

## **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, sympathy, or prejudice for or against any party. Every person stands equal before the law. [*Optional: A business or an insurance company is entitled to the same fair trial as a private individual.*] In deciding this case, don't speculate about whether any party has insurance.

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 plaintiff must convince you that the facts that the plaintiff is trying to prove are more probably 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.

A major portion of your role is to judge the credibility of a witness who has testified. When you are judging 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.

Remember that witnesses are weighed and not counted. 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 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 I have decided that their education or expertise in a particular field or on a particular subject might be helpful to you. You may consider their opinions and give them the weight that you think they deserve.

### **Optional Closing Instruction—Inconsistent Prior Statements**

If the testimony of a witness in court is inconsistent with a prior statement he has made, you have to decide if the testimony of the witness in court should be rejected because it is inconsistent with 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 liable, you must decide that all are liable. You should decide the case as to each defendant according to the instructions that I have given you.

### **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. [For a negligence case: The plaintiff has the burden of proving the following elements by a preponderance of the evidence. He has to demonstrate:

(1) that the injury which he says he suffered was, in fact, caused 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 actual damage to the plaintiff's person or his property.]

If you believe that the plaintiff has established these three elements by a preponderance of the evidence, then the plaintiff is entitled to recover and you should return a verdict for the plaintiff. If the plaintiff has failed to establish these three elements of his case by a preponderance of the evidence, then you must return a verdict for the defendant.

If the defendant has proved that the plaintiff was at fault as well and his fault contributed to his own injury, then you should assign a percentage of fault or responsibility to the plaintiff on the forms that I will provide to you. You can assign any percentage of fault to the plaintiff or any or all of the defendants that you want, but the total of all of the percentages must be 100%. If you're convinced 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 convince you that the plaintiff was at fault and the plaintiff has otherwise proved his case by a preponderance of the evidence, 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 must make an appropriate award according to the instructions which I have given you on the subject of damages.

[*Optional instruction.* 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 you think 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 a fair and 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. 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 the lawyers might ask me 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 near by, 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.

Finally, I remind you again that you represent our community in deciding this case. The community appreciates your service on this jury, and at the same time expects you to reach a fair and 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.

I don't have to add that I don't wish 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.