as a result of witnessing an event that causes injury to another person or as a result of coming on the scene of the event soon thereafter. The persons who can recover include the parents, siblings, and grandparents of the injured person.

In order to recover, the injured person must have suffered such harm that one could reasonably expect that someone who witnessed the event or came upon it soon thereafter would experience serious mental anguish or emotional distress; and that anguish or distress must be severe and debilitating.

By coming on the scene of the event soon thereafter, I mean that the claimant's emotional injury is due to the emotional impact of her own observation of the victim before substantial change has occurred in the victim's condition.

Our law does not permit recovery if the claimant has merely been informed of the injuries after the accident.

GOVERNMENT REGULATIONS

While statutory regulations are not in and of themselves definitive of civil liability, they

may be guidelines for the court in determining standards by which civil liability is determined.

MEDICAL TESTIMONY

Doctors and other health care providers normally testify as expert witnesses and give their opinion about the condition of a patient. The opinion may be based on objective symptoms, subjective symptoms, or a combination of both. 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 TESTIMONY

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.

FORCE OF THE IMPACT

The degree of force of a collision is not directly proportional to the degree of injury which might be sustained by an individual involved in an accident. It is but one factor to be considered, and may be outweighed by other evidence including the testimony of medical experts and other witnesses.

HOUSLEY PRESUMPTION

You may presume that the plaintiff's injuries were caused by this accident if: (1) She demonstrates that she was in good health and symptom free prior to the accident at issue; (2) She demonstrates that subsequent to the accident, symptoms of the alleged injury appeared and have continuously manifested themselves afterwards; and (3) She demonstrates that through evidence, medical, circumstantial, or common knowledge, a reasonably possibility of causation between the accident and injury claimed. (see *Housley v. Cerise*, 579 So.2d 973 (La. 1991).

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 his 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 his/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 his own safety and by such failure, contributed to his 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 his case by a preponderance of the evidence, then you should return a verdict for the plaintiff without assigning any percentage of fault to him.