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 fairly. 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. 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

[Note: 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 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 not imposed to hide anything from you but to make sure that the evidence is the most reliable evidence that is available. I might "sustain," or agree with an objection; or I might "overrule" or disagree with it. If I "sustain" it, then I'm keeping out the evidence because I have to under the rules of evidence. If I sustain an objection to a question and don't permit the witness to answer it, ignore the question altogether and don't speculate as to what the witness might have said. If I "overrule" a lawyer's objection, 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

[Note: 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—and nothing else. 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 shouldn't "Google" or otherwise search 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 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 inconsistent with 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 inconsistent with 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 plaintiff must convince you that the facts the plaintiff is trying to prove are more probably true than not true. If the plaintiff doesn't convince you of that, then you will have to conclude that the plaintiff has failed to prove his case sufficiently to be entitled to win. The law does not presume that simply because the plaintiff has brought this suit, he is necessarily entitled to win.

"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; it does not prefer one over the other.

Another important thing for you to remember as the trial takes place is that a major portion 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 reject 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. Your role is always to determine the facts and you don't do that by counting noses. The testimony of a single witness can prove a fact even though a number of witnesses have testified to the contrary. 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 convincing.

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 I have decided that their education or expertise 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 and 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, sympathy, or prejudice for or against any party. You should consider the case as an action between people of equal standing in the community. Every person stands equal before the law, and every person is to be dealt with as an equal in this court. A business or an insurance company is entitled to the same fair trial as a private individual. 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 the jury even before we start just a little bit about this case so you can keep it in mind as we proceed. This is what we call a "tort" case or a personal-injury case, in which the plaintiff contends that he has been injured, and that the defendant was at fault in causing that injury. He seeks an award of money as a result. 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 is an article of our Civil Code—Article 2315. It states that "every act whatever of man that causes damage to another obliges him by whose fault it happened to repair it." The word "fault" in this article is a key word. "Fault" means 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 probably 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, and in order to succeed, the plaintiff must establish all of the essential parts of this case. Questions addressed to all of these parts of the case will be given to you in the "verdict form" that you will get at the end of the case and that you will take with you to fill out as a part of your deliberations. The other parts of the plaintiff's case are:

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

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

When I say that the plaintiff has to prove the defendant's actions were a cause of his injury, I don't mean that the law recognizes only one cause of an

injury. You will have to decide whether the plaintiff would have suffered injury if the defendant had not acted. If the plaintiff probably *would* have suffered injury no matter what the defendant did, 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 probably *would not* have suffered injury unless the defendant acted the way he did, 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.

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 reasonable person would have acted under the same circumstances. The standard of care is not that of any extraordinarily cautious individual or an exceptionally skilled person, but rather that of a reasonable person.

A reasonable person will avoid creating an unreasonable risk of harm. In deciding whether the defendant acted unreasonably, you may ask yourself several questions:

(1) How likely is it that his actions might have injured someone?

(2) How serious would those injuries be?

(3) How important was it to the community for the defendant to act the way he did?

(4) How wise or advisable was it for him to act the way he did 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 probably also be included: "A reasonably prudent person will normally obey the statutes that apply to his conduct. But in unusual circumstances, even a violation of a statute might be reasonable. You will have to consider, in light of all the circumstances, whether a reasonable person in the defendant's situation would violate the statute. If so, then the violation of the statute is not sub-standard conduct.]

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 allot any amount to the plaintiff, and, if so, how much. Whether or not any amount should be allotted 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 on amounts of money suggested by a lawyer 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 liable, that does not mean that you have to conclude that all of the defendants are liable.]

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 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 on competent evidence, and not on amounts suggested by the attorneys.