CLOSING INSTRUCTIONS:

Members of the jury, we now come to that part of the case where I must give you the instructions an the law. If you can't hear me, please raise your hand. It is important that you hear everything that I say.

Some of the instructions will be similar to what I told you at the beginning of the trial.

It is my duty to tell you the law that applies in this case and it is your duty to follow the law as I state it to you.

During the course of the trial, you have heard objections to evidence. It is the duty of the lawyers on each side of the case to object when the other side offers testimony or other evidence which the lawyer believes is not properly admissible. You should not draw any inference against or show any bias against a lawyer or the lawyer's client because of the making of an objection.

If during the trial I have said or done anything that has suggested to you that I favor the claims or the position of any party, you should disregard it. If I have indicated in any way that I have any opinion as to what the facts are in this case or should be, you should disregard that. I am not the judge of the facts. You are the sole judges of the facts.

As I stated earlier, it is your duty to follow the law as I state it to you. You should not be concerned with the wisdom of any rule of law that I might tell you about. You should consider what I say about the law as a whole. You should not single out any one sentence, or any individual point or idea and ignore the others. The order in which the statements about the law are made has no significance as to their relative importance.

As jurors, there are certain guidelines which you should follow in resolving the issues of fact, in

determining the

credibility or believability of the witnesses, the weight of their testimony, and thereby arriving at what the facts are in this case:

First, you are to consider only the evidence which has been offered during the trial and such inferences as you may logically and reasonably draw from the evidence.

Second, you must not be influenced by sympathy, passion or prejudice in favor of any party or against any of the parties.

Third, if testimony on any point is not contradicted, you should treat it as proving that fact unless the testimony seems to you to be impossible or very improbable, or unless the witness has shown by his or her testimony or it is shown by the other evidence in the case to be unworthy of belief. When testimony conflicts, you will get at the truth by weighing the testimony of one witness against that of the others, by considering the witness's interest or lack of interest in the outcome of the case, the partiality or fairness of the witness, the witness's relative opportunity of knowing the facts about which he or she has testified, the witness's conduct or behavior on the witness stand the manner in which he or she has given testimony, and the other evidence in the case.

You need not accept all of the testimony of a witness as being true or false: you may accept and believe those pacts of a witness's testimony that you consider logical and reasonable and reject those parts of the testimony that seem impossible or improbable.

Fourth, if the testimony of a witness is inconsistent with a prior statement, it is your duty to determine if the testimony of the witness should be discredited. If you decide that the testimony of the witness has been discredited, then you are to decide what weight, if any, to give to that testimony. If you should find that a witness has testified

falsely an to a material fact, then you have the right to reject the entire testimony of the witness or reject only part of the testimony, based upon how you are impressed with the truthfulness of the witness;

Fifth, you should consider the quality and not necessarily the quantity or number of witnesses who testify. That is, you should weigh the testimony of the witnesses rather than merely count which side has produced the most witnesses and find in favor of the side with the most witnesses;

Finally, throughout your deliberations you should keep in mind that all persons are equal before the law. All persons, whether individuals, corporations or insurance companies stand equal in the eyes of the law.

Using these tests, you should determine the credibility or believability of the witnesses and the weight of their testimony and thereby arrive at the facts of this case.

However, the more fact that an accident or incident has happened standing alone does not permit you to assume that the accident or incident was caused by anyone's fault or that the plaintiff should recover damages just because there was an accident or incident.

BURDEN OF PROOF:

This being a civil case, a plaintiff has the burden of proving his or her case by a preponderance of the evidence instead of beyond a reasonable doubt as in a criminal case.

What is meant by a preponderance of evidence? This phrase means that after a consideration of all of the evidence, that you, as Jurors, find that the existence of a fact is more probable than its nonexistence; rephrased, it means that you believe a fact is more true than not true.

However, you should keep in mind. that speculation, guessing and a mere possibility is not sufficient to establish the existence of any fact.

ARGUMENT OF COUNSEL:

Also, you have heard what the lawyers have had to say about the evidence in their arguments. You must distinguish between that which counsel may have said by way of argument and the evidence upon which those arguments are based. Just because a lawyer has said something in a fact does not mean it is so, no matter how many times it may have been repeated by the lawyer in argument.

The arguments of counsel are nothing more than their suggestions to you as to what they think the evidence is and what it has proven. You may accept or disregard these suggestions as you see fit. What the evidence is and what it has proven is for you and you alone to determine.

STIPULATIONS:

Furthermore, when the lawyers stipulate to something it means that they agree to the existence of a fact. Unless I have instructed you to the contrary, you must accept a stipulation as evidence and treat the fact which is stipulated to as having been proven.

LIABILITY:

In resolving the issues of liability in this case, there are certain rules of law that you must consider:

NEGLIGENCE:

One such rule of law Is the rule on negligence. The plaintiff claims the defendant was negligent. Negligence is the doing of some act which a reasonably prudent person would not do or the failure to do something which a reasonably prudent person would do under the particular circumstances at the time.

Malice, ill will, or intent are not necessary elements of negligence. Thus, you may find that. the defendant was negligent even though you believe that he or she did not act out of malice, willfulness, or intent.

In determining what constitutes negligent conduct, there is no fixed rule. It is to be determined from the facts and circumstances that existed at the time the accident or incident occurred. Ultimately, the determination of a Persons negligence in based an reasonableness and if you should conclude that a person acted an a reasonable and prudent person under the circumstances, then a person cannot be found to be negligent.

It is for you to determine in the light of your own experience and common sense what a reasonably prudent person would have done under the same circumstances.

PROXIMATE CAUSE :

Another rule which you must consider is proximate cause. For a plaintiff to recover he or she must prove that the defendant was not only negligent but that this negligence was a proximate cause or cause-in-fact in bringing about the accident or incident and the injuries which he or she sustained.

Proximate cause refers to an act or an omission or failure to act which causes in fact or plays a substantial part in bringing about the accident or incident and damages. Stated another way, an act will be considered as a cause-in-fact of the accident or incident when after all the evidence is considered you as jurors conclude that an act is a substantial factor without which the accident or incident would not have happened.

Also, this does not mean that the law recognizes only one proximate cause of an accident, or incident, or damages consisting of only one factor or thing, or the conduct of only one person. On the contrary, the conduct of two or more persons may operate either independently or together to cause an accident or incident, and damages, and in such a case each may be a proximate cause.

CONTRIBUTORY NEGLIGENCE :

Another rule of law that you must consider in determining the issues of liability is that of contributory negligence. The defendant has charged that the plaintiff is guilty of contributory negligence.

By the defense of contributory negligence, the defendant claims that the plaintiff by the plaintiff's own failure to use ordinary care under the circumstances for his or her own safety contributed to the injuries and damages the plaintiff may have suffered. The burden in an a defendant alleging the defense of contributory negligence to prove by a preponderance of the evidence that the plaintiff was at fault and that such fault was a proximate cause of the accident or incident. rf you should find the plaintiff was guilty of contributory negligence which was a proximate cause of the accident or incident.

Then the plaintiff's claim for damages shall not be defeated but the amount of damages awarded to him or her shall be reduced in proportion to the percentage of negligence attributable to him or her.

With respect to this accident or incident, you should consider the following rules of law in determining whether or not a defendant is negligent and whether or not a plaintiff is guilty of contributory negligence:

(Special liability charges)

Now after considering these rules of law and the evidence, if you should find that:

The defendant was not guilty of negligence, then you must find in favor of the defendant;

Likewise, if you should find that the defendant was negligent but that it was not a proximate cause of the accident or incident, then you must find in favor of that defendant;

If you should find that the defendant was guilty of negligence and that this negligence was a proximate cause of the accident or incident and that the plaintiff was guilty of contributory negligence and that this negligence was a proximate cause of the accident or incident:

Then the plaintiffs claim for damages shall not be defeated but the amount of damages awarded to the plaintiff shall be reduced in proportion to the percentage of negligence attributable to the plaintiff.

Thus, you may find either the plaintiff or defendant negligent to the extent of 5% or 10% or 80% or 90% or any other percentage-either large or small-from 0% up to and including 100%.

However, if you should find that a defendant was guilty of negligence, that this negligence was a proximate cause of the accident or incident and that the plaintiff was not guilty of contributory negligence, then you must find in favor of the plaintiff and proceed to award damages.

DAMAGES:

In determining an award for damages, you should consider both general and special damages. However, you should not conclude that because I an going to speak to you about damages that I believe the plaintiff should recover. This is only for you to decide and my opinion no matter what you think it is not relevant.

In determining an award for general damages, you are vented with much discretion. By the phrase "general damages" we mean a sum of money that you feel would fairly compensate the plaintiff for the pain, suffering, mental anguish, disability, scarring, and loss of lifestyle that the plaintiff has suffered or may suffer in the future. Insofar an a claim for general damages by a spouse or child of an injured person, the spouse or child may recover for a loss of consortium, service and society; this includes the loss of companionship, association, love, affection, conjugal relations, and normal household functions. However, you should keep in mind that any award for general damages is not subject to the payment of federal or state income taxes.

By special damages, we mean out-of-pocket expenses or actual or anticipated losses which the plaintiff has sustained or will sustain as a result of the accident. These may include such its" as past medical expenses, future medical expenses, past and future lost wages, and impairment of earnings capacity. In considering lost wages, you should consider gross wages.

FUTURE LOST WAGES (DIMINISHED EARNING CAPACITY):

In assessing an award of damages for less of future wages or for impairment of earning capacity, you are instructed that this cannot be calculated with a mathematical certainty but that you, an jurors, should determine this award after a consideration of the following factors: You are to consider the plaintiff's physical condition prior to the accident, the plaintiff's work record, the amount of the plaintiff's earnings in previous years, the probability or improbability that the plaintiff would have earned similar amounts during the remainder of the plaintiff's work life if the plaintiff had not sustained the injury for which he or she has filed this lawsuit. You should also consider the motivation of the plaintiff to return to work, the decreasing purchasing power of the dollar and you should consider the plaintiffs gross wages.

The plaintiff must prove both general and special damages by a Preponderance of the evidence. And by this I mean that after consideration of all the evidence that you, as jurors, find that the existence of a fact is more probable than its non-existence. However, again you should keep in mind that speculation, guessing and a were possibility is not sufficient to establish the existence of a fact.

In Louisiana, punitive damages are not allowed and you should not, by your award, seek to punish the defendant. In assessing damages, you should seek only to reasonably compensate the plaintiff for the damages you find the plaintiff has suffered or will suffer.

EXPERTS:

The rules of evidence ordinarily do not permit witnesses to testify as to opinions or conclusions. But expert witnesses who, by education and experience, have been recognized by the Court an expert in none profession (art, science) may state an opinion an to relevant and material matters in which they are expert. You should consider each expert's opinion received in evidence and give it such weight an you think it deserves.

Even though a person has been accepted by the Court as an expert, if you decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, you may reject the opinion entirely or give it only such weight as you decide it deserves, if any.

OPINION OF DOCTOR:

The opinion of a doctor an to the condition of a patient may be based upon entirely objective symptoms revealed through observation, examination, tests or treatment; or the opinion may be based entirely an subjective symptoms, revealed only through statements made by the patient to the doctor, or the opinion may be based on both objective and subjective symptoms.

To the extent any opinion testified to by a doctor in based upon history or subjective symptoms described to the doctor by the patient, you should consider the truth or falsity of the patients statements in determining the weight to be given to the doctors opinion.

In resolving the conflicting medical evidence you must weigh and evaluate all of the medical evidence and the lay testimony relating to the injury sustained by the plaintiff, and after so doing, you may accept or reject the opinion expressed by any medical expert, depending upon how you are impressed with

the qualifications, experience and testimony of that expert, an well as the opportunities that the respective doctors have had to examine the plaintiff and form an opinion.

You will remember that I told you at the beginning of the trial that you were not to discuss the case amongst yourselves. That restriction in now removed. it is now your duty to consult with one another and to deliberate, with a view towards reaching an agreement, it you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but you should do so only after a consideration of the case with your follow jurors and you should not hesitate to change your opinion when you are convinced that you are wrong. However, you should not be influenced to vote any question which you have to decide by the fact that a majority of your fellow jurors favor a decision different from your own. In other words, you should not change your opinion sorely for the purpose of returning a verdict that your follow jurors aqrso with and you don't.

Louisiana law requires that nine of you agree in order to render a verdict for either aide. When nine of you are of the same opinion about the verdict that ends your deliberation and that opinion becomes your verdict.

The first thing you should do when you retire to the jury deliberation room is to choose five amongst you a person to represent you in signing the verdict form. This person will be the foreperson. Men you have reached a verdict. this foreperson will sign and date the verdict form.

Once you have reached a verdict, you will return to the courtroom, and be asked by the court at the appropriate time to make known your verdict.

I will now explain to you the verdict form.