

I. CLOSING JURY INSTRUCTIONS

MEMBERS OF THE JURY, IT NOW BECOMES MY DUTY TO TELL YOU THE LAW THAT APPLIES TO THIS CASE, AND IT IS YOUR DUTY, AS I MENTIONED AT THE BEGINNING OF THE TRIAL, TO FOLLOW THE LAW AS I STATE IT TO YOU.

BEFORE I TELL YOU THE LAW, HOWEVER, LET ME MAKE SOME GENERAL COMMENTS ABOUT YOUR RESPONSIBILITY AS JURORS. YOU HAVE BEEN CHOSEN FROM THE COMMUNITY TO MAKE A 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. THIS MEANS THAT THE CASE SHOULD BE CONSIDERED AND DECIDED AS AN ACTION BETWEEN PERSONS OF EQUAL STANDING IN THE COMMUNITY. A CORPORATION OR AN INSURANCE COMPANY IS ENTITLED TO THE SAME FAIR TRIAL AT YOUR HANDS 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 ATTEMPT TO ACHIEVE JUSTICE, AND YOUR SUCCESS IN THAT ENDEAVOR DEPENDS UPON THE WILLINGNESS OF EACH OF YOU TO SEEK THE TRUTH AS TO THE FACTS FROM THE SAME EVIDENCE PRESENTED TO ALL OF YOU, AND TO ARRIVE AT A VERDICT BY APPLYING THE SAME RULES OF LAW, AS I GIVE THEM TO YOU.

IF DURING THIS TRIAL, I HAVE SAID OR DONE ANYTHING WHICH HAS SUGGESTED TO YOU THAT I FAVOR THE CLAIMS OR POSITIONS 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 THE JUDGES OF THE FACTS.

BEFORE I TELL YOU ABOUT THE LAW, YOU SHOULD UNDERSTAND SEVERAL THINGS ABOUT MY REMARKS. 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 I MAY TELL YOU ABOUT.

YOU SHOULD CONSIDER WHAT I SAY ABOUT THE LAW AS A WHOLE. YOU SHOULD NOT SINGLE OUT ANY ONE SENTENCE, OR INDIVIDUAL POINT OR IDEA, AND IGNORE THE OTHERS. THE ORDER IN WHICH THE STATEMENTS ABOUT THE LAW ARE MADE HAS NO SIGNIFICANCE AS TO THEIR RELATIVE IMPORTANCE.

THE FIRST THING THAT YOU SHOULD KNOW ABOUT THE LAW IS THAT THE PLAINTIFF IN THIS/HER ACTION MUST PROVE HIS/HER CASE BY A PREPONDERANCE OF THE EVIDENCE. THIS MEANS THAT THE PLAINTIFF MUST CONVINCEN YOU THAT, WHEN THE EVIDENCE IS TAKEN AS A WHOLE, THE FACTS SOUGHT TO BE PROVED ARE MORE PROBABLE THAN NOT. IF HE/SHE FAILS TO PROVE OR ESTABLISH ANY ESSENTIAL ELEMENT OF HIS/HER CASE BY A PREPONDERANCE OF THE EVIDENCE, THEN YOU MUST FIND THAT HE/SHE HAS FAILED TO PROVE HIS/HER CASE SUFFICIENTLY TO RECOVER. THERE IS NO PRESUMPTION THAT BECAUSE THE PLAINTIFF HAS BEEN INJURED OR BECAUSE HE/SHE HAS BROUGHT THIS LAWSUIT, HE/SHE NECESSARILY IS ENTITLED TO A RECOVERY AGAINST THESE DEFENDANTS.

THE EVIDENCE WHICH YOU ARE TO CONSIDER CONSISTS OF THE STIPULATED FACTS, THE TESTIMONY OF THE WITNESSES, THE DOCUMENTS, IF ANY, THAT HAVE BEEN ADMITTED INTO EVIDENCE, AND ANY FAIR INFERENCES AND REASONABLE CONCLUSIONS WHICH YOU CAN DRAW FROM THE EVIDENCE SUBMITTED TO YOU. NEITHER THE WRITTEN PLEADINGS, NOR ARGUMENTS BY THE LAWYERS, NOR ANY COMMENT OR RULING WHICH I MAY HAVE MADE IS EVIDENCE

A "STIPULATED FACT" OR "STIPULATION" IS A FACT THAT THE ATTORNEYS AGREE IS ACCURATE. SINCE THERE IS NO DISPUTE ABOUT CERTAIN FACTS, THE ATTORNEYS MAY AGREE OR "STIPULATE" THOSE FACTS TO SAVE ALL OF US A LOT OF TIME IN THIS TRIAL. UNLESS I INSTRUCT YOU TO THE CONTRARY, YOU MUST ACCEPT A STIPULATED FACT

AS EVIDENCE AND TREAT THE FACT WHICH IS STIPULATED AS HAVING BEEN PROVEN.

A FACT MAY BE PROVEN EITHER BY DIRECT EVIDENCE OR BY CIRCUMSTANTIAL EVIDENCE, OR PERHAPS BY BOTH. DIRECT EVIDENCE IS TESTIMONY BY WITNESSES AS TO WHAT THEY SAW OR HEARD, OR PHYSICAL EVIDENCE OF THE FACT ITSELF. CIRCUMSTANTIAL EVIDENCE IS PROOF OF CERTAIN CIRCUMSTANCES FROM WHICH YOU MAY INFER THAT ANOTHER FACT IS TRUE. THE LAW DOES NOT REGARD ONE TYPE OF EVIDENCE AS PREFERABLE OVER THE OTHER.

IN JUDGING THE CREDIBILITY OF THE WITNESSES WHICH YOU HAVE HEARD, YOU SHOULD HAVE IN MIND THE RULE THAT A WITNESS IS PRESUMED TO SPEAK THE TRUTH ABOUT FACTS WITHIN HIS/HER KNOWLEDGE. THIS PRESUMPTION, HOWEVER, MAY BE OVERCOME BY CONTRADICTORY EVIDENCE, BY THE MANNER IN WHICH THE WITNESS TESTIFIES, BY THE CHARACTER OF HIS/HER TESTIMONY, OR BY EVIDENCE THAT PERTAINS TO HIS/HER MOTIVES.

AS I MENTIONED TO YOU AT THE BEGINNING OF THE TRIAL, WHEN YOU WEIGH THE CREDIBILITY OF A WITNESS, YOU SHOULD CONSIDER THE INTEREST, IF ANY, WHICH HE/SHE MAY HAVE IN THE OUTCOME OF THIS CASE; THEIR ABILITY TO KNOW, REMEMBER AND TELL THE FACTS TO YOU; HIS/HER MANNER OF TESTIFYING AS TO SINCERITY AND FRANKNESS, AND THE REASONABLENESS OR UNREASONABLENESS OF THE TESTIMONY IN THE LIGHT OF ALL OTHER EVIDENCE.

IF THE TESTIMONY OF A WITNESS HERE IN COURT IS INCONSISTENT WITH A PRIOR STATEMENT HE/SHE HAS MADE, IT IS YOUR DUTY TO DETERMINE IF THE TESTIMONY OF THE WITNESS HERE IN COURT SHOULD BE DISCREDITED. IF YOU DECIDE THAT THE TESTIMONY OF THE WITNESS HAS BEEN DISCREDITED, THEN YOU ARE TO DECIDE WHAT WEIGHT, IF ANY, TO GIVE TO THE TESTIMONY OF THE WITNESS. IF YOU SHOULD 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 YOU ARE IMPRESSED WITH THE TRUTHFULNESS OF THE WITNESS.

IF THE TESTIMONY OF A WITNESS HERE IN COURT IS INCONSISTENT WITH A PRIOR STATEMENT HE/SHE HAS MADE, IT IS YOUR DUTY TO DETERMINE IF THE TESTIMONY OF THE WITNESS HERE IN COURT SHOULD BE DISCREDITED. IF YOU DECIDE THAT THE TESTIMONY OF THE WITNESS HAS BEEN DISCREDITED, THEN YOU ARE TO DECIDE WHAT WEIGHT, IF ANY, TO GIVE TO THE TESTIMONY OF THE WITNESS. IF YOU SHOULD 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 YOU ARE IMPRESSED WITH THE TRUTHFULNESS OF THE WITNESS.

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. YOUR FUNCTION IS TO DETERMINE THE FACTS AND THIS IS NOT DONE BY COUNTING NOSES. 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.

I HAVE MENTIONED TO YOU THAT WITNESSES ARE EXPECTED TO TESTIFY ABOUT FACTS WITHIN THEIR KNOWLEDGE. THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY AS TO THEIR OPINIONS OR CONCLUSIONS ABOUT THOSE FACTS. AN EXCEPTION TO THIS RULE EXISTS AS TO THOSE WHOM WE CALL "EXPERT WITNESSES." THESE ARE PEOPLE WHO, BY EDUCATION AND EXPERIENCE, HAVE BECOME EXPERTS IN SOME FIELD, AND ARE PERMITTED TO STATE THEIR OPINIONS AS TO RELEVANT MATTERS IN THE FIELDS IN WHICH THEY PROFESS TO BE EXPERTS, AND GIVE THEIR REASONS FOR THOSE OPINIONS.

YOU SHOULD CONSIDER EACH EXPERT OPINION RECEIVED INTO 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, OR IF YOU FEEL THAT IT IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AS THE TRIERS OF FACT IN THIS CASE, YOU MAY SUBSTITUTE YOUR OWN COMMON SENSE AND JUDGMENT FOR THAT OF AN EXPERT WHERE IN YOUR OPINION, SUCH SUBSTITUTION APPEARS WARRANTED BY THE EVIDENCE AS A WHOLE.

DURING THE TRIAL OF THIS CASE CERTAIN TESTIMONY HAS BEEN PRESENTED TO YOU BY WAY OF WRITTEN AND VIDEO DEPOSITIONS WHICH ARE THE RECORDINGS OF SWORN ANSWERS TO QUESTIONS ASKED OF THE WITNESSES IN ADVANCE OF TRIAL BY ONE OR MORE OF THE ATTORNEYS FOR THE PARTIES IN THIS CASE. THE TESTIMONY OF A WITNESS WHO, FOR SOME REASON, CANNOT BE PRESENT TO TESTIFY FROM THE WITNESS STAND MAY BE PRESENTED IN THE FORM OF A DEPOSITION. SUCH TESTIMONY IS ENTITLED TO THE SAME CONSIDERATION AND IS TO BE JUDGED AS TO CREDIBILITY AND WEIGHED AND OTHERWISE CONSIDERED BY THE JURY, INsofar AS POSSIBLE, IN THE SAME WAY AS IF THE WITNESS HAD BEEN PRESENT AND HAD TESTIFIED FROM THE WITNESS STAND.

THE LAW APPLICABLE TO THE PLAINTIFF'S CLAIM DEPENDS UPON THE NATURE OF THAT CLAIM. THE PLAINTIFF SEEKS TO RECOVER UNDER A THEORY OF NEGLIGENCE. UNDER THE CIVIL CODE, SUCH AN ACT IS CALLED AN OFFENSE OR QUASI-OFFENSE AND THE SUIT IS GENERALLY TERMED A DELICTUAL OR TORT SUIT.

THIS IS A SUIT SEEKING DAMAGES FOR INJURY CAUSED BY THE ACT OF ANOTHER. THE BASIC LAW IN LOUISIANA IN THIS TYPE OF SUIT IS FOUND IN ARTICLE 2315 OF OUR CIVIL CODE:

"EVERY ACT WHATEVER OF MAN THAT CAUSES DAMAGE TO ANOTHER/HIS/HER OBLIGES HIM BY WHOSE FAULT IT HAPPENED TO REPAIR IT."

THE WORD "FAULT" IN THAT ARTICLE IS A KEY WORD. WHILE THE CIVIL CODE DOES NOT FURTHER DEFINE THE WORD, IT MAY PERHAPS BEST BE EXPLAINED BY SAYING THAT IT SIGNIFIES THAT CONDUCT WHICH A PERSON SHOULD NOT HAVE ENGAGED IN, THAT IS, THAT HE HAS ACTED AS HE SHOULD NOT HAVE ACTED, OR THAT HE HAS FAILED TO DO SOMETHING THAT HE SHOULD HAVE DONE. IT IS THUS CONDUCT BELOW THE STANDARD WHICH THE LAW APPLIES TO HIS/HER ACTIVITIES.

[A DRIVER ATTEMPTING TO MAKE A LEFT TURN IS UNDER A DUTY TO EXERCISE A HIGH DEGREE OF CARE. HE/SHE IS PRESUMED TO BE LIABLE FOR THE ACCIDENT AND MUST PROVE THAT HE/SHE IS FREE OF NEGLIGENCE TO AVOID LIABILITY. HE/SHE MUST MAKE SURE, BEFORE TURNING, THAT THE TURN CAN BE MADE WITHOUT DANGER TO ONCOMING TRAFFIC, AND HE/SHE MUST YIELD THE RIGHT OF WAY TO SUCH VEHICLE.]

[A LEFT-TURNING DRIVER HAS A DUTY TO EXERCISE A HIGH DEGREE OF CARE EVEN IF THE INTERSECTION IS CONTROLLED BY A LEFT-TURN ARROW. TO DISCHARGE THE BURDEN OF PROVING THAT HE/SHE WAS NOT AT FAULT IN THE ACCIDENT, HE/SHE MUST PROVE THAT HE/SHE WAS MAKING HIS/HER TURN WHILE THE ARROW WAS GREEN OR THAT HE/SHE HAD PREEMPTED THE INTERSECTION.]

[EVIDENCE IN THE FORM OF MOVING PICTURES OR VIDEOTAPES MUST BE APPROACHED WITH GREAT CAUTION BECAUSE THEY SHOW ONLY INTERVALS OF THE ACTIVITIES OF THE SUBJECT, THEY DO NOT SHOW REST PERIODS, AND DO NOT REFLECT WHETHER THE SUBJECT IS SUFFERING PAIN DURING OR AFTER THE ACTIVITY.]

AS I HAVE PREVIOUSLY TOLD YOU, IN ORDER TO BE SUCCESSFUL, THE PLAINTIFF MUST ESTABLISH ALL THE ESSENTIAL ELEMENTS OF HIS/HER CASE. THE OTHER ELEMENTS ARE THE FOLLOWING:

(1) THAT THE INJURY [PLAINTIFF] SUFFERED WAS, IN FACT, CAUSED BY THE CONDUCT OF THE DEFENDANTS;

AND

(2) THAT THERE WAS ACTUAL DAMAGE TO [PLAINTIFF'S] PERSON OR HIS/HER PROPERTY.

OUR LAW CONTEMPLATES A JUST AND ADEQUATE COMPENSATION FOR INJURIES. OUR LAW DOES NOT PERMIT THE AWARDING OF DAMAGES TO PUNISH THE DEFENDANTS, OR MAKE AN EXAMPLE OF THEM 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/HER INJURY, IF YOU FIND ONE HAS OCCURRED, AND SHOULD NOT GO BEYOND SUCH REPARATION.

THE LAW IS FULLY COGNIZANT OF 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 PLAINTIFF FOR THE DAMAGES HE/SHE HAS

ALREADY SUFFERED, AND THOSE HE/SHE WILL IN ALL LIKELIHOOD SUFFER IN THE FUTURE.

IN ESTIMATING SUCH DAMAGES, YOU MAY TAKE INTO CONSIDERATION THE FOLLOWING ELEMENTS:

- (1) GENERAL DAMAGES
(PAIN AND SUFFERING)**
- (2) MENTAL PAIN AND SUFFERING**
- (3) PAST MEDICAL EXPENSES**
- (4) ECONOMIC LOSS**
- (5) LOSS OF ENJOYMENT OF LIFE**
- (6) FUTURE MEDICAL EXPENSES**

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 PLAINTIFF HAS PROVED ARE MORE PROBABLE THAN NOT, EVEN THOUGH HE/SHE CANNOT BE COMPUTED WITH MATHEMATICAL CERTAINTY.

AS I HAVE MENTIONED TO YOU THERE IS NO PRACTICAL WAY TO INTRODUCE EVIDENCE AS TO THE GENERAL DAMAGES WHICH THE PLAINTIFF CLAIMS FOR PAIN AND SUFFERING AND MENTAL DISTRESS. THERE IS NO PRECISE STANDARD TO FIX THESE DAMAGES OR ASSIGN SOME

KIND OF VALUE TO THEM. RATHER/HER/HER, YOUR JOB IS TO DETERMINE THE AMOUNT THAT WILL BE FAIR AND JUST ON THE BASIS OF EVIDENCE OF THE PLAINTIFF'S INJURY AND TREATMENT THAT YOU HAVE HEARD, AND THAT WILL FAIRLY COMPENSATE PLAINTIFF FOR ANY DAMAGE HE/SHE MAY HAVE SUFFERED.

THE LAW RECOGNIZES THAT A PLAINTIFF MAY SUFFER MENTAL DISTRESS AND ANGUISH AS A RESULT OF AN INCIDENT AS WELL AS PHYSICAL PAIN AND SUFFERING. YOU ARE PERMITTED TO CONSIDER SUCH CONSEQUENCES AS PART OF THE GENERAL DAMAGES, WHICH YOU MAY AWARD. BY "MENTAL DISTRESS AND ANGUISH," I MEAN SUBSTANTIAL WORRY OR CONCERN, GRIEF AND THE LIKE.

THOUGH THE LAW RECOGNIZES A POSSIBLE RECOVERY FOR MENTAL DISTRESS, IT REQUIRES THAT YOU CAREFULLY SCRUTINIZE THE EVIDENCE PRESENTED ON THIS POINT TO ASSURE YOURSELVES THAT SUCH INJURY HAS BEEN PROVEN BY THE PLAINTIFF.

A CLAIMANT'S DISABILITY IS PRESUMED TO HAVE RESULTED FROM AN ACCIDENT IF, BEFORE THE ACCIDENT, THE INJURED PERSON WAS IN GOOD HEALTH BUT, COMMENCING WITH THE ACCIDENT, THE SYMPTOMS OF THE DISABLING CONDITION APPEAR AND CONTINUOUSLY MANIFEST THEMSELVES AFTERWARD, PROVIDING THE MEDICAL EVIDENCE SHOWS THERE TO BE A REASONABLE POSSIBILITY OF CAUSAL CONNECTION BETWEEN THE ACCIDENT AND THE DISABLING CONDITION.

IN DETERMINING ANY AWARD THAT YOU MIGHT MAKE FOR PAST WAGE LOSS, YOU SHOULD CONSIDER THE EVIDENCE PRESENTED TO YOU ON THAT ISSUE. ANY AWARD WHICH YOU MAY MAKE SHOULD BE BASED ON PLAINTIFF'S GROSS INCOME, THAT IS HIS/HER EARNINGS BEFORE DEDUCTIONS FOR INCOME TAXES, SOCIAL SECURITY AND SO FORTH--NOT ON WHAT WE GENERALLY CALL HIS/HER "TAKE-HOME PAY." IF PLAINTIFF ATTEMPTS TO RECOVER DAMAGES FOR LOST WAGES WHEN THERE IS NO INDEPENDENT SUPPORT OF PLAINTIFF'S CLAIM, IT IS HIGHLY SPECULATIVE.

THE AMOUNT OF DAMAGES FOR AN ITEM SUCH AS LOSS OF FUTURE WAGES IS NECESSARILY SPECULATIVE AND CANNOT BE CALCULATED WITH MATHEMATICAL CERTAINTY. HOWEVER, IF YOU FEEL THAT SUCH DAMAGES SHOULD BE AWARDED, YOU SHOULD EXERCISE YOUR DISCRETION IN CONSIDERING ALL THE CIRCUMSTANCES AND AWARD AN AMOUNT THAT IS JUST TO BOTH LITIGANTS AND NOT UNDULY OPPRESSIVE TO EITHER.

IN DETERMINING SUCH AN AWARD, YOU MAY CONSIDER PLAINTIFF'S PHYSICAL CONDITION BEFORE AND AFTER THIS INCIDENT, HIS/HER WORK RECORD, HIS/HER EARNINGS IN PRIOR YEARS, THE PROBABILITY OR UNPROBABILITY THAT HE/SHE WOULD HAVE EARNED SIMILAR AMOUNTS IN THE REMAINDER OF HIS/HER WORK LIFE, AND SIMILAR FACTORS.

SINCE, IF YOU MAKE SUCH AN AWARD, PLAINTIFF WOULD BE RECEIVING TODAY SUMS OF MONEY THAT OTHERWISE HE/SHE WOULD ONLY RECEIVE OVER A NUMBER OF YEARS IN THE FUTURE, THE LAW REQUIRES THAT YOU “DISCOUNT” OR REDUCE TO ITS PRESENT VALUE THE AMOUNT OF THE FUTURE LOSS YOU MIGHT OTHERWISE AWARD. IN SIMPLE TERMS, THIS IS A REDUCTION BY THE AMOUNT OF MONEY, OR INTEREST, WHICH THIS SMALLER SUM OF MONEY WILL EARN FOR PLAINTIFF OVER THE PERIOD OF TIME IN WHICH HE/SHE WOULD HAVE BEEN EARNING THESE FUTURE WAGES. YOU SHOULD LIST THIS “DISCOUNTED” FIGURE AS YOUR AWARD FOR FUTURE WAGE LOSS, IF YOU MAKE SUCH AN AWARD.

[IN DETERMINING THIS “DISCOUNT” FACTOR, YOU MAY CONSIDER THE EVIDENCE OF THE EXPERTS WHO HAVE TESTIFIED ON THIS ISSUE.]

A DEFENDANT TAKES HIS/HER VICTIM AS HE/SHE FINDS HIM/HER AND IS RESPONSIBLE FOR ALL THE NATURAL AND PROBABLE CONSEQUENCES OF HIS/HER CONDUCT EVEN THOUGH THE CONSEQUENCES OF THE TORT ARE MADE MORE SERIOUS OR HARMFUL BY REASON OF A PRE-EXISTING PHYSICAL DEFECT OR WEAKNESS OF THE INJURED PERSON. BY THIS IT IS MEANT THAT SOME OF US ARE MORE SUSCEPTIBLE TO SERIOUS INJURY THAN OTHERS AND THOSE WHO ARE SUSCEPTIBLE ARE NOT PENALIZED FOR THAT.

ALTHOUGH A DEFENDANT TAKES HIS/HER VICTIM AS HE/SHE FINDS HIM, THE DEFENDANT CANNOT BE HELD LIABLE FOR INJURIES WHICH WERE NOT PROVEN TO BE ATTRIBUTABLE TO THE WRONGFUL ACT.

THE PLAINTIFF ALSO, HAS A DUTY TO MITIGATE ANY DAMAGES HE/SHE HAS SUSTAINED. HE/SHE MUST TAKE ALL REASONABLE ACTIONS THAT WILL ALLOW HIM/HER TO RECOVER AS SOON AS POSSIBLE OR WILL NOT AGGRAVATE ANY INJURIES THAT HE/SHE HAS SUSTAINED. YOU ARE CHARGED THAT IN CONSIDERING THE AMOUNT OF DAMAGES THE PLAINTIFF MAY HAVE SUSTAINED, YOU SHOULD CONSIDER THE PLAINTIFF'S EFFORTS TO MITIGATE HIS/HER DAMAGES.

IN DETERMINING ANY AWARD THAT YOU MIGHT MAKE FOR PAST OR FUTURE MEDICAL EXPENSES, YOU SHOULD CONSIDER THE EVIDENCE AND THE OPINIONS OF EXPERT WITNESSES TO DECIDE THE REASONABLE VALUE OR EXPENSE OF MEDICAL, NURSING, AND HOSPITAL CARE AND TREATMENT WHICH WAS OR WILL BE REASONABLE AND NECESSARY FOR PLAINTIFF'S CONDITION.

FUTURE MEDICAL EXPENSES MUST BE ESTABLISHED WITH SOME DEGREE OF CERTAINTY. AN AWARD MAY NOT BE MADE IN THE ABSENCE OF MEDICAL TESTIMONY THAT THEY ARE INDICATED AND SETTING OUT THEIR COST.

THE PLAINTIFF MUST PROVE, MORE PROBABLY THAN NOT, THAT FUTURE MEDICAL EXPENSES WILL BE INCURRED.

THE TESTIMONY OF PLAINTIFF'S TREATING PHYSICIAN SHOULD BE AFFORDED MORE WEIGHT THAN A PHYSICIAN WHO MERELY CONDUCTS AN EXAMINATION. HOWEVER, THE TREATING PHYSICIAN'S TESTIMONY MUST ALSO BE WEIGHED IN LIGHT OF OTHER CREDIBLE EVIDENCE. THE WEIGHT TO BE AFFORDED SUCH TESTIMONY IS LARGELY DEPENDENT UPON THE PHYSICIAN'S QUALIFICATIONS AND THE FACTS UPON WHICH HIS/HER OPINION IS BASED."

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. I FURTHER INFORM YOU THAT 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.

THE LAW ALLOWS FOR ANOTHER ELEMENT OF DAMAGES, THAT IS: IT ALLOWS FOR DAMAGES FOR LOSS OF ENJOYMENT OF LIFE, OVER AND ABOVE THE OTHER DAMAGES FOR PAIN AND SUFFERING, ETC. IN OTHER WORDS, LOSS OF SOCIAL AND RECREATIONAL ACTIVITIES, AND HOBBIES SHOULD BE CONSIDERED AS AN ELEMENT OF DAMAGES, IF THE PLAINTIFF HAS PROVEN HIS/HER ABILITY TO ENGAGE IN THESE TYPES OF ACTIVITIES WERE LOST AS A RESULT OF THE ACCIDENT OR INJURIES, SHOULD YOU FIND ANY.

YOU WILL REMEMBER THAT I TOLD YOU AT THE BEGINNING OF THE TRIAL THAT YOU WERE NOT TO DISCUSS THE CASE AMONG YOURSELVES. I NOW REMOVE THAT RESTRICTION. IT IS NOW YOUR DUTY TO CONSULT WITH ONE ANOTHER AND TO DELIBERATE, WITH A VIEW TOWARD REACHING AGREEMENT, IF YOU CAN DO SO WITHOUT VIOLENCE TO YOUR INDIVIDUAL JUDGMENT. YOU EACH MUST DECIDE THE CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER A CONSIDERATION OF THE CASE WITH YOUR FELLOW JURORS, AND YOU SHOULD NOT HESITATE TO CHANGE AN OPINION WHEN YOU ARE CONVINCED THAT YOU ARE WRONG. HOWEVER, YOU SHOULD NOT BE INFLUENCED TO VOTE IN ANY WAY ON ANY QUESTION WHICH YOU HAVE TO DECIDE BY THE FACT THAT A MAJORITY OF YOUR FELLOW JURORS FAVOR SUCH A DECISION. IN OTHER WORDS, YOU SHOULD NOT SURRENDER YOUR HONEST CONVICTIONS FOR THE MERE PURPOSE OF RETURNING A VERDICT OR SOLELY BECAUSE OF THE OPINION OF THE OTHER JURORS.

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.

A. EXPLANATION OF JURY FORM

THIS COMPLETES MY REMARKS ON THE LAW APPLICABLE TO THIS CASE. I WILL GIVE YOU A JURY VERDICT FORM. THIS FORM CONTAINS THE

QUESTIONS WHICH YOU MUST ANSWER IN ORDER FOR A VERDICT TO BE RENDERED IN THIS CASE. THERE ARE TWELVE (12) MEMBERS OF THE JURY. 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 THE CASE, THAT ENDS YOUR DELIBERATION AND THAT OPINION SHOULD BE YOUR VERDICT.

THE FIRST THING YOU SHOULD DO WHEN YOU RETIRE IS TO CHOOSE A PERSON TO BE THE FOREPERSON. THE FOREPERSON SHOULD BE THE ONE TO FILL IN THE JURY VERDICT FORM AND RETURN IT TO THE COURT WITH HIS/HER SIGNATURE ON IT.

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.

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.

IF YOU WISH TO SEE ANY EXHIBIT WHICH WAS ADMITTED INTO EVIDENCE, THE FOREPERSON IS TO WRITE THAT REQUEST AND GIVE IT TO THE BALIFF AND I WILL REVIEW SAME TO SEE IF THE REQUEST CAN BE SATISFIED WITHIN THE RULES OF PROCEDURE.

ADDITIONALLY, PURSUANT TO CIVIL CODE OF PROCEDURE ARTICLE 1792, YOU MAY TAKE OR HAVE SENT TO YOU A COPY OF THESE INSTRUCTIONS INTO THE JURY DELIBERATION ROOM.

MEMBERS OF THE JURY, YOU WILL NOW RETIRE TO CONSIDER YOUR VERDICT.

JURY VERDICT FORM

1. Was [DEFENDANT'S NAME] negligent?

YES _____

NO _____

Proceed to Question 2.

2. Was the negligence of [DEFENDANT'S NAME] a proximate cause of the accident?

YES _____

NO _____

Proceed to Question 3.

3. Was [NAME OF PLAINTIFF] negligent?

YES _____

NO _____

Proceed to Question 4.

4. Was the negligence of [NAME OF PLAINTIFF] a proximate cause of the accident?

YES _____

NO _____

Proceed to Question 5.

5. Please state the percentage of negligence, if any, attributable to [DEFENDANT AND PLAINTIFF].

DEFENDANT _____%

PLAINTIFF _____%

TOTAL **100%**

Note: (The total must equal 100%)

Proceed to Question 6.

6. Did [PLAINTIFF] suffer any damage as a result of the accident of June 20, 2003?

YES _____ NO _____

If the answer to Question 6 is YES proceed to Question 7. If the answer to Question 6 is NO, please sign at the bottom and return to the courtroom.

7. State what sum of money, if any, would reasonably and fairly compensate [PLAINTIFF] for the following:

PAST PHYSICAL PAIN AND SUFFERING \$ _____

FUTURE PHYSICAL PAIN AND SUFFERING \$ _____

PAST MENTAL PAIN AND SUFFERING \$ _____

FUTURE MENTAL PAIN AND SUFFERING \$ _____

PAST MEDICAL EXPENSES \$ _____

FUTURE MEDICAL EXPENSES \$ _____

LOSS OF ENJOYMENT OF LIFE \$ _____

TOTAL AMOUNT \$ _____

FOREPERSON

DATE

