**PRELIMINARY JURY INSTRUCTIONS – CIVIL**

**PRELIMINARY INSTRUCTIONS TO THE JURY**

MEMBERS OF THE JURY:

Now that you have been sworn, I want to impress on you the seriousness of being a juror. I will give you some preliminary instructions to guide you in your participation in the trial. First, I will explain the nature of the case. Then, I will explain what your duties are as jurors and how the trial will proceed. I will give you more detailed instructions at the conclusion of the evidence on the required proof and how you should proceed to reach a verdict.

PRELIMINARY INSTRUCTION NO. 1

The parties who are bringing a lawsuit are called “plaintiffs,” while the parties being sued are called “defendants.” To help you understand what you will see and hear, I will now explain the background of the case.

[Provide brief background of the case.]

The defendant denies liability for the plaintiff’s injuries.

PRELIMINARY INSTRUCTION NO. 2

This lawsuit was brought by plaintiff [insert plaintiff(s) name.]

The defendant(s) being sued in this case [is/are] [insert defendant’s name.]

[If there are two or more defendants, also insert the following:

Although there are [insert number of defendants] defendants, that does not mean that they are equally liable or that any of them are liable. Each defendant is entitled to a fair consideration of its defense against the plaintiff’s claims. If you conclude that one defendant is liable, that does not necessarily mean that the other defendants are also liable.]

I will now describe the basic elements the plaintiff must prove against [the defendant/each of the defendants]. These instructions are preliminary to provide you guidance as the evidence is presented. As I indicated, I will give additional and more detailed instructions at the conclusion of evidence.

PRELIMINARY INSTRUCTION NO. 2-A

To find [insert defendant(s) name] is liable for [insert cause of action], you must be convinced that the plaintiff has proved each of the following elements by a preponderance of the evidence:

First: [state first element];

Second: [state second element].

Note: Repeat these steps until all of the elements have been stated. If there is more than one cause of action, repeat this instruction for each remaining cause of action.

PRELIMINARY INSTRUCTION NO. 3

It is my role to supervise the trial and to decide all legal questions, such as deciding objections to evidence and deciding the meaning of the law. I will also instruct you on the law that you must apply. The order in which I give the instructions has no significance. You must consider the instructions in their entirety, giving them all equal weight. I do not intend to emphasize any particular instruction, and neither should you.

The instructions that I give you are the law, and your oath requires you to follow my instructions even if you disagree with them.

PRELIMINARY INSTRUCTION NO. 4

It is the lawyers’ role to present evidence, generally by calling and questioning witnesses and presenting exhibits. Each lawyer will also try to persuade you to decide the case in favor of his or her client.

Things that you see on television and in the movies may not accurately reflect the way real trials should be conducted. Real trials should be conducted with professionalism, courtesy and civility.

PRELIMINARY INSTRUCTION NO. 5

It will be your duty to find from the evidence what the facts are. The facts generally relate to who, what, when, where, why, and how. The facts must be supported by the evidence. Neither the lawyers nor I decide the facts. You, and you alone, are the judges of the facts. You will then have to apply to those facts the law as I will give it to you. You must follow that law whether you agree with it or not.

Nothing I may say or do during the course of the trial is intended to indicate nor should be taken by you as indicating what your verdict should be.

PRELIMINARY INSTRUCTION NO. 6

The evidence from which you will find the facts will consist of the testimony of witnesses, documents and other things received into the record as exhibits, and any facts the lawyers agree or stipulate to or that I may instruct you to find.

Certain things are not evidence and must not be considered by you. I will list them for you now:

1. Statements, arguments, and questions by lawyers are not evidence.

2. Objections to questions are not evidence. Lawyers have an obligation to their clients to make an objection when they believe evidence being offered is improper under the rules of evidence. You should not be influenced by any objection or by my ruling on it. If an objection is sustained, ignore the question. If it is overruled, treat the answer like any other. If you are instructed that some item of evidence is received for a limited purpose only, you must follow that instruction.

3. Testimony that I have excluded or told you to disregard is not evidence and must not be considered.

4. Anything you may have seen or heard outside the courtroom is not evidence and must be disregarded. You are to decide the case solely on the evidence presented here in the courtroom.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is proof of facts from which you may infer or conclude that other facts exist. I will give you further instructions on these as well as other matters at the end of the case, but keep in mind that you may consider both kinds of evidence.

It will be up to you to decide which witnesses to believe, which witnesses not to believe, and how much of any witness’s testimony to accept or reject. I will give you some guidelines for determining the credibility of witnesses at the end of the case.

PRELIMINARY INSTRUCTION NO. 7

 You must come to the case without bias. You must not decide this case for or against anyone because you feel sorry for anyone or angry at anyone. You must decide this case based on the facts and the law, without regard to sympathy, passion, or prejudice.

[If the plaintiff is a natural person and the defendant is a business entity also insert the following:

The fact that the plaintiff is a natural person and the defendant is a [corporation/company/partnership] should not play any part in your deliberations. You must decide this case as if it were between individuals.]

PRELIMINARY INSTRUCTION NO. 8

You are required to decide this case based only on the evidence that you see and hear in this courtroom and the law that I will instruct you about. For your verdict to be fair, you must not be exposed to any other information about the case. This is very important, and so I need to give you some very detailed explanations about what you should do and not do during your time as jurors.

First, you must not try to get information from any source other than what you see and hear in this courtroom. It’s natural to want to investigate a case, but you may not use any printed or electronic sources to get information about this case or the issues involved. This includes the internet, reference books or dictionaries, newspapers, magazines, television, radio, computers, Blackberries, iPhones, Smartphones, PDAs, or any social media or electronic device. You may not do any personal investigation. This includes visiting any of the places involved in this case, using Internet maps or Google Earth, talking to possible witnesses, or creating your own experiments or reenactments.

Second, you must not communicate with anyone about this case, and you must not allow anyone to communicate with you. This also is a natural thing to want to do, but you may not communicate about the case via emails, text messages, tweets, blogs, chat rooms, comments or other postings, Facebook, Twitter, Instagram, LinkedIn, or any other social media.

You may notify your family and your employer that you have been selected as a juror and you may let them know your schedule. But do not talk with anyone about the case, including your family and employer. You must not even talk with your fellow jurors about the case until I send you to deliberate. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter. And then please report the contact to the courtroom deputy, and they will notify me.

Also, do not talk with the lawyers, parties, or witnesses about anything, not even to pass the time of day. Please understand that the rules of evidence and procedure have developed over hundreds of years in order to ensure the fair resolution of disputes. The fairness of the entire system depends entirely on you, the jurors, reaching your decisions based on evidence presented to you in court, and not on other sources of information. You violate your oath as jurors if you conduct your own investigations or communicate about this trial with others.

Lastly, keep an open mind throughout the trial. Evidence can only be presented one piece at a time. Do not form or express an opinion about this case while the trial is ongoing. You must not decide on a verdict until after you have heard all of the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

I know that these restrictions affect activities that you consider to be normal and harmless and very important in your daily lives. However, these restrictions ensure that the parties have a fair trial based only on the evidence and not on outside information. Information from an outside source might be inaccurate or incomplete, or it might simply not apply to this case, and the parties would not have a chance to explain or contradict that information because they wouldn’t know about it. That’s why it is so important that you base your verdict only on information you receive in this courtroom.

Courts used to sequester—or isolate—jurors to keep them away from information that might affect the fairness of the trial, but we seldom do that anymore. This means that we must rely upon your honor to obey these restrictions, especially during recesses when no one is watching.

Any juror who violates these restrictions jeopardizes the fairness of the proceedings, and the entire trial may need to start over. That is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. Posttrial investigations are common and can disclose these improper activities. If they are discovered, they will be brought to my attention and the entire case might have to be retried, at substantial cost. Violations may also result in substantial penalties for the juror.

If any of you have any difficulty whatsoever in following these instructions, please let me know now. If any of you becomes aware that one of your fellow jurors has done something that violates these instructions, you are obligated to report that as well. If anyone tries to contact you about the case, either directly or indirectly, or sends you any information about the case, please report this promptly as well. Notify the courtroom deputy, who will notify me.

These restrictions must remain in effect throughout this trial. Once the trial is over, you may resume your normal activities. At that point, you will be free to read or research anything you wish. You will be able to speak—or choose not to speak—about the trial to anyone you wish. You may write, or post, or tweet about the case if you choose to do so. The only limitation is that you must wait until after the verdict, when you have been discharged from your jury service.

So, keep an open mind throughout the trial. The evidence that will form the basis of your verdict can be presented only one piece at a time, and it is only fair that you do not form an opinion until I send you to deliberate.

PRELIMINARY INSTRUCTION NO. 9

If you would like to take notes during the trial, you may, but you are not required to take notes. If you decide to take notes, be careful not to get so involved in note taking that you become distracted, and remember your notes will not necessarily reflect exactly what was said. Your notes should be used only as memory aids. Therefore, you should not give your notes precedence over your independent recollection of the evidence. You should also not be unduly influenced by the notes of other jurors. If you do take notes, you must leave them in the jury room at night and do not discuss the content of your notes until you begin deliberations.

PRELIMINARY INSTRUCTION NO. 10

The court reporter is making stenographic notes of everything that is said. The purpose is to have an accurate record of the proceeding and to assist any appeals. A typewritten copy of the testimony, however, will not be available for your use during deliberations.

PRELIMINARY INSTRUCTION NO. 11

At the end of trial, you must make your decision based on what you recall of the evidence. You will not have a transcript of the trial. I urge you to pay close attention to the testimony as it is given.

PRELIMINARY INSTRUCTION NO. 12

During the trial it may be necessary for me to talk with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the rules of evidence, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

PRELIMINARY INSTRUCTION NO. 13

The trial will generally proceed as follows:

1. Opening Statements. The lawyers will make opening statements, outlining what the case is about and what they think the evidence will show. Opening statements are neither evidence nor arguments.

2. Presentation of Evidence. The plaintiff(s) will offer evidence first, and the defendant(s) may cross-examine their witnesses. Following the plaintiff(s)’ case, the defendant(s) will present their respective evidence, and the plaintiff(s) may cross-examine the defendants’ witnesses. The parties may later offer more evidence (called rebuttal evidence) after hearing the witnesses and seeing the exhibits.

3. Instructions on the Law. Throughout the trial and after the evidence has been fully presented, I will instruct you on the law that you must apply. You must obey these instructions. You are not allowed to go against the law in reaching a verdict.

4. Closing Arguments. After all the evidence is in, the lawyers will summarize and argue the case. They will share with you their views of the evidence, how it relates to the law and how they think you should decide the case.

5. Jury Deliberations. The final step is for you to go to the jury room and discuss the case among yourselves until you reach a verdict. Your verdict must be unanimous.

The trial will now begin.

**GENERAL JURY INSTRUCTIONS – CIVIL**

**POSTEVIDENCE INSTRUCTIONS TO THE JURY**

MEMBERS OF THE JURY:

Now that you have heard the evidence, it becomes my duty to instruct you on the law that applies to this case.

It is your duty as jurors to follow the law as stated in the instructions of the court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

Counsel may refer to these instructions in their arguments. If, however, any difference appears to you between the law as stated by them and that stated by the court in these instructions, you are of course to be governed by the court’s instructions.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions of the court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

 Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the court.

INSTRUCTION NO. \_\_

NO BIAS OR PREJUDICE AGAINST ANY PARTY

You have been chosen as jurors in this case to help resolve disputes between the parties. It is your duty to find the facts from all the evidence in the case. To those facts you will apply the law as I give it to you. You must follow the law as I give it to you whether you agree with it or not. You are to perform this duty without bias or prejudice as to any party. You must not be influenced by any personal likes or dislikes, opinions, or sympathy. That means that you must decide the case solely on the evidence before you. You will recall that you took an oath promising to do so at the beginning of the case. The defendant and the plaintiff expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the court, and reach a just verdict.

In following my instructions, you must follow all of them and not single out some and ignore others; they are all equally important. And you must not read into these instructions or into anything the court may have said or done any suggestion as to what verdict you should return—that is a matter entirely up to you.

INSTRUCTION NO. \_\_

MULTIPLE PARTES

Although there are multiple parties in this case, each plaintiff is entitled to have his or her claims considered on their own merits. Likewise, each defendant is entitled to a fair consideration of its defenses against each plaintiff. You must evaluate the evidence fairly and separately as to each plaintiff and to each defendant. The fact that the plaintiff is a natural person and the defendant is a business entity should not play any part in your deliberations. You must decide this case as if it were between individuals.

Unless otherwise instructed, all instructions apply to both the plaintiff and the defendant.

INSTRUCTION NO. \_\_

RESOLUTION OF CLAIMS AGAINST OTHER ENTITIES

During the trial, you have heard about [insert names of persons/entities to whom fault may be allocated]. The plaintiff has resolved their differences with these [persons/entities].

There are many reasons why entities resolve their disputes and you need not concern yourself with that. Resolving or failing to resolve a claim does not mean that anyone is or is not at fault. You will, however, be asked to decide whether any or all of these [persons/entities] were at fault for the [accident/incident] at issue.

In making this determination, you must not consider the resolution of the claims against [insert name of persons/entities] as a reflection of any strength or weakness of any party’s claims or defenses. The resolution may be considered when determining whether the plaintiff may now have a financial interest in showing that [insert name of persons/entities] should bear all or more of the responsibility for the [accident/incident] at issue.

INSTRUCTION NO. \_\_

PREPONDERANCE OF THE EVIDENCE

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but this is not a criminal case. In a civil case such as this one, a different level of proof applies: proof by a preponderance of the evidence. This is a lower burden of proof than “beyond a reasonable doubt.”

When I tell you that a party has the burden of proof or that a party must prove something by a “preponderance of the evidence,” I mean that the party must persuade you, by the evidence, that the fact is more likely to be true than not true. Another way of saying this is proof by the greater weight of evidence, however slight.

The preponderance of the evidence is not determined simply by counting the number of witnesses or the amount of the testimony. Rather, it is determined by evaluating the persuasive character of the evidence. In weighing the evidence, you should consider all of the evidence that applies to a fact, no matter which party presented it. The weight to be given to each piece of evidence is for you to decide.

In answering any question asked on the verdict form, if you find that the party’s claim is more likely true than not true, you should answer that question with a “Yes” [NOTE: If “Yes” is not an answer choice, provide appropriate alternative language]. If, however, the evidence appears to be equally balanced or in favor of the other party’s position with respect to any question asked on the verdict form, then you must answer that question with a “No” [NOTE: If “No” is not an answer choice, provide appropriate alternative language].

If the evidence should fail to establish any essential element of a party’s claim by a preponderance of the evidence, the jury should find for the other party as to that claim.

INSTRUCTION NO. \_\_

“EVIDENCE” DEFINED

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have presented them; and all facts which may have been admitted or stipulated.

Statements and arguments of counsel are not evidence in this case. When, however, the parties stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Any evidence as to which an objection was sustained by the court, and any evidence ordered stricken by the court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion which reason and common sense would lead you to draw from facts which are established by the evidence in the case. In the absence of such facts, you may not draw an inference.

 You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. \_\_

DIRECT AND CIRCUMSTANTIAL EVIDENCE

You may consider both direct and circumstantial evidence.

“Direct evidence” is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness.

“Circumstantial evidence” is proof of a chain of facts or circumstances indicating the existence or the nonexistence of a particular fact, or the occurrence or nonoccurrence of a particular event.

For example, if the fact to be proved is whether Johnny ate the cherry pie, and a witness testifies that she saw Johnny take a bite of the cherry pie, that is direct evidence of the fact. If the witness testifies that she saw Johnny with cherries smeared on his face and an empty pie plate in his hand, that is circumstantial evidence of the fact.

There is no difference between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. You should weigh all of the evidence in the case, giving each piece of evidence the weight or significance that you find it reasonably deserves.

INSTRUCTION NO. \_\_

LIMITED PURPOSE EVIDENCE

Some evidence is received for a limited purpose only. When I instruct you that an item of evidence has been received for a limited purpose, you must consider it only for that limited purpose.

INSTRUCTION NO. \_\_

DO NOT SPECULATE OR RESORT TO CHANCE

When you deliberate, do not flip a coin, speculate or choose one juror’s opinions at random. Evaluate the evidence and come to a decision that is supported by the evidence.

INSTRUCTION NO. \_\_

CHARTS, SUMMARIES, AND EXEMPLARS

Certain charts, summaries, and exemplars have been shown to you in order to help explain the evidence. However, the charts, summaries, and exemplars are not in and of themselves evidence. If the charts, summaries, or exemplars correctly reflect facts or figures shown by the evidence, you may consider them.

INSTRUCTION NO. \_\_

HABIT - ROUTINE PRACTICE

You may consider evidence of the habit of a person or of the routine of a business or organization in determining whether the conduct of a person or organization on a particular occasion was in conformity with the habit or routine practice.

INSTRUCTION NO. \_\_

BELIEVABILITY OF WITNESSES

Testimony in this case has been given under oath. You must evaluate the believability of that testimony. You may believe all or any part of the testimony of a witness. You may also believe one witness against many witnesses or many against one, in accordance with your honest convictions.

In evaluating the testimony of a witness, you may want to consider the following:

1. Personal interest: Do you believe the accuracy of the testimony was affected one way or the other by any personal interest the witness has in the case?
2. Bias: Do you believe the accuracy of the testimony was affected by any bias or prejudice?
3. Demeanor: Is there anything about the witness’s appearance, conduct or actions that causes you to give more or less weight to the testimony?
4. Consistency: How does the testimony tend to support or not support other believable evidence that is offered in the case?
5. Knowledge: Did the witness have a good opportunity to know what the witness is testifying about?
6. Memory: Does the witness’s memory appear to be reliable?
7. Reasonableness: Is the testimony of the witness reasonable in light of human experience?

These considerations are not intended to limit how you evaluate testimony. You are the ultimate judges of how to evaluate believability. You may not consider, however, a witness’s religious beliefs in evaluating his or her credibility.

INSTRUCTION NO. \_\_

DEPOSITION TESTIMONY

Certain testimony of witnesses who, for some reason, could not be present to testify from the witness stand has been presented to you by reading the deposition of the witness or by showing a videotaped deposition. A deposition is sworn testimony of a witness that was given previously, outside of court, with a lawyer for each party present and entitled to ask questions.

Such testimony is evidence and you should consider deposition testimony the same way that you would consider the testimony of a witness testifying in court.

INSTRUCTION NO. \_\_

EXPERT TESTIMONY

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study, experience, skill, knowledge, and training in a particular art, science, profession, or occupation, may give his or her opinion as an expert witness regarding such matters if they are relevant to the case. You should consider such expert opinion and should weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you feel it is entitled, or you may reject it in whole or in part if, in your judgment, the reasons given for the opinion are unsound.

INSTRUCTION NO. \_\_

OUT-OF-STATE OR OUT-OF-TOWN EXPERTS

You may not discount the opinions of any of the experts merely because of where they live or practice.

INSTRUCTION NO. \_\_

DIFFERING TESTIMONY OF EXPERT WITNESSES

If you find that a conflict exists in the testimony of the expert witnesses, you must resolve that conflict by weighing the various opinions and reasons for such opinions given by each of the experts, and the facts upon which the opinions are based, as well as the relative credibility and knowledge of the experts who have testified.

INSTRUCTION NO. \_\_

STATEMENT OF OPINION

Under limited circumstances, I allowed one or more witnesses to express an opinion.

Consider opinion testimony as you would any other evidence, and give it the weight you think it deserves.

INSTRUCTION NO. \_\_

EFFECT OF WILLFULLY FALSE TESTIMONY

If you believe any witness has intentionally testified falsely about any important matter, you may disregard the entire testimony of that witness, or you may disregard only the intentionally false testimony.

INSTRUCTION NO. \_\_

INCONSISTENT STATEMENTS

You may believe that a witness, on another occasion, made a statement inconsistent with that witness’s testimony given here. That does not mean that you are required to disregard the testimony. It is for you to decide whether to believe the witness.

INSTRUCTION NO. \_\_

“FAULT” DEFINED

Your responsibility as jurors is to decide whether the plaintiff was harmed and, if so, whether anyone is at fault for that harm. Fault means any wrongful act or failure to act that causes harm to the person seeking recovery. The wrongful acts or failure to act alleged in this case are [state the causes of action involving fault].

Your answers to the questions on the verdict form will determine whether anyone is at fault. We will review the verdict form in a few minutes.

INSTRUCTION NO. \_\_

“CAUSE” DEFINED

I have instructed you before that the concept of fault includes a wrongful act or failure to act that causes harm.

As used in the law, the word “cause” has a special meaning, and you must use this meaning whenever you apply the word. “Cause” means that:

1. The person’s act or failure to act produced the harm directly or set in motion events that produced the harm in a natural and continuous sequence; and
2. The person’s act or failure to act could be foreseen by a reasonable person to produce a harm of the same general nature.

There may be more than one cause of the same harm.

INSTRUCTION NO. \_\_

The plaintiff asserts [insert number of claims] against the defendant, which are summarized as follows:

1. [insert first cause of action];
2. [insert second cause of action then repeat this step for each remaining cause];

It is the plaintiff’s burden of proof to establish one or more of their claims. I will now explain the elements the plaintiff must prove for you to find the defendant liable on the respective claims.

INSTRUCTION NO. \_\_

COMPARATIVE FAULT OF NONPARTIES

[Insert name of defendant] claims that one or more nonparties were at fault and that such nonparty or nonparties’ fault caused or contributed to the harm. This is called comparative fault.

In this case, [insert name of defendant] alleges that certain nonparties were negligent and that their negligence caused or contributed, in whole or in part, to the [accident/incident] at issue in this case. The nonparties that the defendant claims were at fault based on negligence are [insert names of nonparties].

[Insert name of defendant] has the burden of proving the [nonparty’s/nonparties’] negligence by a preponderance of the evidence. This means before fault may be allocated to one or more nonparty, you must find that [insert name of defendant] has proved all of the elements of a negligence claim against that nonparty.

Any fault that is allocated to a nonparty reduces the plaintiff’s recovery.

INSTRUCTION NO. \_\_

COMPARATIVE FAULT OF PLAINTIFF

If you find that the defendant was negligent and caused harm to the plaintiff, you must decide if the plaintiff was also negligent and caused harm to [himself/herself]. If the plaintiff was negligent and [his/her] negligence was a cause of his own injuries, his own negligence must be compared to the negligence of [the defendant].

A plaintiff whose negligence is less than 50 percent of the total negligence causing the plaintiff’s injuries may still recover compensation, but the amount will be reduced by the percentage of the plaintiff’s negligence. If the plaintiff’s negligence is equal to or great than the negligence of the defendant, then the plaintiff may recover nothing. For example, if you find the plaintiff’s negligence was 30 percent of all negligence causing the injuries, then the plaintiff’s recovery will be reduced by 30 percent. On the other hand, if you find the plaintiff’s negligence is 50 percent or greater, then the plaintiff will recover nothing.

INSTRUCTION NO. \_\_

NEGLIGENCE OF NONPARTIES

You must decide whether [insert name of nonparties were negligent.

In this context, negligence means that a person did not use reasonable care in [state briefly the negligent action]. We all have a duty to use reasonable care to avoid injuring others. Reasonable care is simply what a reasonably careful person would do in a similar situation. A person may be negligent in acting or in failing to act.

The amount of care that is reasonable depends upon the situation. Ordinary circumstances do not require extraordinary caution. But some situations require more care because a reasonably careful person would understand that more danger is involved.

To establish negligence, [insert name of defendant] has the burden of proving that:

1. One or more of the nonparties, meaning [insert name of nonparties], were negligent; and
2. this negligence was a cause of the [accident/incident].

INSTRUCTION NO. \_\_

ALLOCATION OF FAULT

If you decide that more than one person is at fault, you must decide each person’s percentage of fault that caused the harm. This allocation must total 100%.

When you answer the questions on damages, do not reduce the award by any nonparty’s or nonparties’ percentages you have allocated. I will make that calculation later.

INSTRUCTION NO. \_\_

MITIGATION OF DAMAGES

The plaintiff had a duty to exercise reasonable diligence and ordinary care to minimize any damages caused by [insert name of defendant]’s fault. Any damages awarded to the plaintiff should not include those that [he/she] could have avoided by taking reasonable steps. It is the defendant’s burden to prove that the plaintiff could have minimized their alleged damages, but failed to do so. If the plaintiff made reasonable efforts to minimize [his/her] alleged damages, then your award should include the amounts that [he/she] reasonably incurred to minimize them.

INSTRUCTION NO. \_\_

INTRODUCTION TO DAMAGES

ECONOMIC AND NONECONOMIC DAMAGES INTRODUCED

I will now instruct you about damages. My instructions are given as a guide for calculating what damages should be if you find that the plaintiff is entitled to them. If you decide, however, that the plaintiff is not entitled to recover damages, then you must disregard these instructions.

If you decide that [insert name of defendant]’s fault caused injury to the plaintiff, you must decide how much money will fairly and adequately compensate the plaintiff for that injury. There are two kinds of damages: economic and noneconomic.

INSTRUCTION NO. \_\_

PROOF OF DAMAGES

To be entitled to damages, the plaintiff must prove two points:

First, that damages occurred. There must be a reasonable probability, not just speculation, that the plaintiff suffered damages from [insert name of defendant]’s fault.

Second, the amount of damages. The level of evidence required to prove the amount of damages is not as high as what is required to prove the occurrence of damages. There must still be evidence, not just speculation, that gives a reasonable estimate of the amount of damages, but the law does not require mathematical certainty.

In other words, if the plaintiff has proved that they have been damaged and have established a reasonable estimate of those damages, [insert name of defendant] may not escape liability because of some uncertainty in the amount of damages.

INSTRUCTION NO. \_\_

ECONOMIC DAMAGES - MEDICAL CARE AND RELATED EXPENSES

Economic damages are the amount of money that will fairly and adequately compensate the plaintiff for measurable losses of money or property caused by [insert name of defendant]’s fault.

INSTRUCTION NO. \_\_

FACTORS IN DECIDING DAMAGES FOR WRONGFUL DEATH

Damages include an amount that will compensate the plaintiff for the economic loss suffered due to [insert name of the deceased]’s death.

Calculate this amount based on all circumstances existing at the time of [insert name of deceased]’s death that establish the plaintiff’s loss, including the age, health, and life expectancies of [insert name of deceased] immediately prior to the death.

You may calculate economic damages for:

1. The loss of financial support, past and future, that the plaintiff likely would have received, or been entitled to receive from [insert name of the deceased] had [he/she] lived. You will be asked to calculate such damages separately for
	1. Lost financial support from the date of [insert name of deceased]’s death on [insert date of death] to the date of your verdict;
	2. Lost future financial support from the date of your verdict to the end of [insert name of deceased]’s expected working life. This category may include any other evidence of assistance or benefits that the plaintiff likely would have received had [insert name of deceased] lived.
2. Reasonable and necessary expenses for medical care, funeral and burial expenses and other related expenses incurred as a result of the [accident/incident].

INSTRUCTION NO. \_\_

PRESENT CASH VALUE

If you decide the plaintiff is entitled to damages for future economic losses, then the amount of those damages must be reduced to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield.

To reduce an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, would provide the plaintiff with the amount of money needed to compensate the plaintiff for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.

INSTRUCTION NO. \_\_

NONECONOMIC DAMAGES DEFINED

Noneconomic damages are the amount of money that will fairly and adequately compensate the plaintiff for losses other than economic losses.

Noneconomic damages are not capable of being exactly measured, and there is no fixed rule, standard, or formula for them. Noneconomic damages must still be determined even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of noneconomic damages.

You may calculate noneconomic damages for the loss of such things as love, companionship, society, comfort, pleasure, advice, care, protection and affection which the plaintiff has sustained and will sustain in the future.

In determining this award, you are not to consider any pain or suffering of [insert name of deceased] prior to [his/her] death.

**Alternative Instruction**

INSTRUCTION NO. \_\_

NONECONOMIC DAMAGES DEFINED

Noneconomic damages are the amount of money that will fairly and adequately compensate [insert name] for losses other than economic losses.

Noneconomic damages are not capable of being exactly measured, and there is no fixed rule, standard, or formula for them. Noneconomic damages must still be awarded even though they may be difficult to compute. It is your duty to make this determination with calm and reasonable judgment. The law does not require the testimony of any witness to establish the amount of noneconomic damages.

In awarding noneconomic damages, among the things that you may consider are:

1. The nature and extent of injuries;
2. The pain and suffering, both mental and physical;
3. The extent to which [insert name] has been prevented from pursuing his ordinary affairs;
4. The degree and character of any disfigurement;
5. The extent to which [insert name] has been limited in the enjoyment of life; and
6. Whether the consequences of these injuries are likely to continue and for how long.

While you may not award damages based upon speculation, the law requires only that the evidence provide a reasonable basis for assessing the damages but does not require a mathematical certainty.

 I will now instruct you on particular items of economic and noneconomic damages presented in this case.

INSTRUCTION NO. \_\_

SUSCEPTIBILITY TO INJURY

A person who may be more susceptible to injury than someone else is still entitled to recover the full amount of damages that were caused by the defendant’s fault. In other words, the amount of damages should not be reduced merely because the plaintiff may be more susceptible to injury than someone else.

INSTRUCTION NO. \_\_

AGGRAVATION OF SYMPTOMATIC PREEXISTING CONDITIONS

A person who has a physical condition or disability before the time of the accident at issue in the case is not entitled to recover damages for that condition or disability. The injured person, however, is entitled to recover damages for any aggravation of the preexisting condition that was caused by defendant’s fault, even if the person’s preexisting condition made him more vulnerable to physical harm than the average person. This is true even if another person may not have suffered any harm from the event at all.

When a preexisting condition makes the damages from injuries greater than they would have been without the condition, it is your duty to try to determine what portion of the harm to the plaintiff was caused by the preexisting condition and what portion was caused by the accident at issue in the case you are deciding.

If you are not able to make such an apportionment, then you must conclude that the entire harm or condition was caused by defendant’s fault.

INSTRUCTION NO. \_\_

AGGRAVATION OF DORMANT PREEXISTING CONDITION

A person who has a physical condition before the time of sustaining the injuries at issue in a case is not entitled to recover damages for that preexisting condition or disability.

However, if a person has a preexisting condition that does not cause pain or disability, but sustaining the injuries at issue in a case causes the person to suffer pain or disability, then he may recover all damages caused by the event.

INSTRUCTION NO. \_\_

COLLATERAL SOURCE PAYMENTS

You shall award damages in an amount that fully compensates the plaintiff. Do not speculate about or consider any other possible sources of benefit the plaintiff may have received. After you have returned your verdict, I will make whatever adjustments may be appropriate.

INSTRUCTION NO. \_\_

ARGUMENTS OF COUNSEL NOT EVIDENCE OF DAMAGES

You may consider the arguments of the lawyers to assist you in deciding the amounts of damages, but their arguments are not evidence.

INSTRUCTION NO. \_\_

SPECIAL VERDICT FORM

I am going to give you a form called the verdict form that contains several questions and instructions. You must answer the questions based upon the instructions and the evidence you have seen and heard during this trial. We will now go over the verdict form. Please bear in mind that each question is important.

**POSTARGUMENT INSTRUCTIONS**

INSTRUCTION NO. \_\_

JURY DELIBERATIONS

You have now heard all of the evidence and the arguments of counsel and have been provided with a copy of the instructions that I have given you. In a moment you will be escorted to the jury room. Any exhibits admitted into evidence will also be placed in the jury room for your review.

When you go to the jury room, you should first select a foreperson, who will preside over your deliberations and be your spokesperson here in the courtroom. I suggest that you should then review the instructions. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based, but for your verdict to be valid, you must follow the instructions throughout your deliberations. Remember, you are the judges of the facts, but you are bound by your oath to follow the law as stated in the instructions.

Once you have reviewed the instructions, you may also wish to review the verdict form to understand the questions you will need to answer. I would also suggest that before you begin discussing the issues presented to you for resolution, you may find it helpful for each of you to write down your own views about the case. This may help you to clarify your own thinking about the issues.

You should then begin to deliberate. When you have reached unanimous agreement as to your verdict, you will have the foreperson fill in the verdict form, date and sign the form, and then return your verdict to the courtroom. Your deliberations will be confidential. You will not be required to explain your verdict to anyone.

INSTRUCTION NO. \_\_

COMMENCEMENT OF DELIBERATIONS

The attitude and conduct of jurors at the outset of their deliberations are matters of considerable importance. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of his or her opinion on the case or to announce a determination to stand for a certain verdict. When one does that at the outset, his or her sense of pride may be aroused, and he or she may hesitate to recede from an announced position if shown that it is wrong. Remember that you are not partisans or advocates in this matter, but are judges.

INSTRUCTION NO. \_\_

JURY DELIBERATIONS

The verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree to the verdict. Your verdict must be unanimous. This means each of you must agree on the answer to each question on the verdict form.

It is your duty, as jurors, to consult with one another, and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to re- examine your own views, and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence, solely because of the opinion of your fellow jurors, for the mere purpose of returning a verdict.

Remember at all times, you are not partisans. You are judges —judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

INSTRUCTION NO. \_\_

COMMUNICATIONS WITH COURT DURING DELIBERATIONS

If it becomes necessary during your deliberations to communicate with the court, you may send a note through a court security officer, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with the court by any means other than a signed writing and the court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open court.

You will note from the oath the court security officer will take that [he /she], as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

Bear in mind also that you are not to reveal to any person—not even to the court—how the jury stands numerically or otherwise until you have reached a unanimous verdict.

INSTRUCTION NO. \_\_

SCHEDULE FOR DELIBERATIONS

During your deliberations, you are able as a group to set your own schedule for deliberations. I would suggest that you not feel pressured to continue your deliberations if you feel so exhausted or stressed that you may risk compromising your conviction simply to finish your deliberations. A good night’s rest and time for reflection may be helpful to resolve doubts you may have. You may, however, deliberate as late as you wish or recess at an appropriate time set by yourselves. You may set your own schedule for lunch and dinner breaks.

I do ask, however, that you notify the court by a note when you plan to recess for the evening.