CLOSING INSTRUCTIONS

Members of the Jury:

It is my duty to tell you the law that applies to this case, and it is your duty to follow the law as I shall state it to you.

You have been chosen from the community to make a collective determination of the facts in this case. 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 upon all the evidence presented in this case and on nothing else.

You must deliberate on this case without regard to sympathy, prejudice or passion for or against any party to this suit. The case should be considered and decided as an action between persons of equal standing in the community. A corporation, insurance company or hospital is entitled to the same fair trial as a private individual. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

Above all, the community wants you to achieve justice and your success depends upon the willingness of each of you to seek the truth as to the facts from the evidence presented to all of you and to arrive at a verdict by applying the rules of law, as I give them to you.

If I have said or done anything 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 an 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 the judges of the facts.

As I mentioned earlier, it is your duty as jurors to follow the law as I state it to you. You should not be concerned with the wisdom of any rule of law that you may hear about.

BURDEN OF PROOF

The law is that the plaintiffs in this action must prove their case by a preponderance of the evidence. The plaintiffs must convince you that, when the evidence is taken as a whole, the facts sought to be proved are more probable than not. If they fail to prove or establish any essential element of their case by a preponderance of the evidence, then you must find that they have failed to prove their case sufficiently to recover.

Evidence

The evidence which you are to consider consists of the testimony of the witnesses, the documents that have been admitted into evidence, and any fair inferences and reasonable conclusions which you can draw from the evidence. Neither the written pleadings, arguments by the lawyer nor any comments or ruling which I may have made is evidence.

Witnesses

In judging the credibility of the witnesses you should have in mind the rule that a witness is presumed to speak the truth about the facts within his knowledge. This presumption may be overcome by contradictory evidence, the manner in which the witness testified, the character of his testimony, or by evidence that pertains to his motives.

You are not bound to decide any issue of fact in accordance with the number of witnesses presented on that point. Witnesses are weighed and not counted. The test is not which side brings the greater number of witnesses before you, or presents the greater quantity of evidence, but rather which witnesses and which evidence appeals to your minds as being the most accurate and the most convincing.

ARGUMENTS AND STIPULATIONS

Statements and argument of counsel are not evidence in the case and you should ignore those arguments which are not supported by the facts as you find them.

EXPERTS

The Rules of Evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. But expert witnesses, who, by education and experience, have been recognized by the Court as expert in some art, science, profession, or occupation may state an opinion as to relevant and material matters in which they profess to be an expert. You should consider each expert's opinion received in this case, and give it weight as you think it deserves.

Even though he/she has been accepted by the Court, if you decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude

that the reasons given in support of an opinion are not sound, you may reject the opinion entirely.

OPINION OF DOCTOR

The opinion of a doctor as to the condition of a patient may be based upon objective signs revealed through observation, examination and tests; or the opinion may be based on subjective complaints, revealed only through statements made by the patient.

To the extent any opinion expressed by a doctor is based upon history or subjective complaints described to him/her by the patient, you should, of course, consider the truth of the patient's statements in determining the weight to be given the doctor's opinion.

ELEMENTS OF CAUSE OF ACTION

Plaintiff has alleged that he/she was damaged by the fault of the defendant. To prove his/her case, plaintiff bears the burden of proving three elements:

First: Plaintiff must prove that defendant's conduct was substandard: that he/she breached some legal duty, as described by the Court, imposed by law to protect plaintiff against the type of harm allegedly suffered. Mere causation does not impose on defendant liability for plaintiff's alleged damage. Plaintiff must further prove that defendant violated a duty imposed by law to protect the plaintiff from the harm he/she allegedly sustained.

Second: Plaintiff must prove that defendant's substandard conduct was a cause in fact of harm to plaintiff. In other words, that the defendant's substandard conduct was a factor substantially contributing to the incident. In determining whether the conduct was a cause in fact of plaintiff's harm, you should ask yourself whether more likely than not, the incident would have happened anyway. If the incident would have happened despite the substandard conduct of the defendant, then that conduct should not be considered a cause. If on the other hand, defendant's conduct significantly contributed to the incident, its conduct would be a cause in fact. This does not mean that defendant's conduct must have been the only cause of plaintiff's damage. Factors may act independently or together to cause harm. Plaintiff need only prove that defendant's conduct was one of the causes of his/her injury.

Third: Plaintiff must prove what damages he/she sustained as a result of the accident.

SOURCES OF DUTY

NEGLIGENCE

Plaintiff has charged defendant with negligence. Basically, negligence is conduct which falls below that degree of care which we might expect from a reasonable person exercising ordinary care and prudence under the circumstances in which he/she finds himself/herself. In determining whether defendant’s conduct was reasonable or unreasonable under the circumstances, you should consider at least these three factors: (1) Likelihood of the harm; (2) gravity of the harm and (3) ease of prevention.

Likelihood of the harm involves nothing more than a consideration of the probability that any given harm might occur. In other words, how foreseeable was the harm. Gravity of the harm is simply an inquiry dealing with a determination of how serious the harm would be should it occur. Ease of Prevention is a consideration of the relative ease or difficulty which would have been encountered by the defendant in taking steps to prevent the harm from occurring. Considering these factors and such others as you may deem appropriate, you must determine whether or not, under the circumstances in which he found himself, defendant acted reasonably. If his conduct was not reasonable under the circumstances, then defendant would be guilty of negligence.

JURISPRUDENCE

In addition to these general rules of conduct, the Courts and legislature have defined certain duties pertinent to this case:

STATUTES & ORDINANCES

In addition to these standards of conduct, there are several statutes (ordinances applicable to defendant’s conduct).

READ STATUTES

Usually, a violation of a statutory duty is substandard conduct and therefore, negligence. However, not every violation of a statute or ordinance constitutes negligence. The statute is a guide you may apply to determine, in the light of all the circumstances, whether a person in

defendant's position would be reasonable in violating the statute. If so, you may excuse the violation and conclude that despite the violation, defendant's conduct was reasonable under the circumstances.

Comparative Fault

In addition to denying that any fault of defendant/defendants was the legal cause of any injury to the plaintiff/plaintiffs, the defendant/defendants has/have raised the defense of comparative fault. Comparative fault is fault on the part of the person injured which cooperates in some degree with the fault of another and helps to bring about any injury. By the defense of comparative fault, the defendant/defendants in effect allege that even though defendant/defendants may have committed some negligent act or omission which was one of the causes of the accident, the plaintiff, by his/her own failure to use ordinary care under the circumstances for his/her own safety, at the time and place in question was himself/herself a legal cause of injuries and damages plaintiff may have suffered.

You must decide whether plaintiff was at fault and, if so, what degree of his/her fault, if any, contributed to the injuries suffered. In deciding whether the plaintiff contributed to the injuries sustained, you must determine whether plaintiff's conduct fell below that standard which we might reasonably expect a person to exercise for his/her own safety and protection, the standard being that of a reasonable person in like circumstances.

INSERT SPECIAL CHARGES

The burden is on the defendants alleging comparative fault to prove any fault of plaintiff. The defendants have the burden to establish, by a preponderance of the evidence, that plaintiff was at fault and that her fault contributed to any injuries and damages which plaintiffs may have sustained.

If you find that the preponderance of the evidence in this case does not establish that plaintiff was at fault in any degree, then you should return a verdict without assigning any percentage of fault to plaintiff. But, if you should find that plaintiff was at fault in any degree, then you must decide the degree of fault attributed to him/her in returning your verdict. The fact that the plaintiff may have been at fault, in part, however, does not prevent recovery; it only reduces the amount which may be recovered.

A special verdict form will be provided for your convenience. On this form, there is a blank space for you to write your findings as to damages you wish to award and the percentage of fault. Your award should not take into account the percentage of fault, if you have assigned any, to plaintiff. The Court will reduce the award by that percentage.

DAMAGES:

In determining an award for damages, you should consider both general and special damages. However, you should not conclude that because I am going to speak to you about damages that I believe the plaintiff should recover. This is only for you to decide and my opinion no matter what you think is not relevant. In determining an award for general damages, you are vested with much discretion. By the phrase "general damages" we mean a sum of money which you feel would fairly compensate the plaintiff for the pain, suffering, mental anguish, disability, scarring, and loss of lifestyle, and loss of consortium, service and society that the plaintiff has suffered or may suffer in the future. However, you should keep in mind that any award for general damages is not subject to the payment of federal or state income taxes.

By special damages we mean out-of-pocket expenses or actual or anticipated losses which the plaintiff has sustained or will sustain as a result of the accident. These may include such items as past and future medical expenses and lost wages.

FUTURE LOSS WAGES (DIMINISHED EARNING CAPACITY):

In assessing an award of damages for loss of future wages or for impairment of earning capacity, you are instructed that this cannot be calculated with a mathematical certainty but that you, as jurors, should determine this award after a consideration of the following factors: You are to consider the plaintiff's physical condition prior to the accident, the plaintiff's work record, the amount of the plaintiff's earnings in previous years, the probability or improbability that the plaintiff would have earned similar amounts during the remainder of the plaintiff's work life if the plaintiff had not sustained the injury for which he/she has filed this lawsuit. You should also consider the motivation of the plaintiff to return to work and the decreasing purchasing power of the dollar.

The plaintiff must prove both general and special damages by a preponderance of the

evidence. By this I mean that after consideration of all the evidence that you, as the jurors, find that the existence of a fact is more probable that its non-existence. Or put another way, when you believe a fact is more true than not. However, you should keep in mind that speculation, guessing and a mere possibility is not sufficient to establish the existence of a fact.

In Louisiana, punitive damages are not allowed and you should not, by your award, seek to punish the defendant. In assessing damages, you should seek only to reasonably compensate the plaintiff for the damages you find the plaintiff has suffered or will suffer.

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

It is usually not a good idea for a juror, when he/she first enters the jury room, to make an emphatic expression of his/her opinion on the case or announce a determination to stand for a certain verdict. When one does that at the outset, his/her sense of pride may be at issue and he/she may hesitate to back down from an announced position, even if he/she is shown to be wrong. Remember that you are not advocates in this matter; you are judges. The final test of the quality of your service will lie in the verdict which you return to the Court, not in the opinions any of you hold as you go to the jury room. Your contribution to the judicial system will be to arrive at a just and proper verdict. To that end, I remind you that in your deliberations in the jury room there can be no triumph except the ascertainment and declaration of the truth.

You are twelve in number, Louisiana law requires that nine of you agree in order to render a verdict for either side. When nine of you are of the same opinion about this case, that ends your deliberation and that opinion should be your verdict.

You are being asked to return a verdict on the form which I will supply to you.

The first thing you should do when you retire to the jury room is to choose from your number a person to represent you in returning the verdict. That person may be any one of you. When you have reached a verdict, your representative will record that verdict on the form which I have supplied to you.

Finally, I remind you again that you represent our community in the determination of this dispute. The community appreciates your service on this jury and at the same time expects you to reach a fair and impartial verdict.

Members of the Jury, you will now retire to consider your verdict.

Let the record reflect that counsel for all parties have complied with the provisions of Article 1793 of the Code of Civil procedure with reference to special charges, and that prior to argument by counsel before the jury, the Court has informed counsel of those special charges which the Court will give. Counsel, at a charge conference in chambers, before the jury was charged and retired to deliberate, raised their objections to the general and special charges, given and refused, and to the form of the verdict stating specifically the matters to which they objected and the grounds therefore.

For the sake of convenience of all concerned, and in the interest of conserving time, counsel have agreed to dictate their objections to the record, after the jury has retired for deliberation.