

The following is the Civil Trial Outline which I use: this one was used in a personal injury case.

CIVIL TRIAL OUTLINE

[Ask clerk to call the jury panel, if not already seated beforehand. If the panel is in the courtroom, not yet having been seated (to be randomly drawn and seated): AS YOUR NAME IS CALLED, PLEASE SIT WHERE THE BAILIFF INDICATES.]

This is the time set for trial in the matter of _____ [Plaintiff] versus _____ and _____ [Defendants], Case Number _____. You have been brought together as prospective jurors in this civil case which involves a situation where Plaintiff _____ vehicle and Defendant _____ vehicle were involved in a collision.

Will counsel state their appearances? [counsel just state their names]

INTRODUCTION

Let me give you a brief explanation of why you are here and how we are going to proceed. Those who participate in a trial must do so in accordance with established rules. That is true of the witnesses, of the lawyers, and of the Judge. It is equally true of you as jurors.

The lawyers must present the evidence according to the rules. The Judge enforces the rules and determines what evidence may be admitted. Those of you selected as jurors in this case will be the sole judges of the facts, the credibility of the witnesses and the weight to be given to the testimony.

The Plaintiff and the Defendants are entitled to jurors who approach this case with open minds and agree to keep their minds open until a verdict is reached. Jurors must be as free as humanly possible from bias, prejudice or sympathy and must not be influenced by preconceived ideas either as to the facts or as to the law. Although you may be generally qualified to serve as a juror, there may be something that could disqualify you or make it difficult for you to serve in this particular case.

A trial starts with the selection of a jury. As prospective jurors, you will be questioned to determine your qualifications in this case. Our purpose is to obtain a fair and impartial jury. Since this is an important part of the trial, you are required to be sworn before questions are asked. The Clerk of the Court will administer the oath to you now.

PLEASE STAND.

[HAVE CLERK ADMINISTER OATH TO THE PANEL.]

VOIR DIRE & JURY SELECTION

In order to empanel a jury, we need to ask you some questions. These questions are not designed to pry into your personal affairs, but to discover if you have any knowledge of this case; if you have any preconceived opinion that you cannot lay aside; or if you have any experience that might cause you to identify with or favor either side. In asking these questions, I do not intend to waste your time or embarrass you, but to explore your ability to sit as fair and impartial jurors, to listen and decide with open minds and without any preconceived notions regarding who should prevail in this action. At the end of this open questioning period, I will give you a chance to speak more privately if you wish to answer some of the questions in a more comfortable setting.

It is important that when you give your answers that you focus your comments on the question. We don't want you to express views or opinions in your answers which might affect other jurors. Also, if there are facts which you might wish to mention, but which facts could also affect other jurors, we will give you an opportunity to discuss those matters without all the other jurors being present.

I. **COMPETENCE:**

A. In order to serve as a juror in this case, you must be:

1. A citizen of the United States,
2. Over the age of 18,
3. A resident of Salt Lake County, and
4. Able to speak, read and understand the English language.

Is there anyone who does not meet all of these requirements, if so, please raise your hand.

B. You may not serve on a jury if:

1. You have been convicted of a felony that has not been expunged, or
2. You are serving on active duty in the military; or
3. You are suffering from a physical or mental disability that makes you incapable of performing the duties required of a juror. [e.g., hear and concentrate on evidence for the period of the trial, be present during the usual hours of the trial, comprehend the proceedings, reasonably remember what is presented, etc.]

Is there anyone who meets any of these criteria? If so, please raise your hand.

FIND THAT ALL JURORS ARE COMPETENT TO SERVE [or excuse individuals, as appropriate.]

II. **THE JUROR CARD**

Starting with juror number one, and following in the order in which you were seated, please stand one at a time and give the information that is requested on the form you have been given.

Speak as clearly as you can. When you have finished, pass the card to the next person and take your seat.

I should point out to you that we do not have a court reporter here to take down all of your answers. Instead, the court uses an audio recording system. You can see the microphones at various locations in the court room. This means you must speak up so that your voice can be picked up on the recording. It's also important that we keep to a minimum any extraneous noise which would obscure the voices on the recording.

[The Juror Card: Name, occupation and place of employment; level of education and give your field of concentration, if any; spouse's first name; spouse's occupation and place of employment; number and ages of children (if any of your children is a working adult, please describe that child's employment); newspapers and magazine or periodical subscriptions; hobbies or leisure activities. For younger panel members, what do your parents do for a living?]

III. **PRIOR KNOWLEDGE AND AWARENESS**

A. **Counsel, Parties and Witnesses:**

1. Ask PLAINTIFF's counsel to introduce **him/herself and his/her firm;** **Anyone at Counsel Table**, and identify any **Witnesses** he/she may call.

Is any of you acquainted with or related to any of the persons on the Plaintiff's side who were just introduced to you or identified as witnesses? [**If so**, have panelist identify the person and the nature of the relationship.]

To those who have spoken: Would that relationship affect your ability to sit as a fair and impartial juror in this case? If so, please raise your hand.

2. Ask counsel for DEFENDANTS to introduce **him/herself and his/her firm,** **Anyone at Counsel Table** with them, Defendants, and to identify any **Witnesses** they may call.

- i. **Is any of you acquainted** with or related to any of the persons on the defense side who were just introduced to you or identified as witnesses? [**If so**, have panelist identify the person and the nature of the relationship.]

To those who have spoken: Would that relationship affect your ability to sit as a fair and impartial juror in this case? If so, please raise your hand.

- ii **Is any of you acquainted** with or related to anyone who works in either counsel's office? [Follow through, as above.]

B. **Prior knowledge about the case.** As I mentioned, this is a civil case.

1. [modify as appropriate] The claim against the Defendants is that on or about _____, Plaintiff _____ was driving his car south at the intersection of _____ in _____ City. A collision ensued _____ when _____
_____. At the time of the collision, Defendant was acting in the course and scope of his employment with Defendant company _____. Plaintiff alleges that as a result of the collision, he suffered and will suffer injuries, including medical expenses, lost income, and pain and suffering. Defendants deny Plaintiff's claims and assert that Plaintiff himself was at fault.
2. Has any of you heard anything, or read anything, about this case?
3. If yes, what was the source of your information? [Friend, newspaper, TV, radio, other.]
4. Answering only "yes" or "no," has that information made any great impression on you or caused you to form any opinion about the merits of this case?
5. If you answered "yes," could you set aside that opinion, listen to the evidence to be presented in this case fairly and impartially, and decide the merits of this case solely on the evidence received here?
6. Do you believe you could be fair and impartial?

C. **Obligation to Follow the Law.** From time to time during the course of the trial, I will give you instructions in the law that applies to this case. If you are selected as a juror, it will be your duty to follow the law that I give you, regardless of whether you may agree or disagree with the law as I state it.

Does any of you feel that you would have trouble doing that? If so, please raise your hand.

D. **Verdict Based Solely on the Evidence.** If you are chosen as a juror, **you must base your verdict solely on the evidence** provided by the witnesses who testify in this case and on any documents or other physical evidence received.

Does any of you feel that you would have trouble doing that? If so, please raise your hand.

E. **Open Mind Free from Bias or Prejudice.** As jurors, **you must have an open mind free from any prejudices** related to the case or the parties. If any of you have any questions in your mind about your ability to return a verdict in this matter, based

solely on the evidence presented, free from outside influences or bias, please raise your hand. [Do follow-up questioning individually.]

- F. [if appropriate] **Law Enforcement Witnesses**. One or more witnesses may be a law enforcement officer.

Does any of you feel that the testimony of a person working in law enforcement is more or is less believable than any other witness? If so, please raise your hand.

- G. **Law Enforcement Friend or Relative**. Does any of you have any experience in law enforcement or a relative or close friend that works in law enforcement? If so, raise your hand. [Stand, state name, tell us the relationship and law enforcement position of the person that you know or are related to.]

- H. [if appropriate] **Medical Professional**.

It is likely that we will have one or more witnesses in this case who are medical doctors or other medical professionals.

Does any of you feel that the testimony of a person working in the field of medicine (including chiropractors) is more or is less believable than any other witness? If so, please raise your hand.

- I. **Medical Professional Friend or Relative**. Does any of you have any experience as a medical professional or a relative or close friend that works in such field (such as nurses, physical therapists, doctors, chiropractors, etc.)? If so, raise your hand. [Stand, state name, tell us the relationship and law enforcement position of the person that you know or are related to.]

You should judge the credibility of such law enforcement or medical professional witnesses the same way as you would judge any other witness, regardless of any witness' job or position in the community.

If you feel you would be unable to follow that direction and/or that you would be unable to sit as a fair and impartial juror in this case, please raise your hand.

- J. **Witness or Litigant in Prior Case**. Has any of you ever been **called to testify as a witness** or has any of you been an actual party in a civil or criminal case? If so, please stand, state your name and tell us whether it was in a civil or criminal case; and if a criminal case, please identify the subject matter of the case. How did the case turn out?

Of those who have just spoken, is there anything about your experience in court that would prevent you from being fair and impartial to both sides in this case? If your answer is yes, please raise your hand.

- K. **Prior Jury Service.** Has any of you ever **served on a jury before?** If so, please raise your hand. [Stand, state your name and tell us when you served; in what court; if a criminal case, please identify the subject matter of the case; and tell us what verdict was reached by the jury.]

Of those who have just spoken, is there anything about your prior jury service that would prevent you from being fair and impartial to both sides in this case? If your answer is yes, please raise your hand.

- L. **Hardship.** We recognize that **jury service is a hardship**, requiring you to rearrange your schedule, your family life, or business. It is such an important contribution to our justice system and the community, however, that we ask citizens to make that kind of sacrifice.

Occasionally, there is a hardship that is so great, that you believe you would not be able to sit in court and listen to the evidence, because the hardship or stress would interfere with your ability to do so. This case will take approximately about _____ trial days to complete.

Does any of you have any extraordinary hardship that would prevent you from serving? If so, please raise your hand.

- M. **Case-Specific Voir Dire Questions** [submitted by counsel in Word or WordPerfect, not pdf]: (such as)

1. Has any of you or an immediate family member ever been diagnosed with chronic pain or been permanently or partially disabled?
2. Have you or a member of your immediate family ever been involved in a traffic accident where someone was injured and needed to go the hospital? Give details.
3. Does any of you, for any reason, feel that it is wrong, or would you hesitate, to claim money damages, including going to court, for injuries sustained in an automobile collision such as in this case.
4. Have you ever been involved in any other type of accident causing personal injury to you or another person?
5. Have you read or seen any materials relating to the appropriateness of personal injury cases or relating to tort reform issues? When? What? Did this create any bias in your mind favoring either the Plaintiff or the Defendants?
6. Do you have any personal, religious, or other beliefs that would prevent you from awarding, or not awarding damages, as supported by the evidence in this case and the law given you by the court.

7. As jurors, you must have an open mind free from any prejudice. If any of you has any questions in your mind about your ability to return a verdict based solely on the evidence presented, free from outside influence, please raise your hand.

N. **ADDITIONAL CASE-SPECIFIC VOIR DIRE** (previously submitted by counsel or stock.)

1. Have you or a close member of your family ever been employed by a law firm? (Follow up)
2. Have you formed any opinions as to the size or kind of award that should be given in personal injury cases in general, which opinion would influence your deliberations in this case?
3. Does any of you have any experience in the investigation of traffic accidents or other accidents?
4. Does any of you have any experience in safety administration issues?
5. Does any of you have any experience in the following fields: engineering, complicated mathematics, physics, meteorology, or accident reconstruction?
6. Would the fact that one of the Defendants is a company affect your ability to be a fair impartial and unbiased juror in this case?
7. Does any of you know any other prospective juror in this panel?

[to the Jury: If there are any questions that you would feel embarrassed to respond to in this setting, please let me know and we can arrange to address the issue in chambers.]

O. **ASK COUNSEL AT THE BENCH IF THEY HAVE ANY FURTHER VOIR DIRE QUESTIONS TO BE ASKED TO THE PANEL.** Please approach the bench.

P. **ASK THIS AS THE LAST VOIR DIRE QUESTION:**

Finally, I would like each of you to place yourself in the positions of the Plaintiff and the Defendants in this case. If you were in their position selecting a jury, is there any of you who would not want a juror with your present views or state of mind sitting in judgment in this case?

If so, raise your hand. [Follow up]

Q. **ADDRESS ISSUES REGARDING SPECIFIC JURORS** (in chambers or at bench?): Counsel, we will follow up with additional questions for [specific jurors] in chambers. [Break for jury panel, stay close.]

1. Jurors who indicated that they would rather not respond to specific questions in the environment of the courtroom.
2. Jurors whose answers required follow-up questions in chambers, (a) so as not to adversely influence the jury pool, because of sensitive subject matter, or (b) due to the need to do frank and open questioning that would be more productive and less intrusive in chambers.

Tell Jury Panel: *We will continue with some questions to individual panel members.*

Remainder may have a brief break: get water, use restroom facilities on this floor. If you leave the courtroom, please return quickly. Please do not leave this floor/wing. Please return to the same seat in which you are now sitting.

Please do not discuss anything about the case or any of the issue we have talked about with you this morning. Do not speak to any of the participants in this trial or any of the spectators. You may speak quietly with other members of the jury panel, but do not discuss the case.

R. **CONFERENCE WITH COUNSEL REGARDING CHALLENGES FOR CAUSE.** URCP 47 (challenges for cause) [At bench or in chambers.] Make a record as to why each juror was struck. Advise counsel as to the number of peremptory challenges (3; 1 for each alternate).

S. **PEREMPTORY CHALLENGES:** [3 for each party, plus one for each alternate juror.] The lawyers are now going to exercise peremptory challenges, striking names off the list. We will end up with (8) panel members [plus ___ alternates] to try this case. I will now hand the jury list to the attorneys, starting with the Plaintiffs.

JUDGE'S PRELIMINARY DIRECTIONS

(The following is designed to be given to the jury during peremptory challenges but may be given at such other times as the court may feel appropriate.)

Ladies and Gentlemen:

We are now at the point in this trial where the parties and their counsel have an opportunity to directly participate in the jury selection process. You may have observed that up to this point, I have asked you questions concerning your qualifications as jurors for this case and have made determinations as to whether each of you is qualified. Through the process called peremptory challenge, each party will now have an opportunity to directly determine which of you will be serving on the jury. As this is a civil matter, each party has 3 (3 plus one for each alternate) peremptory challenges and may exercise those challenges for any reason whatsoever, whether that be great or slight. It is important for you to understand, however, that in the event you are not chosen as a juror

here, you should not take that matter personally, for the reasons counsel may have for exercising a peremptory challenge are so numerous that in all likelihood your non-selection has as little to do with you personally.

While counsel are going through the peremptory challenge process, I am going to introduce you to some of the people that those of you who are selected to serve on this jury will be working with during the course of the trial and describe their functions to you.

As indicated to you, we have no court reporter. Instead, an audio recording is made of these proceedings.

Seated next to me is the Court Clerk. The Clerk has the responsibility of administering all oaths, both to jurors and to witnesses. The Clerk also has the responsibility of keeping track of all evidence that is presented or received by the Court. Additionally, the Clerk has the responsibility of keeping the Minutes of the proceedings in the court so that reference can be made on a day-by-day basis to what has transpired during these proceedings.

Finally, seated near you is the Court Bailiff. The Bailiff has the responsibility of bringing the court to order and maintaining order throughout the proceedings. She also has the responsibility of attending to the jury and keeping track of each one of you. If any of you has anything which needs to be brought to the Court's attention, the Bailiff can assist you in that regard.

One final thing which I think is important for you to understand. You will observe that when we commenced court, the Bailiff brought us all to order and we all stood. In the event you did not notice it, I was standing along with the rest of you. The point I want to make is that you were not standing for me but, rather, we were all standing together for three symbolic reasons. First, to remind us of the importance of our duties and responsibilities in connection with the processes of law generally.

Secondly, to remind us that there is no case which comes before the courts of this country which is not important, both to the parties specifically, and to the system of law generally. There is one final reason why we stand, and that is to remind each of us that irrespective of how we view our functions or our relationship to the system of justice, while we are here, we have but one duty and that is to see that justice is accomplished. Those are the reasons we all stand together at the beginning of each session of this court.

I have already introduced you to the attorneys representing the Plaintiff and Defendants in this case. The function of the attorneys in a lawsuit is fundamentally twofold. First, they have the job of teaching you as jurors, the exclusive triers of the facts, what this case is all about from their client's perspective; that is, their job is to act as the teachers concerning the facts of this case.

Since this is a jury trial, I as judge, have a very limited role. My responsibility is of course to preside over the trial and make certain that it runs as smoothly as possible. Additionally, I have the responsibility of making rulings on what evidence is and is not admissible in a trial of this type. Finally, I have the responsibility of instructing you as to what law applies to this case and what law you will utilize in arriving at your decision.

As jurors, you are the exclusive triers of the facts; that is, you have the exclusive prerogative of determining what the facts of this case are, and as I will instruct you later, when any six or more of you have agreed to those facts, applying the law that I shall give you in my instructions, you are able then to arrive at a verdict.

Your fact-finding prerogative as jurors is so exclusively yours that even I, as judge, cannot interfere with or usurp your prerogative.

In determining the facts in this case, you must look solely to the evidence that is presented in this courtroom. The evidence which you may consider will come from that witness stand from witnesses under oath, or from documents or other physical evidence which may be received in evidence.

The burden of proof in a civil case which must be met by a party asserting a proposition is generally “a preponderance of the evidence.” What that means is that before you can find for Plaintiffs in this case, you must be persuaded that when weighing the evidence which supports Plaintiffs’ case against any other evidence, Plaintiffs’ position is more likely than not. The term preponderance of the evidence does not mean beyond all doubt or beyond a reasonable doubt, rather, it means that if the evidence preponderates in favor of Plaintiff, however slightly, Plaintiff is entitled to prevail. On the other hand, if you find that the evidence is equally balanced or that it preponderates in favor of the Defendants, however slightly, then your verdict must be against the Plaintiff and for the Defendants. The jury will receive more instructions on this later.

Discussion of Jury System: Magna Carta, US and Utah Supreme Courts.

T. **RECEIVE JURY LIST FROM ATTORNEYS.**

1. Review for *Boston* challenges.
2. If not raised, ask if either counsel has any problem with how the peremptory challenges were taken.

U. **JUDGE (OR CLERK) READS NAMES OF JURORS SELECTED.** [Ask selected jurors to stand as their names are called and to remain standing.]

ASK COUNSEL: IS THIS THE JURY THAT YOU HAVE SELECTED?

ASK JURORS TO SIT IN THE JURY BOX in the order they were originally seated and to return to the same seat every time.

V. **CLERK: ADMINISTER THE OATH TO THE JURY.**

EXCUSE rest of jury panel with thanks.

STATEMENT TO JURORS NOT SELECTED TO SERVE; Ladies and Gentlemen, I want to thank each one of you who was not selected to serve on this jury today. The fact of the matter is that your presence and participation are key in making the jury system function. As you have seen, in order to enable the Court and counsel to select a jury to sit on this case, that is acceptable to them, it is necessary to have more than just the eight people ultimately selected available for jury service. Thus, your time has not been wasted, for each one of you has been an important and integral part in selecting a jury in this case.

[NOTE: If recess at this point, REMIND JURORS not to talk to parties, witnesses, not to talk to anyone about the case, not to form any opinion but to keep an open mind until that case is given to them for deliberation, at the end.]

STATEMENT CONCERNING CONFERENCES WITH COUNSEL IN CHAMBERS:

Ladies and Gentlemen, during the course of this trial, the attorneys for the respective parties and I will often meet in my chambers before court starts or during recesses. Sometimes, these meetings will go beyond the time we are scheduled to start. I want to assure you that when this happens, we are not being inconsiderate of the importance of your time. To the contrary, every conference I have in chambers with counsel is designed to simplify the issues of the trial and to expedite this case so that it may be brought to a timely conclusion. Accept, therefore, my apologies in advance for any delay in our starting time with the understanding that for every moment I spend with counsel, we may be saving you many minutes or even hours in your service in this case.

[Make sure that the Bailiff has distributed pens and paper to jury]

To the Jury: Ladies and Gentlemen, we are now to the point where the Court will give to you the first set of Jury Instructions. You will receive additional instructions later in the trial.

The Bailiff will now distribute copies of the first 25 instructions.

[These should not be submitted by counsel unless there's an objection to the stock format used by the Court; with the exception of Number 7, Statement of the Case, which should be proposed by counsel and stipulated to, if possible.]

COURT BEGINS TO READ FIRST SET OF JURY INSTRUCTIONS

1. GENERAL INSTRUCTION

There are certain laws and rules which apply to this case. I'll explain them to you from time to time during these proceedings in order to give you the information that you need to fulfill your role as jurors at each stage of the trial. I will give you the first set of instructions at this point. You will receive the final set of instructions after the close of evidence. Please pay careful attention. Each of you has been given a copy of these instructions. This copy is yours to keep. As I read these instructions to you, you may follow along on your copy, or not, as you wish. Keep in mind the following points:

Obey Instructions. Some of these instructions give you information about how the trial will proceed, the rules that govern this process, and the roles of the participants, including your role as jurors. Other instructions tell you what the law is that you are to apply in reaching your verdict in this case. If any attorney makes statements of the law that differ from the instructions on the law that I give to you, you should disregard such statements and rely entirely on these instructions.

Many Instructions. There will be many instructions. All are important. Don't pick out one and ignore the rest. Think about each instruction in the context of all the others.

Gender - Singular/Plural. In these instructions, any references to "she" or "her" also include "he" or "him," or *vice versa*, as appropriate to this case; and the singular, such as "Defendant" includes the plural "Defendants," when appropriate.

Note Taking. The Bailiff has provided you with notepads and pens. You may take notes during the trial, but don't over do it, and don't let it distract you from following the evidence. The lawyers will review the evidence in their closing arguments and help you focus on what is most relevant to your decision. I also caution that notes are not evidence. Use them only to aid personal memory or concentration. Keep in mind that you must each arrive at a verdict independently, and one juror's memory of the evidence or opinion should not be given excessive consideration solely because that juror has taken notes.

Keep an Open Mind. Don't form or express an opinion about the ultimate issues in this case until you have listened to all the evidence and the lawyers' summaries, along with the final instructions on the law. Keep an open mind until your deliberations are completed. Evidence can only be presented one piece at a time. Make sure you have received all of the evidence before you begin your deliberations on a verdict.

2. THE INSTRUCTIONS ARE TO BE CONSIDERED AS A WHOLE.

These instructions, though numbered separately, are to be considered and construed by you as one connected whole: Each instruction should be read and understood in reference to and as a part of the entire charge, and not as though any one sentence or instruction separately were intended to state the whole law of the case upon any particular point.

If in these instructions any rule, direction or idea has been stated in varying ways, no emphasis thereon is intended, and none must be inferred by you. For that reason, you are not to single out any certain sentence, or any individual point or instruction, and ignore the others, but you are to consider all the instructions as a whole, and to regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

3. WHAT RULES APPLY TO RECESSES

From time to time I will call for a recess. It may be for a few minutes, a lunch break, overnight or longer. During recesses, do not talk about this case with anyone; not family, friends or even with each other. The bailiff may ask you to wear a badge identifying yourself as a juror so that

people will not try to discuss the case with you. Don't mingle with the lawyers, the parties, the witnesses or anyone else connected with the case. You may say "hello" or exchange similar brief civilities with these persons, in passing, but don't engage in any conversation. Don't accept from or give to any of these persons any favors, however slight, such as rides or food.

The lawyers and parties are naturally concerned to avoid any hint of improper contact with you, so don't think that they are being purposely rude if they avoid any interaction with you during the course of this trial. If anyone tries to talk to you about the case, let the bailiff know immediately. You may communicate with the bailiff or among yourselves about topics other than a subject of the trial. Don't read about this case in the newspaper or listen to any reports on television or radio, if there are any. Finally, don't form or express an opinion regarding any subject of the trial until you are sent out for deliberation at the end of the trial. These restraints are necessary for a fair trial.

4. THE ROLE OF THE JUDGE, THE JURY AND THE LAWYERS

The judge, the jury and the lawyers are all officers of the Court and play important roles in the trial.

Judge. It is my role as judge to decide all legal issues, supervise the trial and instruct the jury on the LAW that it must apply.

Jury. It is your role as the jury to follow that law and decide the factual issues. Factual issues generally relate to WHO, WHAT, WHEN, WHERE, HOW or similar things concerning which evidence will be presented.

Lawyers. It is the role of the lawyers to present evidence, generally by calling and questioning witnesses and presenting exhibits. It is the responsibility of each side to be an advocate, and each has a duty to try to persuade you to accept their version of the facts and to decide the case in favor of their position.

The ethical rules and the standards of professionalism adopted in this state are very important to this proceeding. Those rules and standards require that lawyers demonstrate courtesy, candor, and cooperation. Consistent with their duties, each side must diligently advance their legitimate interests. They should do so with energy and courage. At the same time, each side should not engage in conduct that is uncivil, abrasive, abusive, hostile, or obstructive. Instead, each side should treat others in a courteous and dignified manner. We all have the right to expect civil and professional conduct from all participants involved in this case. Keep in mind that neither the lawyers, the parties, nor I actually decide the facts of this case, because that is your role. Don't be influenced by what you think our personal opinions are; rather, you decide the case based upon the law explained in these instructions and the evidence presented in court.

5. THE LAWYERS ARE NOT ON TRIAL.

Please remember, the lawyers are not on trial. Your feelings about them should not influence your decision in this case.

Further, the fact that a lawyer or an expert be from out of state should make no difference in your verdict.

6. OUTLINE OF THE TRIAL

The trial will generally proceed as follows:

Opening Statements. Each side will outline what the case is all about, and they will indicate what they think the evidence will show.

Presentation of Evidence. The Plaintiff will offer his evidence first, followed by the Defendants. Each side may also offer rebuttal evidence after hearing the witnesses and seeing the exhibits offered by the other side. If an exhibit is given to you to examine, you should examine it carefully, individually, and without any comment.

Recesses and Breaks. During the trial there will be periods of time when the court recesses. During those times you must not discuss the case with anyone, including fellow jurors; you should not allow anyone to discuss the case with you. If any attempt is made to do so, you should report that to the bailiff immediately. You should not read, hear, or see media coverage of this trial.

Additional instructions on the Law. After each side has presented its evidence, I will give you additional instructions on the law that applies to this case.

Closing Arguments. Each side will then summarize and argue the case. They will share with you their respective views of the evidence, how it relates to the law and how they think you should decide the case.

Jury Deliberation. The final step is for you to retire to the jury room and deliberate until you reach a verdict, and you will be given additional instructions about how you are to do that later. During your deliberations, we will not be able to provide you with transcripts of the trial testimony; you will have to rely on your memory. Thus it is important, whether you take notes or not, that you observe the witnesses carefully and listen carefully to the testimony.

7. THE CLAIMS OF THE PARTIES.

[Place here the claims of the parties as modified from the proposals submitted by them. For example:]

Plaintiff _____ claims that on _____, he was driving his car _____.
Defendant _____ was driving his car _____.
Plaintiff claims that Defendant carelessly attempted to turn left from _____ onto _____ and in doing so caused his car to collide with Plaintiff's car. Plaintiff further claims that the collision caused him to suffer past and future damages, including medical expenses, lost income, and pain and suffering, and property damage. Plaintiff alleges that at the time of the collision, Defendant was acting in the course and scope of his employment with _____.

Defendants deny Plaintiff's claims. Defendants assert that Plaintiff caused the collision and that the damages claimed by Plaintiff were not caused by the collision.

8. WHAT IS THE JURY'S ROLE IN THIS CASE?

You must decide whether or not the Plaintiff's claims have been established under the standard set for the Plaintiff's burden of proof and whether Defendants' defenses have been established under the standard set for the Defendants' burden of proof. Your decision is called a VERDICT. Your verdict must be based only on the evidence produced here in court. It must be based on facts, not on speculation. Don't guess about any fact. However, you may draw reasonable inferences or arrive at reasonable conclusions from the evidence presented. You should perform your duty to be a jury uninfluenced by passion or prejudice in favor of or against either party. You must not allow yourselves to be biased for or against the Defendants simply because the Plaintiff has brought this case in court. Nor should you allow yourselves to be biased for or against the Plaintiff simply because the Defendants have answered, denying Plaintiff's claims.

You are to be governed in your deliberations solely by the evidence introduced in this trial and the law as stated to you by me. The law forbids you to be governed by mere sentiment, conjecture, sympathy, passion, prejudice, public opinion or public feeling. Both the Plaintiff and the Defendants have a right to demand and they do demand and expect that you will conscientiously and dispassionately consider and weigh the evidence and apply the law of the case, that you will reach a just verdict regardless of what the consequences of such verdict may be. The verdict must represent the individual opinion of each juror. Three-fourths, or six, of the members of the jury must agree upon the verdict.

9. WHAT IS EVIDENCE?

Evidence is anything that tends to prove or disprove the existence of a disputed fact. Evidence includes testimony, documents, objects, photographs, recordings, stipulations, certain qualified opinions, and/or any combination of these things. Sometimes the lawyers may agree that certain facts exist; this is called a stipulation. You should accept any stipulated facts as having been proved. In limited instances, I may take "judicial notice" of a well-known fact. If that happens, I will explain how you should treat it.

10. OPINION TESTIMONY

Under certain circumstances, witnesses are allowed to express an opinion. A person who by education, study or experience has become an expert in any art, science or profession, may give an opinion and the reason for it. In evaluating such testimony, consider the reasons, if any, given for it.

You are not bound by such an opinion. Give it the weight you think it deserves. If you should decide that the opinions of an expert witness are not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound, or that such opinion is outweighed by other evidence, you may disregard the opinion entirely.

A layperson (a non-expert) is also allowed to express an opinion if it is based on personal observations and it is helpful to understanding such person's testimony or other aspects of the case. You are not bound to believe anyone's opinion. Consider it as you would any other evidence, and give it the weight you think it deserves.

In determining whether a particular statement was a statement of fact or an expression of opinion, you may consider the surrounding circumstances under which it was made, the manner in

which the statement was made, and the ordinary effect of the words used. You may also consider the relationship of the parties and the subject matter with which the statement was concerned.

11. WHAT IS NOT TO BE CONSIDERED OR USED AS EVIDENCE?

I've explained to you what evidence is. Now I'll tell you about some things which do not qualify as evidence or which, for some other good reason, you should not consider in reaching your verdict.

Complaint and Answer. The fact that a formal complaint has been filed asserting a claim against the Defendants is not evidence of liability. The Defendants have filed an Answer, denying any liability. This Answer is also not evidence. As I will discuss in more detail later in these instructions, it is the Plaintiff's burden to prove his case by a preponderance of the evidence.

Lawyer Statements. What the lawyers say is not evidence. Their purpose is to give you a preview of expected evidence and to help you understand the evidence from their viewpoint. If a lawyer makes a statement about the evidence which is different from your own recollection of the evidence, you should rely on your own memory.

Personal Investigation. Evidence is not what you can find out on your own. You should not make any investigation about the facts in this case. Do not make personal inspections, observations or experiments. Do not view premises, things or articles not produced in court. Don't let anyone else do anything like this for you. Don't look for information in law books, on the internet, in dictionaries or public or private records which are not produced in court.

Out of Court Information. Do not consider anything you may have heard or read about this case in the media or by word of mouth or other out-of-court communication. You must rely solely on the evidence that is produced and received in court.

12. DEPOSITION TESTIMONY

In the present action, certain testimony may be presented to you by way of deposition. Depositions contain sworn testimony, with the lawyer for each party having the right to be present at the deposition and also being entitled to ask questions. Testimony provided in a deposition may be read to you in open court or may be seen on a video monitor.

You are not to discount this testimony for the sole reason that it comes to you in the form of a deposition. It is entitled to the same consideration as if the witness testifying at the deposition had personally appeared and testified here under oath at trial.

13. CHARTS AND SUMMARIES

Certain charts and summaries may be shown to you in order to help explain the facts disclosed by the records and other documents which are in evidence in the case. However, such charts or summaries are not by themselves evidence or proof of any facts unless otherwise admitted. If such charts or summaries do not correctly reflect facts or figures shown by the available evidence in the case, you should disregard them.

14. THE JUDGE DECIDES WHAT EVIDENCE IS ADMISSIBLE

Sometimes a question will be raised about whether certain evidence is proper for the jury to consider. This type of question is called an OBJECTION. I rule on objections. If an objection is SUSTAINED the evidence is kept out and you should not consider it, nor should you guess as to what the evidence might have been or what was the reason for the objection. If an objection is OVERRULED the evidence comes in and you may consider it. If evidence which you have heard or seen is STRICKEN you must ignore it.

My decisions regarding the admission of evidence involve issues of law, and I am not giving any opinion as to which witnesses are or are not worthy of belief or as to which party should prevail in the case. Don't be concerned about the reasons for my rulings, and don't try to infer anything about the case from those rulings.

Further, if I do or say anything during the course of this trial that suggests to you that I favor the position of either party, whether in my rulings or otherwise, it is entirely unintentional; and you must not be influenced by that in any way.

15. WHO IS RESPONSIBLE TO CONVINCING THE JURY?

The Plaintiff has the burden of proof for his claims in this case. The Plaintiff is the one making the initial claims in this case. The Plaintiff must establish Plaintiff's claims by a preponderance of the evidence or the greater weight of evidence. [and/or, if a different standard, indicate]

Under certain circumstances, as explained later in these instructions, the Defendants may bear the burden of proof for other issues.

16. WHAT IS MEANT BY "PREPONDERANCE OF THE EVIDENCE?"

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 presented in court, that the fact is more likely to be true than not true.

You may have heard that in a criminal case proof must be beyond a reasonable doubt, but I must emphasize to you that 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.

Another way of saying this is proof by the greater weight of the evidence, however slight. Weighing the evidence does not mean counting the number of witnesses or documents, nor the

amount of testimony. Rather, it means 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.

After weighing all of the evidence, if you decide that a fact is more likely true than not, then you must find that the fact has been proved. On the other hand, if you decide that the evidence regarding a fact is evenly balanced, then you must find that the fact has not been proved, and the party has therefore failed to meet its burden of proof to establish that fact.

I will instruct you in more detail about the specific elements that must be proved.

17. CIRCUMSTANTIAL EVIDENCE.

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of facts or circumstances that give rise to a reasonable inference of the truth of the facts sought to be proved.

18. REQUIRED PROOF—PLAINTIFF

Plaintiff must prove by a preponderance of the evidence that Defendants were at fault for causing the collision, and that Plaintiff was damaged because of the collision. Plaintiff must also prove the amount of his damages.

19. REQUIRED PROOF—DEFENDANTS

Defendants deny that the Plaintiff's damages, if any, were caused by the collision. Defendants also assert that Plaintiff was himself at fault for causing the collision.

Defendants have the burden of proving by a preponderance of the evidence that Plaintiff was at fault for causing the collision.

20. HOW TO MAKE DECISIONS ABOUT THE EVIDENCE

It will be your duty to determine your verdict relying solely on the evidence presented during the trial. For that purpose you should consider all of the evidence together, fairly, impartially and conscientiously, putting aside any bias, prejudice, or preconceptions.

Once evidence is admitted, you must decide three things about it: Whether it should be believed, how important it is, and what you can reasonably infer or conclude from it. An inference is a conclusion that logic, reason, or common sense leads you to draw from a fact or group of facts that the evidence has established.

Use your common sense as a reasonable person in making these decisions. Review all the evidence. Don't imagine things which have no evidence to back them up. Consider the evidence fairly without any bias or sympathy toward either side.

Where there is conflicting evidence, you should try to reconcile the conflict so far as you reasonably can. Where the conflict cannot be reconciled, you are the final judges and must determine from the evidence what the facts are.

21. DECIDING WHETHER TO BELIEVE A WITNESS

You are the sole judges of the importance of the evidence, the believability of the witnesses and the facts. There is no firm rule that I can give you for determining whether a witness is truthful. As each witness testifies, you must decide how accurate that testimony is and what weight to give it, using your own good judgment and experience in life. In evaluating testimony, it may help you to ask yourself questions such as these, giving the weight you feel is reasonable for each issue:

Personal Interest. Does the witness have a personal interest in how the trial comes out?

Other Bias. Does the witness have some other bias or motive to testify a certain way?

Demeanor. What impression is made by the witness' appearance and conduct while answering questions?

Consistency. Did the witness make conflicting statements or contradict other evidence?

Knowledge and Memory. Did the witness have a good opportunity to know the facts and the ability to remember them?

Reasonableness. Is the testimony reasonable in light of human experience?

You may also apply any other common sense yardstick to the testimony you hear and the other evidence you receive. You are not required to believe any witness or all that a witness says. You are entitled to believe one witness as against many or many as against one, in accordance with your honest convictions.

22. WHAT IF A WITNESS PURPOSELY GIVES FALSE OR INCONSISTENT TESTIMONY?

If you believe a witness has previously made inconsistent statements or has purposely given false testimony about anything relevant to this case, you may disregard not only the inconsistent or false testimony but any of the remaining testimony from that witness, or you may give the remaining testimony whatever weight you think it deserves.

23. STIPULATED FACTS.

A stipulation is an agreement. Unless I instruct you otherwise, when the lawyers on both sides stipulate or agree to a fact, you must accept the stipulation as evidence and regard that fact as proved.

The Parties have stipulated to the following facts:
[insert any pre-trial stipulations]

and

Since the Parties have agreed on these facts, you must accept them as true for the purposes of this case.

24. DO NOT SPECULATE ON EVIDENCE NOT ADMITTED.

You should consider only evidence that is admitted. Do not speculate on evidence which is not admitted. Do not draw any inferences with respect to why some testimony or other evidence is not admitted.

25. ALL PARTIES EQUAL BEFORE THE LAW.

In this case the Plaintiff _____ and the Defendant _____ are individuals. Defendant _____ is a corporation [LLC]. This should make no difference to you. You must decide this case as if it were between individuals.

OPENING STATEMENTS [Plaintiffs/Defendants: The Court will give both sides the same amount of time. Generally, this should not exceed 20-30 minutes for each side.]

Plaintiff, then Defendant; no rebuttal on opening statements.

IV. PRESENTATION OF EVIDENCE

A. Plaintiffs

Any motions by Defendant after the close of Plaintiff's evidence should be made outside the jury's presence.

B. Defendants

Any motions by Plaintiff after the close of Defendant's evidence should be made outside the jury's presence.

C. Rebuttal (both sides if counterclaims?)

++[FINAL Jury Instructions]++

[*AFTER THE CLOSE OF EVIDENCE, THE CLERK ADDS TO EACH JUROR'S COPY ADDITIONAL INSTRUCTIONS APPLICABLE TO THIS CASE. Generally, the Court will produce a full and complete set of instructions which replaces the first set.*]

SECOND SET OF INSTRUCTIONS

[These are tailored to fit the specific case: stipulated instructions will be used; contested instructions must be submitted with authority cited; all instructions should be submitted both electronically and in hard copy. Word or WordPerfect, not pdf. What follows through Instruction No. 58 are examples. Instructions No. 59 through No. 66 are stock and need not be submitted unless there's an objection to one of these.]

26. *"FAULT" DEFINED.*

Your duty as jurors is to decide whether Plaintiff _____ was harmed and, if so, whether anyone is at fault for that harm. If you decide that more than one person or entity is at fault, you must then allocate fault among them.

"Fault" means any wrongful act or failure to act that causes harm to the person seeking recovery. The wrongful act or failure to act alleged in this case is negligence [or strict liability, etc.] as that term will be explained to you.

Your answers to the questions on the verdict form will determine whether anyone is at fault. We will review the verdict form later in these instructions.

27. *"NEGLIGENCE" DEFINED.*

You must decide whether anyone was at fault under the law set forth in subsequent instructions. That is, you must decide if Defendant _____, Defendant _____ company, and/or Plaintiff _____ himself was negligent in this case.

"Negligence" means that a person did not use reasonable care. We all have a duty to use reasonable care to avoid injuring someone. A driver has the duty to use reasonable care at all times. Reasonable care is simply what a reasonably careful person or entity would do in a similar situation. A person or entity may be negligent in acting or in failing to act.

The amount of care that is considered "reasonable" depends on the situation. You must decide what a prudent person with similar knowledge would do in a similar situation. Some situations require more care because a person of ordinary prudence would understand that more danger is involved. Less care is expected in situations such as when the risk of danger is lower or when the situation happens so suddenly that a person of ordinary prudence would not appreciate the danger.

Negligence may arise in acting or in failing to act.

A person whose injuries or damages are caused by another person's negligent conduct may recover compensation from the negligent person for those injuries or damages.

28. THE CRASH OR INJURIES ARE NOT EVIDENCE OF FAULT.

The mere fact that a crash or injuries occurred does not support the conclusion that any party was at fault.

29. "CAUSE" DEFINED.

I've 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 or the entity'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.

30. FORESIGHT, NOT HINDSIGHT

A person is negligent if he or she commits some act or omission which reasonably should have been foreseen to be exposing others to a risk of harm. In determining this, it is foresight and not hindsight which must be used to assess the actions or inactions of the parties. The test is not whether afterward one may see a way that the injury could have been prevented, but whether the party should have foreseen the likelihood of injury.

31. RIGHT TO ASSUME PROPER CONDUCT BY OTHERS

A reasonably careful person may assume that other people (1) are reasonably intelligent, (2) have normal sight and hearing, and (3) will obey the law and be careful as required by law. However, a person who follows the legal standard of care will not ignore obvious risks created by other persons.

32. COMPARATIVE FAULT

If you decide that more than one entity was responsible for Plaintiff's damages, you must decide each entity's percentage of fault. As noted, "fault" means a breach of legal duty. This allocation of fault must be done on a percentage basis, and the total must be 100%. Each entity's percentage should be based on how much that entity's fault contributed to the harm.

If you allocate a percentage of fault to Plaintiff _____ himself, the Plaintiff's total recovery will be reduced by that allocated percentage of fault. If you decide that Plaintiff _____'s fault was 50% or more, Plaintiff _____ will recover nothing.

When you answer the questions about damages on the verdict form, which will be explained later, do not reduce the dollar amount of any damages by the percentage of Plaintiff _____'s fault, if any. The Court will make that calculation later, based on your findings as to the relative percentages of fault and the total damages.

For example, if you find that Plaintiff _____'s own fault was 20 percent of all fault proximately causing his injuries, then the Court will reduce his recovery by 20 percent of the total damages found by the jury. On the other hand, if you find that his fault is 50% or greater, then he shall recover nothing. Finally, if you find that he was not at fault, then any recovery will not be reduced.

33. MERE ASSERTIONS OF NEGLIGENCE ARE NOT SUFFICIENT.

A party may not rely on mere assertions of negligence which are not supported by facts.

34. DUTY OF DRIVERS

To avoid danger, every driver is required to follow the legal standard of care applicable to that driver in order:

1. To keep a proper lookout for other vehicles and highway conditions that reasonably may be anticipated.
2. To keep the vehicle under proper control by guiding and directing the course of the vehicle and being able to bring the vehicle to a stop within a reasonable distance..

[omissions from list]

3. To drive at a safe speed, having proper regard for the width, surface, and condition of the highway, other traffic, visibility, and any existing or potential hazards.
4. To drive in one lane whenever possible and to change lanes only after observing that it can be done safely and after giving the appropriate signal.
5. To drive on the correct side of the highway.
6. To pass others only after observing that it can be done safely.

The law provides that any person driving a motor vehicle on a public highway shall keep a proper lookout. A "proper lookout" means maintaining the lookout that an ordinarily careful person would use in light of all conditions existing at the time and those reasonably to be anticipated.

This duty does not merely require looking, but also requires making reasonable observations and having a reasonable understanding of other traffic and the general situation.

35. SPEED.

A driver has a duty to drive at a safe speed. The speed limit at the place of this accident was 35 miles per hour. Driving at a speed in excess of the limit may be evidence of fault. However, conditions and circumstances may allow a driver to drive at a [lower or greater] speed with proper regard for existing and potential hazards.

36. VIOLATION OF STATUTE, ORDINANCE OR SAFETY LAW.

A violation of a safety law is evidence of fault unless the violation is excused. Among Plaintiff _____'s claims is the assertion that Defendant _____ violated safety laws which state:

- A. The driver of a vehicle turning left must yield to vehicles close enough to represent an immediate hazard. The driver must make reasonable observations and yield when reasonably necessary.
- B. Except when directed to proceed by a peace officer, every operator of a vehicle approaching a stop sign shall stop at a clearly ed stop line, but if none, then at a point nearest the intersecting roadway where the operator has a view of approaching traffic in the intersecting roadway before entering it. After having stopped, the operator shall yield the right-of-way to any vehicle in the intersection or approaching on another roadway so closely as to constitute an immediate hazard during the time the operator is moving across or within the intersection or junction of roadways.

If you decide that Plaintiff _____ proved by a preponderance of the evidence that Defendant _____ violated any of these safety laws, you must decide whether the violation is excused.

37. CENTER TURN LANES: UTAH STATUTES

As already noted, a violation of a safety law is evidence of fault unless the violation is excused. Defendant _____ also claims that Plaintiff _____ violated safety laws:

Utah Statutes provide:

Two-way left turn lanes:

- (a) where a two-way left turn lane is provided, a left turn may not be made from any other lane;
- (b) a vehicle may not be driven in the two-way left turn lane except when preparing for or making:
 - (I) a left turn from or into the roadway; or
 - (ii) a U-turn except when prohibited by a traffic-control device;
- © (I) except as provided under Subsection (3)(c)(ii), the operator of a vehicle intending to turn left may not enter a two-way left turn lane more than 500 feet prior to making the turn;
- (ii) if traffic in the two-way left turn lane extends beyond 500 feet, the operator of a vehicle intending to turn left may enter the two-way left turn lane immediately upon reaching the last vehicle in the two-way turn lane;
- (d) the operator of a vehicle that has turned left into the two-way left turn lane may not travel in the lane more than 500 feet unless the operator intends to turn left and Subsection (3)(c)(ii) applies; and
- (e) the operator of a vehicle may not travel straight through an intersection in a two-way left turn lane.

“Intersection” is defined under Utah law as the area embraced within the prolongation or connection of the lateral curblines, or, if none, then the lateral boundary lines of the roadways of two or more highways which join one another.

“Highway” is defined under Utah law as the entire width between property lines of every ways or place of any nature when any part of it is open to the use of the public as a matter of right for vehicular travel.

If you decide that Defendant _____ proved by a preponderance of the evidence that Plaintiff _____ violated any of these safety laws, you must decide whether the violation is excused.

38. EXCUSE FROM FOLLOWING SAFETY LAWS.

If you decide that one party proved by a preponderance of the evidence that the other party violated one or more of the safety laws, you must decide whether the party accused of such violation has proved by a preponderance of the evidence that he should be excused for one or more of the following reasons:

- (1) He was incapable of obeying the law.
- (2) He was incapable of understanding what the law required.

[omission of other excuses]

If you decide that a party violated a safety law and that the violation was not excused, you may consider the violation as evidence of negligence. If you decide that a party did not violate the safety law or that the violation should be excused, you must disregard the violation and decide whether that party acted with reasonable care under the circumstances.

39. “RIGHT-OF-WAY” AND TURNS.

A vehicle has the right-of-way when it has the right to proceed in a lawful manner in preference to an approaching vehicle. But a driver has a continuing duty to use reasonable care for the

safety of others and themselves, even when one has the right-of-way over the other.

A driver may turn a vehicle only if it can be done with reasonable safety and after giving an appropriate signal. A driver turning left has a duty to yield the right-of-way to any vehicle approaching from a different direction that is so close it is an immediate hazard.

A driver who is turning his or her vehicle has a duty to use reasonable care to keep a lookout for other vehicles or other conditions reasonably to be anticipated, and not to turn unless and until the turn can be completed with reasonable safety.

[stock]

40. DAMAGES—*Introduction to tort 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 awarded if you find that Plaintiff is entitled to them. However, if you decide that Plaintiff is not entitled to recover damages, then you must disregard these instructions.

If you decide that Defendants' fault caused Plaintiff's harm, you must decide how much money will fairly and adequately compensate Plaintiff for that harm. There are two kinds of damages: economic and noneconomic.

[stock]

41. PROOF OF DAMAGES.

To be entitled to damages, Plaintiff _____ must prove two points:

First, that damages occurred. There must be a reasonable probability, not just speculation, that Plaintiff suffered damages from Defendants' 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 a mathematical certainty.

In other words, if Plaintiff has proved that he has been damaged and has established a reasonable estimate of those damages, Defendants may not escape liability because of some uncertainty in the amount of damages.

[stock]

42. ECONOMIC DAMAGES DEFINED.

Economic damages are the amount of money that will fairly and adequately compensate Plaintiff for measurable losses of money caused by Defendants' fault.

[stock]

43. *NONECONOMIC DAMAGES DEFINED.*

Noneconomic damages are the amount of money that will fairly and adequately compensate 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 damage 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 Plaintiff has been prevented from pursuing his ordinary affairs; [omission–disfigurement, etc.]
- (4) the extent to which Plaintiff has been limited in the enjoyment of life; and
- (5) 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 next instruct you on particular items of economic and noneconomic damages presented in this case.

44. *ECONOMIC DAMAGES. MEDICAL CARE AND RELATED EXPENSES.*

Economic damages include reasonable and necessary expenses for medical care and other related expenses incurred in the past.

Thus, in awarding past medical expense damages, you may consider:

- (1) the reasonable value of medical care, services, and supplies and equipment which were
- (2) reasonably required to be given in the treatment of Plaintiff stemming from the collision.

45. *ECONOMIC DAMAGES. LOST EARNINGS AND LOST EARNING CAPACITY.*

Economic damages include past and future lost earnings, including lost benefits, and lost earning capacity.

Calculate past lost earnings from the date of the harm until the trial. Calculate future lost earnings from the date of trial forward.

Lost earning capacity is not the same as lost earnings. Lost earning capacity means the lost potential to earn income. In determining lost earning capacity, you should consider:

- (1) _____'s actual earnings;
- (2) his work before and after the collision;
- (3) what he was capable of earning had he not been injured; and

(4) any other facts that relate to _____'s employment.

46. *ECONOMIC DAMAGES. LOSS OF HOUSEHOLD SERVICES.*

Economic damages include loss of household services. To recover damages for this loss, Plaintiff must prove the reasonable value of the household services that _____ has been or will be unable to do since the harm.

[stock]

47. *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 Defendants' fault. In other words, the amount of damages should not be reduced merely because Plaintiff _____ may be more susceptible to injury than someone else.

[stock]

48. *PRESENT CASH VALUE.*

If you decide that 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, will provide Plaintiff with the amount of money needed to compensate Plaintiff for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.

[stock]

49. *LIFE EXPECTANCY.*

According to mortality tables, a person of _____'s age, race, and gender is expected to live until 20__ (age __), or __ more years after the date of the vehicle crash. You may consider this fact in deciding the amount of future damages. A life expectancy is merely an estimate of the average remaining life of all persons in our country of a given age, race, and gender, with average health and exposure to danger. Some people live longer and others die sooner. You may also consider all other evidence bearing on the expected life of _____, including his occupation, health, habits, life style, and other activities.

[stock]

50. *COLLATERAL SOURCE PAYMENTS.*

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

[STOCK]

51. ARGUMENTS OF COUNSEL NOT EVIDENCE OF DAMAGES.

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

[stock]

52. VICARIOUS RESPONSIBILITY

_____ is a corporation and, as such, can act only through its officers and employees, and others designated by it as its agents.

Any act or omission of an officer, employee, or agent of a corporation, in the performance of their duties or within the scope of the authority of the officer, employee or agent, is the act or omission of the corporation. So, if you find that the preponderance of the evidence shows that an officer, agent, or employee of a corporation was at fault in performing their duties or within the scope of their authority, then you must find that such entity was at fault.

[stock]

53. AGGRAVATION OF SYMPTOMATIC PRE-EXISTING CONDITIONS.

If you find that Defendant proved by a preponderance of the evidence that Plaintiff _____ had a physical condition before the time of a vehicle crash, he would not be entitled to recover damages for that pre-existing condition or disability. However, Plaintiff _____ is entitled to recover damages for any aggravation or worsening of the pre-existing condition that Plaintiff proved by a preponderance of the evidence was caused by Defendant _____'s fault, even if Plaintiff _____'s pre-existing condition made him more vulnerable to physical harm than the average person. This is true even if some other person may not have suffered any harm from the event at all.

When a pre-existing 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 Plaintiff _____'s injury, if any, was caused by the pre-existing condition and what portion was caused by the vehicle crash.

If you are not able to make such an apportionment, then you must conclude that all of Plaintiff _____'s claimed injuries in this case were caused by Defendant _____'s fault.

[stock]

54. AGGRAVATION OF DORMANT PRE-EXISTING CONDITION.

As noted, if you find that Defendant proved by a preponderance of the evidence that Plaintiff _____ had a pre-existing physical condition before the time of the vehicle crash, Plaintiff _____ would not be entitled to recover damages for that pre-existing condition or disability.

However, if Plaintiff _____ had a pre-existing condition that was not causing pain or disability, but the vehicle crash causes Plaintiff _____ to suffer the damages he claims, then he may recover all damages caused by the event.

[stock]

55. DUTY TO MITIGATE.

It is the duty of a person who has been injured to use reasonable diligence in caring for the injuries and reasonable means to prevent their aggravation or worsening and to accomplish healing.

When an injured person does not use reasonable diligence to care for the injuries, and they are made worse as a result of such failure, the liability, if any, of another whose act or omission was a proximate cause of the original injury must be limited to the amount of damage that would have been suffered if the injured person had exercised the required diligence.

It is the Defendants' burden to prove by a preponderance of the evidence that Plaintiff could have, but failed to mitigate or minimize his damages. On the other hand, if you find that Plaintiff _____ did make reasonable efforts to minimize his damages, then your award should also include the amounts that he reasonably incurred to minimize them.

[stock]

56. NO SPECULATION.

Damages are not recoverable for loss beyond an amount that the evidence permits to be established. An award of damages may not be based upon speculation or conjecture, but rather must be based upon evidence, which provides a reasonable estimate of the amount of damages. The law does not require proof of damages to a mathematical certainty.

Do not speculate on or consider any other possible sources of benefit the Plaintiff may have received. Any legally required adjustments will be made by the Court.

[stock]

57. NO IMPLICATION FROM DAMAGE INSTRUCTIONS.

The fact that I have instructed you concerning damages should not be taken as an indication that I believe or not believe that damages in any particular amount should or should not be awarded to

Plaintiff. The instructions in reference to damages are given as a guide in case you find from a preponderance of the evidence that damages should be awarded to Plaintiff. However, if you find that there should be no damages awarded, then you may disregard the instructions you receive on the matter of damages.

58. THE VERDICT FORM.

Upon the jury's reaching a verdict, the foreperson shall complete and sign the verdict form. That form states:

MEMBERS OF THE JURY:

Please answer the following questions. If on any given question at least six of you find that the evidence preponderates in favor of the issue presented, then answer the question "Yes." If at least six of you find that the evidence is so equally balanced that you cannot determine an issue by a preponderance of the evidence or that the evidence preponderates against the issue presented, then answer the question "No." Also, at least six of you must agree that any damages assessed were proved by a preponderance of the evidence.

1. Was Defendant _____ negligent as alleged by Plaintiff _____?

Yes: _____ No: _____

If your answer is "No," please date and sign this Verdict Form and return it to the Court. If your answer is "Yes," please continue.

2. Did the Plaintiff _____ prove by a preponderance of the evidence that he suffered injury or aggravation of a pre-existing condition caused by Defendant _____'s negligence?

ANSWER: Yes _____ No _____

If your answer is "No," please date and sign this Verdict Form and return it to the Court. If your answer is "Yes," please continue.

3. Did the Defendants prove by a preponderance of the evidence that the Plaintiff _____ was himself negligent?

Yes _____ No _____

If you answered "No" to Question 3, skip Question 4 and go on to Question 5. If you answered Question 3 "Yes," go on with Question 4.

4. Assuming that all of the wrongful conduct which contributed to Plaintiff's injuries, if any, totals 100%, what percentage of such conduct is attributable to

Defendant _____ %

Plaintiff _____ %
Total 100 %

If you have allocated 50% or more of the fault to Plaintiff _____, then you are finished. Sign the Verdict Form and return it to the Court. Otherwise, go on to number 5.

5. Please state the amount of economic damages Plaintiff _____ proved by a preponderance of the evidence that were or will be reasonably and necessarily incurred as caused by Defendant _____'s negligence, and not attributable solely to a pre-existing condition if any.

Past medical expenses: \$ _____

Past and future Lost Earnings: \$ _____

Past and future Lost Household services \$ _____

Total Economic Losses: \$ _____

6. Please state the amount of non-economic damages, including pain and suffering, Plaintiff _____ proved by a preponderance of the evidence that he suffered or will likely suffer as caused by Defendant _____'s negligence, and not attributable solely to a pre-existing condition, if any.

Total non-economic damages (past and future):
\$ _____

Dated: _____

Jury Foreperson

[Numbers 59 through 66 are stock]

59. WHAT TO TAKE WITH YOU INTO THE JURY ROOM

You may take the following things with you when you go into the jury room to discuss this case:

- a. All exhibits admitted in evidence;
- b. Your notes (if any);
- c. Your copy of these instructions; and
- d. The verdict form that will be given to you.

60. WHAT TO DO IN THE JURY ROOM

The first thing you should do in the jury room is choose a person to be in charge. This person is called the FOREPERSON. The Foreperson's duties are:

- a. To keep order and allow everyone a chance to speak;
- b. To represent the jury in any communications you make; and
- c. To sign and date your verdict and bring it back to court.

In deciding what the verdict should be, all jurors are equal. The Foreperson has no more power than any other juror.

61. YOUR VERDICT MUST BE YOUR OWN DECISION ARRIVED AT AFTER OPEN AND HONEST DELIBERATION.

Consider each other's opinions, then reach your own decision based upon honest deliberation. It is rarely productive or good for a juror, upon entering the jury room, to make an emphatic expression of opinion or to announce a determination to stand for a certain verdict. When that is done at the outset, a person's sense of pride may block appropriate consideration of the case. Use your common memory, your common understanding and your common sense. Talk about the case with each other as you ponder and deliberate.

In the end, your verdict must be your own. Don't make a decision just to agree with everyone else. You should, however, respect and consider the opinions of the other jurors. If you are persuaded that a decision you initially made was wrong, don't hesitate to change your mind. Help each other arrive at the truth. Your decision need not be unanimous. Only six of you need to agree upon the verdict. In an attempt to reach a decision, you may not resort to chance or any form of decision-making other than honest deliberation.

62. WHAT TO DO IF YOU HAVE QUESTIONS DURING DELIBERATION

If you think you need more information or a clarification, write a note and give it to the bailiff. I will review it with the lawyers. We will answer your question whenever appropriate. However, these instructions should contain all the information you need to reach a verdict based upon the evidence that has been presented to you. You should understand that no further evidence can be provided to you.

63. FOCUS ON THIS CASE ALONE

Your duty is to decide this case and this case alone. You should not use this case as a forum for correcting perceived wrongs in other cases or in the broader society, or as a means of expressing views about anything other than whether these Defendants are liable to pay damages or not, and if so, how much are the damages. Your verdict should reflect the law given to you in these instructions applied to the facts that you find to be supported by the evidence. Your decision should not be distorted by any outside factors or objectives.

The final test of the quality of your service will be the verdict you return. You will make an important contribution to justice and your community if you focus exclusively on this case and return a just and proper verdict.

64. REACHING A VERDICT

In determining any fact in this case you should not consider nor be influenced by any statement made or act done by the Court which you may interpret as indicating its views thereon. You are the sole and final judges of all questions of fact submitted to you, and you must determine such questions for yourselves from the evidence, without regard to what you believe the Court thinks thereon. The Court has not intended to express, or intimate, or be understood as giving any opinion on what the proof shows or does not show, or what are or what are not the facts in the case. Indeed, it is immaterial what the Court thinks about it. You must follow your own views and not be influenced by the views of the Court.

As I have said, this being a civil case, your verdict must represent the view of three-fourths, or six members of the jury. When six of you are in agreement, then you have reached a verdict and your work is finished. At least six of you must agree on each issue presented to you. If there is more than one issue, the six in agreement need not be the same six on each issue.

65. HOW TO REPORT YOUR VERDICT

When you retire to deliberate, you will be provided with a Verdict Form, which is self-explanatory. After your deliberations have been completed and you have reached a verdict, the Foreperson should fill out and sign the Verdict form in accordance with the decision of the jury.

Once the Verdict Form is completed, dated, and signed, notify the bailiff that you are ready to return to court. The Foreperson should present the Verdict Form to the bailiff, at the direction of the judge, when you return to the courtroom to deliver your verdict.

66. WHAT HAPPENS AFTER THE VERDICT HAS BEEN REPORTED

After you have given your verdict to the judge, the clerk will read the jury's verdict. After that, the judge or the clerk may ask each of you about the verdict to make sure you agree with it. Then you will be released from your jury service and you may leave at any time.

After you are excused, you may talk about the case with anyone. Likewise, you are not required to talk about it, if you don't want to. If anyone attempts to talk to you about the case when you don't want to do that, please tell the Bailiff or the Court Clerk. Finally, if you do decide to discuss the case with anyone, keep in mind that your fellow jurors freely stated their opinions in the jury room with the understanding that they were speaking in confidence. Please respect the privacy of the views of your fellow jurors.

CLOSING ARGUMENTS [Plaintiff/Defense/Plaintiff: The Court will grant each side the same amount of time; normally, 45 minutes is sufficient for each side; Plaintiff may split time between beginning and rebuttal, say 35 and 10, or 30 and 15.]

++EXCEPTIONS TO JURY INSTRUCTIONS++

+[Allow both sides to take exception to jury instructions outside the presence of the jury at this point, unless earlier stipulation that exceptions may be taken after the jury retires. (Stipulation must be put on the record *before* the jury retires.) (Endorse decisions on requested jury instructions: show which parts given and refused).]

CASE GOES TO JURY

- A. ADMINISTER OATH TO BAILIFF. [OATH: Do you solemnly swear that you will take charge of this jury and take them to some private and convenient place where they may deliberate upon their verdict, allowing no one to speak to them nor to do so yourself, unless so ordered by the Court, and to return them into court when they have so reached such a verdict or when so ordered, so help you God?]
- B. ADVISE JURORS: I am now going to ask you to go with the bailiff into the jury room for your deliberations. You may not take any outside materials into the jury room with you. You may take only your own notes and your copies of the jury instructions. **I will send in to you:** the original of the instructions that you received. I encourage you to review those instructions. I will also send in the exhibits which were admitted and the verdict form.

The bailiff is not allowed to answer questions about the case, but if you have a question, you may place it in writing and have him give it to me. I will respond to the question after discussing it with counsel for the parties.

- C. JURY RETIRES. [If the jury goes home before verdict: admonish jurors not to discuss the case with anyone except fellow jurors while in the jury room deliberating.]

A. **EXCUSE ALTERNATE JURORS or HOLD THEM.** Admonish alternates not to discuss the case with anyone until further notice from the Court that their service is no longer needed. Have them leave phone numbers with the clerk. They should remain available for this case until finally excused.

B. **TO COUNSEL:**

1. **Exhibits.** Have counsel examine the exhibits and ensure that the clerk has all the exhibits received into evidence.
2. **Exceptions to Instructions.** Allow counsel to take exceptions to the instructions. For the record: State that there was a prior discussion in chambers where the attorneys and the Court discussed exceptions, and that counsel stipulated that exceptions could be taken after the jury retired.

C. **IF JURY DEADLOCKS:** Send note in, instructing jury to keep trying. If that doesn't work, make record of manifest necessity for mistrial.

D. **VERDICT.**

1. **Before bringing jury in:** If necessary, admonish members of the audience that there should be no reaction when the jury verdict is read. These proceedings are not over until this court is adjourned. Regardless of what the verdict may be, the jury is entitled to the same respect that you have shown during all of these proceedings. Therefore, there will be no comment from anyone, until after the court adjourns.
2. **After jury returns to the courtroom:** State for the record that counsel for all parties are present, and that the members of the jury are all present.
3. **ASK FOREPERSON TO IDENTIFY HIM OR HERSELF.**
4. **HAVE YOU REACHED A VERDICT IN THIS CASE?** Please hand your verdict to the bailiff. [Court examines the verdict.]
5. **ASK CLERK TO READ THE VERDICT.**
Ask Foreperson: Is this the verdict of the jury?
6. **DOES EITHER COUNSEL WANT THE JURY POLLED?** [If so, have clerk poll jury.]

F. **If the jury finds punitive damages should be awarded:**

If the punitive damages issue has been bifurcated [and usually it is]: Advise the jury that now they have one further matter to consider: Evidence needs to be taken with respect to this issue; further instructions given, and argument should be held and then the jury will deliberate on the amount.

- G. **ASK COUNSEL IF THERE IS ANYTHING FURTHER BEFORE THE JURY IS DISCHARGED.**
- H. **TO THE JURY:** Members of the jury, thank you for your service. I hope and trust that this experience has been a satisfying one for you, however difficult. Your jury service is now completed. You may now discuss the case with anyone, but you are not required to do so. Whether you discuss this case with counsel or anyone else after you are discharged from service is a matter of your own choice.

YOU ARE NOW DISCHARGED

POST-VERDICT

- A. Any post-verdict motions?
- B. Enter Judgment in accord with verdict or as modified.
- C. **ADJOURN.**

STATEMENT IF CASE IS SETTLED

Ladies and Gentlemen, I am pleased to advise you that this case has been resolved by the parties. Now, you may think that it has been a waste of your time to come here (and get this far into the trial) only to have it settled. I want you to understand, however, that it is your presence here (and your service as jurors in this case), as well as your willingness to serve as jurors, which has enabled these parties to resolve a dispute which, up to this time, they have not been able to resolve. I feel that it is fair to say that but for your willingness to serve in this case and your presence here, the parties could not have resolved this dispute on their own.

Therefore, even though your service as jurors is now completed, each of you may personally take pride in the fact that while you did not have to make a decision in this case which resolved this case, it has been resolved, at least partly because you are here and prepared to serve. At this time, you are discharged with my thanks and the thanks of all the participants in this matter.