PLAINTIFF DOCKET SECTION B

VERSUS FIRST JUDICIAL DISTRICT COURT

DEFENDANT CADDO PARISH, LOUISIANA

**JURY CHARGE**

Members of the jury:

You have now heard all the evidence and the arguments of counsel.

It is now my duty to instruct you on the law that applies to this case and to your deliberations. The jury has the duty to accept and apply the law as given by the court. The jury alone shall determine the weight and the credibility of the evidence. You are the exclusive judges of the evidence and credibility of the witnesses.

In deciding this case, you should not be influenced by sympathy, passion, prejudice, or public opinion. You are expected to reach a just verdict.

If I have given you the impression that I have an opinion concerning any fact in the case, you are to disregard that impression.

You must not single out any of these instructions and disregard others. The order in which the instructions are given does not indicate that one instruction is more important than another.

The court is not permitted to comment either upon what has or has not been proven or upon which witnesses you should believe or not believe.

All legal entities and all natural persons have the same rights to bring and defend suits in our courts, and all have the right to be treated equally under the law and before the court. The fact that one party is a corporation and one party is a natural person should not influence your consideration of the evidence or application of the law.

**Arguments and Evidence:**

The statements and the arguments made by the attorneys at any time during the trial are not evidence. You are to disregard any remark of counsel which you find to be inconsistent with the evidence in the case or the law as instructed by this court.

The evidence which you should consider consists of the testimony of witnesses, as well as any documents and exhibits which were introduced into evidence.

Evidence is either direct or circumstantial. Direct evidence is evidence which, if believed, proves a fact. Circumstantial or indirect evidence is evidence which, if believed, proves a fact and from that fact you may logically and reasonably conclude that another fact exists.

Any fact at issue may be proven by the use of direct or circumstantial evidence. Proof by circumstantial evidence is sufficient to constitute a preponderance of the evidence when, taking the evidence as a whole, such proof shows the fact to be proven is more probable than not.

You are not bound to decide any issue of fact in accordance with the number of witnesses presented on that point. The test is not which side brings the greater number of witnesses before you or presents the greater quantity of evidence, but rather which witnesses and evidence appeals to your mind as being the most accurate and convincing.

**Burden of Proof:**

In a civil action like this one, the burden of proof is on the plaintiff to prove the essential elements of his claims by a preponderance of the evidence. To establish something by "a preponderance of the evidence" means simply to prove, by direct or circumstantial evidence, that something is more likely true than not true. Proof that establishes only possibility, speculation, or unsupported probability will not suffice to establish the plaintiff’s claim.

If you find that the plaintiff has proven his claims by a preponderance of the evidence, you must find in his favor. If you find that the plaintiff failed to prove any element of his claim by a preponderance of the evidence, then he may not recover on that claim.

**Plaintiff’s Claims:**

**Stipulations:**

A “stipulation” is an agreement or something that the attorneys agree is accurate. When there is no dispute about certain facts or testimony, the attorneys may agree or “stipulate” to those facts or testimony.

You must accept a stipulated fact as evidence and treat that fact as having been proven here in court. Additionally, stipulated testimony must be considered in the same way as if that testimony had been received here in court.

You must treat the following facts as having been proven:

**Witnesses:**

It is your duty to determine the credibility of the witnesses and how much weight you should give the testimony of the witnesses. In this respect, you may take into consideration the probability or improbability of witness statements, their knowledge of the facts to which they testify, their reliability to noting and remembering facts, their demeanor on the witness stand, the interest or lack of interest they may have in the case, their relationship with either the plaintiff or defendant, and every circumstance surrounding the giving of their testimony which may aid in weighing their statements. If you believe that any witness has willfully and deliberately testified falsely to any material fact for the purpose of deceiving you, then you are justified in disregarding the entire testimony of such witness as providing nothing and as not worthy of belief. You have the right to accept as true, or reject as false, the testimony of any witness, in whole or in part, as you are impressed with their veracity.

An expert is a person who is learned in a particular area and is permitted to express his opinion upon matters at issue, but an expert is not called into court for the purpose of deciding the case. You, the jurors are responsible for deciding the case. An expert is merely a witness, and you have the right to either accept or reject his testimony and opinion in the same manner and for the same reasons for which you may accept or reject the testimony of other witnesses in the case. You may also consider the education, knowledge, training, or other basis in determining what weight, if any, to give to the testimony of an expert.

**Theories of Recovery:**

**Damages:**

If and only if you decide to return a verdict for the plaintiff, then you should award an appropriate amount of money to the plaintiff according to the instructions which I give you on the subject of damages. If damages are awarded, they should be such that they place the plaintiff in the same position in which he would have been had the injuries not occurred. This can include all past, present, and probable future harm, as well as pain, suffering, and mental anguish. The fact that I instruct you on the law of damages, as well as on other matters, is not to imply or suggest that the court intends to express any opinion as to whether or not they should be awarded.

You may not decide on a percentage of fault or an amount of damages by agreeing in advance to an average of various amounts suggested by individual jurors. You must reach these conclusions by your own independent consideration and judgment. Nine of you must ultimately agree on the percentage or the amount in question, or on a denial of an award altogether.

If you find, based on the law and evidence, that the plaintiff is entitled to a verdict in his favor, then you must consider damages. In arriving at the amount of the award necessary to adequately compensate the plaintiff for his injuries, you should consider:

future medical/life care expenses,

past lost wages and future lost earning capacity,

past and future physical pain and suffering,

past and future mental anguish,

past and future loss of enjoyment of life, and

damages for permanent impairment of bodily function that is not included in any other category of damages.

A person who claims damages resulting from the wrongful act of another has a duty under the law to use reasonable diligence to mitigate his damages, that is, to avoid or to minimize those damages.

If you find that the defendant has proven by a preponderance of the evidence that the plaintiff unreasonably failed to lessen his damages, you should deny him recovery for those damages that he would have avoided had he acted reasonably.

An injured plaintiff may not sit idly by when presented with an opportunity to reduce his damages. However, the plaintiff is not required to exercise unreasonable efforts, to incur unreasonable expenses, or undertake work which is painful or dangerous because of his injuries.

Should you find liability and award damages, the law does not provide a formula for the amount of those damages, and you should award the amount of damages you as a jury find appropriate and just.  You should consider the evidence you have heard, including any calculations from any witness for either side, in determining the appropriate amount of any damages. Some of these items of damages are difficult to measure in dollars and cents. You must carefully weigh the evidence and determine the amount of such items according to your very best judgment and experience.

The general law is that the reparation should be equal to the injury received. No one should be allowed to unjustly enrich themselves at the expense of another; that is to say, punitive damages or speculative damages are not to be awarded, nor should sympathy or prejudice enter into your judgment. You may not include or add to any amount a sum for revenge, punishment, or to set an example.

Statements of any attorney in this case as to their estimate of dollar amounts to be awarded, if any, for pain and suffering, mental anguish, and similar claims, are not evidence and should only be considered as argument. Your decision should be based on the evidence and your determination of what is fair and just.

**Deliberation:**

You must deliberate this case without regard to sympathy, prejudice, or passion for or against any party. This means that the case should be considered and decided as an action between persons of equal standing in the community. All persons or entities stand equal before the law and are to be dealt with as equals in the court of justice.

Each juror, having in view the oath you have taken and the duty and responsibility thereunder, should have your own mind convinced based upon the preponderance of the evidence before conscientiously agreeing to a verdict. You may now discuss the evidence with each other to arrive at the true facts and determination of this case.

You will select your own Foreperson whose duty it will be to conduct your deliberations, fill out the verdict form, date it, sign it, and speak for you when returning to court. You need not be unanimous in your verdict. Nine of you must agree on the answer to each question. The same nine jurors do not need to agree on the answer to each question. Your Foreperson does not have to be one of the nine agreeing jurors on the answer to any question. It is still their duty to fill out the verdict form, sign it, and speak for you.

I will now deliver to you a copy of these instructions and the Jury Verdict Form which should be completed by your Foreperson after you have reached your verdict. You may carry your handwritten notes and Plaintiff’s and Defendant’s exhibit books into the deliberation room.

This case is now yours to decide.

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Judge Brady O’Callaghan

First Judicial District Court

**ATTORNEYS:**