GENERAL CIVIL JURY CHARGES
IN GENERAL NEGLIGENCE CASES

General Introduction

Ladies and Gentlemen, now that you have heard the evidence and the argument of the attorneys, it is now time for me to instruct you on the law applicable to this case. Although you, as jurors, are the sole judges of the facts, you are duty-bound to follow the law as stated in these instructions of this Court, and to apply the rules of law to the facts as you find them from the evidence presented in this case, regardless of any opinion that you may have of what the law ought to be.

You should consider what I say about the law as a whole and not single out any one sentence or individual point or idea and ignore others. The order in which the statements about the law are made has no significance as to their relative importance.

If during this trial, the Court has said or done anything which has suggested favor to the claims of any party or indicated any opinion as to what the facts in this case are or should be, that should be disregarded; it was not intended. You are the judges of the facts.

You have been chosen from the community to make a collective determination of the facts in this case. What the community and the parties expect from 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

nothing else. The law does not permit jurors to be governed by sympathy, bias, prejudice, or public opinion. You are to consider carefully and impartially all the evidence, follow the law as stated by the Court, and reach a just verdict regardless of the consequences.

This action should be considered and decided by you as an action between persons of equal standing. The law does not respect one party more than it does any other. All parties – persons or organizations – stand equal before the law, and are to be dealt with as equals in a court of justice.

Evidence

The evidence in this case consists of the sworn testimony of the witnesses, the documents and any other physical things that have been admitted, the presumptions stated in these instructions, together with any fair inferences and reasonable conclusions which you can draw from such evidence, based upon your ordinary experiences in life. The arguments of attorneys are not evidence. However, a stipulation or agreement by and between the attorneys as to the existence of a fact, and such facts as have been judicially noticed by the Court, must be accepted by you as proven evidence. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded.

It is the duty of the attorneys to object to evidence when the attorney believes that it is not properly admissible. If the Court allows evidence to be admitted over the

objection, the Court is not indicating any opinion as to the weight or effect that you must give the evidence; you are the sole judges of the credibility of witnesses and the weight of evidence. My overruling of the objection only means that I feel that it is legally proper for you to receive and consider that evidence.

When the Court has sustained an objection to a question addressed to a witness, you must disregard the question entirely and may draw no inference from the wording of it, or speculate as to what the witness would have said if allowed to answer. This is so because the Court feels that it is not legally proper for you to receive or consider the answer to that question.

In addition, evidence which the Court orders stricken from the record must be disregarded.

Direct and Circumstantial Evidence

A fact may be proven by either 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.

Burden of Proof

The burden is on the plaintiff to prove every essential element of his or her claim by a preponderance of the evidence. If the proof should fail to establish any essential element of the plaintiff's claim by a preponderance of the evidence, you should find for the defendants. To "establish by a preponderance of the evidence" means to prove that something is more likely so than not so. In other words, a preponderance of the evidence in the case means such evidence as, when considered and compared with that opposed to it, has more convincing force, and produces in your minds belief that what is sought to be proved is more likely true than not true.

In order to entitle the party upon whom the burden of proof rests to a finding in his favor, that party's evidence must not only be of greater convincing power than that offered in opposition, but it must also be able to satisfy or convince the minds of the jury of the truth of his contention. However, the preponderance of the evidence does not necessarily depend upon the number of witnesses on either side. It depends upon the weight and credibility which you attach to the testimony of each witness, since witnesses are weighed and not counted. You may be satisfied that the evidence of one witness is entitled to greater weight and credibility than that of another witness, or even of several witnesses, and you may give it such weight in determining where the preponderance of such evidence lies.

Credibility of Witnesses

In weighing the testimony of each witness, you should give it careful scrutiny and consider all the circumstances under which the witness testified. That is, his appearance and demeanor on the witness stand, the relationship which he might have to any party, the manner in which he might be affected by the verdict, his manner of testifying, his apparent candor and fairness, or lack thereof, the reasonableness or unreasonableness of his story, the witness's apparent intelligence or lack of intelligence, the extent to which he is corroborated or contradicted by other credible evidence and, in short, any circumstances that tend to throw light upon his credibility. Applying these tests, it is for you to determine that weight which is to be given to the testimony of each witness. You have the right to accept as true or reject as false, all or part of the testimony of any witness, accordingly, as you are impressed with his truthfulness.

Expert Testimony

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. An exception to this rule exists as to those whom we call "expert witnesses". Witnesses who by education and experience have become expert in some art, science, profession, or calling, may state an opinion as to relevant and material matter, in which they profess to be expert, and may also state their reasons for the opinion. You should consider each expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should 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 the opinion are not sound, you may reject the opinion entirely.

Depositions or Videos Used as Evidence [if applicable]

Depositions: During the trial of this case, certain testimony has been read to you by way of deposition. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand, is usually presented in writing under oath in the form of a deposition. Such testimony is entitled to the same consideration and, insofar as possible, is to be judged as to credibility, and weighed and otherwise considered by you in the same manner as if the witness had been present, and had given from the witness stand the testimony read to you from the deposition.

Videos: During the trial of this case, certain testimony has been presented to you by video. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand, may be presented in this form. Such testimony is entitled to the same consideration and, insofar as possible, is to be judged as to credibility, and weighed and otherwise considered by you in the same manner as if the witness had been present here at the trial of this case.

Causation

General

This is a suit seeking damages for injury caused by the fault of another. It is one of your tasks to determine if the plaintiff has proved by a preponderance of the evidence that the defendant has fallen below the standard which the law expects of him in this particular instance. You will have to determine if the plaintiff has proved that the defendant engaged in sub-standard conduct and is thus at fault.

A required element of the plaintiff's case under any theory of law is that the plaintiff's damages be caused by the defendant. A defendant is the legal cause of the plaintiff's damages if (1) the defendant's conduct is the cause-in-fact of those damages, and (2) the damages are within the scope of the risks created by the defendant's duty.

Cause-in-Fact

To be a cause-in-fact, the conduct of the defendant must be a substantial factor in causing damage. You will first determine what, if any, conduct of the defendant falls below the standard which the law imposes upon him. You must next ask whether the plaintiff would have suffered damages "but for" this conduct. If the plaintiff probably would have suffered injuries regardless of the defendant's conduct, then you must conclude that the injuries were not caused-in-fact by the defendant. If, on the other hand, the plaintiff probably would not have suffered in the absence of the defendant's conduct, then you must conclude that the defendant did play a part in the plaintiff's injury.

Duty/Risk

If you find that the defendant's conduct was the cause of the plaintiff's injuries, you must determine whether that injury was within the scope of the risks encompassed by the defendant's duty. Put another way, you must determine whether the duty which the defendant breached was designed to prevent the type of harm that actually occurred. If you find that the duty was designed to protect the plaintiff from some other harm, or that the duty was designed to protect some other potential victim, then you must find that the plaintiff's injuries were not within the scope of the risk of the defendant's duty, and you must find that the defendant was not the legal cause of the plaintiff's injuries.

Specific Factual Situations [if applicable]

Corporation/Partnership a party: You must bear in mind that a corporation or partnership can act only through its officers, employees, or other agents. An employer is liable for the negligent acts of its employees while they are acting in the course and scope of their employment.

Insurance company a party: One party to this lawsuit is an insurer. An insurance company is not liable unless its insured is legally reasonable for damages.

Negligence

Every person is responsible for the damages he causes not merely by his act but by his negligence, his imprudence, or his want of skill.

Negligence is the doing of some act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do. It is the failure to use ordinary care under the circumstances in the management of one's person or property.

Ordinary care is that care which reasonably prudent persons exercise in the management of their affairs, in order to avoid injury to themselves or their property, or the persons or property of others. The care which we reasonably expect from a reasonably prudent person will vary according to the circumstances facing him. An act, negligent under one set of conditions, might not be so under another.

In summary, in order to find that the defendant's conduct was sub-standard, you must find that as an ordinarily prudent person under all the circumstances surrounding his conduct, the defendant should have reasonable foreseen that as a result of his conduct, some such injury as the plaintiff suffered would occur, and you must find also that the defendant failed to exercise reasonable care to avoid the injury. You may find it helpful to phrase your inquiry this way: "How would an ordinary prudent person have acted or what precautions would he have taken if faced with similar conditions or circumstances?"

The fact that an accident happens and that someone is hurt does not raise a presumption of negligence on the part of anyone. Negligence is an affirmative fact which is not to be presumed but must be proved by a preponderance of the evidence.

Contributory Negligence

The defendant not only denies negligence, but contends that any injuries and damages the plaintiff may have sustained were the result of the plaintiff's own negligence. Contributory negligence is fault on the part of a person injured which cooperates in some degree with the negligence of another, and so helps to bring about the injury or damage. The test of contributory negligence is the same as the test of negligence of the defendant. It is an act or omission of the party injured which amounts to a lack of ordinary care without which the accident would not have occurred, but which, concurring with the conduct of the defendant, is a cause of the injury or damage. When a defendant contends that a plaintiff is completely at fault or, in the alternative, contributorily negligent, the burden of establishing that fact is on the defendant.

Thus, if you conclude that the plaintiff has proved his case by a preponderance of evidence, then you must determine whether the defendant has proved by a preponderance of the evidence that the plaintiff has failed to conduct himself in accordance with the standard expected of him, and has thereby contributed to his own injury. It is the law of Louisiana that the sub-standard conduct of an injured person which contributes to his own injury will reduce his recovery, but will not eliminate or

do away with it entirely. If a plaintiff is contributorily negligent, his verdict will be reduced because persons under the law have a duty to protect themselves from injury. If the defendant convinces you that the plaintiff is contributorily negligent, you must take into account the degree of fault attributable to the injured person in returning your verdict. But if the defendant does not convince you that the injured person 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.

In deciding the question of the plaintiff's contributory negligence, it may help to phrase your inquiry this way: "Should the plaintiff as an ordinarily prudent person, under all the circumstances surrounding his conduct, have reasonably foreseen some such injury as a result of his conduct, and did he fail to exercise reasonable care to avoid such injury to himself?"

Comparative Negligence

Louisiana law requires that you divide the total responsibility for this incident among all those who were involved in it. You should do this by assigning percentages of fault to the various persons involved which will total 100%. If you are convinced by the evidence that the plaintiff was injured solely by his own sub-standard conduct, you must return a verdict for the defendant by assigning 100% of the responsibility for the incident to the plaintiff. Likewise, if you are convinced that the injuries were the sole

result of the defendant's sub-standard conduct, you must return a verdict for the plaintiff by assigning 100% of the responsibility to the defendant. You are free to assign whatever percentage you feel is appropriate to the various parties, from 0% to 100%, but they must total 100%. In making these determinations, you should consider both the nature of the conduct of each party at fault and the extent of the causal relation between the conduct and the damages claimed. In assessing the conduct of the parties, various factors may influence the degree of fault which you may assign to the parties, including: whether the conduct resulted from inadvertence or involved an awareness of the danger; how great a risk was created by the conduct; the capacities of the actor, whether superior or inferior; and any extenuating circumstances which might require the actor to proceed in haste, without proper thought.

Damages

The plaintiff is claiming damages as a result of the accident. Louisiana law provides, "Every act of man that causes damage to another obliges him by whose fault it happened to repair it." [C.C. art. 2315.] This language contemplates simple reparation, a just and adequate compensation for injuries. It suggests no idea of revenge or punishment. You are not permitted to award speculative damages, that is, damages which are remote or conjectural. If you find that the plaintiff is entitled to an award, you may award only such as will compensate for injury and damage that you find has actually been sustained or may be sustained in the future, proven by a preponderance

of the evidence. The amounts claimed by the attorneys are not evidence but merely something for you to consider.

General Damages, Including Aggravation

Your award should include general damages, which are: any physical and mental pain and suffering incurred by the plaintiff in the past, present, and future; any past or future loss of earnings or earning impairment; any permanent physical impairment or disability that you have not otherwise taken into account; and any loss of enjoyment of life. One who commits a tort takes his victim as he finds him. The defendant is responsible also for any aggravation of any pre-existing ailments or disabilities sustained by the plaintiff.

Special Damages [if applicable]

Your award should include special damages, which are: the reasonable value of any care and treatment given by physicians, nurses, or others; any ambulance services, x-rays, and medicines; and any medical, surgical, and hospital services that the plaintiff may have sustained or may be reasonably required to sustain in the future.

Consortium [if applicable]

Damages may include loss of consortium, service, or society, which damage is recoverable by the spouse of an injured party. In evaluating a spouse's loss, you are to take into account the following 7 parts: loss of love and affection; loss of society and companionship; loss of sexual relations; loss of performance of material services; loss of financial support; loss of aid and assistance; loss of happiness.

Lost Earning Capacity [if applicable]

An award for lost earning capacity, like any other element of damage, must be established by the plaintiff by a preponderance of the evidence. If you find that the evidence indicates that the plaintiff will in all probability continue to be capable of earning as much or more than if the accident had not occurred, you should not make any award of lost earning capacity. Otherwise, when determining a proper award for lost earning capacity, proper factors to be considered include: the plaintiff's physical condition prior to the accident; work record; amount of earnings in previous years; the probability or improbability that similar amounts would have been earned during the remainder of work life if the injury had not been sustained; age; probability of promotion or progress of job status if supported by adequate evidence; life expectancy; work-life expectancy; degree of disability, if any; rehabilitation prospects and adaptability to rehabilitation; and likelihood of alternate employment, which includes difficulty in obtaining employment in a competitive market. The factor of rising income trend is also a proper consideration and may be considered along with the trend toward a decreased purchasing power of the dollar. You may also consider that any award for future income will be due all at one time and available for possible investment, whereas otherwise such income would have accrued gradually each pay period over time.

An award of future lost earning capacity, by its very nature, tends to be speculative. In order to recover such a sum, the plaintiff need not introduce evidence to prove the claim with mathematical certainty. If you find such an award is proper,

you are expected to exercise sound discretion after taking into consideration all of the facts and circumstances of the case, and award such amount as will, under the circumstances of the case, appear just to both litigants. Mathematical projections of future earnings may be used as a guide in computing such an award, if you see fit to do so.

It is the law in Louisiana that you look at gross income rather than net income.

Mitigation

An injured person must make reasonable effort to mitigate and minimize damage. This requires a person who has been injured to seek gainful employment so as to minimize or avoid future wage loss. It is not reasonable to expect a person to work in serious pain or to threaten his health.

An injured person is also obligated to submit to reasonable medical treatment for his improvement.

Costs

You are not permitted to award any sum for court costs, attorneys' fees, or interest. Any award made to the plaintiff as damages for personal injuries is not subject to federal or state income taxes.

Special Damage Instructions [if applicable]

[Here insert applicable special damage instructions, if any.]

Other Damage Instructions

Do not reduce any damage figure by any percentage of responsibility which you may have assigned to any party. A damage figure should reflect all of the damage suffered, whether or not you have found that the plaintiff contributed to that damage. The Court will make a reduction, if appropriate, after you return your verdict.

The fact that I have instructed you as to the proper measure of damages should not be considered by you as an opinion as to which party is entitled to prevail, nor as an intimation from me that any damages are due. Instructions as to the measure of damages are given for your guidance, in the event you find from the evidence that an award is appropriate. You alone determine whether damages are due and, if so, in what amount.

Deliberation Instructions

Upon retiring to the jury room, you will first select one of your number to be a foreperson. Your foreperson shall preside over your deliberations and, when you have concluded, sign the verdict sheet.

Let me say that it is usually not a good idea for a juror, when first entering the jury room, to make an emphatic expression of opinion on the case or announce a determination to stand for a certain verdict. When one does that at the outset, a sense of pride may be at issue; one may hesitate to back down from an announced position,

even if shown to be wrong. Remember, you are not advocates in this matter, but rather you are the judges.

It will be your duty, each of you, to discuss the issues of this case amongst yourselves. If there are differences of opinion in the appraisement of the evidence or in any other phase submitted to you for consideration, you should make every conscientious effort to reconcile your differences, if you can conscientiously do so.

Consider the questions on the verdict sheet. It is your duty to reach a conclusion as to each question. There are [twelve/six] in your number. When [nine/five] are of the same opinion, that ends your deliberation with respect to that question. Your answers do not have to be unanimous. As to each individual question on the verdict sheet, please consider your answer. Where a "yes" or "no" answer is appropriate, simply write down whichever one of those words reflects your findings. When a sum of money or a percentage is indicated, simply fill in the amount, if appropriate. The foreperson will fill in the appropriate answers, fill in the date, and affix his or her signature.

If you desire, you may have sent to you a written copy of all jury instructions and charges I have given you. You may also view any document or object received in evidence if a physical examination thereof is required by you to reach a verdict.

If you have any questions, write them down a piece of paper and knock on the door. The bailiff will bring them to me.

[Go over Verdict Form.]

[Dismiss alternate jurors.]

I remind you that you represent the community in the determination of this dispute. The community appreciates your service, and at the same time, expects you to reach a verdict which is fair to all parties.

Ladies and Gentlemen, you may now retire to begin your deliberations. The Court will await your verdict.