

## Soft Tissue Charge

Ladies and Gentlemen of the Jury, it is the duty of the Court to determine the law of this case, and to conform each step of the trial to the law. The Court is required by such duty to instruct you concerning the law governing you in your deliberations as a Jury, as well as the law that you are to apply to the facts of the case as you determine those facts to be. It is your exclusive duty to determine the truth, the facts of this case.

You should follow the law as it is given in these Instructions. All of the Instructions should be considered together as a connected series and be regarded as the law applicable to this case. You have no right to disregard, or to give special attention to any part of the Instructions or to question the wisdom of any rule of law.

Any personal opinion which you may have as to the facts not established by the evidence in this case cannot properly be considered by you as a basis for your verdict, because, as jurors sworn to try this case and to render a true verdict on the law and the evidence, you may act only upon the evidence which has been introduced before you during the course of this trial. This means that you cannot speculate as to what may have happened, in the absence of evidence or testimony on a given point. You should, therefore, carefully consider the testimony of each and every witness and not disregard or overlook any testimony, witness or evidence.

You are the sole judges of the credibility of the witnesses and

the weight of the evidence. As used in these Instructions, "the credibility of a witness" means the truthfulness or lack of truthfulness of the witness. "The weight of the evidence" means the extent to which you are or are not convinced by the evidence.

In determining the credit and weight you will give to the testimony of the witness who has testified before you, you may consider, if found by you from the evidence:

- (1) the good memory or lack of memory of the witnesses;
- (2) the interest or lack of interest of the witness in the outcome of the trial;
- (3) the relationship of any witness to any of the parties or other witnesses;
- (4) the demeanor and manner of the testifying witnesses;
- (5) the opportunity and means, or lack of opportunity and means, of having knowledge of

- the matters concerning which the witness testified;
- (6) the reasonableness or unreasonableness of the testimony of the witness;
  - (7) the apparent fairness, or lack of fairness of the witness:
  - (8) the intelligence of the witness;
  - (9) the bias, prejudice, hostility, friendliness or unfriendliness of the witness for, or against, the plaintiff, or, for, or against, the defendant;
  - (10) contradictory statements of any witness, if you believe that such were made by the witness and that the same are contradictory of his or her testimony;
  - (11) contradictory acts of any witness, if you believe that such were committed by the witness and that they were contradictory to his or her

testimony.

From these considerations and all other evidence and circumstances appearing in the trial, you may give to the testimony of the witness such credit and weight as you believe such evidence is entitled to receive.

The rules of evidence provide that if scientific, technical, or other specialized knowledge might assist a jury in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education may testify and state his opinion concerning such matters.

However, expert testimony is no more conclusive than that of any other witness. Just as in the case of non-expert witnesses, you may, from all the foregoing considerations and from all other evidence and circumstances appearing in the trial, give to the testimony of each expert witness such credit and weight as you believe such evidence is entitled to receive. Furthermore, after weighing and considering the testimony and opinion of an expert

witness, you may believe or disbelieve the testimony and opinion of such witness in whole or in part.

If you believe that any witness in this case has knowingly testified falsely as to any material fact, you may, after considering and weighing the testimony of such witness, disregard the whole of the testimony of such witness or give it, or any part thereof, such weight and credit as you believe it to be entitled to receive.

During the course of the trial, evidence may have been presented to you by way of reading depositions. You are hereby instructed by the Court that the testimony so submitted to you in that manner is under oath and shall be considered by you and given the same weight and credibility as if the person giving the testimony were physically present in the courtroom and testifying to you from the witness stand.

Plaintiff, \_\_\_\_\_, is claiming that the Defendant is liable for her injuries because Defendant's negligence was the proximate cause of those injuries. Defendant has acknowledged or admitted

that he was at fault for the accident.

The burden of proof with regard to a particular issue in a case rests with the party arguing the affirmative of that issue. In this case, the Plaintiff has the burden of proving by a preponderance of the evidence that her injuries and damages were caused by this collision.

The Plaintiff can recover only for those elements of damages that she has proven to be present by a preponderance of the evidence to have proximately resulted from the accident of

The preponderance of the evidence has to do with the weight of the evidence; and, if, after considering and weighing all of the evidence of the case, both direct and circumstantial, including all the evidence introduced by all of the parties, you believe that the evidence in favor of any fact or facts which you are required to determine in order to decide the case, outweighs the evidence opposing such fact or facts, even in the slightest degree, then, you

should find that such fact or facts are proved by a preponderance of the evidence.

The preponderance of the evidence does not necessarily consist of the greater volume of testimony or number of witnesses, for you may, if the circumstances proved warrant you in doing so, believe the testimony of one (1) witness against the testimony of a number of witnesses testifying differently.

A fact may be proved by circumstantial evidence. Circumstantial evidence consists of proof of facts or circumstances which give rise to a reasonable inference of the truth of the fact sought to be proved, that is to say, after certain circumstances have been proved to your satisfaction, you may conclude that certain results follow. Circumstantial evidence is not only competent evidence, but, is sometimes the only mode of proof and is just as legal and just as effective as any other, provided the circumstances are of such character and force to satisfy you.

The Court instructs the jury that in your consideration of the



evidence in this case, you are not limited to statements of witnesses. In other words, you are not limited solely to what you see and hear as the witnesses testify. On the contrary, you are permitted to draw, from facts which you find have been proven by a preponderance of the evidence, such reasonable inferences as seem justified in the light of your experience, and in this connection, the Court further instructs the jury that inferences are deductions or conclusions which common sense lead the jury to draw from facts which have been established by the evidence in the case.

The negligence of the Defendant, \_\_\_\_\_, is the "proximate cause" of Plaintiff's injuries if it was one of the efficient causes thereof, without which her injuries would not have resulted. It is a cause that contributes directly to the injury and resulting damages, and is distinguished from a mere incidental circumstance, not in the direct line of causation.

If you find that the Defendant's negligence was the proximate cause of Plaintiff's injuries, you may award the Plaintiff damages.

The Plaintiff may recover only for those elements of damages that she has proven by a preponderance of the evidence to have proximately resulted from the negligence of the Defendant,

The Court instructs the jury that you should find a verdict in favor of the Plaintiff. You should allow her such sum as the evidence shows will fairly compensate her for the loss sustained by her by reason of the damage done to her.

The Court instructs the jury that if, from the evidence and the other instructions of the Court, you find your verdict in favor of the Plaintiff, then in assessing the damages to which she is entitled, you may take into consideration any of the following:

- (1) Medical bills incurred in the past;
- (2) Medical bills in the future;
- (3) Lost earning capacity in the past;
- (4) Lost earning capacity in the future;
- (5) Pain and suffering, mental anguish and emotional

distress in the past;

- (6) Pain and suffering, mental anguish and emotional distress in the future;
- (7) Loss of enjoyment of life in the past;
- (8) Loss of enjoyment of life in the future.

The Court instructs the jury that in estimating \_\_\_\_\_'s damages, you should consider her health and condition before \_\_\_\_\_, as compared with her present condition, and what her condition may be in the future, in light of the testimony adduced at trial, in consequence of her injuries.

The Court instructs the jury that you may, in estimating \_\_\_\_\_'s damages, if you believe her injuries are permanent, also take into consideration her probable duration of life, and to show this, you may take into consideration the standard mortality tables as showing the probable duration of her life under all proof in this case.

According to the mortality tables, the average life expectancy

of \_\_\_\_\_, age \_\_\_\_\_ years, is \_\_\_\_\_ years more; in other words, \_\_\_\_\_ should attain the age of \_\_\_\_\_ years. This fact is now in evidence to be considered by you in fixing damages. However, this one factor of evidence is not, by law, controlling, but should be considered in connection with all the other evidence in the case bearing on the same question.

Damages which are purely speculative cannot be recovered. But it is the uncertainty as to the fact of damages, and not as to the amount of damages, that is to be considered. Where it is certain that the damages resulted, mere uncertainty as to the amount does not justify the jury in refusing recovery. A mere difficulty in assessment of damages is not sufficient reason for refusing them where the right to damages has been established.

The Court instructs the jury that even if you should believe that \_\_\_\_\_ was afflicted with some condition at the time of the injury from which she might have a predisposition to some of or all of the troubles from which she is now suffering, but was otherwise

in good health, and the injuries received in the accident developed or aggravated this condition and predisposition without fault of the Plaintiff, and such injuries were the result of the Defendant's negligence, then the Defendant is liable for the Plaintiff's condition or the aggravation of that condition.

You must not consider how or if any verdict you return will be paid. You are to decide this case solely on the basis of the evidence you have heard and the law as I have instructed you, and you may not during your deliberation give any effect or weight to any other considerations.

The Court instructs the jury that the permanency of, or the future effect of, any injury must be proven with reasonable certainty in order to permit a jury to award an injured party future damages. You should not award the Plaintiff any damages for future permanent effects that you believe from the evidence are merely possible or probable as a result of the accident.

The Court instructs the jury that the proper measure of

damages for future medical expenses is the reasonable value of medical services as will be incurred to a reasonable degree of medical certainty by reason of the permanent effects of a party's injury.

Loss of enjoyment of life as previously discussed in these instructions means the amount for which Plaintiff should be compensated, if any, for the manner in which Plaintiff has been reduced in her capacity as an individual to function both temporarily and permanently as a whole person and to appear both temporary and permanently as a normal person.

You should find that the Plaintiff is entitled to a verdict, and you should further find that the evidence in the case establishes a reasonable certainty of future medical expense, then it becomes the duty of the jury to ascertain the present worth in dollars of such future damage, since the award of future damages necessarily requires that payment be made now for a loss that will not actually be sustained until some future date.

Under these circumstances, the result is that the Plaintiff will in effect be reimbursed in advance of the loss, and so will have the use of money which she would not have received until some future date, but for the verdict.

In order to make a reasonable adjustment for the present use, interest free, of money representing a lump-sum payment of anticipated future loss, the law requires that the jury discount, or reduce to its present worth, the amount of anticipated future loss, by taking (1) the interest rate or return which the Plaintiff could reasonably expect to receive on an investment of the lump-sum payment, together with (2) the period of time over which the future loss is reasonably certain to be sustained; and then reduce, or in effect deduct from, the total amount of anticipated future loss whatever that amount would be reasonably certain to earn or return, if invested at such rate of interest over such future period of time; and include in the verdict an award for only the present-worth ---- the reduced amount ---- of anticipated future loss.

The Court instructs the jury that, if you believe from the evidence that the Plaintiff is entitled to damages, you are not permitted to award the Plaintiff any damages for the purpose of punishing, deterring or making an example of \_\_\_\_\_, and strongly cautions the jury to bear this in mind as deliberation occurs.

Plaintiffs, \_\_\_\_\_, seek damages for loss of parental consortium. The Court instructs the jury that consortium is the right arising from the parental union to have performance by a parent of all the duties and obligations assumed by the parental relationship including the right to society, companionship and services.

If you find from a preponderance of the evidence that Plaintiffs, \_\_\_\_\_, suffered a loss of consortium which was proximately caused by the Defendant's negligence, then you may award them such sum as you deem just and proper.

If you determine that an award for loss of consortium is proper,



you may take into account the age of the children, the nature of the relationship between the parent and the children, the emotional and physical characteristics of the children, and whether other consortium-giving relationships are available to the children in determining your award of damages.

Loss of earning capacity can be proved by the Plaintiff establishing that there exists an injury which can reasonably be found to diminish her earning capacity. The Plaintiff then may rely upon her own testimony, or those of other witnesses, to acquaint the jury with the impact her injuries have had on her job skills. When the Plaintiff has established by a preponderance of the evidence that her injuries have diminished her earning capacity by disabling the Plaintiff from engaging in those occupations for which, in the absence of said injury, she would have been able to pursue, then the jury may assess a general amount of damages for Plaintiff's diminished earning capacity. This element of damages is intended to compensate for a person's loss of ability to earn wages, and can

be awarded even though the injured party was not gainfully employed at the time of the accident.

The Court instructs the jury that a person who has been injured has a duty to use reasonable means under all circumstances to lessen the damages and to recover from those injuries. If you find that the Plaintiffs have failed to undertake reasonable means to mitigate their damages, you should consider this evidence in your assessment of damages.

Where the evidence demonstrates, as in this case, that certain medical expenses have been incurred, then a rebuttable presumption arises that the expenses were both reasonable and necessary for the treatment of injuries arising from the accident at issue. Once this presumption arises, it is the Defendant's burden to produce evidence sufficient to overcome the presumption of the reasonableness and necessity of the medical expenses. Absent proof by a preponderance of the evidence on this issue from the Defendant, then you may award to Plaintiff the medical expenses

established by the evidence to have been incurred.

From time to time, counsel in this case have objected to the introduction of testimony and may have made arguments in connection with such objections. It is not only the right, but also the duty of a lawyer to protect the interest of his client by objecting to the introduction of, or by moving to strike out, evidence he or she deems inadmissible or improper, as well as by offering evidence he or she believes competent for admission.

The fact that the lawyer for any of the parties may have made such objections, motions, or offers, regardless of this Court's ruling thereon, must not prejudice you for, or against, the party represented by such lawyer.

Furthermore, my rulings and the language adopted by me in my rulings should not be considered by you for any purpose in arriving at your verdict, because it is the duty of the Court to pass upon the introduction of testimony which may be objected to by counsel in the course of the trial, just as it is your duty to consider

the weight and credibility of the testimony permitted by the Court to be introduced.

Nothing that I have said or done, at any time during this trial is to be considered by you as evidence of any fact, or as being a comment by this Court upon the evidence, or upon the weight of the evidence, or an indication that this Court favors the cause of any one litigant above that of any other litigant.

Nothing said or done by the lawyers who have tried this case is to be considered by you as evidence of any fact.

Your verdict must represent the considered judgment of each Juror. In order to return a verdict, it is necessary that each Juror agree thereto. In other words, your verdict must be unanimous.

It is your duty, as Jurors, to consult with one another and to deliberate in an effort to reach an agreement, if you can do so without violence to individual judgment. Each of you must decide the evidence for yourself, but only after an impartial consideration of the evidence in the case with your fellow Jurors. In the course of

your deliberations, do not hesitate to re-examine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow Jurors, or for the mere purpose of returning a verdict.

In carrying out your function to determine the facts of the case, you must do so without prejudice, fear or favor and, solely, from a fair consideration of the evidence.

Your verdict should not be the result of sympathy or sentiment, but should be based exclusively on the evidence and the law. The evidence should be considered and viewed by you in the light of your own observations and experiences in the ordinary affairs of life.

## **FINAL INSTRUCTIONS TO THE JURY**

Upon retiring to the Jury Room, you should first select one (1) of your number to act as Foreperson, who will preside over your deliberations and will be your spokesperson here in Court. Forms of Verdict have been prepared for your convenience.

You will take the Verdict Forms to the Jury Room and, when you have reached a unanimous decision as to your verdict, it is to be signed by your Foreperson and later returned to open Court.

If, during your deliberations, you should desire to communicate with the Court, please reduce your message or question to writing, signed by the Foreperson, and pass the note to the Bailiff, who will bring it to my attention. I will, then, respond as promptly as possible, either in writing or by having you returned to the Courtroom so that I can address you personally.

I caution you, however, with regard to any message or question you might send, that you should never state specifically your numerical division at that time.