SUPREME COURT OF LOUISIANA

ORDER

Acting in accordance with Article V, Sections 1, 5 and 25 of the Louisiana Constitution of 1974, and the inherent power of this Court, and considering the need to enact a Court Rule pertaining to general civil jury instructions,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

Part R, Rule XLIV of the Rules of the Supreme Court of Louisiana be and is hereby enacted to read as follows:

PART R. PLAIN CIVIL JURY INSTRUCTIONS

Rule XLIV. Plain Civil Jury Instructions

The following general opening, interim, and closing jury instructions should be used in all civil jury trials in the State. These are general civil jury instructions only and are not intended to replace the need for a charge conference regarding special jury instructions. All bracketed language ("[ ]") is optional.

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 which 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, if you ask for them.

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.

Some Definitions of Terms

Some judges may prefer to give the following information, up to the section entitled "Certain 'Advance' Closing Instructions," to the whole venire prior to individual jurors being selected and sworn. If this information is given to the general venire, then repeating it at this point to the sworn jurors would be optional.

Some of the terms that you'll hear in the courtroom might be new to you, so let me just tell you ahead of time what they mean. The person who files a law suit is called the plaintiff; in this case, the plaintiff is _________________. The person who defends against the plaintiff's law suit is called the defendant; in this case, the defendant is _________________. Sometimes, we refer to the plaintiff and the defendant as the "parties" to the law suit.

You'll sometimes hear me refer to "counsel." That's just another word for "lawyer" or "attorney." I'll sometimes refer to myself as "the Court" and this chair that I'm sitting in as "the bench." The courtroom staff that you see are the "court reporter," the "minute clerk" and the "bailiff," who is in charge of keeping order in the courtroom.

You'll also hear us refer to an "exhibit," which if admitted is a type of evidence other than testimony by a witness. An exhibit might be a document or a physical piece of evidence that may be shown to you; some lawyers may say that they want to "publish" an exhibit to the jury, but that's just a fancy word for showing the exhibit to you.

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 I'm the judge of the law and in charge of courtroom procedure, 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

Some judges may prefer to move these rules forward in the instructions and give them to the whole venire.

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.

(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.

This paragraph might be omitted if these instructions are given to the general venire before jury instruction, but should be given to the jurors once selected. [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.]

Certain "Advance" Closing 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.

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. 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.]

One of the first things for you to keep in mind as the trial begins is that the plaintiff has to prove his case by what the law calls a “preponderance of the evidence.” This means that the evidence shows that the facts the plaintiff is seeking to prove are more likely true than not true.

“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.

The following paragraph only applies if the plaintiff must prove some or all of the facts in his case 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.]

The evidence which 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.

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.

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 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 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. 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.

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.]

Brief Overview of the Nature of this Case and the Verdict Form

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.

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."

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 as a result of 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.

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.]

Another part of the plaintiff's case is proof of personal injury or property damage, and you will hear some evidence about that. I will tell you more about that part of the plaintiff's case at the end of the trial and there will be questions on the verdict form to allow you to decide whether you will choose to award any amount to the plaintiff, and, if so, how much. Whether or not any amount should be awarded is solely for you to decide. A decision about damages is entirely up to you, and your decision should be based on the evidence, not solely on amounts of money suggested by any of the lawyers in closing arguments.

If the verdict form is agreed upon and ready, it could be explained here.

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.

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.

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. *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.*

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.

Optional Closing Instruction—Different Prior Statements

[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—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.]

Specific and detailed instructions on the substance of the case at hand, relevant legal principles and the like should be inserted here. Depending upon how much detail is provided in this section, some parts of the "Final Instructions Prior to Deliberation" in the following pages might be shortened or omitted.

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. *Some or all of the relevant instructions from the opening instructions may be repeated here. For a*

negligence case: [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.

In an appropriate case, particularly one with a complicated set of interrogatories to the jury, the court might want to add something like the following: [Each of you should keep the jury verdict forms that you have been given and should record your own vote on each question, since I may decide to “poll” the jury to find out how each of you voted on each question.]

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 bailiff 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 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.

"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.]

This Rule shall become effective October 15, 2014.

New Orleans, Louisiana, this _______ day of _______________, 2014.

FOR THE COURT:

____
Bernette J. Johnson, Chief Justice