## 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.

As I mentioned to you at the start of the trial, the plaintiff has to prove his case by a preponderance of the evidence. 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.

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.

**Optional Closing Instruction—Proof by Clear and Convincing Evidence**

[The plaintiff has to prove the facts in this case by clear and convincing evidence. This is a standard of proof beyond the customary standard of "preponderance of the evidence" which applies in most civil cases. To prove a fact by clear and convincing evidence means to demonstrate that the existence of that fact is much more probable than its non-existence. If the plaintiff fails to prove a fact essential to his case by clear and convincing evidence, then you must find that he has failed to prove his case sufficiently to prevail. It may help you in your understanding of this concept to know that the law regards this standard of proof as between the lesser standard of preponderance of the evidence applicable in most civil cases and the greater standard of beyond a reasonable doubt applicable in criminal cases.]

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. The law treats direct evidence and circumstantial evidence as equally reliable.

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.

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 brings forward the most witnesses or presents 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.

Some of the witnesses that you have 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.

If the testimony of a witness in court is different from a prior statement he has made, you have to decide if the testimony of the witness in court should be rejected because it is different from his prior statements. If you decide that the testimony has been discredited, then you must decide what weight, if any, to give to the testimony. If you find that a witness has testified falsely as to a material fact, then you have the right to reject the entire testimony of the witness or to reject only part of the testimony, based upon how much you are impressed with the truthfulness of the witness.

**Optional Closing Instruction—Deposition Read or Video Deposition Shown**

**[**Some of the evidence that was presented was 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. 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.**]**

**Optional Closing Instruction—Deposition Used for Impeachment**

**[**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.]

**Optional Closing Instruction—Multiple Plaintiffs**

[Although there are ___________ plaintiffs, that does not mean that if you find that one should recover, you must decide that all should recover.  You should decide the case as to each plaintiff according to the instructions that I have given you.]

**Optional Closing Instruction—Multiple Defendants**

[And although there are ________ 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.]

The applicable law depends upon the nature of the plaintiff's claim. This case is what we call a "tort" case or a personal injury case, in which the plaintiff contends that they have been injured, and that the defendant was at fault in causing the injury. The plaintiffs seeks an award of money as a result. The defendant of course has a different view and has defended itself against the plaintiff's claims. The basic law in Louisiana on this kind of case is an article of our Civil Code - Article 2315. It 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" in this article is a key word. "Fault" means a type of conduct that a person should not have engaged in, meaning that they have acted as they should not have acted or has failed to do something that they should have

done. The law thus regards the conduct as being below the standard or measure which applies to the defendant’s activities.

The standards which the law applies to the defendant’s conduct will change according to the nature of its activity and the surrounding circumstances. These standards are sometimes set by the legislature in statutes, and sometimes they are set by the courts when the legislature has not provided a specific statute. Now that we are at the end of the trial, I'm going to tell you the standards which apply to the defendant’s conduct in this particular suit, and you have to accept those standards. Your job is to decide if the plaintiff has proved by a preponderance of the evidence that the defendant’s conduct fell below those standards. To put it briefly, you have to decide if the plaintiff has proved that the defendant’s conduct was sub-standard and thus, in legal terms is “at fault.” In this particular case, the plaintiff says that the defendant has committed the kind of fault that the law calls “negligence.”

But this is only one of the parts of the plaintiff’s case, and in order to succeed, the plaintiff must establish all of the essential parts of their case. Questions addressed to all of these parts of the case will be given to you in the “verdict form” that you will get at the end of these instructions and that you will take with you to fill out as a part of your deliberations. The other parts of the plaintiff’s case are:

(1) that the injury the plaintiff suffered was, in fact, caused by the conduct of the defendant; and

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

When I say that the injury must be shown to have been caused by the defendant’s conduct, I don't mean that the law recognizes only one cause of an injury, consisting of only one factor or thing, or the conduct of only one person. On the contrary, a number of factors may operate at the same time, either independently or together, to cause injury or damage. You have to decide whether

the plaintiff probably would not have suffered the injury or damage in the absence of the defendant's conduct. If the plaintiff probably would have suffered injury no matter what the defendant did, then you will have to decide that the injury was not caused by the defendant, and render a verdict for the defendant. If, on the other hand, plaintiff probably would not have suffered injury in the absence of the defendant's conduct, then you will have to decide that the defendant's conduct did play a part in the plaintiff's injury and you will have to proceed to the next part of plaintiff's case.

The next part of the plaintiff's case that you have to consider is whether the defendant's conduct was below the standard applicable to its activity, as I mentioned to you just a minute ago. In this case, the basic standard is that the defendant must exercise the degree of care that we might reasonably expect from an ordinarily prudent person under the same or similar circumstances. The standard of care is not that of an extraordinarily cautious individual or an exceptionally skilled person, but that of a person of ordinary prudence.

An ordinarily prudent person will avoid creating an unreasonable risk of harm. In deciding whether the defendant violated this standard of conduct, you may 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.

**Special Jury Charges**

***Specific and detailed instructions on the substance of the case at hand, relevant legal principles and the like should be inserted here.***

To sum up this part, to find that the defendant's conduct is sub-standard, you must find that an ordinarily prudent person under all of the surrounding circumstances would reasonably have foreseen that as a result of his conduct, some

such injury as the plaintiff suffered would occur, and that the defendant failed to do what an ordinarily prudent person would have done. You may find it helpful to ask yourself: "How would an ordinarily prudent person have acted or what precautions would they have taken if faced with similar conditions or circumstances?"

If you decide that the plaintiff has established the other elements of his case by a preponderance of the evidence, and the defendant has failed to establish a defense which would prevent the plaintiff from recovering an award for his injuries, you must decide the question of whether there has been damage to his person or his property and if so, the amount of that damage.

In this regard, I recall to your attention the words of Article 2315 of our Civil Code: "Every act whatever of man that causes damage to another, obliges him by whose fault it happened to repair it." This article, and our law, suggest simple reparation, a just and adequate compensation for injuries. It suggests no idea of revenge or punishment. Accordingly, our law does not permit the awarding of damages to punish the defendant, or make an example of him to prevent other accidents, and you should include no such amount in your award. Your award should be designed to fully and fairly compensate the plaintiff for his injury, if you find one has occurred, and should not go beyond such reparation.

The law recognizes the difficulty of translating personal injuries into a dollars and cents figure, but that is what must be done. You must arrive at a figure that will fairly and adequately compensate the plaintiff for damages he has already suffered, and that he will in all likelihood suffer in the future. In estimating such damages, you may take into consideration the following elements:

(1) physical injury suffered;

(2) pain and suffering, both physical and mental;

(3) loss of enjoyment of life;

(4) permanent disability, if any;

(5) loss of earnings, if any, both past and future;

(6) medical expenses, both past and future.

Like other parts of the plaintiff's case, these damages must be established by a preponderance of the evidence. This means, on the one hand, that you are not entitled to award speculative damages for injuries which you think the plaintiff might have suffered or might suffer in the future. On the other hand, it means that you may make an effort to reasonably approximate the damages which the plaintiff has proved are more probable than not, even though they cannot be computed with mathematical certainty. You may, if you wish, take into account the decreasing value of the dollar in today's market.

In reaching a verdict on the question of damages, I caution you not to include anything for the payment of court costs and attorney fees; the law does not consider these as damages suffered by the plaintiff. Also, any amount which you might award to the plaintiff is not income within the meaning of the income tax laws. If you decide to make an award, follow the instructions I have given you, and do not add or subtract from that award on account of federal or state income taxes. In other words, if you find that the plaintiff is entitled to damages, the amount which you award should be the sum that you think will fully and fairly compensate the plaintiff for his injuries, without regard to what he may pay his attorney or the amount that you might think would be paid in income taxes.

The law recognizes both general damages for the pain and suffering which the plaintiff may have faced because of this incident and specific damages, sometimes called "special damages," which are intended to reimburse the plaintiff for the actual or anticipated out-of-pocket expenses which they have incurred to date or will incur in the future.

If you decide to award the plaintiff general damages, you may consider their pain and suffering, inconvenience and mental distress, both in the past and to be anticipated in the future.

If you decide to award the plaintiff special damages, you should consider the evidence that has been offered on these issues, and you may award sums of money for:

(1) past medical expenses;

(2) future medical expenses, if any;

(3) past lost wages;

(4) future lost wages, if any; and

(5) damage to plaintiff's property.

I remind you that in the assessment of damages, you have wide discretion in terms of both the decision about any award at all and the amount of the award. The fact that I have instructed you on damages should not indicate to you that I believe plaintiff should or should not recover any damages in this case. This is entirely for you to decide.

The law of Louisiana does not permit an award of punitive damages, that is to say, in a case of this kind, no award should be made as a punishment for injuries which may have been inflicted. Punitive damages cannot be allowed, even though a defendant may be grossly negligent, and even if you might feel that the defendant should be punished. Any award made in such a case must be limited to a reasonable compensation for the items claimed as damages resulting from the accident.

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 three elements 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 three elements of his case are more likely true than not true, then you should return a verdict for the defendant.

If the defendant contends that the plaintiff was at fault as well and his fault contributed to his own injury, then the defendant must persuade you that it is more likely true than not true that the plaintiff was at fault.

You can assign any percentage of fault to the plaintiff or to any or all of the defendants that you want, but the total of all of the percentages must be 100%. If you're persuaded by the defendant's evidence that the only reason the plaintiff was injured was because of the plaintiff's own sub-standard conduct, you may return a verdict for the defendant in response to the questions on the verdict form by assigning 100% fault to the plaintiff. If the defendant does not persuade you that the plaintiff was at fault and the plaintiff has otherwise proved his case as I have described to you, then you should return a verdict for the plaintiff without assigning any percentage of fault to the plaintiff.

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 may take with you, if you wish, a complete copy of all of my instructions to you, or you may ask for a copy to be sent to you later. 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.

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 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.

You are being asked to return a verdict in this case by answering certain specific questions which will be posed to you.

***The verdict form should be explained here.***

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.

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. When you have reached a verdict, your representative will record that verdict in its entirety on the appropriate form. He or she should then sign the form, date it and notify the court crier that you have reached a verdict.

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 court crier, who will be nearby, and she 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 court crier and other court employees as you leave.