

## **CHAPTER 100 PRELIMINARY INSTRUCTIONS SYNOPSIS**

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### **101 Duty of Jurors—Admonishment**

Members of the Jury:

You have been selected as jurors and have taken an oath to well and truly try this case.

Keep an open mind. Do not make a decision about the outcome of this case until you have heard all the evidence, the arguments of counsel, and my final instructions about the law you will apply to the evidence you have heard.

Your decision must be based only on the evidence presented during this trial and my instructions on the law. It would not be fair for you to base your decision on information that you acquire outside the courtroom from a source that cannot be challenged or cross-examined by the parties.

Therefore, from now until the trial ends, you must not:

- Conduct research on your own or as a group,
- Use dictionaries, the Internet, Google, or any other resource to gather any information about the issues in this case, the law that applies to the case, or the people involved in the case, including the parties, witnesses, lawyers, or the judge.
- Investigate the case, conduct any experiments, or attempt to gain any specialized knowledge about the case, or
- Receive assistance in deciding the case from any outside source.

You also must not:

- Use laptops or cell phones in the courtroom or in the jury room,
- Consume any alcohol or drugs that could affect your ability to hear and understand the evidence,
- Read, watch, or listen to anything about this trial from any source whatsoever, including newspapers, radio, television, or the Internet,
- Listen to discussions among, or receive information from, other people about this trial, or
- Visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate.

Finally, you must not:

- Talk to any of the parties, their lawyers, any of the witnesses, or members of the media. If anyone tries to talk to you about this case, you must tell my court staff or me immediately.

You may discuss the evidence with your fellow jurors during the trial, but only in the jury room, and only when all of you are present. Even though you are permitted to have these discussions, you must not make a decision about the outcome of this case until your final deliberations begin. Until you reach a verdict, do not communicate about this case or your deliberations with anyone else.

You must not communicate with anyone or post information about the case, or what you are doing in the case, by any means, including telephone, text messages, email, internet chat rooms, blogs, or social websites, such as Facebook or Twitter.

During the trial, you may tell people who need to know that you are a juror, and you may give them information about when you will be required to be in court. But you must not talk with them or others about anything else related to the case. Only you have been found to be fair, and only you have promised to be fair—no one else has been so qualified. After your service on this jury is concluded, you are free to talk with anyone about the case or do whatever research you wish.

[Our law does not permit you to visit a place discussed in the testimony because you cannot be sure that the place is in the same condition as it was on the day in question. Also, even if it were in the same condition, once you go to a place to evaluate evidence in light of what you see there, you become a witness, not a juror. As a witness, you may now have an erroneous view of the scene that may not be subject to correction by either party. That is not fair.]

These rules are designed to help guarantee a fair trial. I know you will follow these rules, in accord with your oath and promise.

### **103 Personal Knowledge of a Juror**

If you realize that you have personal knowledge about this case, you must inform my court staff or me immediately.

### **105 Law to the Court, Facts to the Jury**

Judges and jurors perform different tasks. I will instruct you on the law, both now and after all the evidence has been presented. You will decide the facts in this case. Then you will decide the outcome of this case by applying my instructions to the facts.

### **107 Instructions Considered as a Whole**

Consider all of my preliminary and final instructions together. Do not single out any individual sentence, point, or instruction and ignore the others.

### **109 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [*his*][*her*][*its*] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **111 Greater Weight of the Evidence (Preponderance of the Evidence)**

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

### **113 Clear and Convincing Evidence**

Proof by clear and convincing evidence is a higher standard of proof than proof by the greater weight of the evidence.

Proof of a claim by clear and convincing evidence means that the facts supporting that claim are highly probable.

In criminal law we require that crimes be proved by an even higher standard of proof called beyond a reasonable doubt. We do not use this higher standard in civil cases, but the concept of beyond a reasonable doubt helps us to understand the concept of clear and convincing evidence. Clear and convincing evidence is a higher standard than the greater weight of the evidence, but a lower standard than beyond a reasonable doubt.

### **115 Credibility of Witnesses—Weighing Evidence**

You alone are the judges of the evidence, including the credibility of witnesses. Credibility means believability. A credible witness is a witness whose testimony you believe.

In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe what he or she has testified about; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; any relationship the witness may have with other witnesses or interested parties; and the reasonableness of the witness's testimony considered in the light of all the evidence you have heard.

Assume that each witness has testified truthfully. If you find conflicts in the evidence, reconcile those conflicts, if you can, based on the assumption that each witness has testified truthfully.

Do not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony that you cannot reconcile, decide what testimony you believe and what testimony you disbelieve.

In deciding what or whom you believe, you should use your own knowledge, experience, and common sense gained from day-to-day living.

### **117 Exhibits/Court Rulings**

During the trial, the parties may offer exhibits as evidence. I will decide whether to admit the exhibit as evidence. When I admit an exhibit as evidence, you should carefully examine it without comment while you are in the courtroom.

Rules of law strictly control the admissibility of evidence. The attorneys may ask certain questions or offer certain exhibits that I may rule are not admissible into evidence. Do not consider or speculate about evidence that I do not admit or order stricken from the record. Treat such evidence as though you had never seen or heard it.

Nothing I say or do is intended to suggest what you should believe about the facts in this case, or what your verdict should be. Each of you, as jurors, must determine the facts and the verdict..

### **119 Juror Note-Taking**

Judge the evidence from your memory of the testimony of the witnesses and any exhibits admitted into evidence. I will not provide a written transcript of any testimony. Therefore, listen carefully as the evidence is presented.

You may take notes during the trial. Paper will be provided. Do not become so involved in note-taking that you fail to listen carefully to the evidence and observe the witnesses as they testify.

Your notes are not evidence in this case. They are only an aid to your memory of the evidence. Do not give your notes or your fellow jurors' notes any greater weight than your memory or impression of the actual evidence.

You may only disclose your notes to your fellow jurors while you are all together in the jury room. Do not disclose your notes to anyone else. Do not take your notes outside of the courtroom or jury room. When your notes are not in your possession, no one will be allowed to read them. [After your verdict is returned, your notes will be destroyed.]

### **121 Juror Questions—Procedure**

You may have questions that you want to ask a witness. Do not address any questions directly to a witness, the lawyers, or your fellow jurors. Instead, if you have questions, raise your hand after the attorneys have asked all of their questions, and before the witness has left the witness stand. Write down your questions. I will collect them and review them with the attorneys. I will then decide whether your questions are permitted by law. If a question is permitted, I will ask the witness to answer the question. If it is not permitted, do not speculate why a question was not asked or what the answer may have been.

### **123 Conduct of Trial**

First, the attorneys will have an opportunity to make opening statements. These statements are not evidence. They are only previews of what the attorneys anticipate the evidence will be.

Following the opening statements, the attorneys begin presenting the evidence. They may call witnesses to testify under oath. The attorneys may also offer documents and other exhibits as evidence.

When the evidence is completed, the attorneys will make final, or closing, arguments. These

final arguments are not evidence, but are given to help you evaluate the evidence. The attorneys are also permitted to argue, to characterize the evidence, and to attempt to persuade you to a particular verdict. You may accept or reject those arguments as you see fit.

## CHAPTER 300 GENERAL INSTRUCTIONS SYNOPSIS

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- 302 Foreseeable—Defined**
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- 321 Assess Damages Separately—Two or More Plaintiffs**
- 323 Joint and Several Liability—Non-Comparative Fault Cases**
- 325 Res Ipsa Loquitur**
- 327 Violation of Statutory Duty as Fault or Negligence**
- 329 Excuse from Statutory Violation**

### **301 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:  
(1) the [injury][property damage][a death] would not have occurred without the conduct, and  
(2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

### **302 Foreseeable—Defined**

[An injury][Property damage][A death] is "foreseeable" when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **303 Intervening Cause**

Sometimes an unrelated event breaks the connection between a defendant's negligent action and the injury a plaintiff claims to have suffered. If this event was not reasonably foreseeable, it is called an "intervening cause."

When an intervening cause breaks the connection between a defendant's negligent act and a plaintiff's injury, a defendant's negligent act is no longer a "responsible cause" of that plaintiff's injury.

### **305 Direct Evidence & Circumstantial Evidence**

The parties in this case may prove a fact by one of two types of evidence—direct evidence or circumstantial evidence.

Direct evidence is direct proof of a fact. Circumstantial evidence is indirect proof of a fact.

For example, direct evidence that an animal ran in the snow might be the testimony of someone who actually saw the animal run in the snow. On the other hand, circumstantial evidence that an animal ran in the snow might be the testimony of someone who only saw the animal's tracks in the snow.

It is not necessary that any fact be proved by direct evidence. You may consider both direct evidence and circumstantial evidence as proof.

### **307 [Opinion][Expert][Skilled] Witness**

Generally, a witness may not express an opinion. However, a witness may be permitted to express an opinion because of [his][her] knowledge, skill, experience, training, or education.

Consider opinion testimony in the same manner as other testimony. In deciding how much weight to give opinion testimony, you may also consider:

- (1) the witness's skill, experience, knowledge, and familiarity with the facts of this case;
- (2) the reliability of the information supporting the witness's opinions; and
- (3) the reasons for the opinions.

### **309 Agreed/Stipulated Facts**

The parties in this case have agreed that certain facts are true. You must accept these facts as true: [*insert agreed facts*].

### **311 Depositions**

A party may present testimony by way of a written or videotape [deposition][transcript of testimony].

[A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and the lawyer for each party may ask questions. A court reporter is present and records the questions and answers.]

[A transcript is the sworn testimony of a witness from a prior trial or legal proceeding.]

Evaluate this testimony using the same rules you apply to the testimony of other witnesses.

### **313 Judicially Noticed Facts**

I have taken judicial notice that [*state facts that are judicially noticed*]. You must accept that fact as true.

### **315 Jury View**

I am permitting you to view [*state what is to be viewed*]. The purpose of the view is to help you to better understand and weigh the evidence introduced in the courtroom. Do not consider what you see at the scene as evidence.

During your trip, you must not:

- (1) talk about the case among yourselves or with anyone else;
- (2) talk to the attorneys, parties, or witnesses;
- (3) express any opinion about the case;
- (4) listen to or read any outside or media accounts of the trial; or
- (5) conduct an independent investigation.

After you arrive, remain together as a group. The bailiff will supervise you during the view.

#### 317 Privileges

I have decided that [name of witness] is not required to answer certain questions, because [he][she] is entitled to the [name of privilege] privilege as to those questions.

You must not consider in any way the fact that [name of witness] has not answered those questions.

#### 319 Insurance Not to Be Considered

In deciding this case, you must not consider or speculate about whether [either][any] party has insurance.

#### 321 Assess Damages Separately—Two or More Plaintiffs

If you decide that any plaintiff is entitled to recover damages, you must separately decide the amount owed to that plaintiff and list that amount on the verdict form[s].

#### 323 Joint and Several Liability—Non-Comparative Fault Cases

If you decide that [\_\_\_\_\_plaintiff] is entitled to recover damages from more than one defendant, you must decide whether the damages should be divided among the defendants.

If you find by the greater weight of the evidence that:

(1) those defendants acted together in causing [\_\_\_\_\_plaintiff]'s [injury] [injuries][damages];

(2) the independent acts of those defendants combined to produce a single injury; or

(3) [\_\_\_\_\_defendant employee] was acting within the scope of [his][her] employment for [\_\_\_\_\_defendant employer] when [\_\_\_\_\_defendant employee] caused [\_\_\_\_\_plaintiff]'s [injury][injuries][damages], then those defendants are [both][all] liable for the entire amount of [\_\_\_\_\_plaintiff]'s damages and you return a verdict in a single amount for the total damages against [all][both] defendants. [\_\_\_\_\_Plaintiff] will not collect more than the total amount of your verdict.

If you find by a greater weight of the evidence that each defendant's negligent acts caused a separate and distinct harm to [\_\_\_\_\_plaintiff], then you must divide the damages among those defendants and award damages against each defendant for the separate harm [he][she] caused.

Do not consider the amount that any individual defendant will pay toward your verdict.

[\_\_\_\_\_Plaintiff] will not collect more than the total amount of your verdict.

#### 325 Res Ipsa Loquitur

There are certain situations in which the nature of an incident and the circumstances surrounding it lead to the reasonable belief that it would not have occurred unless someone did not use reasonable care.

If [plaintiff] proves all of the following by the greater weight of the evidence:

(1) [plaintiff] was [injured][harmed][damaged] [as a result of][when] [here insert event which plaintiff claims was a responsible cause of injury/damage/harm];

(2) only the [defendant][defendant's agent] controlled [insert name of instrumentality]; and

(3) under normal circumstances the [event][insert event] would not have occurred unless the

[defendant][defendant's agent] was negligent,

then you may infer that the incident resulted from [defendant]'s negligence. You may consider this inference with all of the other evidence in arriving at your verdict.

### **327 Violation of Statutory Duty as Fault or Negligence**

When the events in this case happened, [Indiana Code § \_\_\_\_\_][*ordinance number and name*] provided [in part] as follows: [*here set out applicable portions of statute or ordinance*].

If you decide from the greater weight of the evidence that a person violated [Indiana Code § \_\_\_\_\_][*ordinance number and name*], and that the violation was not excused, then you must decide that person was negligent.

### **329 Excuse from Statutory Violation**

A person may be excused from failing to comply with [a statute][an ordinance] if [he][she] proves by the greater weight of the evidence that:

- (1) Compliance was impossible or noncompliance was excusable because of circumstances:
  - (a) beyond the person's control, and
  - (b) not the result of the person's negligence; or
- (2) The [statute][ordinance] provided a specific excuse.

**CHAPTER 500 CONCLUDING INSTRUCTIONS  
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**501 Introduction to the Court’s Final Instructions**

As I said in my preliminary instructions, judges and jurors perform different tasks. I instructed you on the law at the start of this trial, and I will now further instruct you on the law. You will decide the facts of this case. Then you will decide the outcome of this case by applying all of my instructions to those facts.

**502 Sympathy, Bias, Prejudice**

Do not base your verdict[s] on sympathy, bias, or prejudice.

**503 Instructions Considered as a Whole**

Consider all of my preliminary and final instructions together. Do not single out any individual sentence, point, or instruction and ignore the others.

**505 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its]

claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **507 Elements; Burden of Proof**

[*Plaintiff*] claims [*defendant*] was [negligent][*designate other type of fault*].

To recover on this claim, [*plaintiff*] must prove by the greater weight of the evidence that:

1. [*defendant*] acted or failed to act [by][in one or more of the following ways]: [*insert how plaintiff claims that defendant was negligent or otherwise at fault*];
2. [*defendant*]'s act or failure to act was [negligent][*designate other type of fault*];
3. [*defendant*]'s act or failure to act was a responsible cause of [*plaintiff*]'s claimed injuries; and
4. [*plaintiff*] suffered damages as a result of the injuries.

To recover an award of punitive damages, [*plaintiff*] must prove by clear and convincing evidence that:

[*Here set out the elements of plaintiff's claim for punitive damages to correspond to the factual disputes raised by the evidence.*]

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

A defendant may defend [himself][herself] by claiming certain specific "defenses." In this case [*defendant*] claims: [*Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.*] To prove these defenses, [*defendant*] must prove by the greater weight of the evidence that:

[*Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.*]

### **509 Greater Weight of the Evidence (Preponderance of the Evidence)**

Evidence is of the greater weight if it convinces you more strongly of its truthfulness. It is evidence that convinces you that something is more probably true than not true.

A greater number of witnesses testifying to a fact on one side or a greater quantity of evidence introduced on one side does not necessarily amount to the greater weight of the evidence.

### **511 Clear and Convincing Evidence**

Proof by clear and convincing evidence is a higher standard of proof than proof by the greater weight of the evidence.

Proof of a claim by clear and convincing evidence means that the facts supporting that claim are

highly probable.

In criminal law we require that crimes be proved by an even higher standard of proof called beyond a reasonable doubt. We do not use this higher standard in civil cases, but the concept of beyond a reasonable doubt helps us to understand the concept of clear and convincing evidence. Clear and convincing evidence is a higher standard than the greater weight of the evidence, but a lower standard than beyond a reasonable doubt.

### **513 Direct Evidence & Circumstantial Evidence**

The parties in this case may prove a fact by one of two types of evidence—direct evidence or circumstantial evidence.

Direct evidence is direct proof of a fact. Circumstantial evidence is indirect proof of a fact.

For example, direct evidence that an animal ran in the snow might be the testimony of someone who actually saw the animal run in the snow. On the other hand, circumstantial evidence that an animal ran in the snow might be the testimony of someone who only saw the animal's tracks in the snow.

It is not necessary that any fact be proved by direct evidence. You may consider both direct evidence and circumstantial evidence as proof.

### **515 Credibility of Witnesses—Weighing Evidence**

You alone are the judges of the evidence, including the credibility of witnesses. Credibility means believability. A credible witness is a witness whose testimony you believe.

In considering the testimony of any witness, you may take into account his or her ability and opportunity to observe what he or she has testified about; the manner and conduct of the witness while testifying; any interest, bias, or prejudice the witness may have; any relationship the witness may have with other witnesses or interested parties; and the reasonableness of the witness's testimony considered in the light of all the evidence you have heard.

Assume that each witness has testified truthfully. If you find conflicts in the evidence, reconcile those conflicts, if you can, based on the assumption that each witness has testified truthfully.

Do not disregard the testimony of any witness without a reason and without careful consideration. If you find conflicting testimony that you cannot reconcile, decide what testimony you believe and what testimony you disbelieve.

In deciding what or whom you believe, you should use your own knowledge, experience, and common sense gained from day-to-day living.

### **517 Impeachment of Witness—Prior Inconsistent Acts, Statements, Testimony**

A. Parties may attack the credibility of a witness by showing that the witness [made a statement][or][behaved in a manner] inconsistent with the witness's testimony.

You may consider the fact that the witness [spoke][acted] inconsistently with his testimony in this case *only* to determine the weight you will give to that witness's testimony given during this trial.

B. [However,] if a witness testified inconsistently *under oath* either in this case or in any other case or court proceeding, you may *also* consider *the content* of the witness's prior inconsistent statement as evidence in this case.

### **519 Impeachment of Witness—Proof of Conviction of Crime**

You may consider evidence that a witness has been convicted of a crime, along with all the other evidence in this case, in deciding the witness's credibility and the weight you will give [his][her] testimony.

### **521 [Opinion][Expert][Skilled] Witness**

Generally, a witness may not express an opinion. However, a witness may be permitted to express an opinion because of [his][her] knowledge, skill, experience, training, or education.

Judge opinion testimony in the same manner that you judge other testimony. In deciding how much weight to give opinion testimony, you may also take into consideration:

- (1) the witness's skill, experience, knowledge, and familiarity with the facts of this case;
- (2) the reliability of the information supporting the witness's opinions; and
- (3) the reasons for the opinions.

### **523 Agreed/Stipulated Facts**

The parties in this case have agreed that certain facts are true. You must accept these facts as true: [*insert agreed facts*].

### **525 Depositions**

A party may present testimony by way of a written or videotape [deposition][transcript of testimony].

[A deposition is the sworn testimony of a witness taken before trial. The witness is placed under oath and swears to tell the truth, and the lawyer for each party may ask questions. A court reporter is present and records the questions and answers.]

[A transcript is the sworn testimony of a witness from a prior trial or legal proceeding.]

Evaluate this testimony using the same rules you apply to the testimony of other witnesses.

### **527 Evidence Admitted for Limited Purposes**

During the trial, I instructed you to consider certain evidence only for specific, limited purposes. You must consider that evidence only for those limited purposes.

### **529 Inadmissible Evidence**

You must not consider testimony or exhibits that were not admitted into evidence.

### **531 Collateral Source Evidence**

If you find that [*plaintiff*] is entitled to recover, you must consider evidence of [worker's compensation][*name other collateral source payment*] benefits [*plaintiff*] received and whether [*plaintiff*] must repay those benefits.

Any amount [*plaintiff*] must repay for those benefits will be paid out of any verdict you award to [*plaintiff*] after this trial is over. Do not reduce your verdict by the amount of those benefits [*plaintiff*] must repay.

[Any amount (*plaintiff*) is not required to repay will not be paid out of any verdict you award to (*plaintiff*) after this trial is over. Therefore, in determining your verdict, reduce what you would otherwise award (*plaintiff*) by the amount of any benefits (*plaintiff*) is not required to repay.]

### **533 Insurance Not to Be Considered**

In deciding this case, you must not consider or speculate about whether [either][any] party has insurance.

### **535 Failure to Produce Evidence (Spoliation)**

If a party fails to [testify about facts][produce a witness][produce documents] under the party's exclusive [knowledge][control], you may conclude that the [testimony the witness could have given][documents the witness could have produced] would have been unfavorable to the party's case.

### **537 Judicial Notice of Mortality Tables**

[*Plaintiff*] has asked you to award money based on [his][her][*plaintiff's decedent's*] life expectancy.

According to the \_\_\_\_\_ Mortality Table, the life expectancy of a [male][female] person \_\_\_\_\_ years of age is \_\_\_\_\_ years.

This is evidence you may consider in determining the amount of money to award, if any.

Mortality tables are merely estimates of life expectancy. They are based on statistical averages of the remaining length of life of all persons in our country of a given age and sex.

In considering the life expectancy of [*plaintiff*][*plaintiff's decedent*], you may evaluate all facts and circumstances that bear on the life expectancy of [*plaintiff*][*plaintiff's decedent*], including the mortality table and [his][her] occupation, health history, state of health [at time of death], and habits.

### **539 Consolidated Actions—Two or More Plaintiffs**

The claims of each plaintiff are separate and distinct. [Their claims will be tried together for efficiency.] You must decide each claim separately. Unless I instruct you otherwise, my instructions apply to [both][all] plaintiffs.

### **541 Two or More Defendants**

There are [two][*number greater than two*] defendants in this action. [The claims against them will be tried together for efficiency.] You must consider the claims against and any defenses raised by each defendant separately. Unless I instruct you otherwise, my instructions apply to [both][all] defendants.

### **543 Jury Deliberations**

To return a verdict, all of you must agree to it. In other words, it must be unanimous.

Each of you must decide the case for yourself, but only after considering and discussing the evidence with each other. You should try to agree on a verdict, if you can do so without compromising your individual judgment. Do not hesitate to re-examine your own views and change your mind if you believe you are wrong. But do not give up your honest belief just

because the other jurors may disagree, or just to end the deliberations.

#### **544 Technology Used to Present Exhibits at Trial**

In reviewing exhibits, if you need the [equipment][technology] used to present an exhibit at trial, please notify the bailiff, and I will provide it.

#### **545 Jury Management**

When you return to the jury room, select one of your members as presiding juror to manage the deliberations.

No one will be allowed to hear your discussions and no recording will be made of what you say. The bailiff is available to assist you with personal needs, but cannot answer any questions about the case.

If you have any questions for me, you must put them in writing and give them to the bailiff, and I will respond as the law permits. You may be able to find answers to your questions by reviewing my written instructions and all the evidence.

If at any time you are not all together, or if you are outside the jury room, you must not talk about the case among yourselves or with anyone else.

I am giving you forms of possible verdicts. The presiding juror must sign and date the verdict[s] to which you all agree. Do not sign any verdict form for which there is not unanimous agreement.

When you have agreed upon [a] verdict[s], inform the bailiff. When the parties are present, the bailiff will bring you back to court. Bring all verdict forms, signed and unsigned, with you at that time. I will read the verdict aloud. Each of you may be asked if it is your verdict. Otherwise, you are under no obligation to discuss your verdict or deliberations with anyone.

#### **547 Duty of Alternate Juror**

[Mr.][Ms.] [*name of alternate juror*], you have been selected as an alternate juror.

Your duties are the same as those of the regular jurors, except you must not participate in the deliberations or voting of the jury—unless I direct you to do so.

The presiding juror of the jury shall prevent alternate jurors from deliberating or voting with the jury. The presiding juror shall promptly report any violation of this instruction to me.

#### **549 Inconsistent Jury Verdicts**

Members of the jury, the verdict you have returned must be corrected, because [it contradicts itself][it is inconsistent with my instructions][the total percentage of fault does not equal 100 percent][the amount awarded is inconsistent with your findings][other].

You must now return to the jury room, to reconsider and correct the verdict.

You may change any portion of the verdict to correct it. Each of you is also free to change your vote.

Once you have corrected your verdict, please inform the bailiff, who will return you to court.

## CHAPTER 700 GENERAL DAMAGES SYNOPSIS

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### A. General

#### 701 Damages—Guess or Speculation

Base your decision on the evidence and not on guess or speculation. However, damages need not be proven to a mathematical certainty.

#### 703 General Elements of Damages

If you decide from the greater weight of the evidence that [*defendant*] is liable to [*plaintiff*], then you must decide the amount of money that will fairly compensate [*plaintiff*].

In deciding the amount of money you award, you may consider:

- (1) the nature and extent of the [injury][injuries], and the effect of the [injury][injuries] on the [*plaintiff*]'s ability to function as a whole person;
- (2) whether the [injury][injuries] [is][are] temporary or permanent;
- (3) the value of [lost time][lost earnings][and][loss or impairment of earning capacity];

- (4) the physical pain and mental suffering [*plaintiff*] has experienced [and will experience in the future] as a result of the [injury][injuries];
- (5) the reasonable value of necessary medical care, treatment, and services plaintiff incurred [and will incur in the future] as a result of the [injury][injuries];
- (6) the aggravation of a pre-existing [injury][disease][or][condition];
- (7) the [disfigurement][and][or][deformity] resulting from the [injury][injuries]; and
- (8) the life expectancy of [*plaintiff*].

#### **704 Pain and Suffering**

[\_\_\_\_\_ *Plaintiff*] does not have to present evidence of the dollar value of [his][her] pain, suffering, mental anguish, or [\_\_\_\_\_ *insert other damage element for which evidence of monetary value is not required, such as disfigurement or deformity*]. These types of damages need not be proven to a mathematical certainty.

[\_\_\_\_\_ *Plaintiff*] must prove the nature and extent of these types of damages, however. The dollar value, if any, of these damages is left to your good judgment.

#### **705 Loss of Consortium—Loss of Spouse’s Services**

[*Consortium plaintiff*] has claimed that [*defendant*]’s actions caused [him][her] to lose the services, society, or companionship of [*plaintiff*]. [*Consortium plaintiff*] is allowed to bring this claim because [he][she] is married to [*plaintiff*]. You must not award any damages to [*consortium plaintiff*] if you did not award any damages to [*plaintiff*].

To establish this claim, [*consortium plaintiff*] must prove the following by the greater weight of the evidence:

- (1) [*Defendant*] is liable to [*plaintiff*];
- (2) [*Consortium plaintiff*] suffered the loss of services, society, or companionship of [*plaintiff*] because of the injury to [*plaintiff*]; and
- (3) [*Defendant*]’s negligence was the responsible cause of this loss.

If you decide from the greater weight of the evidence that [*defendant*] is liable to [*consortium plaintiff*], you must then decide the amount of money which will fairly compensate [him][her] for the reasonable value of the loss of services, society, or companionship of [*plaintiff*] and any loss that is reasonably certain to occur in the future.

#### **707 Judicial Notice of Mortality Tables**

[*Plaintiff*] has asked you to award money based on [his][her][*decedent*’s] life expectancy.

According to the \_\_\_\_\_ Mortality Table, the life expectancy of a [male][female] person \_\_\_\_\_ years of age is \_\_\_\_\_ years.

This is evidence you may consider in determining the amount of money to award, if any.

Mortality tables are merely estimates of life expectancy. They are based on statistical averages of the remaining length of life of all persons in our country of a given age and sex.

In considering the life expectancy of [*plaintiff*][*decedent*], you may evaluate all facts and circumstances that bear on the life expectancy of [*plaintiff*][*decedent*], including the mortality table and [his][her] occupation, health history, state of health [at time of death], and habits.

### **709 Impairment of Earning Capacity—Child Plaintiff**

the value of [child's] [lost time][lost earnings][and][loss or impairment of earning capacity] after [child] turn[s][ed] eighteen;

### **711 Effects of Inflation—Damages to Be Incurred in Future**

the effects, if any, of inflation and the depreciation or reduction in the value of money;

### **713 Parent Claim for Loss of Child's Services**

the value of any earnings, services, kindness, or attention [child] reasonably would have been expected to provide [his][her] parents up to the time [child] turn[s][ed] eighteen, and that the parents have now lost (or can reasonably be expected to lose) as a result of [defendant's] [negligence][wrongful conduct];

### **715 Tax Consequences of Verdict**

In arriving at your verdict, you must not consider the tax consequences, if any, of the money you may award.

### **716 Loss of Chance Damages—Increased Risk of Future Harm or Reduced Chance for a Better Result**

the value, if any, of [plaintiff's] [increased risk of future harm][reduced chance for a better result];

## **B. Real & Personal Property**

### **717 Real Property—General Rule**

If you decide from the greater weight of the evidence that [defendant(s)] [is][are] liable for damage to [plaintiff's][plaintiffs] real estate, you must decide whether the damage is temporary or permanent.

Damage to real estate is temporary when the cost to restore it is less than its fair market value immediately before the damage. If you decide that the damage to the real estate is temporary, you should award the cost of restoration.

Damage to real estate is permanent when the cost to restore it is more than its fair market value immediately before the damage. If you decide that the damage to the real estate is permanent, you should award the difference between the fair market value of the real estate immediately before and after the damage.

### **719 Damage to Real Property Due to Environmental Contamination**

If you decide from the greater weight of the evidence that [defendant(s)] [is][are] liable for damage to [plaintiff's][plaintiffs] real estate due to environmental contamination, you may award damages for both the cost to repair the real estate and any reduction in its fair market value remaining after the repair.

### **721 Personal Property—Complete Destruction or Loss**

When personal property is completely [destroyed][lost], the measure of damages is the fair market value of the property at the time of its [destruction][loss].

“Fair market value” means the price a willing seller will accept from a willing buyer when neither

party is forced to do so.

### **723 Personal Property—Partial Destruction**

When personal property is damaged but not completely destroyed, you must decide the amount of money that will fairly compensate [*plaintiff*] by considering:

[*Based upon the evidence insert Clause 1, 2, or 3.*]

[(1) The difference between the fair market value of the property immediately before (*describe the event*) and the fair market value of the property immediately after (*describe the event*).]

[(2) The reasonable cost of repair where the repair will restore the property to its fair market value before (*describe the event*).]

[(3) A combination of the evidence of reasonable cost of repair and evidence of the loss of fair market value where the repair will not restore the property to its fair market value before (*describe the event*).]

“Fair market value” means the price a willing seller will accept from a willing buyer when neither party is forced to do so.

## **C. Wrongful Death**

### **725 Wrongful Death—Surviving Dependent Children**

If you decide from the greater weight of the evidence that [*defendant(s)*] [*is*][*are*] liable, and that [*child*][*children*] [*is*][*are*] the surviving dependent [*child*][*children*] of [*decedent*], then you must decide the amount of money that will fairly compensate [*surviving dependent child/children*] and [*personal representative*] for [*decedent*]'s wrongful death.

In deciding the amount of money that will fairly compensate [*surviving dependent child/children*], you may consider:

(1) [*decedent*]'s age, health, and life expectancy immediately before the injury causing [*his*][*her*] death;

(2) [*his*][*her*] occupation and earning capacity, and probable future earnings reduced by [*his*][*her*] personal living expenses, had [*he*][*she*] lived;

(3) the value of future support that [*surviving dependent child/children*] could reasonably have expected to receive from [*decedent*]; and

(4) the loss of love, care, and affection that [*surviving dependent child/children*] could reasonably have expected to receive from the continued life of [*decedent*].

[*Personal representative*] is entitled to recover for the benefit of [*decedent*]'s estate:

(1) the value of necessary and reasonable health care services provided in connection with [*decedent*]'s injury caused by [*defendant*];

(2) the value of necessary and reasonable funeral and burial expenses for [*decedent*]; and

(3) the cost of administering [*decedent*]'s estate.

In awarding damages, you must consider only the time period from [*decedent*]'s death until:

(1) the end of [*surviving dependent child/children*] dependency, or

(2) the end of [*decedent*]'s life expectancy, had the injury not occurred,

whichever period you determine would have ended first.

### **727 Wrongful Death—Surviving Spouse**

If you decide from the greater weight of the evidence that [*defendant(s)*] [is][are] liable, then you must decide the amount of money that will fairly compensate [*surviving spouse*] and [*personal representative*] for [*decedent*]'s wrongful death.

In deciding the amount of money that will fairly compensate [*surviving spouse*], you may consider:

- (1) [*decedent*]'s age, health, and life expectancy immediately before the injury causing [his][her] death;
- (2) [his][her] occupation and earning capacity, and probable future earnings reduced by [his][her] personal living expenses, had [he][she] lived;
- (3) the value of future support that [*surviving spouse*] could reasonably have expected to receive from [*decedent*]; and
- (4) the loss of love, care, and affection that [*surviving spouse*] could reasonably have expected to receive from the continued life of [*decedent*].

[*Personal representative*] is entitled to recover for the benefit of [*decedent*]'s estate:

- (4) the value of necessary and reasonable health care services provided in connection with [*decedent*]'s injury caused by [*defendant*];
- (5) the value of necessary and reasonable funeral and burial expenses for [*decedent*]; and
- (6) the cost of administering [*decedent*]'s estate.

In awarding damages, you must consider only the time period from [*decedent*]'s death until:

- (1) the end of [*decedent*]'s life expectancy, had the injury not occurred, or
- (2) the end of [*surviving spouse*]'s life expectancy,

whichever period you determine would have ended first.

### **729 Wrongful Death—Surviving Dependent Next of Kin**

If you decide from the greater weight of the evidence that [*defendant(s)*] [is][are] liable, and that [*surviving dependent next-of-kin*] [is][are] the surviving dependent next-of-kin of [*decedent*], then you must decide the amount of money that will fairly compensate [*surviving dependent next-of-kin*] and [*personal representative*] for [*decedent*]'s wrongful death.

In deciding the amount of money that will fairly compensate [*surviving dependent next-of-kin*], you may consider:

- (1) [*decedent*]'s age, health, and life expectancy immediately before the injury causing [his][her] death;
- (2) [his][her] occupation and earning capacity, and probable future earnings reduced by [his][her] personal living expenses, had [he][she] lived;
- (3) the value of future support that [*surviving dependent next-of-kin*] could reasonably have expected to receive from [*decedent*]; and
- (4) the loss of love, care, and affection that [*surviving dependent next-of-kin*] could reasonably have expected to receive from the continued life of [*decedent*].

[*Personal representative*] is entitled to recover for the benefit of [*decedent*]'s estate:

- (1) the value of necessary and reasonable health care services provided in connection with [*decedent*]'s injury caused by [*defendant*];
- (2) the value of necessary and reasonable funeral and burial expenses for [*decedent*]; and

(3) the cost of administering [*decedent*]'s estate.

In awarding damages, you must consider only the time period from [*decedent*]'s death until:

- (1) the end of [*surviving dependent next-of-kin*] dependency, or
- (2) the end of [*decedent*]'s life expectancy, had the injury not occurred,

whichever period you determine would have ended first.

### **731 Wrongful Death—Damages Recoverable by the Estate's Personal Representative— No Surviving Spouse, Dependent Children or Dependent Next of Kin**

If you decide from the greater weight of the evidence that [*defendant(s)*] [is][are] liable to [*personal representative*], you must then decide the total amount of money that will fairly compensate [*decedent*]'s estate for [*decedent*]'s wrongful death. [*Personal representative*] is entitled to recover for the benefit of [*decedent*]'s estate:

- (1) the value of necessary and reasonable health care services provided in connection with [*decedent*]'s injury caused by [*defendant*];
- (2) the value of necessary and reasonable funeral and burial expenses for [*decedent*]; and
- (3) the cost of administering [*decedent*]'s estate.

### **733 Wrongful Death of Unmarried Adult with Non-Dependent Parents or Children**

If you decide from the greater weight of the evidence that:

- (1) [*defendant(s)*] [is][are] liable for [*decedent*]'s death,
- (2) [*parent(s) or child/children*] [is][are] the nondependent surviving parent[s][or][child] [children] of [*decedent*], and
- (3) [*parent(s) or child/children*] had a genuine, substantial, and ongoing relationship with [*decedent*],

then you must decide the amount of money that will fairly compensate [*parent(s) or child/children*] and [*personal representative*] for [*decedent*]'s wrongful death.

In determining the amount to award to [*parent(s) or child/children*], you may consider, but are not limited to, the loss of love and companionship that [*parent(s) or child/children*] could reasonably have expected to receive from the continued life of [*decedent*]. However, you may not award damages to compensate for [*parent(s) or child's/children's*] grief, to punish [*defendant(s)*], or to discourage similar conduct.

[*Personal representative*] is entitled to recover for the benefit of [*decedent*]'s estate:

- (1) the value of necessary and reasonable health care services provided in connection with [*decedent*]'s injury caused by [*defendant*];
- (2) the value of necessary and reasonable funeral and burial expenses for [*decedent*]; and
- (3) the cost of administering [*decedent*]'s estate.

In awarding damages, you must consider only the time period from [*decedent*]'s death until:

- (1) the end of [*decedent*]'s life expectancy, had the injury not occurred, or
- (2) the end of [*parent(s) or child/children*] life expectancy,

whichever period you determine would have ended first.

### 735 Wrongful Death—Death of Child

If you decide from the greater weight of the evidence that [*defendant(s)*] [is][are] liable to [*plaintiff(s)*], you must then decide the amount of money that will fairly compensate [*plaintiff(s)*] for the loss they suffered from the wrongful death of [*child*].

In determining the amount of money to award, you may consider only the value of:

- (1) the loss of [*child*]'s services;
- (2) the loss of [*child*]'s love and companionship;
- (3) the cost of health care and hospitalization required by the wrongful act or omission that caused [*child*]'s death;
- (4) the cost of [*child*]'s funeral and burial;
- (5) reasonable cost of psychiatric and psychological counseling incurred by [*surviving parent(s) and minor siblings*] and required as a result of the [*child*]'s death;
- (6) [*child*]'s uninsured debts, including debts that [*parent(s)*] [is][are] required to pay on [*child*]'s behalf; and
- (7) the cost of administering [*child*]'s estate.

In awarding damages for the loss of [*child*]'s love and companionship, damages may be awarded from the time of [*child*]'s death until the end of child's last surviving parent's life expectancy.

In awarding damages other than for loss of love and companionship, you may consider only the time from [*child*]'s death until:

- (1) [he][she] would have reached the age of twenty;
- (2) [he][she] would have reached the age of twenty-three years if [he][she] was enrolled in a postsecondary educational institution, or a career and technical education school or program that is not a postsecondary educational program; or
- (3) the end of child's last surviving parent's life expectancy.

whichever period you determine would have ended first.

### D. Punitive

#### 737 Punitive Damages

If you decide that [*plaintiff*] is entitled to recover, then in addition to compensatory damages, you may also award punitive damages.

Punitive damages may be awarded if you decide that [*plaintiff*] proved by clear and convincing evidence that either:

- (1) [*defendant*]'s actions amounted to willful and wanton misconduct; OR
- (2) (A) [*defendant*] acted either:
  - a. maliciously;
  - b. fraudulently;
  - c. oppressively; OR
  - d. with gross negligence,

AND

- (B) [*defendant*]'s acts were not the result of any of the following:
  - a. mistake of fact;

- b. an honest error of judgment;
- c. overzealousness;
- d. ordinary negligence; OR
- e. other human failing.

### **739 Punitive Damages—Terms—Definitions**

The terms in the previous instruction on punitive damages have the following meanings:

“Gross negligence” is a voluntary [act][failure to act] done with reckless disregard of the consequences to another person.

“Wanton or willful” misconduct is an intentional [act][failure to act] done with reckless disregard of probable injury to a person, when the defendant knew of that probability [and, if the defendant failed to act, (he)(she) had the opportunity to avoid the risk].

“Malice” is [an act][a failure to act] done:

- (1) intentionally,
- (2) without legal authority or excuse, and
- (3) with the intent to [injure][harm].

“Fraud” is [an act][a failure to act][a concealment] done knowingly or intentionally to cheat or deceive another person.

“Oppressiveness” is [an act][a failure to act] done in a domineering, overbearing, or controlling manner that subjects another person to a cruel and unjust hardship.

### **741 Measure of Punitive Damages**

If you decide to award punitive damages, you must determine the amount of money you believe will be adequate to:

- (1) punish [defendant] for what [he][she][it] did to [plaintiff]; and
- (2) [deter][discourage] [defendant] and other [persons][companies] from similar acts in the future.

In deciding the amount of punitive damages, you may consider:

- (a) the amount of actual or potential harm suffered by [plaintiff] as a result of [defendant]’s conduct;
- (b) the amount of any civil [fines][penalties] that apply to conduct similar to [defendant]’s conduct;
- (c) [defendant]’s financial condition; and
- (d) the degree of reprehensibility of [defendant]’s conduct.

Reprehensible means [worthy of severe (criticism)(blame)][deserving of severe disapproval]. In determining the degree of reprehensibility of [\_\_\_\_\_ defendant]’s conduct, you should consider the following:

- Was the harm caused physical as opposed to financial?
- Did [\_\_\_\_\_ defendant]’s conduct show a reckless disregard for the health or safety of others?
- Did [\_\_\_\_\_ defendant]’s conduct involve repeated actions or was it an isolated incident?
- Was the harm the result of intentional malice, trickery, or deceit, as opposed to mere accident?
- Was the target of [\_\_\_\_\_ defendant]’s conduct financially vulnerable?

If you award punitive damages, you must state the amount of those damages on the verdict form separately from the amount of any compensatory damages.

**745 Punitive Damages—Out-of-State Conduct**

You may not use evidence of out-of-state conduct to punish [*defendant*] if that conduct was lawful in the place where it occurred.

**CHAPTER 900 COMPARATIVE FAULT  
SYNOPSIS**

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**901 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [*his*][*her*][*its*] claims by the greater weight of the evidence.

[Defendant] denies [plaintiff]’s claims. [Defendant] is not required to disprove [plaintiff]’s claims.

[Defendant] has claimed certain defenses. [Defendant] must prove [his][her][its] defense[s] of [specify affirmative defense(s)] by the greater weight of the evidence.

[(Plaintiff) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (Plaintiff) must prove this claim by clear and convincing evidence.]

### **903 Elements; Burden of Proof**

[Plaintiff] claims [defendant] was [negligent][designate other type of fault].

To recover on this claim, [plaintiff] must prove by the greater weight of the evidence that:

1. [defendant] acted or failed to act [by][in one or more of the following ways]: [*insert how plaintiff claims that defendant was negligent or otherwise at fault*];
2. [defendant]’s act or failure to act was [negligent][designate other type of fault];
3. [defendant]’s act or failure to act was a responsible cause of [plaintiff]’s claimed injuries; and
4. [plaintiff] suffered damages as a result of the injuries.

To recover an award of punitive damages, [plaintiff] must prove by clear and convincing evidence that:

[*Here set out the elements of plaintiff’s claim for punitive damages to correspond to the factual disputes raised by the evidence.*]

[Defendant] denies [plaintiff]’s claims. [Defendant] is not required to disprove [plaintiff]’s claims.

A defendant may defend [himself][herself] by claiming certain specific “defenses.” In this case [defendant] claims: [*Here set out the elements of defendant’s affirmative defenses to correspond to the factual disputes raised by the evidence.*] To prove these defenses, [defendant] must prove by the greater weight of the evidence that:

[*Here set out the elements of defendant’s affirmative defenses to correspond to the factual disputes raised by the evidence.*]

#### **905 Burden of Proof for Plaintiff’s Fault in a Comparative Fault Case**

[Defendant] claims [plaintiff]’s own fault contributed to the [injury][harm] [plaintiff] claims to have suffered and that [plaintiff]’s fault was a responsible cause of the [injury][harm].

[Defendant] has the burden of proving by the greater weight of the evidence that [plaintiff] was at fault.

### **907 Comparative Fault—Definition**

You must decide this case according to the Indiana law of comparative fault. The term “fault” refers to conduct that makes a person responsible, in some degree, for [a death][an injury][property damage]. The type[s] of fault at issue [is][are] [*name types of fault at issue*].

### **909 Negligence—Definition**

Negligence is the failure to use reasonable care.

A person may be negligent by acting or by failing to act. A person is negligent if he or she does

something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

#### **911 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

#### **913 Willful or Wanton Misconduct—Definition**

“Wanton or willful” misconduct is an intentional [act][failure to act] done with reckless disregard of probable injury to a person, when the defendant knew of that probability [and, if the defendant failed to act, (he)(she) had the opportunity to avoid the risk].

#### **914 Gross Negligence—Definition**

“Gross negligence” is a voluntary [act][failure to act] done with reckless disregard of the consequences to another person.

#### **915 Reckless Conduct—Definition**

A person acts recklessly when [he][she] disregards a substantial risk of danger that either is known or would be apparent to a reasonable person in the same position. The conduct must be highly unreasonable or a significant departure from reasonable care.

#### **917 Responsible Cause (Proximate Cause)—Definition**

A person’s conduct is legally responsible for causing [an injury][property damage][a death] if: (1) the [injury][property damage][a death] would not have occurred without the conduct, and (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

#### **918 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

#### **919 Intervention of Outside Cause**

Sometimes an unrelated event breaks the connection between a defendant’s negligent action and the injury a plaintiff claims to have suffered. If this event was not reasonably foreseeable, it is an “intervening cause.”

When an intervening cause breaks the connection between a defendant’s negligent act and a plaintiff’s injury, a defendant’s negligent act is no longer a “responsible cause” of that plaintiff’s injury.

#### **921 Incurred Risk/Assumed Risk—Comparative Fault Only**

[Defendant] claims [plaintiff] knew of a specific danger, understood the risk [he][she][it] faced, and voluntarily exposed [herself][himself][itself] to the danger. In other words, [defendant] claims [plaintiff] voluntarily [incurred][assumed] the risk.

To prove [plaintiff] [incurred][assumed] the risk, [defendant] must prove by the greater weight of

the evidence that:

- (1) [plaintiff] knew and appreciated the specific risk; and
- (2) [plaintiff] voluntarily accepted the risk.

If you decide that [plaintiff] [incurred][assumed] the risk, then that conduct is fault that you should assess against [plaintiff].

### **923 Nonparty**

A defendant may identify as a “nonparty” any person the defendant claims was at fault and caused any or all of the plaintiff’s claimed damages.

In this case, [defendant] has named [nonparty] as a nonparty.

### **925 Defendant Takes Plaintiff as He Finds Him**

[Defendant] is not excused from responsibility just because [plaintiff] had [describe physical or mental condition] at the time of [the collision][the incident][describe event] that made [him][her] more likely to be injured.

### **926(a) Pre-existing Conditions; Aggravation**

A pre-existing condition is a [physical][mental] condition that existed before [the collision][the incident][describe event].

[Plaintiff] may recover damages for the extent that [defendant] aggravated [plaintiff]’s [specify pre-existing condition].

[Plaintiff] cannot, however, recover damages for [specify pre-existing condition] itself.

### **926(b) Post-Incident Conditions; Aggravation**

[Plaintiff] is [also] not entitled to recover damages for any condition that occurred after, and was not caused by, [the collision][the incident][describe event].

### **927 Comparative Fault—Children**

[Child] was \_\_\_\_\_ years old at the time of the incident.

#### Child under the age of 7 years

A child under the age of seven (7) cannot be held legally responsible for [his][her] actions. Therefore, you cannot decide that a child under seven years of age was at fault.

#### Child between the ages of 7 and 14 years

A child between the ages of seven (7) and fourteen (14) must use the same care that a reasonably careful child of the same age, knowledge, judgment, and experience would use in the same situation.

#### Child over age 14 years

[Absent special circumstances], a child over the age of fourteen (14) must use the same care as an adult.

### **929 Fault of a Parent**

A child is not responsible for [his][her] [parent’s][guardian’s][custodian’s] conduct.

Therefore, if you decide that [parent, guardian, or custodian] was at fault, you may not decide

that [child] was at fault for [parent, guardian, or custodian]'s conduct.

### **931 Sudden Emergency**

[Plaintiff][Defendant] claims [he][she] was not at fault because [he][she] acted with reasonable care in an emergency situation. [Plaintiff][Defendant] was not at fault if [he][she] proves the following by the greater weight of the evidence:

- (1) [he][she] was faced with a sudden emergency;
- (2) [he][she] did not cause the emergency;
- (3) [he][she] did not have enough time to consider [his][her] options; and
- (4) [he][she] acted as a reasonably careful person would act when facing a similar emergency, even if a different course of action might later seem to have been a better choice.

### **932 Rescue**

A person who has, through his [negligence][other standard of care], endangered the safety of another may be held liable for injuries sustained by a third person in attempting to save such other from injury.

You may hold [defendant] liable for [plaintiff]'s injuries if you find that:

1. [defendant] [negligently][other standard of care] endangered [rescued person]
2. [plaintiff] attempted to prevent further harm to [rescued person],
3. [plaintiff]'s attempt was reasonable under the circumstances.

### **933 Intoxication—No Excuse or Justification**

An intoxicated person is held to the same standard of care as someone who is not intoxicated. Intoxication does not excuse or justify a person's failure to act as a reasonably careful person.

### **935 Duty to Minimize (Mitigate) Post-Injury in Comparative Fault Cases**

A plaintiff must use reasonable care to minimize [his][her] damages after [he][she] is [injured][harmed].

[Plaintiff] may not recover for any item of damage that [he][she] could have avoided through the use of reasonable care.

[Defendant] has the burden of proving by the greater weight of the evidence that [plaintiff] failed to use reasonable care to minimize [his][her] damages.

Do not consider failure to minimize damages as fault. Rather you may consider failure to minimize damages to reduce the amount of damages that [plaintiff] claims.

### **937 Violation of Statutory Duty as Fault**

When the events in this case happened, [Indiana Code § \_\_\_\_\_][ordinance number and name] provided [in part] as follows: [here set out applicable portions of statute or ordinance].

If you decide from the greater weight of the evidence that a person violated [Indiana Code § \_\_\_\_\_][ordinance number and name], and that the violation was not excused, then you must decide that person was at fault.

### **939 Excuse from Statutory Violation**

A person may be excused from failing to comply with [a statute][an ordinance] if [he][she] proves

by the greater weight of the evidence that:

- (1) Compliance was impossible or noncompliance was excusable because of circumstances:
  - (a) beyond the person's control, and
  - (b) not the result of the person's negligence; or
- (2) The [statute][ordinance] provided a specific excuse.

#### **941 Comparative Fault—Apportionment—One Plaintiff/One Defendant**

To decide if [plaintiff] is entitled to recover damages from [defendant], and if so, the amount of those damages, apportion the fault of [plaintiff], [defendant], and [identified nonpart(y)(ies)] on a percentage basis. Do this as follows:

First, if [defendant] is not at fault, return your verdict for [defendant] and against [plaintiff]; and deliberate no further. (*Use Verdict Form 5001(A).*)

If [defendant] is at fault, decide [defendant]'s percentage of fault, and the percentage of fault, if any, of [plaintiff] and [identified nonpart(y)(ies)] that caused [plaintiff]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Next, if [plaintiff]'s fault is greater than 50 percent, return your verdict for [defendant] and against [plaintiff] in this case, and deliberate no further. (*Use Verdict Form 5001(B).*)

However, if you decide that [plaintiff]'s fault is 50 percent or less, then:

- (1) Decide the total amount of [plaintiff]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [plaintiff]'s total damages by [defendant]'s percentage of fault.
- (3) Return your verdict for [plaintiff] and against [defendant] in the amount of the product of that multiplication. (*Use Verdict Form 5001(C).*)

I will give you verdict forms that will help guide you through this process.

#### **943 Comparative Fault—Apportionment—One Plaintiff/Two Defendants**

To decide if [plaintiff] is entitled to recover damages from [defendant one] or [defendant two] or both, and if so, the amount of those damages, apportion the fault of [plaintiff], [defendants], and [identified nonpart(y)(ies)] on a percentage basis. Do this as follows:

First, if [defendants] are not at fault, return your verdict for [defendants] and against [plaintiff]; and deliberate no further. (*Use Verdict Form 5003(A).*)

If [defendants] are at fault, decide [defendant]'s percentages of fault, and the percentage of fault, if any, of [plaintiff] and [identified nonpart(y)(ies)] that caused [plaintiff]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Next, if [plaintiff]'s fault is greater than 50 percent, return your verdict for [defendants] and against [plaintiff] in this case; and deliberate no further. (*Use Verdict Form 5003(B).*)

However, if you decide that [plaintiff]'s fault is 50 percent or less, then:

- (1) Decide the total amount of [plaintiff]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [plaintiff]'s total damages by each [defendant]'s percentage of fault.

(3) Return your verdict for [*plaintiff*] and against each [*defendant*] in the amount of the product of that multiplication. (Use *Verdict Form 5003(C)*.)

I will give you verdict forms that will help guide you through this process.

**944(A) Mixed Comparative Fault and Common Law Defendants—If All Parties Agree—  
Judge Calculates Judgment Against Each Defendant**

To decide if [*plaintiff*] is entitled to recover damages from [*comparative fault defendant*] or [*common law defendant*] or both, and if so, the amount of those damages, apportion the fault of [*plaintiff*], [*defendants*], and [*identified nonpart(y)(ies)*] on a percentage basis. Do this as follows:

First, if neither [*comparative fault defendant*] nor [*common law defendant*] is at fault, return your verdict for [*comparative fault defendant*] and [*common law defendant*], and against [*plaintiff*], and deliberate no further. (Use *Verdict Form 5003(A)*.)

If either [*comparative fault defendant*] or [*common law defendant*] is at fault, decide their percentages of fault, and the percentage of fault, if any, of [*plaintiff*] and [*identified nonpart(y)(ies)*] that caused [*plaintiff*]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Finally, decide the total amount of [*plaintiff*]'s damages, if any. Do not consider fault when you decide this amount. (Use *Verdict Form 5004*.)

Based on the law, the percentages of fault you allocate, and the total amount of damages in your verdict, I will calculate the amount of money, if any, [*plaintiff*] is entitled to recover against either of the defendants.

The law treats these defendants differently. The law requires that:

(1) If [*plaintiff*]'s fault is greater than 50 percent, [*plaintiff*] cannot recover damages against either [*comparative fault defendant*] or [*common law defendant*].

(2) If [*plaintiff*]'s fault is greater than 0 percent, [*plaintiff*] cannot recover damages against [*common law defendant*].

I will give you verdict forms that will help guide you through this process.

**944(B) Mixed Comparative Fault and Common Law Defendants**

The law requires you to use different methods to decide if [*plaintiff*] is entitled to recover damages from [*comparative fault defendant*] or [*common law defendant*] or both, and if so, the amount of those damages.

**A. Deliberations as to  
[*common law defendant*]**

If you decide that [*common law defendant*] was not negligent, return your verdict for [*common law defendant*], and against [*plaintiff*], and deliberate no further as to

**B. Deliberations as to  
[*comparative fault defendant*]**

If you decide that [*comparative fault defendant*] is not at fault, return your verdict for [*comparative fault defendant*], and against

[*common law defendant*].  
(Use Verdict Form 5017.)

If you decide that [*plaintiff*]'s own negligence contributed to the [injury][harm] [*plaintiff*] claims to have suffered and that [*plaintiff*]'s negligence was a responsible cause of the [injury][harm], return your verdict for [*common law defendant*] and against [*plaintiff*] in this case, and deliberate no further as to [*common law defendant*]. (Use Verdict Form 5017.)

However, if you decide that [*common law defendant*] was negligent, and that [*plaintiff*]'s own negligence did not contribute to the [injury][harm], then you must decide the amount of plaintiff's damages caused by the negligence of [*common law defendant*] without comparing that negligence to the fault of any other defendant in this case. Return your verdict against [*common law defendant*] in that amount. (Use Verdict Form 5013.)

[*plaintiff*], and deliberate no further as to [*comparative fault defendant*]. (Use Verdict Form 5001(A).)

If [*comparative fault defendant*] is at fault, decide [his][her][its] percentage of fault, and the percentage of fault, if any, of [*plaintiff*], [*common law defendant*], and [*identified nonpart(y)(ies)*] that caused [*plaintiff*]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

If [*plaintiff*]'s fault is greater than 50 percent, return your verdict for [*comparative fault defendant*] and against [*plaintiff*] in this case; and deliberate no further. (Use Verdict Form 5003(B).)

However, if you decide that [*plaintiff*]'s fault is 50 percent or less,

(1) Decide the total amount of [*plaintiff*]'s damages, if any. Do not consider fault when you decide this amount.

(2) Multiply [*plaintiff*]'s total damages by [*comparative fault defendant*]'s percentage of fault.

(3) Return your verdict for [*plaintiff*] and against [*comparative*

*fault defendant*] in the amount of the product of that multiplication. (Use Verdict Form 5003(C).)

I will give you verdict forms that will help guide you through this process.

**945 Comparative Fault—Apportionment—Plaintiff and Spouse (Consortium Claim)**

To decide if [*plaintiff*] is entitled to recover damages from [*defendant*], and if so, the amount of those damages, apportion the fault of [*plaintiff*], [*defendant*], and [*identified nonpart(y)(ies)*] on a percentage basis. Do this as follows:

First, if [*defendant*] is not at fault, return your verdict for [*defendant*] and against [*name all plaintiffs*]; and deliberate no further. (Use Verdict Form 5005(A).)

If [*defendant*] is at fault, decide [*defendant*]'s percentage of fault, and the percentage of fault, if any, of [*plaintiff*] and [*identified nonpart(y)(ies)*] that caused [*plaintiff*]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Next, if [*plaintiff*]'s fault is greater than 50 percent, return your verdict for [*defendant*] and against [*name all plaintiffs*] in this case; and deliberate no further. (Use Verdict Form 5005(B).)

However, if you decide that [*plaintiff*]'s fault is 50 percent or less, then:

- (1) Decide the total amount of [*plaintiff*]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [*plaintiff*]'s total damages by [*defendant*]'s percentage of fault.
- (3) Return your verdict for [*plaintiff*] and against [*defendant*] in the amount of the product of that multiplication. (Use Verdict Form 5005(C).)

Also, if you decide that [*plaintiff*]'s fault is 50 percent or less, you must decide the damages, if any, you award to [*plaintiff's spouse*]. To do this, you must:

- (4) Decide the total amount of [*plaintiff's spouse*]'s damages, if any. Do not consider fault when you decide this amount.
- (5) Multiply [*plaintiff's spouse*]'s total damages by [*defendant*]'s percentage of fault.
- (6) Return your verdict for [*plaintiff's spouse*] and against [*defendant*] in the amount of the product of that multiplication. (Use Verdict Form 5005(C).)

I will give you verdict forms that will help guide you through this process.

**947 Comparative Fault—Apportionment—Two Plaintiffs Both Claimed at Fault**

To decide if the plaintiffs, [*plaintiff one*] and [*plaintiff two*] are entitled to recover damages from [*defendant*], and if so, the amount of those damages, apportion the fault of [*plaintiff one*], [*plaintiff two*], [*defendant*], and [*identified nonpart(y)(ies)*] on a percentage basis. Do this as follows:

First, if [*defendant*] is not at fault, return your verdict for [*defendant*] and against [*plaintiff one*] and [*plaintiff two*]; and deliberate no further. (Use Verdict Form 5007(A).)

If [defendant] is at fault, decide [defendant]'s percentage of fault, and the percentage of fault, if any, of [plaintiff one], [plaintiff two], and [identified nonpart(y)(ies)] that caused [plaintiff one]'s and [plaintiff two]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Next, if either [plaintiff one]'s or [plaintiff two]'s fault is greater than 50 percent, return your verdict for [defendant] and against the plaintiff whose fault is greater than 50 percent, and deliberate no further as to that plaintiff. (Use Verdict Form 5007(B).)

However, if you decide that [plaintiff one]'s fault is 50 percent or less, then:

- (1) Decide the total amount of [plaintiff one]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [plaintiff one]'s total damages by [defendant]'s percentage of fault.
- (3) Return your verdict for [plaintiff one] and against [defendant] in the amount of the product of that multiplication. (Use Verdict Form 5007(C).)

If you decide that [plaintiff two]'s fault is 50 percent or less, then:

- (4) Decide the total amount of [plaintiff two]'s damages, if any. Do not consider fault when you decide this amount.
- (5) Multiply [plaintiff two]'s total damages by [defendant]'s percentage of fault.
- (6) Return your verdict for [plaintiff two] and against [defendant] in the amount of the product of that multiplication. (Use Verdict Form 5007(C).)

I will give you verdict forms that will help guide you through this process.

#### **949 Comparative Fault—Apportionment—Two Plaintiffs with One Claimed at Fault**

To decide if [plaintiff claimed to be at fault] and [no-fault plaintiff] are entitled to recover damages from [defendant], and if so, the amount of those damages, apportion the fault of [plaintiff claimed to be at fault], [defendant], and [identified nonpart(y)(ies)] on a percentage basis. Do this as follows:

First, if [defendant] is not at fault, return your verdict for [defendant] and against [name all plaintiffs]; and deliberate no further. (Use Verdict Form 5009(A).)

If [defendant] is at fault, decide [defendant]'s percentage of fault, and the percentages of fault, if any, of [plaintiff claimed to be at fault] and [identified nonpart(y)(ies)] that caused [plaintiffs]' injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

If you decide that [defendant] was at fault, then:

- (1) Decide the total amount of [no-fault plaintiff]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [no-fault plaintiff]'s total damages by [defendant]'s percentage of fault.
- (3) Return your verdict for [no-fault plaintiff] and against [defendant] in the amount of the product of that multiplication. (Use Verdict Form 5009(C2).)

Next, if [plaintiff claimed to be at fault]'s fault is greater than 50 percent, return a verdict for [defendant] and against [plaintiff claimed to be at fault] in this case, and deliberate no further as to [plaintiff claimed to be at fault]. (Use Verdict Form 5009(B).)

If you decide that *[plaintiff claimed to be at fault]*'s fault is 50 percent or less, then:

(4) Decide the total amount of *[plaintiff claimed to be at fault]*'s damages, if any. Do not consider fault when you decide this amount.

(5) Multiply *[plaintiff claimed to be at fault]*'s total damages by *[defendant]*'s percentage of fault.

(6) Return your verdict for *[plaintiff claimed to be at fault]* and against *[defendant]* in the amount of the product of that multiplication. (Use Verdict Form 5009(C1).)

I will give you verdict forms that will help guide you through this process.

### **951 Comparative Fault—Apportionment—Two Plaintiffs with One Claimed at Fault and Two Defendants Treated as One**

To decide if *[plaintiff claimed to be at fault]* and *[no-fault plaintiff]* are entitled to recover damages from *[defendants]*, and if so, the amount of those damages, apportion the fault of *[plaintiff claimed to be at fault]*, *[defendants]*, and *[identified nonpart(y)(ies)]* on a percentage basis. Do this as follows:

First, if *[defendants]* are not at fault, return your verdict for *[defendants]* and against *[name all plaintiffs]*; and deliberate no further. (Use Verdict Form 5011(A).)

If *[defendants]* are at fault, decide *[defendant]*'s percentage of fault, and the percentages of fault, if any, of *[plaintiff claimed to be at fault]* and *[identified nonpart(y)(ies)]* that caused *[plaintiffs]*' injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

If you decide that *[defendants]* were at fault, then:

(1) Decide the total amount of *[no-fault plaintiff]*'s damages, if any. Do not consider fault when you decide this amount.

(2) Multiply *[no-fault plaintiff]*'s total damages by *[defendant]*'s percentages of fault.

(3) Return your verdict for *[no-fault plaintiff]* and against *[defendants]* in the amount of the product of that multiplication. (Use Verdict Form 5011(C2).)

Next, if *[plaintiff claimed to be at fault]*'s fault is greater than 50 percent, return your verdict for *[defendants]* and against *[plaintiff claimed to be at fault]* in this case; and deliberate no further. (Use Verdict Form 5011(B).)

If you decide that *[plaintiff claimed to be at fault]*'s fault is 50 percent or less, then:

(4) Decide the total amount of *[plaintiff claimed to be at fault]*'s damages, if any. Do not consider fault when you decide this amount.

(5) Multiply *[plaintiff claimed to be at fault]*'s total damages by *[defendant]*'s percentage of fault.

(6) Return your verdict for *[plaintiff claimed to be at fault]* and against *[defendants]* in the amount of the product of that multiplication. (Use Verdict Form 5011(C1).)

I will give you verdict forms that will help guide you through this process.

### **953 Respondeat Superior—Vicarious Liability**

An employer is liable for the negligent act of its employee done within the scope of *[his][her]* employment, if the act is a responsible cause of injury to the plaintiff.

[However, even if the employee is acting within the scope of (his)(her) employment, an employer is not liable for the negligent act of its employee where the act is done on the employee's own initiative and is not done in the service of the employer.]

### **955 Negligence of Party Providing Dangerous Item for Use by Another**

If you find that:

- (1) [*defendant*], either directly or through a third person, provided an item for use by another person;
- (2) [*defendant*]:
  - (a) knew or had reason to know that the item was dangerous or was likely to be dangerous for the use for which it was provided; and
  - (b) had no reason to believe that the other person would realize the dangerous condition;
- (3) [*defendant*] did not use reasonable care to inform a person likely to use the item of the dangerous condition or of the facts that made it likely to be dangerous;
- (4) [*plaintiff*] was someone who [*defendant*] expected or should have expected:
  - (a) would be allowed to use the item, or
  - (b) would be endangered by the item's probable use;
- (5) a person whom [*defendant*] expected to use the item, did use it;
- (6) the item was used in the way [*defendant*] expected; and
- (7) the item's use caused physical harm to [*plaintiff*],

then you may consider this as fault to be assessed against [*defendant*].

### **957 Negligence of Party Providing Dangerous Item for a Business Purpose of the Provider**

If you find that:

- (1) [*defendant*], either directly or through a third person, provided an item to another person for [*defendant*]'s business purposes;
- (2) [*defendant*] either knew or should have discovered that the item had a dangerous condition or character;
- (3) [*defendant*] failed to:
  - (a) use reasonable care to make the item safe for the use for which it was provided; or
  - (b) inform the expected users of the item of its dangerous condition or character;
- (4) [*plaintiff*] was someone:
  - (a) for whose use [*defendant*] provided the item, or
  - (b) who [*defendant*] expected or should have expected would be endangered by the item's probable use;
- (5) the item was used by the person to whom it was provided;
- (6) the item was used in the way [*defendant*] expected; and
- (7) the item's use caused physical harm to [*plaintiff*],

then you may consider this as fault to be assessed against [*defendant*].

### **959 Dram Shop—Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] furnished an alcoholic beverage to [*name the person*] when:

- (1) [*defendant*] knew that [*name of person*] was visibly intoxicated when [*defendant*] furnished the alcoholic beverage, and

(2) [*name the person*]’s intoxication was a responsible cause of [*plaintiff*]’s [*death*][*injury*][*damage*].

[*Plaintiff*] must prove [*his*][*her*][*its*] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]’s claim. [*Defendant*] is not required to disprove [*plaintiff*]’s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [*his*][*her*][*its*] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **961 Sporting Event Injuries—Co-Participants, Spectators, and/or Third Persons**

A participant in [*sport*] must act reasonably and must not create an unreasonable risk of injury. A participant’s conduct is reasonable if it is within the range of ordinary behavior of participants in the sport, even if the conduct might, in a different setting, be considered reckless or intentional.

In determining whether [*defendant*] acted reasonably, you may consider:

- (1) the nature of [*sport*],
- (2) the customs and practices of [*sport*] [at the level being played] [including the types of contact and the level of violence generally accepted],
- (3) what rules governed the game, and
- (4) any other relevant circumstances.

**CHAPTER 1100 COMMON LAW NEGLIGENCE—CLAIMS AGAINST GOVERNMENT  
SYNOPSIS**

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**1101 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

*[Plaintiff]* claims that *[defendant]* *[insert claimed action(s)]*. *[Plaintiff]* must prove *[his][her][its]* claims by the greater weight of the evidence.

*[Defendant]* denies *[plaintiff]’s* claims. *[Defendant]* is not required to disprove *[plaintiff]’s* claims.

*[Defendant]* has claimed certain defenses. *[Defendant]* must prove *[his][her][its]* defense[s] of *[specify affirmative defense(s)]* by the greater weight of the evidence.

*[(Plaintiff)]* also claims (he)(she)(it) is entitled to an award of punitive damages because *(insert brief statement of claim for punitive damages)*. *(Plaintiff)* must prove this claim by clear and

convincing evidence.]

### **1103 Elements; Burden of Proof**

[*Plaintiff*] claims [*defendant*] was [negligent][*designate other type of fault*].

To recover on this claim, [*plaintiff*] must prove by the greater weight of the evidence that:

1. [*defendant*] acted or failed to act [by][in one or more of the following ways]: [*insert how plaintiff claims that defendant was negligent or otherwise at fault*];
2. [*defendant*]'s act or failure to act was [negligent][*designate other type of fault*];
3. [*defendant*]'s act or failure to act was a responsible cause of [*plaintiff*]'s claimed injuries; and
4. [*plaintiff*] suffered damages as a result of the injuries.

To recover an award of punitive damages, [*plaintiff*] must prove by clear and convincing evidence that:

[*Here set out the elements of plaintiff's claim for punitive damages to correspond to the factual disputes raised by the evidence.*]

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

A defendant may defend [himself][herself] by claiming certain specific “defenses.” In this case [*defendant*] claims: [*Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.*] To prove these defenses, [*defendant*] must prove by the greater weight of the evidence that:

[*Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.*]

### **1105 Contributory Negligence—Definition; Burden of Proof**

[*Defendant*] claims [*plaintiff*]'s own negligence contributed to the [injury][harm] [*plaintiff*] claims to have suffered and that [*plaintiff*]'s negligence was a responsible cause of the [injury][harm]. Negligence of this kind is “contributory negligence.”

[*Defendant*] has the burden of proving by the greater weight of the evidence that [*plaintiff*] was contributorily negligent.

If you decide that [*plaintiff*]'s contributory negligence was a responsible cause of [his][her] [injury][harm], then [*plaintiff*] cannot recover damages even if [*defendant*] was also negligent.

### **1107 Negligence—Definition**

Negligence is the failure to use reasonable care.

A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

### **1109 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **1111 Willful or Wanton Misconduct—Definition**

“Wanton or willful” misconduct is an intentional [act][failure to act] done with reckless disregard

of probable injury to a person, when the defendant knew of that probability [and, if the defendant failed to act, (he)(she) had the opportunity to avoid the risk].

### **1113 Contributory Negligence—Not a Defense to Willful and Wanton Misconduct**

If [plaintiff] proves that [defendant]’s conduct was willful and wanton misconduct, [defendant] may not defend himself by claiming that [plaintiff] has been contributorily negligent.

[However, if both (plaintiff)’s and (defendant)’s conduct was willful and wanton misconduct, (defendant) may defend himself by claiming that (plaintiff) contributed to the (injury)(harm).]

### **1115 Reckless—Definition**

A person acts recklessly when [he][she] disregards a substantial risk of danger that either is known or would be apparent to a reasonable person in the same position. The conduct must be a significant departure from reasonable care.

### **1117 Responsible Cause (Proximate Cause)—Definition**

A person’s conduct is legally responsible for causing [an injury][property damage][a death] if: (1) the [injury][property damage][a death] would not have occurred without the conduct, and (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

### **1118 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **1119 Intervention of Outside Cause**

Sometimes an unrelated event breaks the connection between a defendant’s negligent action and the injury a plaintiff claims to have suffered. If this event was not reasonably foreseeable, we call the event an “intervening cause.”

When an intervening cause breaks the connection between a defendant’s negligent act and a plaintiff’s injury, a defendant’s negligent act is no longer a “responsible cause” of that plaintiff’s injury.

### **1121 Defendant Takes Plaintiff as He Finds Him**

[Defendant] is not excused from responsibility just because [plaintiff] had [describe physical or mental condition] at the time of [the collision][the incident][describe event] that made [him][her] more likely to be injured.

### **1122(a) Pre-existing Conditions; Aggravation**

A pre-existing condition is a [physical][mental] condition that existed before [the collision][the incident][describe event].

[Plaintiff] may recover damages for the extent that [defendant] aggravated [plaintiff]’s [specify pre-existing condition].

[Plaintiff] cannot, however, recover damages for [specify pre-existing condition] itself.

### **1122(b) Post-Incident Conditions; Aggravation**

[*Plaintiff*] is [also] not entitled to recover damages for any condition that occurred after, and was not caused by, [the collision][the incident][*describe event*].

### **1123 Concurring Acts of Negligence of Two or More Persons: Common Law Negligence Cases Only**

When the negligence of two [or more] people combines to become the responsible cause of an injury or harm, and the injured person is not contributorily negligent, then the injured person may recover damages from any or all persons causing the harm, and [neither person][none of those people] can claim the negligence of the other[s] as a defense.

### **1125 Last Clear Chance: Common Law Negligence Only**

A plaintiff may be excused from contributory negligence if a defendant had the “last clear chance” to avoid the harm.

If you conclude [*plaintiff*] was contributorily negligent, you may excuse [*plaintiff*] from that contributory negligence if [*plaintiff*] proves all of the following:

- (1) [*Defendant*] was negligent;
- (2) [*Plaintiff*] was in immediate danger and could not free [himself][herself] from that danger;
- (3) [*Defendant*] knew that [*plaintiff*] was in immediate danger;
- (4) [*Defendant*] knew that [*plaintiff*] could not free [himself][herself] from that danger;
- (5) [*Defendant*] had the time and ability to avoid [injury][damage] to [*plaintiff*] but did not use reasonable care to do so; and
- (6) [*Defendant*]'s failure was the responsible cause of [injury][damage] to [*plaintiff*].

### **1127 Incurred Risk/Assumed Risk—Common Law Negligence Only**

[*Defendant*] claims [*plaintiff*] knew of a specific danger, understood the risk [he][she][it] faced, and voluntarily exposed [herself][himself][itself] to the danger. In other words, [*defendant*] claims [*plaintiff*] voluntarily [incurred][assumed] the risk.

To prove [*plaintiff*] [incurred][assumed] the risk, [*defendant*] must prove by the greater weight of the evidence that:

- (1) [*plaintiff*] knew and appreciated the specific risk; and
- (2) [*plaintiff*] voluntarily accepted the risk.

If you decide that [*plaintiff*] [incurred][assumed] the risk, your verdict should be for [*defendant*].

### **1129 Negligence or Contributory Negligence—Children**

[*Child*] was \_\_\_\_\_ years old at the time of the incident.

#### Child under the age of 7 years

A child under the age of seven (7) cannot be held legally responsible for [his][her] actions. Therefore, you cannot decide that a child under seven years of age was negligent.

#### Child between the ages of 7 and 14 years

A child between the ages of seven (7) and fourteen (14) must use the same care that a reasonably careful child of the same age, knowledge, judgment, and experience would use in the same situation.

### Child over age 14 years

[Absent special circumstances], a child over the age of fourteen (14) must use the same care as an adult.

#### **1131 Negligence of a Parent**

A child is not responsible for [his][her] [parent's][guardian's][custodian's] conduct.

Therefore, if you decide that [parent, guardian, or custodian] was negligent, you may not decide that [child] was negligent for [parent, guardian, or custodian]'s conduct.

#### **1133 Sudden Emergency**

[Plaintiff][Defendant] claims [he][she] was not negligent because [he][she] acted with reasonable care in an emergency situation. [Plaintiff][Defendant] was not negligent if [he][she] proves the following by the greater weight of the evidence:

- (1) [he][she] was faced with a sudden emergency;
- (2) [he][she] did not cause the emergency;
- (3) [he][she] did not have enough time to consider [his][her] options; and
- (4) [he][she] acted as a reasonably careful person would act when facing a similar emergency, even if a different course of action might later seem to have been a better choice.

#### **1134 Rescue**

A person who has, through his [negligence][other standard of care], endangered the safety of another may be held liable for injuries sustained by a third person in attempting to save such other from injury.

You may hold [defendant] liable for [plaintiff]'s injuries if you find that:

1. [defendant] [negligently][other standard of care] endangered [rescued person]
2. [plaintiff] attempted to prevent further harm to [rescued person],
3. [plaintiff]'s attempt was reasonable under the circumstances.

#### **1135 Intoxication—No Excuse or Justification**

An intoxicated person is held to the same standard of care as someone who is not intoxicated. Intoxication does not excuse or justify a person's failure to act as a reasonably careful person.

#### **1137 Duty to Minimize (Mitigate) Damages—Common Law Negligence Cases**

A plaintiff must use reasonable care to minimize [his][her] damages.

[Plaintiff] may not recover for any item of damage that [he][she] could have avoided through the use of reasonable care.

[Defendant] has the burden of proving by the greater weight of the evidence that [plaintiff] failed to use reasonable care to minimize [his][her] damages.

#### **1139 Violation of Statutory Duty as Negligence**

When the events in this case happened, [Indiana Code § \_\_\_\_\_][ordinance number and name] provided [in part] as follows: [here set out applicable portions of statute or ordinance].

If you decide from the greater weight of the evidence that a person violated [Indiana Code § \_\_\_\_\_][ordinance number and name], and that the violation was not excused, then you must decide that person was negligent.

### 1141 Excuse from Statutory Violation

A person may be excused from failing to comply with [a statute][an ordinance] if [he][she] proves by the greater weight of the evidence that:

- (1) Compliance was impossible or noncompliance was excusable because of circumstances:
  - (a) beyond the person's control, and
  - (b) not the result of the person's negligence; or
- (2) The [statute][ordinance] provided a specific excuse.

### 1142(A) Mixed Comparative Fault and Common Law Defendants—If All Parties Agree— Judge Calculates Judgment Against Each Defendant

To decide if [plaintiff] is entitled to recover damages from [comparative fault defendant] or [common law defendant] or both, and if so, the amount of those damages, apportion the fault of [plaintiff], [defendants], and [identified nonpart(y)(ies)] on a percentage basis. Do this as follows:

First, if neither [comparative fault defendant] nor [common law defendant] is at fault, return your verdict for [comparative fault defendant] and [common law defendant], and against [plaintiff], and deliberate no further. (Use Verdict Form 5003(A).)

If either [comparative fault defendant] or [common law defendant] is at fault, decide their percentages of fault, and the percentage of fault, if any, of [plaintiff] and [identified nonpart(y)(ies)] that caused [plaintiff]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Finally, decide the total amount of [plaintiff]'s damages, if any. Do not consider fault when you decide this amount. (Use Verdict Form 5004.)

Based on the law, the percentages of fault you allocate, and the total amount of damages in your verdict, I will calculate the amount of money, if any, [plaintiff] is entitled to recover against either of the defendants.

The law treats these defendants differently. The law requires that:

- (1) If [plaintiff]'s fault is greater than 50 percent, [plaintiff] cannot recover damages against either [comparative fault defendant] or [common law defendant].
- (2) If [plaintiff]'s fault is greater than 0 percent, [plaintiff] cannot recover damages against [common law defendant].

I will give you verdict forms that will help guide you through this process.

### 1142(B) Mixed Comparative Fault and Common Law Defendants

The law requires you to use different methods to decide if [plaintiff] is entitled to recover damages from [comparative fault defendant] or [common law defendant] or both, and if so, the amount of those damages.

#### Deliberations as to [common law defendant]

If you decide that [common law defendant] was not negligent, or that [common law defendant] was negligent, but that [his][her][its] negligence was not

#### Deliberations as to [comparative fault defendant]

If you decide that [comparative fault defendant] is not at fault, or that [comparative fault defendant] was at fault, but that [his]

a responsible cause of [plaintiff]'s injury, return your verdict for [common law defendant], and against [plaintiff], and deliberate no further as to [common law defendant]. (Use Verdict Form 5017.)

If you decide that [plaintiff]'s own negligence contributed to the [injury][harm] [plaintiff] claims to have suffered and that [plaintiff]'s negligence was a responsible cause of the [injury][harm], return your verdict for [common law defendant] and against [plaintiff] in this case, and deliberate no further as to [common law defendant]. (Use Verdict Form 5017.)

However, if you decide that [common law defendant] was negligent, and that [plaintiff]'s own negligence did not contribute to the [injury][harm], then you must decide the amount of plaintiff's damages caused by the negligence of [common law defendant] without comparing that negligence to the fault of any other defendant in this case. Return your verdict against [common law defendant] in that amount. (Use Verdict Form 5013.)

[her][its] fault was not a responsible cause of [plaintiff]'s injury, return your verdict for [comparative fault defendant], and against [plaintiff], and deliberate no further as to [comparative fault defendant]. (Use Verdict Form 5001(A).)

If [comparative fault defendant] is at fault, decide [his][her][its] percentage of fault, and the percentage of fault, if any, of [plaintiff], [common law defendant], and [identified nonpart(y)(ies)] that caused [plaintiff]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

If [plaintiff]'s fault is greater than 50 percent, return your verdict for [comparative fault defendant] and against [plaintiff] in this case; and deliberate no further. (Use Verdict Form 5003(B).)

However, if you decide that [plaintiff]'s fault is 50 percent or less,

- (1) Decide the total amount of [plaintiff]'s damages, if any. Do not consider fault when you decide this amount.
- (2) Multiply [plaintiff]'s total damages by [comparative fault defendant]'s percentage of fault.
- (3) Return your verdict for [plaintiff] and against [comparative fault defendant] in the amount of the product of that multiplication. (Use Verdict Form 5003(C).)

I will give you verdict forms that will help guide you through this process.

### **1143 Respondeat Superior—Vicarious Liability**

An employer is liable for the negligent act of its employee done within the scope of [his][her] employment, if the act is a responsible cause of injury to the plaintiff.

[However, even if the employee is acting within the scope of (his)(her) employment, an employer is not liable for the negligent act of its employee where the employee acts on his own initiative and not in the service of the employer.]

### **1145 Negligence of Party Providing Dangerous Item for Use by Another**

If you find that:

(1) [defendant], either directly or through a third person, provided an item for use by another person;

(2) [*defendant*]:

(a) knew or had reason to know that the item was dangerous or was likely to be dangerous for the use for which it was provided; and

(b) had no reason to believe that the other person would realize the dangerous condition;

(3) [*defendant*] did not use reasonable care to inform a person likely to use the item of the dangerous condition or of the facts that made it likely to be dangerous;

(4) [*plaintiff*] was someone who [*defendant*] expected or should have expected:

(a) would be allowed to use the item, or

(b) would be endangered by the item's probable use;

(5) a person whom [*defendant*] expected to use the item, did use it;

(6) the item was used in the way [*defendant*] expected; and

(7) the item's use caused physical harm to [*plaintiff*],

then [*defendant*] was negligent.

#### **1147 Negligence of Party Providing Dangerous Item for a Business Purpose of the Provider**

If you find that:

(1) [*defendant*], either directly or through a third person, provided an item to another person for [*defendant*]'s business purposes;

(2) [*defendant*] either knew or should have discovered that the item had a dangerous condition or character;

(3) [*defendant*] failed to:

(a) use reasonable care to make the item safe for the use for which it was provided; or

(b) inform the expected users of the item of its dangerous condition or character;

(4) [*plaintiff*] was someone:

(a) for whose use [*defendant*] provided the item, or

(b) who [*defendant*] expected or should have expected would be endangered by the item's probable use;

(5) the item was used by the person to whom it was provided;

(6) the item was used in the way [*defendant*] expected; and

(7) the item's use caused physical harm to [*plaintiff*],

then [*defendant*] was negligent.

**CHAPTER 1200 CONSTITUTIONAL TORTS  
SYNOPSIS**

**A. 42 U.S.C. § 1983—Excessive Force**

**1201 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Elements**

**1203 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Scope of Force**

**1205 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Reasonableness of Force**

**1207 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Two or More Defendants**

**1209 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Failure to Intervene**

**1211 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Reasonable Officer, Timing, Intent**

**1213 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Compensatory Damages**

**1215 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Punitive Damages**

**B. 8th Amendment—Excessive Force [Reserved]**

**A. 42 U.S.C. § 1983—Excessive Force**

1201 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—  
Elements

In this case, [\_\_\_\_\_ *plaintiff*] claims that [\_\_\_\_\_ *defendant*] used excessive force against [him][her]. To recover on this claim, [\_\_\_\_\_ *plaintiff*] must prove by the greater weight of the evidence that:

- 1) [\_\_\_\_\_ *defendant*] used unreasonable force against [\_\_\_\_\_ *plaintiff*];
- 2) the actions of [\_\_\_\_\_ *defendant*] were a responsible cause of [\_\_\_\_\_ *plaintiff*]'s alleged injuries and damages; [and]
- 3) [(\_\_\_\_\_ *defendant*) acted under color of law].

**1203 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th  
Amendment—Scope of Force**

Not all force used by an officer is unreasonable. Some force may be necessary. [\_\_\_\_\_ *Plaintiff*] may only recover for excessive force if the force used was greater than the force that a reasonable officer in the same position would use.

**1205 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th  
Amendment—Reasonableness of Force**

Physical bodily injury is not required to prove that the force was unreasonable, nor does physical bodily injury automatically make the force unreasonable. You must decide whether the force was unreasonable.

In deciding whether force was reasonable or unreasonable, you may consider all of the circumstances, including:

- 1) the need for the use of force;
- 2) the relationship between the need for force and the amount of force [\_\_\_\_\_defendant] used;
- 3) any efforts made by [\_\_\_\_\_defendant] to limit the force to what was needed under the circumstances;
- 4) what a reasonable officer may have perceived as a threat under the same or similar circumstances;
- 5) whether [\_\_\_\_\_plaintiff] poses an immediate threat to the safety of officers or others;
- 6) the [\_\_\_\_\_law enforcement agency]'s standard operating procedures regarding the use of force;
- 7) the extent to which [\_\_\_\_\_plaintiff] was actively resisting arrest or refusing reasonable orders of the authorities;
- 8) the extent of [\_\_\_\_\_plaintiff]'s injuries, if any;
- 9) [the severity of the alleged crime]; and
- 10) [\_\_\_\_\_any other circumstances based on the facts of the case].

**1207 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Two or More Defendants**

There are [two][\_\_\_\_\_number greater than two] defendants in this action. [The claims against them will be tried together for efficiency.] You must consider the claims against and any defenses raised by each defendant separately. Unless I instruct you otherwise, my instructions apply to [both][all] defendants.

**1209 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Failure to Intervene**

An officer who does not use excessive force, but had a reasonable opportunity to intervene to prevent, stop, or reduce the use of excessive force, may be liable. In determining this, you may consider whether that officer had the knowledge, ability, opportunity, and authority to intervene but did not take reasonable steps to intervene.

To succeed on a claim for failure to intervene to protect [\_\_\_\_\_plaintiff] from excessive force allegedly used by [\_\_\_\_\_defendant], [\_\_\_\_\_plaintiff] must prove by the greater weight of the evidence that:

- 1) [\_\_\_\_\_defendant] used excessive force against [\_\_\_\_\_plaintiff];
- 2) [\_\_\_\_\_bystander-defendant] knew that [\_\_\_\_\_defendant] was using or was about to use excessive force on [\_\_\_\_\_plaintiff];
- 3) [\_\_\_\_\_bystander-defendant] had a realistic opportunity to do something to prevent, stop, or reduce the use of excessive force;
- 4) [\_\_\_\_\_bystander-defendant] failed to take reasonable steps to prevent, stop, or reduce the use of excessive force; and
- 5) [\_\_\_\_\_bystander-defendant]'s failure was a responsible cause of [\_\_\_\_\_plaintiff]'s injury or damages.

**1211 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Reasonable Officer, Timing, Intent**

Decide whether [\_\_\_\_\_defendant]'s actions were unreasonable by considering what a reasonable officer would have done at the time, and in the circumstances, when

[\_\_\_\_\_ *defendant*] used the force.

Do not consider [\_\_\_\_\_ *defendant*]'s intent or motive.

**1213 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Compensatory Damages**

[*Use appropriate elements from* Instruction No. 703 for Compensatory Damages.]

**1215 Excessive Force—Non-Incarcerated Plaintiff—42 U.S.C. § 1983 and 4th Amendment—Punitive Damages**

[Use the punitive damages instructions found in Instruction Nos. 737–745.]

**B. 8th Amendment—Excessive Force [Reserved]**

The Committee is drafting Instructions on 8th Amendment Excessive Force cases brought by incarcerated plaintiffs.

## CHAPTER 1300 MOTOR VEHICLES/CARRIER OF PASSENGERS

### SYNOPSIS

#### A. Motor Vehicles

- 1301 Duty of Driver and/or Pedestrian to be Careful
- 1303 Proper Lookout
- 1305 Passenger's Duty of Care
- 1307 Assumption Others Will Use Due Care
- 1309 Automobile Guest (Relatives and Hitchhikers)—Liability
- 1311 Joint Enterprise—Defined
- 1313 Duty of Driver of Emergency Vehicle
- 1315 Duty of Others Upon Approach of Emergency Vehicle
- 1317 Emergency Call
- 1319 People/Vehicles at Work on Highway
- 1321 Train Operator—Duty of Care

#### B. Carrier of Passengers

- 1323 Carrier of Passengers—Definition
- 1325 Passenger—Definition
- 1327 Duty to Passenger Generally
- 1329 Duty to Protect Passenger from Injury by Passengers, Third Persons, and Employees
- 1331 Duty to Protect Passengers from Intentional Harm by Employees
- 1333 Duty to Disabled, Infirm, or Intoxicated Person or to Child
- 1335 Duty to Provide Place to Wait, Board, and Alight
- 1337 Passenger Complying with Rules—Carrier Liable for Expulsion

#### A. Motor Vehicles

##### 1301 Duty of Driver and/or Pedestrian to be Careful

Every [motor vehicle driver][and][pedestrian] must use the care an ordinarily careful person would use under the same or similar circumstances. [Drivers][and][Pedestrians] who do not use reasonable care are negligent.

##### 1303 Proper Lookout

Every [driver][pedestrian] must maintain a proper lookout to see or hear what should be seen or heard through the exercise of reasonable care. A person is negligent if [he][she] does not maintain a proper lookout.

##### 1305 Passenger's Duty of Care

A passenger in a motor vehicle is not required to constantly look out for unexpected danger, but still must use reasonable care for [his][her] own safety. If:

- (1) [passenger] knew or should have known of the danger;

(2) [passenger] had enough time to warn the driver; and

(3) the warning would have allowed the driver to avoid the [danger][collision] [obstacle][insert type of danger],

then [passenger] was negligent.

### **1307 Assumption Others Will Use Due Care**

Unless a person using a road has notice to the contrary, that person is entitled to assume that others using the road will use reasonable care.

### **1309 Automobile Guest (Relatives and Hitchhikers)—Liability**

The owner or driver of a motor vehicle is responsible for loss or damage arising from injuries to a guest passenger only if the injuries are caused by the wanton or willful misconduct of the owner or driver.

If [defendant] has proved by the greater weight of the evidence that:

(1) [plaintiff] was a passenger in [(defendant)'s motor vehicle][a motor vehicle driven by (defendant)]; and

(2) [plaintiff] did not pay [defendant] to transport [him][her],

then [defendant] is responsible only if [plaintiff] proves all of the following:

(3) [defendant]'s behavior was wanton or willful;

(4) [plaintiff] was injured while traveling in the motor vehicle;

(5) [plaintiff] suffered [loss][damage] as a result of [his][her] injur[y][ies]; and

(6) [defendant]'s behavior caused [plaintiff]'s [loss][damage].

### **1311 Joint Enterprise—Defined**

A “joint enterprise” is an activity between two or more persons for their mutual benefit. To establish that a joint enterprise existed between the parties in this case, you must decide that the parties had:

(1) joint control over the management, operation, course, and conduct of their activity;

(2) a joint financial interest in their activity;

(3) an equal right to direct and govern each other's movements; and

(4) an express or implied agreement regarding the activity.

If you decide that \_\_\_\_\_ and \_\_\_\_\_ were engaged in a joint enterprise, any [contributory] fault by \_\_\_\_\_ is also [contributory] fault by \_\_\_\_\_.

### **1313 Duty of Driver of Emergency Vehicle**

The driver of an emergency vehicle must drive with due regard for the safety of all persons using the highway.

[For other statutory issues regarding drivers of emergency vehicles, the Committee recommends the use of Instruction No. 937 (comparative fault) or 1139 (common law negligence).]

### **1315 Duty of Others Upon Approach of Emergency Vehicle**

Unless otherwise directed by a law enforcement officer, a driver who hears the siren of an emergency vehicle or sees an emergency vehicle approaching with flashing lights must:

- (1) yield the right of way to the emergency vehicle;
- (2) drive immediately to the right hand edge or curb of the highway, position [his][her] vehicle clear of any intersection and parallel to the right side of the road, and stop; and
- (3) remain stopped and in parallel position until the emergency vehicle has passed.

### **1317 Emergency Call**

One of the questions in this case is whether [name of person or party] was driving to an emergency.

The special rules for drivers of emergency vehicles apply only if the [name of person or party] had reasonable grounds to believe that:

- (1) an emergency was taking place; and
- (2) [he][she] had a duty to respond to the emergency.

Otherwise, [name of person or party] must follow the same rules as any other driver.

### **1319 People/Vehicles at Work on Highway**

Laws that regulate traffic do not apply to people working on the surface of a highway, or to [motor vehicles][other equipment] while their drivers are working on the surface of a highway.

### **1321 Train Operator—Duty of Care**

Every train operator must use the care an ordinarily careful train operator would use under the same or similar circumstances. Train operators who do not use reasonable care are negligent.

## **B. Carrier of Passengers**

### **1323 Carrier of Passengers—Definition**

A common carrier is one who represents to the public that it is in the business of transporting [passengers][household goods] for a fee and invites the general public to use its services.

### **1325 Passenger—Definition**

A passenger is a person [other than an employee of the carrier then on duty] who, with the actual or implied consent of the common carrier, is boarding, riding, or exiting the carrier's vehicle.

### **1327 Duty to Passenger Generally**

[Defendant, \_\_\_\_\_, is a common carrier.]

A common carrier must use reasonable care for the safety of its passengers.

### **1329 Duty to Protect Passenger from Injury by Passengers, Third Persons, and Employees**

A common carrier must use reasonable care in protecting its passengers from:

- (1) the negligent acts of its employees, and
- (2) the misconduct of [other passengers][persons not its passengers][its employees].

### **1331 Duty to Protect Passengers from Intentional Harm by Employees**

A common carrier is liable for any intentional harm caused to a passenger by the common carrier's employee[s] [while on duty].

### **1333 Duty to Disabled, Infirm, or Intoxicated Person or to Child**

When a common carrier knows that a passenger is [disabled][frail or infirm][intoxicated][a child][a child traveling alone], so that the hazards of travel increase for that passenger, the carrier must use the reasonable care and diligence that the circumstances require.

### **1335 Duty to Provide Place to Wait, Board, and Alight**

A common carrier must use reasonable care to provide a reasonably safe place for passengers to wait for, board, and exit the carrier's vehicle.

### **1337 Passenger Complying with Rules—Carrier Liable for Expulsion**

A common carrier is liable for failing to transport, expelling, or threatening to expel a passenger who follows its rules and is entitled to transportation.

A common carrier cannot excuse its conduct by claiming that it acted in good faith.

## CHAPTER 1500 MEDICAL NEGLIGENCE

### SYNOPSIS

- 1501 Issues for Trial; Burden of Proof
- 1503 Elements; Burden of Proof
- 1505 Negligence—Definition
- 1507 Reasonable Care—Definition
- 1509 Contributory Negligence—Definition; Burden of Proof
- 1511 Medical Negligence—Health Care Provider
- 1513 Responsible Cause (Proximate Cause)—Definition
- 1514 Foreseeable—Defined
- 1515 Duty of Medical Specialist
- 1517 Duty to Refer to Specialist
- 1519 Joint Duty of Health Care Providers Qualified Under the Medical Malpractice Act
- 1521 Delegation of Duties—Foreign Objects
- 1523 Right to Rely upon Health Care Provider
- 1525 Choice of Treatment Modalities
- 1527 Informed Consent
- 1529 Informed Consent—Elements—Burden of Proof
- 1531 Consent Required; Express and Implied Consent Defined
- 1533 Incapacity to Consent
- 1535 Consent Not Required—Emergency Operation
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- 1539 Expert Testimony Required
- 1541 Medical Review Panel—Weight
- 1543 Res Ipsa Loquitur
- 1545 Hospital Liability
- 1547 Duty of Hospital Employees
- 1549 Contributory Negligence—Duty to Provide Accurate Information
- 1551 Contributory Negligence—Duty to Follow Instructions
- 1553 Duty to Follow Instructions After Treatment—Mitigation of Damages
- 1555 Loss of Chance—Elimination of a Probability of Recovery
- 1556 Loss of Chance—Increased Risk of Future Harm
- 1557 Lost Chance—Reduced Life Expectancy
- 1559 Statute of Limitations—General
- 1561 Statute of Limitations—Doctrine of Fraudulent Concealment
- 1563 Statute of Limitations—Continuing Wrong—Course of Conduct
- 1565 Statute of Limitations—Failure to Diagnose
- 1567 Physicians—Battery
- 1569 Good Samaritan
- 1571(A) Mixed Comparative Fault and Common Law Defendants—If All Parties Agree—Judge Calculates Judgment Against Each Defendant
- 1571(B) Mixed Comparative Fault and Common Law Defendants

### **1501 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[Plaintiff] claims that [defendant] [insert claimed action(s)]. [Plaintiff] must prove [his][her][its] claims by the greater weight of the evidence.

[Defendant] denies [plaintiff]'s claims. [Defendant] is not required to disprove [plaintiff]'s claims.

[Defendant] has claimed certain defenses. [Defendant] must prove [his][her][its] defense[s] of [specify affirmative defense(s)] by the greater weight of the evidence.

[(Plaintiff) also claims (he)(she)(it) is entitled to an award of punitive damages because (insert brief statement of claim for punitive damages). (Plaintiff) must prove this claim by clear and convincing evidence.]

### **1503 Elements; Burden of Proof**

[Plaintiff] claims [defendant] was [negligent][designate other type of fault].

To recover on this claim, [plaintiff] must prove by the greater weight of the evidence that:

1. [defendant] acted or failed to act [by][in one or more of the following ways]: [insert how plaintiff claims that defendant was negligent or otherwise at fault];
2. [defendant]'s act or failure to act was [negligent][designate other type of fault];
3. [defendant]'s act or failure to act was a responsible cause of [plaintiff]'s claimed injuries; and
4. [plaintiff] suffered damages as a result of the injuries.

To recover an award of punitive damages, [plaintiff] must prove by clear and convincing evidence that:

[Here set out the elements of plaintiff's claim for punitive damages to correspond to the factual disputes raised by the evidence.]

[Defendant] denies [plaintiff]'s claims. [Defendant] is not required to disprove [plaintiff]'s claims.

A defendant may defend [himself][herself] by claiming certain specific "defenses." In this case [defendant] claims: [Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.] To prove these defenses, [defendant] must prove by the greater weight of the evidence that:

[Here set out the elements of defendant's affirmative defenses to correspond to the factual disputes raised by the evidence.]

### **1505 Negligence—Definition**

Negligence is the failure to use reasonable care.

A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

### **1507 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **1509 Contributory Negligence—Definition; Burden of Proof**

[Defendant] claims [plaintiff]’s own negligence contributed to the [injury][harm] [plaintiff] claims to have suffered and that [plaintiff]’s negligence was a responsible cause of the [injury][harm]. We call negligence of this kind “contributory negligence.”

[Defendant] has the burden of proving by the greater weight of the evidence that [plaintiff] was contributorily negligent.

If you decide that [plaintiff]’s contributory negligence was a responsible cause of [his][her] [injury][harm], then [plaintiff] cannot recover damages even if [defendant] was also negligent.

### **1511 Medical Negligence—Health Care Provider**

In providing health care to a patient, a [type of health care provider] must use the degree of care and skill that a reasonably careful, skillful, and prudent [type of health care provider] would use under the same or similar circumstances.

A [type of health care provider] who fails to exercise that reasonable care and skill commits medical negligence.

Medical negligence may consist of:

(1) doing something a [type of health care provider] should not have done under the circumstances; or

(2) not doing something a [type of health care provider] should have done under the circumstances.

### **1513 Responsible Cause (Proximate Cause)—Definition**

A person’s conduct is legally responsible for causing [an injury][property damage][a death] if:

(1) the [injury][property damage][a death] would not have occurred without the conduct, and

(2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

#### **1514 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

#### **1515 Duty of Medical Specialist**

A medical specialist focuses his or her practice on diagnosing and treating a particular medical condition, consistent with the state of scientific knowledge at the time.

A medical specialist must use the same degree of care and skill that other specialists in the field would have used under the same or similar circumstances at the time of treatment.

#### **1517 Duty to Refer to Specialist**

A health care provider who is not qualified to treat a patient because [he][she] does not practice in a specialty, or lacks the necessary training or facilities, must advise the patient to consult a specialist or another qualified health care provider(s).

#### **1519 Joint Duty of Health Care Providers Qualified Under the Medical Malpractice Act**

If you decide that [\_\_\_\_\_name of health care providers] were both medically negligent, and that their negligence was a responsible cause of the same injury, then regardless of their degree of negligence, they are both liable for the entire amount of [\_\_\_\_\_plaintiff]’s damages, and you must return a verdict against both defendants in a single amount for the total damages. Do not consider the amount that any individual defendant will pay toward your verdict. [\_\_\_\_\_Plaintiff] will not collect more than the total amount of your verdict.

#### **1521 Delegation of Duties—Foreign Objects**

A doctor who performs an operation on a patient must make certain that [foreign object(s)] [is][are] removed, and is not relieved of that responsibility by giving that duty to someone else.

#### **1523 Right to Rely upon Health Care Provider**

The patient-[type of health care provider] relationship is one in which the patient trusts the [type of health care provider], because the patient lacks the knowledge, skill, and experience of the [type of health care provider] in those subjects which are vitally important to the patient.

A patient has a right to rely upon the [type of health care provider].

### **1525 Choice of Treatment Modalities**

[Health care providers] are allowed broad discretion in selecting treatment methods, and are not limited to those most generally used.

When more than one accepted method of treatment is available, the [type of health care provider] must use sound judgment in choosing which method to use.

If a [type of health care provider] uses sound judgment in selecting from a variety of accepted treatments, and uses reasonable care and skill in treating a patient, then the [type of health care provider] is not responsible if the treatment does not succeed.

The fact that other methods existed or that another [type of health care provider] would have used a different treatment does not establish medical negligence.

### **1527 Informed Consent**

A patient must consent to the treatment [he][she] receives. A patient's decision to undergo a particular treatment must be an informed choice.

Health care providers must tell a patient the important facts about possible treatments. Before making a choice, a patient has a right to know [the nature of a proposed treatment][other available treatments][the risks involved].

### **1529 Informed Consent—Elements—Burden of Proof**

[Plaintiff] claims that [defendant] did not inform [him][her] of [the nature of a proposed treatment][other treatments available][the risks involved].

To recover damages from [defendant], [plaintiff] must [use expert testimony to] prove by the greater weight of the evidence that a [type of health care provider], using reasonable care and skill under the circumstances of this case, would have informed [plaintiff] of [the nature of the proposed treatment][other treatments available][the risks involved for the patient].

Specifically, [plaintiff] must prove the following by the greater weight of the evidence:

- (1) [defendant] [performed][prescribed] [describe treatment that plaintiff claims defendant performed or prescribed];
- (2) [defendant] had a duty to inform [plaintiff] of [an] important fact[s] concerning the treatment;
- (3) [defendant] did not inform the plaintiff of those fact[s];
- (4) a reasonable person in the same or similar circumstances as [plaintiff] would not have consented to [treatment] had [she][he] been informed of those fact[s]; and
- (5) [defendant]'s failure to inform was a responsible cause in causing [plaintiff]'s [death][injury].

### **1531 Consent Required; Express and Implied Consent Defined**

A [type of health care provider] may not provide health care to a patient without the patient's consent. A patient's consent may be express or implied.

"Express consent" means actual, direct, or explicit permission, whether oral or written.

"Implied consent" means permission that is not expressly given, but which the [type of health care provider] would reasonably understand from the patient's conduct and surrounding circumstances.

### **1533 Incapacity to Consent**

When the patient is unable to consent to treatment because the patient is [a minor][unconscious][incompetent], a [type of health care provider] must obtain the consent from someone authorized to give consent for the patient.

### **1535 Consent Not Required—Emergency Operation**

Ordinarily, a [type of health care provider] must obtain consent before treating a patient.

However, consent is not necessary under emergency conditions when:

- (1) immediate treatment is necessary;
- (2) obtaining consent is impossible; or
- (3) when delay would endanger the patient's life or health.

### **1537 Consent Not Required—Additional Surgery**

Generally, a [type of health care provider] must obtain the patient's consent for a specific operation.

However, if:

- (1) during the operation the [type of health care provider] discovers conditions that could not have been reasonably foreseen;
- (2) additional surgery is necessary to preserve the patient's life or health; and
- (3) the [type of health care provider] cannot obtain consent from the patient or a person authorized to give consent,

then the [type of health care provider] may perform the additional necessary surgery.

### **1539 Expert Testimony Required**

In deciding whether [defendant] used reasonable care and skill in treating [plaintiff], you must consider only the expert testimony of health care providers who are members of [defendant]'s profession.

### **1541 Medical Review Panel—Weight**

Indiana law required that [plaintiff] present [his][her] case to a medical review panel.

A medical review panel is made up of three health care providers: [plaintiff] selects one member, [defendant] selects a second member, and the first two members select the third member. Do not assume that any member of the review panel is associated with, or an advocate for, any party.

The medical review panel's opinion does not resolve the issues you must decide and you may give it the weight you think appropriate.

### **1543 Res Ipsa Loquitur**

You may assume that an act of medical negligence took place if [plaintiff] proves the following by the greater weight of the evidence:

- (1) [plaintiff] was under [defendant]'s care when the [injury][harm][death] occurred;
- (2) [defendant] had exclusive control of [plaintiff]'s actions or reactions when the [injury][harm][death] occurred;
- (3) the [injury][harm][death] was of a kind that would not have occurred unless an act of medical negligence took place; and
- (4) [defendant] had exclusive control of the instrument or (agency/means) which caused the [injury][harm][death].

If you conclude that an act of medical negligence took place, you must then consider that fact with all other evidence in deciding whether [defendant] was liable.

### **1545 Hospital Liability**

A hospital is liable for the negligent act of its employees if the employees were acting within the scope of their employment, if the act is a responsible cause of injury to the plaintiff.

### **1547 Duty of Hospital Employees**

Skilled hospital employees, including [types of skilled hospital employees], must use reasonable care in providing medical services to patients in the hospital.

Generally, skilled hospital employees are not liable if they follow orders given by the attending physician. If, however, a skilled hospital employee fails to [report changes in a patient's

condition][question a physician's orders that do not follow standard medical practice], and the employee's [omission][failure to report or question] is a responsible cause in causing the injury to the patient, then the hospital is liable for the injury.

#### **1549 Contributory Negligence—Duty to Provide Accurate Information**

Patients must use reasonable care in giving health care providers accurate and complete information.

In this case [defendant] claims that [plaintiff] did not give complete and accurate information. If [defendant] [has proven][proves] the following by the greater weight of the evidence, then [defendant] is not liable for [plaintiff]'s [injury][harm][death]:

- (1) [plaintiff] failed to give accurate and complete information to the [defendant];
- (2) a reasonably careful person in the same or similar circumstances would have given accurate and complete information to the [defendant]; and
- (3) [plaintiff]'s failure to give accurate and complete information to the [defendant] was a responsible cause in causing [plaintiff]'s [injury][harm][death].

#### **1551 Contributory Negligence—Duty to Follow Instructions**

Patients must use reasonable care in following a [type of health care provider]'s instructions.

In this case [defendant] claims that [plaintiff] did not use reasonable care in following [defendant]'s instructions. If [defendant] [has proven][proves] the following by the greater weight of the evidence, then [defendant] is not liable for [plaintiff]'s [injury][harm][death]:

- (1) [plaintiff] failed to follow reasonable instructions that [defendant] gave before or at the time of the alleged act of medical negligence;
- (2) a person using reasonable care in the same or similar circumstances would have followed [defendant]'s instructions; and
- (3) [plaintiff]'s failure to follow [defendant]'s instructions was a responsible cause in causing [plaintiff]'s [injury][harm][death].

#### **1553 Duty to Follow Instructions After Treatment—Mitigation of Damages**

A patient must use reasonable care in following a [type of health care provider]'s instructions after being treated to assist in his or her recovery.

In this case [defendant] claims that [plaintiff] did not use reasonable care in following [defendant]'s instructions. If you decide that [defendant] is liable, and you also decide that [defendant] [has proven][proves] the following by the greater weight of the evidence:

(1) [plaintiff] failed to follow reasonable instructions that [defendant] gave after the alleged act of medical negligence; and

(2) a person using reasonable care in the same or similar circumstances would have followed [defendant]'s instructions; and

(3) [plaintiff]'s failure to follow the instructions was a responsible cause in contributing to [plaintiff]'s damages,

then you should reduce the amount of money you would otherwise award [plaintiff] by the value of the damages you decide resulted from [plaintiff]'s failure to follow instructions.

### **1555 Loss of Chance—Elimination of a Probability of Recovery**

A [type of health care provider] may be liable to a patient for a loss of chance of survival resulting from the [type of health care provider]'s failure to exercise reasonable care.

To recover damages from [defendant], [plaintiff] must prove by the greater weight of the evidence that:

(1) [defendant]'s care and treatment of [plaintiff] fell below the appropriate standard of care;

(2) if [defendant] had met the appropriate standard of care, [plaintiff] would have had a chance of survival;

(3) [defendant]'s failure to meet the appropriate standard of care decreased [plaintiff]'s chance of survival; and

(4) [defendant]'s failure to meet the appropriate standard of care was a substantial factor in causing the harm to [plaintiff].

In determining the amount of damages to award [plaintiff] for a lost chance of survival, if any, first decide the percentage value of the lost chance of survival to [plaintiff].

To make this determination, consider the evidence presented about:

(5) [plaintiff]'s percentage chance of survival before [defendant]'s alleged negligent acts or omissions, and

(6) [plaintiff]'s percentage chance of survival after [defendant]'s alleged negligent acts or omissions.

The difference between these percentages is the percentage value of [plaintiff]'s lost chance of survival.

After determining the percentage value of [plaintiff]'s lost chance of survival, determine the value of the total damages based on the evidence presented.

Multiply this dollar amount by the percentage value of [plaintiff]'s lost chance of survival. I will give you a verdict form that will help guide you through this process.

### **1556 Loss of Chance—Increased Risk of Future Harm**

If you decide that [defendant] was negligent, and that [defendant]'s negligence was a substantial factor in increasing [plaintiff]'s risk of future harm, then you must decide the amount of money that will fairly compensate [plaintiff] for that increased risk.

[Plaintiff]'s increased risk of future harm is the difference between [plaintiff]'s risk of harm before and after [defendant]'s negligence.

In determining how much [plaintiff]'s risk of harm was increased, you may consider the medical and statistical evidence the parties have submitted.

The money awarded for these damages is separate from, and must not duplicate, money awarded for any other damages.

### **1557 Lost Chance—Reduced Life Expectancy**

If you decide that [defendant] was negligent, and that [defendant]'s negligence was a substantial factor in reducing [plaintiff]'s chance for a better result, then you must decide the amount of money that will fairly compensate [plaintiff] for that reduced chance.

[Plaintiff]'s decreased chance for a better result is the difference between [plaintiff]'s chance for a better result before and after [defendant]'s negligence.

In determining how much [plaintiff]'s chance for a better result was decreased, you may consider the medical and statistical evidence the parties have submitted.

The money awarded for these damages is separate from, and must not duplicate, money awarded for any other damages.

### **1559 Statute of Limitations—General**

Indiana law generally provides that a plaintiff must file a claim of medical negligence within two years after a defendant commits medical negligence. There are a few exceptions to this general rule, and [plaintiff] claims one of those exceptions in this case.

To decide whether [plaintiff] filed [his][her] claim within the required period of time, first, you must decide whether, and if so when, [defendant] committed the act of medical negligence.

Next, you must decide when a reasonable person would have discovered the act of medical negligence.

[If you decide that (plaintiff) discovered the medical negligence two years or more after the act of medical negligence, and that the time delay in discovering the negligence was reasonable,

you must decide whether (plaintiff) filed this lawsuit within two years from the date (plaintiff) discovered the medical negligence. If so, (plaintiff) filed this lawsuit within the required time period.]

[If you decide that (plaintiff) should have discovered the medical negligence within two years of the act of medical negligence, you must decide whether it was reasonably possible for (plaintiff) to file this lawsuit within two years of the act of medical negligence or, if not, whether (plaintiff) filed it within a reasonable period of time. If so, (plaintiff) filed this lawsuit within the required time period.]

If you decide that [plaintiff] did not file this lawsuit within the required time period, you must decide in favor of [defendant].

### **1561 Statute of Limitations—Doctrine of Fraudulent Concealment**

Indiana law generally provides that a plaintiff must file a claim of medical negligence within two years after a defendant commits medical negligence. There are a few exceptions to this general rule, and [plaintiff] claims one of those exceptions in this case.

A [type of health care provider] must inform a patient of important facts about his or her care and treatment.

If [plaintiff] proves by the greater weight of the evidence that [defendant] failed to inform [plaintiff] of an important fact, then [plaintiff] must have filed this lawsuit within two (2) years of the earliest of:

(1) The date the [type of health care provider]-patient relationship ends;

(2) The date [plaintiff] discovers or with reasonable diligence should have discovered the medical negligence.

If, on the other hand, [plaintiff] proves by the greater weight of the evidence that [defendant] actively concealed an important fact with the intent to mislead or hinder [plaintiff] from obtaining information about the medical negligence, then [plaintiff] must have filed this lawsuit within a reasonable time period after the [plaintiff] discovers or with reasonable diligence should have discovered the medical negligence.

If [defendant] proves by the greater weight of the evidence that [plaintiff] did not file [his][her] lawsuit within the required time period, you must decide in favor of [defendant].

### **1563 Statute of Limitations—Continuing Wrong—Course of Conduct**

Indiana law generally provides that a plaintiff must file a claim of medical negligence within two years after a defendant commits medical negligence. Medical negligence may consist of a single act that produces an injury or an entire course of conduct over time that produces an injury.

If:

(1) the [defendant]'s course of conduct failed to meet the standard of reasonable care and skill; and

(2) the [defendant]'s course of conduct was a responsible cause in causing [plaintiff]'s injury,

then the two (2) year period during which [plaintiff] must have filed this lawsuit began when the course of conduct ended.

### **1565 Statute of Limitations—Failure to Diagnose**

Indiana law generally provides that a plaintiff must file a claim of medical negligence within two years after a defendant commits medical negligence. Medical negligence may consist of a failure to diagnose.

If:

(1) the [defendant] failed to diagnose [plaintiff]'s [disease][condition]; and if

(2) the [defendant]'s failure to diagnose breached the standard of reasonable care and skill;

then the two (2) year period during which [plaintiff] must have filed this lawsuit began when [defendant] last treated [plaintiff].

### **1567 Physicians—Battery**

A [type of health care provider] who physically contacts a patient's body without the patient's consent commits battery—even if the [type of health care provider] uses the required skill and care in treating the patient.

A [type of health care provider] also commits battery if:

(1) a patient agreed to a certain treatment;

(2) the [type of health care provider] provided a different treatment than the treatment to which the patient consented;

(3) the different treatment included contact with the patient's body; and

(4) the patient did not consent to the different treatment.

### **1569 Good Samaritan**

In general, a person who is confronted with an emergency or accident and gives free emergency care in good faith is immune from civil liability for any personal injury that results from the person's act or failure to act:

(1) in providing the emergency care; or

(2) in providing or arranging for further medical treatment or care for the injured person.

However, a person is liable if his or her act or failure to act amounts to gross negligence or willful or wanton misconduct.

**1571(A) Mixed Comparative Fault and Common Law Defendants—If All Parties Agree—  
Judge Calculates Judgment Against Each Defendant**

To decide if [plaintiff] is entitled to recover damages from [comparative fault defendant] or [common law defendant] or both, and if so, the amount of those damages, apportion the fault of [plaintiff], [defendants], and [identified nonpart(y)(ies)] on a percentage basis. Do this as follows:

First, if neither [comparative fault defendant] nor [common law defendant] is at fault, return your verdict for [comparative fault defendant] and [common law defendant], and against [plaintiff], and deliberate no further. (Use Verdict Form 5003(A).)

If either [comparative fault defendant] or [common law defendant] is at fault, decide their percentages of fault, and the percentage of fault, if any, of [plaintiff] and [identified nonpart(y)(ies)] that caused [plaintiff]'s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.

Finally, decide the total amount of [plaintiff]'s damages, if any. Do not consider fault when you decide this amount. (Use Verdict Form 5004.)

Based on the law, the percentages of fault you allocate, and the total amount of damages in your verdict, I will calculate the amount of money, if any, [plaintiff] is entitled to recover against either of the defendants.

The law treats these defendants differently. The law requires that:

(1) If [plaintiff]'s fault is greater than 50 percent, [plaintiff] cannot recover damages against either [comparative fault defendant] or [common law defendant].

(2) If [plaintiff]'s fault is greater than 0 percent, [plaintiff] cannot recover damages against [common law defendant].

I will give you verdict forms that will help guide you through this process.

**1571(B) Mixed Comparative Fault and Common Law Defendants**

The law requires you to use different methods to decide if [plaintiff] is entitled to recover damages from [comparative fault defendant] or [common law defendant] or both, and if so, the amount of those damages.

#Table

<b>Deliberations as to [common law defendant]</b> <b>Deliberations as to [comparative fault defendant]</b>
<p>If you decide that [common law defendant] was not negligent, or that [common law defendant] was negligent, but that [his][her][its] negligence was not a responsible cause of [plaintiff]’s injury, return your verdict for [common law defendant], and against [plaintiff], and deliberate no further as to [common law defendant]. (Use Verdict Form 5017.)</p> <p>If you decide that [comparative fault defendant] is not at fault, or that [comparative fault defendant] was at fault, but that [his][her][its] fault was not a responsible cause of [plaintiff]’s injury, return your verdict for [comparative fault defendant], and against [plaintiff], and deliberate no further as to [comparative fault defendant]. (Use Verdict Form 5001(A).)</p>
<p>If you decide that [plaintiff]’s own negligence contributed to the [injury][harm] [plaintiff] claims to have suffered and that [plaintiff]’s negligence was a responsible cause of the [injury][harm], return your verdict for [common law defendant] and against [plaintiff] in this case, and deliberate no further as to [common law defendant]. (Use Verdict Form 5017.)</p> <p>If [comparative fault defendant] is at fault, decide [his][her][its] percentage of fault, and the percentage of fault, if any, of [plaintiff], [common law defendant], and [identified nonpart(y)(ies)] that caused [plaintiff]’s injuries. These percentages must total 100 percent. Do not apportion fault to any other person or entity.</p>
<p>However, if you decide that [common law defendant] was negligent, and that [plaintiff]’s own negligence did not contribute to the [injury][harm], then you must decide the amount of plaintiff’s damages caused by the negligence of [common law defendant] without comparing that negligence to the fault of any other defendant in this case. Return your verdict against [common law defendant] in that amount. (Use Verdict Form 5013.)</p> <p>If [plaintiff]’s fault is greater than 50 percent, return your verdict for [comparative fault defendant] and against [plaintiff] in this case; and deliberate no further. (Use Verdict Form 5003(B).) However, if you decide that [plaintiff]’s fault is 50 percent or less,</p> <ol style="list-style-type: none"> <li>(1) Decide the total amount of [plaintiff]’s damages, if any. Do not consider fault when you decide this amount.</li> <li>(2) Multiply [plaintiff]’s total damages by [comparative fault defendant]’s percentage of fault.</li> <li>(3) Return your verdict for [plaintiff] and against [comparative fault defendant] in the amount of the product of that multiplication. (Use Verdict Form 5003(C).)</li> </ol>

#Table

I will give you verdict forms that will help guide you through this process.

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**1707 Legal Negligence—Elements**

**1709 Burden of Proof for Plaintiff’s Fault in a Comparative Fault Case**

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**1713 Responsible Cause (Proximate Cause)—Definition**

**1714 Foreseeable—Defined**

**1715 Delegation of Duty**

**1717 Standard of Care—Expert Opinion**

**1701 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]’s claims. [*Defendant*] is not required to disprove [*plaintiff*]’s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

**1703 Duty of Attorney**

In providing legal services, an attorney must use the degree of care and skill that a reasonably careful, skillful, and prudent attorney would use under the same or similar circumstances.

[Unless stated or otherwise agreed, an attorney must use the same degree of care and skill that other attorneys practicing in the same field of law would use under the same or similar circumstances.]

An attorney who uses sound judgment and ordinary care and skill in representing a client, is not responsible for the outcome of the case.

**1705 Standard of Care—Degree of Knowledge**

An attorney must know the settled rules of law and practice in courts where the attorney practices.

An attorney is not liable for a mistake on the interpretation of the law about which well-informed lawyers might reasonably differ, unless the courts have settled the law.

**1707 Legal Negligence—Elements**

To recover damages from [*defendant*], [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] had a duty to use ordinary skill and knowledge in representing [*plaintiff*];
- (2) [*defendant*] did not use ordinary skill and knowledge in representing [*plaintiff*];
- (3) [*plaintiff*] was damaged; and
- (4) [*defendant*]'s failure to use ordinary skill and knowledge was a responsible cause of [*plaintiff*]'s damages.

1709 Burden of Proof for Plaintiff's Fault in a Comparative Fault Case

[*Defendant*] claims [*plaintiff*]'s own fault contributed to the [injury][harm] [*plaintiff*] claims to have suffered and that [*plaintiff*]'s fault was a responsible cause of the [injury][harm].

[*Defendant*] has the burden of proving by the greater weight of the evidence that [*plaintiff*] was at fault.

**1711 Comparative Fault—Definition**

You must decide this case according to the Indiana law of comparative fault. The term “fault” refers to conduct that makes a person responsible, in some degree, for [a death][an injury][property damage]. The type[s] of fault at issue [is][are] [*name types of fault at issue*].

**1713 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:

- (1) the [injury][property damage][a death] would not have occurred without the conduct, and
- (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

**1714 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

**1715 Delegation of Duty**

An attorney has a duty to use reasonable care and skill in representing his or her client and cannot delegate that duty to an employee. An attorney is responsible for the acts and failures to act of his or her employees.

**1717 Standard of Care—Expert Opinion**

In deciding whether [*defendant*] used reasonable care and skill in representing [*plaintiff*], you must consider only the expert testimony of attorneys.

**CHAPTER 1900 PREMISES LIABILITY/ANIMALS  
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- 1953 Domestic Animals—General Duty
  - 1955 Domestic Animals—Known to be Dangerous
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**A. Premises Liability – Trespasser as Plaintiff**

**1901 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]’s claims. [*Defendant*] is not required to disprove [*plaintiff*]’s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

1903 Burden of Proof for Plaintiff's Fault in a Comparative Fault Case  
[*Defendant*] claims [*plaintiff*]'s own fault contributed to the [injury][property damage][death]  
[*plaintiff*] claims to have suffered and that [*plaintiff*]'s fault was a responsible cause of the  
[injury][harm].

[*Defendant*] has the burden of proving by the greater weight of the evidence that [*plaintiff*] was at fault.

### **1905 Comparative Fault—Definition**

You must decide this case according to the Indiana law of comparative fault. The term “fault” refers to conduct that makes a person responsible, in some degree, for [injury][property damage][death]. The type[s] of fault at issue [is][are] [*name types of fault at issue*].

### **1907 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **1909 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:  
(1) the [injury][property damage][a death] would not have occurred without the conduct, and  
(2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

### **1910 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **1911 Status and Duty in General**

You must decide whether [*plaintiff*] in this case was an invitee, a licensee, or a trespasser on [*defendant*]'s property.

[Property owners][Occupants] owe different levels of care to invitees, licensees, and trespassers.

### **1913 Trespasser**

A trespasser is a person who is on the property of another [person][entity] without the [owner's][occupant's] permission.

### **1919 Licensee**

A licensee is a person who is on the property of another [person][entity] for [his][her] own

purposes when the [owner][occupant] of the property either permits that person to enter the property, or does not object.

### **1921 Duty to Licensee**

[(*Name*) was a licensee on the property of the (owner)(occupant), (*name*).]

Licensees enter another [person][entity]'s property at their own risk of injury from conditions on the property.

However, an [owner][occupant] must not willfully or intentionally injure the licensee, or act in a manner to increase the licensee's risk of injury.

In addition, an [owner][occupant] who knows of a hidden danger on the property must warn the licensee of that danger.

### **1923 Licensee—Elements and Burden of Proof**

To recover damages from [*defendant*], [*plaintiff*] must [prove][have proven] each of the following by the greater weight of the evidence:

- (1) [*defendant*] was the [owner][occupant] of property;
- (2) [*plaintiff*] was a licensee on the property [owned][occupied] by [*defendant*];
- (3) [*plaintiff*] was injured as a result of a condition on the property; and
- (4) [*defendant*]:
  - (a) willfully or intentionally injured the licensee, or acted in a manner to increase the licensee's risk of injury, or
  - (b) knew of a hidden danger on the property and did not warn the licensee of that danger.

### **1925 Invitee**

An invitee is a person who a property [owner][occupant] invites to enter or remain on [his][her][its] property.

### **1927 Invitation—Express or Implied**

An invitation to enter or remain on the property of another may be express or implied.

An "express" invitation is a spoken or written invitation.

An invitation is "implied" when the conduct of the [owner][occupant] would lead a reasonable person to believe [he][she] has been invited to enter or remain on the property.

### **1929 Duty to Invitee**

[(*Name*) was an invitee on the property of the (owner)(occupant), (*name*).]

An [owner][occupant] of property is liable for injury caused to an invitee by the property's condition only if the [owner][occupant]:

- (1) knew that the condition existed and realized that it created an unreasonable danger to an invitee, or should have discovered the condition and its danger;
- (2) should have expected that the invitee would not discover or realize the danger of the condition, or would fail to protect himself or herself against it; and
- (3) failed to use reasonable care to protect the invitee against the danger.

### **1931 Invitee—Elements and Burden of Proof**

To recover damages from [*defendant*], [*plaintiff*] must [prove][have proven] each of the following by the greater weight of the evidence:

- (1) [*defendant*] was the [owner][occupant] of property;
- (2) [*plaintiff*] was an invitee on the property [owned][occupied] by [*defendant*];
- (3) [*plaintiff*] was injured as a result of a condition on the property; and
- (4) [*defendant*]:
  - (a) knew that the condition existed and realized that it created an unreasonable danger to invitees, or should have discovered the condition and its danger;
  - (b) should have expected that the invitees would not discover or realize the danger of the condition, or would fail to protect themselves against it; and
  - (c) failed to use reasonable care to protect the invitees against the danger.

### **1933 Attractive Nuisance**

Children may not understand or appreciate the dangers they may encounter when trespassing.

[Owners][Occupants] of property must use ordinary and reasonable care to protect trespassing children from hidden dangers to which children may be attracted on their property.

### **1935 Attractive Nuisance—Burden of Proof**

To recover damages from [*defendant*], [*plaintiff*] must [prove][have proven] each of the following by the greater weight of the evidence:

- (1) [*defendant*] was the [owner][occupant] of property;
- (2) [*plaintiff*] was a child;
- (3) the condition on the property was maintained or permitted by [*defendant*];
- (4) the danger presented by the condition was hidden;
- (5) the condition was not common to nature, regardless of whether it was natural or artificial;
- (6) the condition was peculiarly dangerous to children, and of such a nature that they would not comprehend the danger;
- (7) the condition was particularly attractive to children;
- (8) [*defendant*] knew or should have known of the condition, and that children do or are likely to trespass and be injured; and
- (9) [*defendant*]'s failure to take reasonable steps to protect [*plaintiff*] from the danger was a responsible cause of [*plaintiff*]'s injury.

### **1937 Duty of [Owner's][Occupant's] Real Estate Agent to Prospective Buyer**

An [owner's][occupant's] real estate agent must warn a prospective buyer of hidden defects in the property if the defects are actually known to the agent but not known to the prospective buyer.

The agent is not required to inspect the property for defects.

### **1939 Control of Common Areas**

Sometimes people who rent property from a landlord are entitled to use common areas. A landlord who controls a common area must keep it in reasonably safe condition.

### **1941 Hidden Defects—Common Law**

A landlord must warn a tenant of a hidden defect on the property when the landlord knows the defect exists but the tenant does not.

### **1943 Highways, Streets, and Sidewalks—Duty of Governmental Entity**

A governmental entity must use reasonable care to keep its [highways][streets][alleys][sidewalks] in reasonably safe condition for travel.

### **1945 Duty in General—Plaintiff on Premises of Non-profit Religious Organizations with Actual or Implied Permission**

The law required [defendant]:

- (1) not to harm [plaintiff] intentionally, and
- (2) to warn [plaintiff] of a hidden danger on the property if a representative of [defendant] had actual knowledge of the hidden danger.

### **1947 Duty in General—Plaintiff on Premises of Non-profit Religious Organization Without Actual or Implied Permission**

The law only required that [defendant] not harm [plaintiff] intentionally.

### **1949 Duty—Non-profit Religious Organizations—Childcare Services**

The law required [defendant childcare provider] and [defendant nonprofit religious institution]:

- (1) not to harm [plaintiff] or [plaintiff's child] intentionally;
- (2) to warn [plaintiff] or [plaintiff's child] of a hidden danger on the property if a representative of [defendant childcare provider] or [defendant nonprofit religious institution] had actual knowledge of the hidden danger; and
- (3) to inspect the property for dangerous hazards and defects, and correct any dangerous hazard or defect within a reasonable period of time after becoming aware of the existence of the dangerous hazard or defect.

**1951 Permission or Consent—Express or Implied—Non-profit Religious Organizations**  
[Permission][Consent] to enter or remain on the property of another may be express or implied.

“Express” [permission][consent] is spoken or written [permission][consent].

[Permission][Consent] is “implied” when the conduct of the [owner][occupant] would lead a reasonable person to believe [he][she] has [permission][consent] to enter or remain on the property.

## **B. Animals**

### **1953 Domestic Animals—General Duty**

A [person][entity] who [owns][has charge of] a domestic animal must use reasonable care to prevent the animal from [injuring][harming] [other persons][other animals][property].

### **1955 Domestic Animals—Known to be Dangerous**

A [person][entity] who knows or by reasonable care should have known that a domestic animal [he][she][it] [owns][has charge of] is vicious or dangerous to [people][other animals][property] must use reasonable care under the circumstances to prevent the animal from causing injury or damage.

### **1957 Inherently Dangerous Animals**

A [person][entity] who [owns][has charge of] an inherently dangerous animal, such as a [lion,

*tiger, bear, etc.*], is liable for any damages caused by the animal.

**CHAPTER 2100 PRODUCT LIABILITY: STRICT LIABILITY  
SYNOPSIS**

**2101 Issues for Trial; Burden of Proof**

**2103 Product Liability Against Manufacturer—Elements—Burden of Proof**

**2105 Responsible Cause (Proximate Cause)—Definition**

**2106 Foreseeable—Defined**

**2107 Product—Definition**

**2109 User or Consumer—Definition**

**2111 Physical Harm—Definition**

**2113 Seller—Definition**

**2115 Manufacturer—Definition**

**2117 Unreasonably Dangerous—Definition**

**2119 Seller as “Manufacturer”—Definition**

**2121 Defective Products—Defective Condition**

**2125 Reasonable Care Not a Defense**

**2127 Reasonable Care—Definition**

**2129 Lack of Privity Not a Defense**

**2131 Defense—Misuse of Product**

**2133 Defense—Known Defect and Danger**

**2135 Defense—Modification/Alteration of Product**

**2151 Crashworthiness—Products Liability Against Manufacturer (Strict Liability)—Issues for Trial; Burden of Proof**

**2153 Crashworthiness—Products Liability Against Manufacturer (Strict Liability)—Elements—Burden of Proof**

**2101 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

**2103 Product Liability Against Manufacturer—Elements—Burden of Proof**

To recover damages from [*defendant*], [*plaintiff*] must prove each of the following by the greater weight of the evidence:

- (1) [*defendant*] manufactured the [*product*] and was in the business of selling [*products*];
- (2) [*defendant*] sold, leased, or otherwise put the [*product*] into the stream of commerce;
- (3) the [*product*] was in a defective condition unreasonably dangerous to [users or consumers][a user's or consumer's property];
- (4) [*plaintiff*] was a user or consumer of the [*product*] and was in a class of persons [*defendant*]

should have reasonably expected to be subject to the harm caused by the defective condition;  
(5) the [product] was expected to and did reach [plaintiff] without substantial alteration of the condition in which [defendant] sold the [product]; and  
(6) the defective condition of the [product] was a responsible cause of physical harm to [plaintiff] [(plaintiff)'s property].

#### **2105 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:  
(1) the [injury][property damage][a death] would not have occurred without the conduct, and  
(2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

#### **2106 Foreseeable—Defined**

[An injury][Property damage][A death] is "foreseeable" when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

#### **2107 Product—Definition**

A "product" is a physical object that is personal property at the time it is [sold][transferred] by the seller to another person or entity.

The term "product" does not apply where a transaction mainly involves the sale of a service.

#### **2109 User or Consumer—Definition**

"User or consumer" means:

- (1) a purchaser;
- (2) a person who used or consumed a product;
- (3) a person who possessed or controlled a product, while acting for the person injured by the product; or
- (4) a bystander who was injured by a product, and who would reasonably be expected to be near the product during its reasonably expected use.

#### **2111 Physical Harm—Definition**

"Physical harm" means:

- (1) bodily injury;
- (2) death;
- (3) loss of services and rights resulting from bodily injury or death; and
- (4) sudden, major damage to property other than damage to the product itself.

"Physical harm" does not include gradual damage to property, or the economic losses which arise from the gradual damage.

#### **2113 Seller—Definition**

A "seller" is a person who sells or leases products to others for resale, use, or consumption.

### **2115 Manufacturer—Definition**

A “manufacturer” is a [person][entity] [who][that] designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product before the product or part is sold to a user or consumer.

### **2117 Unreasonably Dangerous—Definition**

A product is “unreasonably dangerous” if its use exposes a user or consumer to a risk of physical harm beyond that contemplated by an ordinary consumer who purchases the product with ordinary knowledge about the product’s characteristics.

### **2119 Seller as “Manufacturer”—Definition**

A “seller” of products is held to the same standard as a “manufacturer,” if any of the following apply:

- (1) the seller has actual knowledge of a defect in the product;
- (2) the seller creates and gives a manufacturer specifications for producing the products that are relevant to the alleged defect;
- (3) the seller exercises significant control over all or a portion of the manufacturing process;
- (4) the seller alters or modifies the product in a significant manner after the product comes into the seller’s possession and before it is sold to the ultimate user or consumer;
- (5) the seller is owned in whole or significant part by the manufacturer; or
- (6) the seller owns the manufacturer, in whole or in significant part.

[A seller who discloses the name of the actual manufacturer of a product is not a “manufacturer” merely because the seller places or has placed a private label on a product.]

### **2121 Defective Products—Defective Condition**

A product is in a defective condition if, when it is [transferred][sold] by the seller to another [person][entity], its condition:

- (1) would not be anticipated by a reasonable, expected user or consumer, and
- (2) is unreasonably dangerous to that user or consumer when [he][she] uses the product in a reasonably expected way.

### **2125 Reasonable Care Not a Defense**

It is not a defense that [*defendant*] exercised all reasonable care in the manufacture and preparation of the [*product*].

### **2127 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **2129 Lack of Privity Not a Defense**

It is not a defense that [*plaintiff*] did not buy the [*product*] from or enter into a contract with [*defendant*].

### **2131 Defense—Misuse of Product**

[*Defendant*] claims that misuse of the [*product*] caused [*plaintiff*]'s damages.

To assign fault against [*plaintiff*][*named non-party*] for misuse, [*defendant*] must prove the following by the greater weight of the evidence:

- (1) [*plaintiff*][*named non-party*] used the [*product*] in a manner that was not reasonably expected

by [defendant] at the time the [product] was sold; and  
(2) this misuse of the [product] was a responsible cause of the [harm][damage] [plaintiff] suffered.

### **2133 Defense—Known Defect and Danger**

[Defendant] claims [plaintiff] knew of the defect and danger of the [product].

[Plaintiff] cannot recover if [defendant] proves each of the following by the greater weight of the evidence:

- (1) [plaintiff] knew of the [product]'s defect;
- (2) [plaintiff] was aware of the danger in the [product]; and
- (3) [plaintiff] nevertheless used [product] and was injured.

### **2135 Defense—Modification/Alteration of Product**

[Defendant] claims that modification or alteration of the [product] caused [plaintiff]'s damages.

To assign fault against [plaintiff][named non-party] for modification or alteration, [defendant] must prove the following by the greater weight of the evidence:

- (1) any person modified or altered the [product] after it was delivered to the initial user or consumer;
- (2) the modification or alteration was not reasonably expected by [defendant] at the time the [product] was sold; and
- (3) the modification or alteration of the [product] was a responsible cause of the [harm][damage] [plaintiff] suffered.

### **2151 Crashworthiness—Products Liability Against Manufacturer (Strict Liability)—Issues for Trial; Burden of Proof**

[\*\* (Plaintiff) claims that (he)(she)(it) was involved in (*briefly describe the event as alleged by plaintiff*) on (insert date).\*\*]

[Plaintiff] claims that [defendant] manufactured the [*name the product or component claimed to be defective*] in a defective condition. [Plaintiff] further claims that although the defective condition of the [*name the product or component claimed to be defective*] did not cause the [collision][incident] in which [plaintiff] was involved, the physical harm to [plaintiff][*(plaintiff)*'s property] was greater than the physical harm would have been had the [*name the product or component claimed to be defective*] not been in a defective condition.

[Defendant] denies [plaintiff]'s claims. [Defendant] is not required to disprove [plaintiff]'s claims.

[Defendant] has claimed certain defenses. [Defendant] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[*(Plaintiff)* also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **2153 Crashworthiness—Products Liability Against Manufacturer (Strict Liability)—Elements—Burden of Proof**

To recover damages from [defendant], [plaintiff] must prove each of the following by the greater weight of the evidence:

- (1) [*defendant*] manufactured the [*product*] and was in the business of selling [*products*];
- (2) [*defendant*] sold, leased, or otherwise put the [*product*] into the stream of commerce;
- (3) the [*product*] was in a defective condition unreasonably dangerous to [*users or consumers*][a user's or consumer's property];
- (4) [*plaintiff*] was a user or consumer of the [*product*] and was in a class of persons [*defendant*] should have reasonably expected to be subject to the harm caused by the defective condition;
- (5) the [*product*] was expected to and did reach [*plaintiff*] without substantial alteration of the condition in which [*defendant*] sold the [*product*];
- (6) the physical harm to [*plaintiff*][(*plaintiff*'s property)] was greater than the physical harm would have been had the [*product*] not been in a defective condition; and
- (7) the defective condition of the [*product*] was a responsible cause of the enhanced physical harm to [*plaintiff*][(*plaintiff*'s property)].

**CHAPTER 2300 PRODUCT LIABILITY: NEGLIGENCE  
SYNOPSIS**

- 2301 Negligence Theory Transition Instruction**
- 2303 Issues for Trial; Burden of Proof**
- 2305 Product Negligence—Elements; Burden of Proof**
- 2307 Comparative Fault—Definition**
- 2309 Negligence—Definition**
- 2311 Reasonable Care—Definition**
- 2313 Responsible Cause (Proximate Cause)—Definition**
- 2314 Foreseeable—Defined**
- 2315 Product—Definition**
- 2316(A) Defective Products—Defective Condition**
- 2316(B) Defective Product—Warnings/Instructions**
- 2317 User or Consumer—Definition**
- 2319 Physical Harm—Definition**
- 2321 Seller—Definition**
- 2323 Manufacturer—Definition**
- 2325 Unreasonably Dangerous—Definition**
- 2327 Seller as “Manufacturer”—Definition**
- 2329 Products in Conformity with State of the Art or in Compliance with Applicable Codes—Not Defective (Rebuttable Presumption)**
- 2331 Defense—No Duty to Warn for Open and Obvious Dangers**
- 2333 Defense—Misuse of Product**
- 2335 Defense—Known Defect and Danger**
- 2337 Defense—Modification/Alteration of Product**
- 2351 Crashworthiness—Negligence Theory Transition Instruction**
- 2353 Crashworthiness—Products Liability (Negligence)—Issues for Trial; Burden of Proof**
- 2355 Crashworthiness—Products Liability (Negligence)—Elements; Burden of Proof**

**2301 Negligence Theory Transition Instruction**

[*Plaintiff*] [also] claims the [*defendant*] negligently [designed][manufactured][supplied][failed to warn (*plaintiff*) about] the \_\_\_\_\_, resulting in [injury][damage] to [*plaintiff*] [(*plaintiff*)’s property][\_\_\_\_\_].

I will now instruct you on the law of negligence as it applies to this case.

**2303 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]’s claims. [Defendant] is not required to disprove [*plaintiff*]’s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **2305 Product Negligence—Elements; Burden of Proof**

[*Plaintiff*] claims that [*defendant*] failed to use reasonable care in [*use only those bracketed phrases that correspond to plaintiff's claims*]:

- (1) [designing the (*product*)] [and]
- (2) [warning (*plaintiff*) about the (*product*)'s danger when (*defendant*) knew, should have known, or should have discovered the danger] [and]
- (3) [instructing (*plaintiff*) about the proper use of the (*product*)] [and]
- (4) [selling, leasing, or otherwise putting the (*product*) into the stream of commerce when it was in a defective condition unreasonably dangerous to (users or consumers)(a user's or consumer's property)].

To recover damages from [*defendant*], [*plaintiff*] must prove each of the following by the greater weight of the evidence:

- (1) [*defendant*] failed to use reasonable care in one of the following ways, which caused the [*product*] to be in a defective condition unreasonably dangerous to [users or consumers][a user's or consumer's property]:
  - (a) [designing the (*product*)] [or]
  - (b) [warning (*plaintiff*) about the (*product*)'s danger when (*defendant*) knew, should have known, or should have discovered the danger] [or]
  - (c) [instructing (*plaintiff*) about the proper use of the (*product*)] [or]
  - (d) [selling, leasing, or otherwise putting the (*product*) into the stream of commerce when it was in a defective condition unreasonably dangerous to (users or consumers)(a user's or consumer's property)].
- (2) [*defendant*] sold, leased, or otherwise put the [*product*] into the stream of commerce;
- (3) [*plaintiff*] was a user or consumer of the [*product*] and was in a class of persons [*defendant*] should have reasonably expected to be subject to the harm caused by the defective condition;
- (4) the [*product*] was expected to and did reach [*plaintiff*] without substantial alteration of the condition in which [*defendant*] sold the [*product*]; and
- (5) the defective condition of the [*product*] was a responsible cause of physical harm to [*plaintiff*][(plaintiff)'s property].

### **2307 Comparative Fault—Definition**

You must decide this case according to the Indiana law of comparative fault. The term “fault” refers to conduct that makes a person responsible, in some degree, for [a death][an injury][property damage]. The type[s] of fault at issue [is][are] [*name types of fault at issue*].

#### **2309 Negligence—Definition**

Negligence is the failure to use reasonable care.

A person may be negligent by acting or by failing to act. A person is negligent if he or she does something a reasonably careful person would not do in the same situation, or fails to do something a reasonably careful person would do in the same situation.

### **2311 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **2313 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:

- (1) the [injury][property damage][a death] would not have occurred without the conduct, and
- (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

### **2314 Foreseeable—Defined**

[An injury][Property damage][A death] is "foreseeable" when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **2315 Product—Definition**

A "product" is a physical object that is personal property at the time it is [sold][transferred] by the seller to another person or entity.

The term "product" does not apply where a transaction mainly involves the sale of a service.

### **2316(A) Defective Products—Defective Condition**

A product is in a defective condition if, when it is [transferred][sold] by the seller to another [person][entity], its condition:

- (1) would not be anticipated by a reasonable, expected user or consumer, and
- (2) is unreasonably dangerous to that user or consumer when [he][she] uses the product in a reasonably expected way.

### **2316(B) Defective Product—Warnings/Instructions**

A product is defective if the seller fails to:

- (1) properly package or label the product with reasonable warnings about the dangers of the product; or
- (2) give reasonably complete instructions about the proper use of the product;

when the seller, by exercising reasonable diligence, could have made those warnings or instructions available to the user or consumer.

### **2317 User or Consumer—Definition**

"User or consumer" means:

- (1) a purchaser;
- (2) a person who used or consumed a product;
- (3) a person who possessed or controlled a product, while acting for the person injured by the product; or
- (4) a bystander who was injured by a product, and who would reasonably be expected to be near the product during its reasonably expected use.

### **2319 Physical Harm—Definition**

"Physical harm" means:

- (1) bodily injury;
- (2) death;

- (3) loss of services and rights resulting from bodily injury or death; and
- (4) sudden, major damage to property other than damage to the product itself.

“Physical harm” does not include gradual damage to property, or the economic losses which arise from the gradual damage.

#### **2321 Seller—Definition**

A “seller” is a person who sells or leases products to others for resale, use, or consumption.

#### **2323 Manufacturer—Definition**

A “manufacturer” is a [person][entity] [who][that] designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product before the product or part is sold to a user or consumer.

#### **2325 Unreasonably Dangerous—Definition**

A product is “unreasonably dangerous” if its use exposes a user or consumer to a risk of physical harm beyond that contemplated by an ordinary consumer who purchases the product with ordinary knowledge about the product’s characteristics.

#### **2327 Seller as “Manufacturer”—Definition**

A “seller” of products is held to the same standard as a “manufacturer,” if any of the following apply:

- (1) the seller has actual knowledge of a defect in the product;
- (2) the seller creates and gives a manufacturer specifications for producing the products that are relevant to the alleged defect;
- (3) the seller exercises significant control over all or a portion of the manufacturing process;
- (4) the seller alters or modifies the product in a significant manner after the product comes into the seller’s possession and before it is sold to the ultimate user or consumer;
- (5) the seller is owned in whole or significant part by the manufacturer; or
- (6) the seller owns the manufacturer, in whole or in significant part.

[A seller who discloses the name of the actual manufacturer of a product is not a “manufacturer” merely because the seller places or has placed a private label on a product.]

#### **2329 Products in Conformity with State of the Art or in Compliance with Applicable Codes—Not Defective (Rebuttable Presumption)**

[*Defendant*] claims the [*product*] was not defective because the [*product*] [was manufactured in conformity with the state of the art][complied with applicable codes].

You may assume that the [*product*] was not defective and [*defendant*] was not negligent if you decide that [*defendant*] has proved by the greater weight of the evidence that, before [*defendant*] sold the product:

- (1) [it conformed to the generally recognized state of the art applicable to the safety of the product at the time the product was designed, manufactured, packaged, and labeled.]  
[or]
- (2) [it complied with applicable codes, standards, regulations, or specifications established, adopted, promulgated, or approved by the United States or by Indiana, or by an agency of the United States or Indiana.]

[*Plaintiff*] may overcome this assumption by introducing evidence tending to show that despite [compliance][or][conformity], the [*product*] was in a defective condition unreasonably dangerous to any user or consumer. If [*plaintiff*] introduces this evidence, then you may, but are not required to, decide that [*plaintiff*] has overcome the assumption that the [*product*] was not defective and [*defendant*] was not negligent.

### **2331 Defense—No Duty to Warn for Open and Obvious Dangers**

If you decide that any danger to [*plaintiff*] was open and obvious, [*plaintiff*] cannot recover under [his][her] claim that [*defendant*] failed to warn of that danger.

### **2333 Defense—Misuse of Product**

[*Defendant*] claims that misuse of the [*product*] caused [*plaintiff*]'s damages.

To assign fault against [*plaintiff*][*named non-party*] for misuse, [*defendant*] must prove the following by the greater weight of the evidence:

- (1) [*plaintiff*][*named non-party*] used the [*product*] in a manner that was not reasonably expected by [*defendant*] at the time the [*product*] was sold; and
- (2) this misuse of the [*product*] was a responsible cause of the [harm][damage] [*plaintiff*] suffered.

### **2335 Defense—Known Defect and Danger**

[*Defendant*] claims [*plaintiff*] knew of the defect and danger of the [*product*].

[*Plaintiff*] cannot recover if [*defendant*] proves each of the following by the greater weight of the evidence:

- (1) [*plaintiff*] knew of the [*product*]'s defect;
- (2) [*plaintiff*] was aware of the danger in the [*product*]; and
- (3) [*plaintiff*] nevertheless used [*product*] and was injured.

### **2337 Defense—Modification/Alteration of Product**

[*Defendant*] claims that modification or alteration of the [*product*] caused [*plaintiff*]'s damages.

To assign fault against [*plaintiff*][*named non-party*] for modification or alteration, [*defendant*] must prove the following by the greater weight of the evidence:

- (1) any person modified or altered the [*product*] after it was delivered to the initial user or consumer;
- (2) the modification or alteration was not reasonably expected by [*defendant*] at the time the [*product*] was sold; and
- (3) the modification or alteration of the [*product*] was a responsible cause of the [harm][damage] [*plaintiff*] suffered.

### **2351 Crashworthiness—Negligence Theory Transition Instruction**

[*Plaintiff*] also claims that [*Defendant*] negligently designed the [*name the product or component claimed to be negligently designed*] resulting in enhanced physical harm to [*plaintiff*][(*plaintiff*)'s property].

I will now instruct you on the law of negligence as it applies to this case.

### **2353 Crashworthiness—Products Liability (Negligence)—Issues for Trial; Burden of Proof**

[\*\*(*Plaintiff*) claims that (he)(she)(it) was involved in (*briefly describe the event as alleged by plaintiff*) on (insert date).\*\*]

[*Plaintiff*] [also] claims that [*defendant*] negligently designed the [*name the product or component claimed to be negligently designed*]. [*Plaintiff*] further claims that although the negligent design of the [*name the product or component claimed to be negligently designed*] did not cause the [collision][incident] in which [*plaintiff*] was involved, the physical harm to [*plaintiff*] [(*plaintiff*)'s property] was greater than the physical harm would have been had the [*name the product or component claimed to be negligently designed*] not been negligently designed. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his] [her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he) (she) (it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

### **2355 Crashworthiness—Products Liability (Negligence)—Elements; Burden of Proof**

[*Plaintiff*] claims that [*defendant*] failed to use reasonable care in designing the [*product*].

[*Plaintiff*] further claims that although the [*defendant*] did not cause the [collision][incident] in which [*plaintiff*] was involved, [*defendant*]'s failure to use reasonable care in designing the [*product*] was a responsible cause of the enhanced physical harm to [*plaintiff*] in the [collision][incident].

To recover damages from [*defendant*], [*plaintiff*] must prove each of the following by the greater weight of the evidence:

- (1) [*defendant*] failed to use reasonable care in designing the [*product*], which caused the [*product*] to be in a defective condition unreasonably dangerous to [users or consumers][a user's or consumer's property];
- (2) [*defendant*] sold, leased, or otherwise put the [*product*] into the stream of commerce;
- (3) [*plaintiff*] was a user or consumer of the [*product*] and was in a class of persons [*defendant*] should have reasonably expected to be subject to the harm caused by the defective condition;
- (4) the [*product*] was expected to and did reach [*plaintiff*] without substantial alteration of the condition in which [*defendant*] sold the [*product*];
- (5) the physical harm to [*plaintiff*] [(*plaintiff*)'s property] was greater than the physical harm would have been had the [*product*] had not been in a defective condition; and
- (6) the defective condition of the [*product*] was a responsible cause of the enhanced physical harm to [*plaintiff*][(*plaintiff*)'s property].

**CHAPTER 2500 PRODUCT LIABILITY: WARRANTY  
SYNOPSIS**

**2501 Issues for Trial; Burden of Proof**

**2503 Breach of Warranty—Elements**

**2505 Responsible Cause (Proximate Cause)—Definition**

**2506 Foreseeable—Defined**

**2507 Definitions for Breach of Warranty Claims**

**2509 Express Warranties by Statement, Promise, Description or Sample**

**2511 Warranty Not Created by Mere Opinion or Commendation**

**2513 Types of Implied Warranties**

**2515 Implied Warranty of Merchantability**

**2517 Implied Warranties Arising from Course of Dealing or Use of Trade**

**2519 Implied Warranty of Fitness for a Particular Purpose**

**2521 Exclusion or Modification of Warranties**

**2523 Cumulation and Conflict of Warranties Express or Implied**

**2525 Third Party Beneficiaries of Warranties**

**2501 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

**2503 Breach of Warranty—Elements**

To recover damages from [*defendant*], [*plaintiff*] must prove all of the following by the greater weight of the evidence:

- (1) a warranty existed;
- (2) [*defendant*] breached the warranty; and
- (3) the breach of warranty was a responsible cause of [*plaintiff*]'s loss.

**2505 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:

- (1) the [injury][property damage][a death] would not have occurred without the conduct, and
- (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

### **2506 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **2507 Definitions for Breach of Warranty Claims**

“Buyer” means a person who buys or contracts to buy goods.

“Course of Dealing” means a sequence of previous conduct between the parties to a particular transaction that establishes a common basis of understanding for interpreting their conduct and communications.

“Fungible goods or securities” are those of which any unit is the equivalent of any other like unit because of its nature or trade usage. Goods that are not fungible shall be considered fungible to the extent that a particular agreement or document treats unlike units as equivalents.

“Goods” mean all things that can be moved at the time they are identifiable as goods to which the contract refers.

[Goods also include money, but only when the parties treat money as a commodity, not when it is merely the price to be paid under the contract.]

[Goods also include investment securities.]

[Goods also include the right to bring a lawsuit based on contract or right to possess personal property.]

[Goods also include growing crops and the unborn young of animals.]

“Merchant” means a person:

- (1) who deals in the type of goods involved in the transaction at issue;
- (2) who otherwise by [his][her] occupation holds [himself][herself] out as having knowledge or skill peculiar to the practices or goods involved in the transaction; or
- (3) who employs an agent, broker, or other intermediary who by [his][her] occupation holds [himself][herself] out as having that knowledge or skill.

“Merchantable Goods”—To be merchantable, goods must at least:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, be of fair, average quality within the description;
- (3) be fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality, and quantity within each unit and among all units involved;
- (5) be adequately contained, packaged, and labeled as the agreement may require; and
- (6) conform to any promises or statements of fact made on the container or label.

“Seller” means a person who sells or contracts to sell goods.

“Trade usage” [“Usage of trade”] is a common and regular practice or method of dealing in a place, vocation, or trade that justifies an expectation by the parties to a transaction that the same practice or method of dealing will apply to their transaction.

“Warranty” is an assurance or guaranty, either express, in the form of a statement by a seller of goods, or implied by law, having reference to and ensuring the goods’ character, quality, or fitness for a particular purpose.

### **2509 Express Warranties by Statement, Promise, Description or Sample**

A seller creates an “express warranty” in the following ways:

- (1) any statement of fact or promise made by the seller to the buyer that relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods will conform to the statement or promise;
- (2) any description of the goods that is made part of the basis of the bargain creates an express warranty that the goods will conform to the description; or
- (3) any sample or model that is made part of the basis of the bargain creates an express warranty that all of the goods will conform to the sample or model.

### **2511 Warranty Not Created by Mere Opinion or Commendation**

To create an express warranty, the seller does not have to use formal words such as “warranty” or “guarantee,” or have a specific intention to make a “warranty.” However, neither a seller’s mere affirmation of the value of the goods nor the seller’s opinion or praise of the goods creates a warranty.

### **2513 Types of Implied Warranties**

There are three types of implied warranties:

- (1) the implied warranty of merchantability;
- (2) the implied warranty of fitness for a particular purpose; and
- (3) warranties arising from a course of dealing or trade usage.

### **2515 Implied Warranty of Merchantability**

Unless excluded or modified, a warranty that the goods are merchantable is implied in a contract for their sale if the seller is a merchant with respect to goods of that kind.

[The serving for value of food or drink to be consumed either on the premises or elsewhere is a sale.]

### **2517 Implied Warranties Arising from Course of Dealing or Use of Trade**

A course of dealing or trade usage may create implied warranties, unless those warranties are excluded or modified.

A course of dealing or trade usage of which the parties are or should be aware may give particular meaning to, and supplement or qualify, terms of an agreement.

Wherever reasonable, you must interpret the express terms of an agreement and an applicable course of dealing or trade usage as consistent with each other. However, if that interpretation is unreasonable, the express terms of the agreement are controlling.

When interpreting the agreement, use the applicable trade usage in the place where the parties perform any part of the agreement.

### **2519 Implied Warranty of Fitness for a Particular Purpose**

Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and the buyer is relying on the seller’s skill or judgment to select or furnish suitable goods, there is an implied warranty that the goods will be fit for that purpose.

### **2521 Exclusion or Modification of Warranties**

[*Subject to the issue in this case, select the appropriate paragraph(s) noted below.*]

[*General rule of construction*]

When reasonable, interpret words or conduct relevant to the creation of an express warranty as consistent with words or conduct that tends to deny or limit that warranty. If you cannot do this, the attempt to deny or limit the warranty has no effect.

[*Implied warranty of merchantability*]

To exclude or modify the implied warranty of merchantability or any part of it, a merchant's language must mention merchantability and, if in writing, must be conspicuous.

[*Implied warranty of fitness for a particular purpose*]

A merchant's exclusion or modification of the implied warranty of fitness for a particular purpose must be in writing and conspicuous. [A (seller)(merchant) can exclude all warranties of fitness for a particular purpose by writing, for example, "There are no warranties that extend beyond the description on the face hereof."]

[*"As is," etc.*]

Unless the circumstances indicate otherwise, a merchant excludes all implied warranties by conspicuously writing "as is," "with all faults," or other language that in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there are no implied warranties.

[*Examination of Goods by Buyer*]

If the buyer, before entering into the agreement, examined the goods [or a sample or model] as fully as the buyer desired, or refused to examine the goods, there is no implied warranty regarding defects that the buyer's examination should have revealed.

[*Course of Dealing, Course of Performance, Trade Usage*]

An implied warranty may be excluded or modified by [course of dealing] [course of performance][trade usage].

[*Livestock*]

There is no implied warranty that cattle, hogs, or sheep are free from disease, if the seller shows compliance with all state and federal regulations concerning animal health.

### **2523 Cumulation and Conflict of Warranties Express or Implied**

You must interpret express and implied warranties as consistent with each other and as cumulative. However, if that interpretation is unreasonable, the parties' intent determines which warranty is controlling. To determine that intent, the following rules apply:

(1) exact or technical specifications replace an inconsistent sample, model, or general language

of description,

(2) a sample from an existing bulk replaces inconsistent general language of description, and

(3) express warranties replace inconsistent implied warranties other than an implied warranty of fitness for a particular purpose.

### **2525 Third Party Beneficiaries of Warranties**

A seller's express or implied warranty applies to a person injured by the breach of the warranty if it is reasonable to expect that person may use, consume, or be affected by the goods, and the person is a member of the buyer's family or household, or is a guest in the buyer's home. A seller may not exclude or limit the operation of this rule.

**CHAPTER 2700 DEFAMATION  
SYNOPSIS**

**2701 Nature of Plaintiff's Claim**

**2703 Defamation—Definition**

**2705 Libel—Definition**

**2707 Slander—Definition**

**2713 Reasonable Care—Definition**

**2714 Responsible Cause (Proximate Cause)—Definition**

**2715 Public Official or Public Figure Plaintiff or Matter of Public Concern/Media Defendant/Presumed Damages**

**2717 Public Official or Public Figure Plaintiff or Matter of Public Concern/Media Defendant/Without Presumed Damages**

**2719 Public Official or Public Figure Plaintiff or Matter of Public Concern/Non-Media Defendant/Presumed Damages**

**2721 Public Official or Public Figure Plaintiff or Matter of Public Concern/Non-Media Defendant/Without Presumed Damages**

**2723 Private Figure Plaintiff/No Public Concern/Media Defendant/Presumed Damages**

**2725 Private Figure Plaintiff/No Public Concern/Media Defendant/Without Presumed Damages**

**2727 Private Figure Plaintiff/No Public Concern/Non-Media Defendant/Presumed Damages**

**2729 Private Figure Plaintiff/No Public Concern/Non-Media Defendant/Without Presumed Damages**

**2731 Ill Will**

**2733 Punitive Damages**

**2735 Truth as a Defense—(Not Applicable to Matters of Public Concern Involving Media Defendants)**

**2737 Qualified Privilege**

**2739 Slander of Title**

**2701 Nature of Plaintiff's Claim**

[*Plaintiff*] claims that [*defendant*] has defamed [*her*][*him*][*it*] and that [*she*][*he*][*it*] is entitled to damages.

**2703 Defamation—Definition**

Defamation is defined as words, statements, or other forms of expression that tend to lower a person's reputation in the community or to discourage others from dealing or associating with the person.

**2705 Libel—Definition**

Libel is the defamation of a person or entity by writing, printing, signs, pictures, effigies, or the like.

**2707 Slander—Definition**

Slander is the defamation of a person or entity by spoken words.

**2713 Reasonable Care—Definition**

Reasonable care means being careful and using good judgment and common sense.

### **2714 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:

- (1) the [injury][property damage][a death] would not have occurred without the conduct, and
- (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

### **2715 Public Official or Public Figure Plaintiff or Matter of Public Concern/Media Defendant/Presumed Damages**

To recover damages from [defendant],

(A) [Plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [insert alleged communication];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was [heard][seen][received] by someone other than [plaintiff]; and
- (5) the statement was false.

AND

(B) [plaintiff] must also prove it is highly probable that [defendant] knew the communication was false or had serious doubts as to the truth of the communication.

If you decide in favor of [plaintiff], the law presumes that [plaintiff] has been damaged due to the nature of the statements made, and you may award such presumed damages. These may include reasonable compensation for harm to [plaintiff]'s reputation.

There is no definite standard or method of calculation to decide reasonable compensation for presumed damages. [Plaintiff] is not required to present evidence of actual harm, or the opinion of any witness as to the amount of reasonable compensation. Any award for presumed damages must be just and reasonable.

If you decide in favor of [plaintiff], then in addition to presumed damages, you may also award money for other proven damages caused by [defendant]'s communication. You must determine the amount of money you believe will fairly compensate [plaintiff] for these other proven damages, including, but not limited to:

- (1) personal humiliation;
- (2) mental anguish and suffering;
- (3) physical harm; and
- (4) financial harm, if any, such as loss of business or income.

[Plaintiff] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

**2717 Public Official or Public Figure Plaintiff or Matter of Public Concern/Media  
Defendant/Without Presumed Damages**

To recover damages from [defendant],

(A) [plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [insert alleged communication];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person
- (4) the communication was [heard][seen][received] by someone other than [plaintiff];
- (5) the statement was false; and
- (6) [plaintiff] was damaged as a result of [defendant]'s communication.

AND

(B) [plaintiff] must also prove it is highly probable that [defendant] knew the communication was false or had serious doubts as to the truth of the communication.

If you decide in favor of [plaintiff], you may decide the amount of money that will fairly compensate [plaintiff] for financial harm, if any, caused by [defendant]'s communication, such as loss of business or income. [Plaintiff] must prove by the greater weight of the evidence that [he][she] suffered such financial harm.

If you decide in favor of [plaintiff], then in addition to presumed damages, you may also award money for other proven damages caused by [defendant]'s communication. You must determine the amount of money you believe will fairly compensate [plaintiff] for these other proven damages, including, but not limited to:

- (1) harm to [plaintiff]'s reputation;
- (2) personal humiliation;
- (3) mental anguish and suffering; and
- (4) physical harm.

[Plaintiff] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

**2719 Public Official or Public Figure Plaintiff or Matter of Public Concern/Non-Media  
Defendant/Presumed Damages**

To recover damages from [defendant],

(A) [plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [insert alleged communication];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person; and
- (4) the communication was [heard][seen][received] by someone other than [plaintiff].

AND

(B) [plaintiff] must also prove it is highly probable that [defendant] knew the communication was false or had serious doubts as to the truth of the communication.

If you decide in favor of [plaintiff], the law presumes that [plaintiff] has been damaged due to the nature of the statements made, and you may award such presumed damages. These may include reasonable compensation for harm to [plaintiff]'s reputation.

There is no definite standard or method of calculation to decide reasonable compensation for presumed damages. [Plaintiff] is not required to present evidence of actual harm, or the opinion of any witness as to the amount of reasonable compensation. Any award for presumed damages must be just and reasonable.

If you decide in favor of [plaintiff], then in addition to presumed damages, you may also award money for other proven damages caused by [defendant]'s communication. You must determine the amount of money you believe will fairly compensate [plaintiff] for these other proven damages, including, but not limited to:

- (1) personal humiliation;
- (2) mental anguish and suffering;
- (3) physical harm; and
- (4) financial harm, if any, such as loss of business or income.

[Plaintiff] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

**2721 Public Official or Public Figure Plaintiff or Matter of Public Concern/Non-Media Defendant/Without Presumed Damages**

To recover damages from [defendant],

(A) [plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [*insert alleged communication*];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was [heard][seen][received] by someone other than [plaintiff]; and
- (5) [plaintiff] was damaged as a result of [defendant]'s communication.

AND

(B) [plaintiff] must also prove it is highly probable that [defendant] knew the communication was false or had serious doubts as to the truth of the communication.

If you decide in favor of [plaintiff], you must decide the amount of money that will fairly compensate [plaintiff] for financial harm, if any, caused by [defendant]'s communication, such as loss of business or income. [Plaintiff] must prove by the greater weight of the evidence that [he][she] suffered such financial harm.

If, but only if, you decide that [plaintiff] has proven financial harm, you must also decide the amount of money that will fairly compensate [plaintiff] for other proven damages caused by [defendant]'s communication, including, but not limited to:

- (1) harm to [plaintiff]'s reputation;
- (2) personal humiliation;
- (3) mental anguish and suffering; and
- (4) physical harm.

[Plaintiff] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

### **2723 Private Figure Plaintiff/No Public Concern/Media Defendant/Presumed Damages**

To recover damages from [defendant], [plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [insert alleged communication];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was [heard][seen][received] by someone other than [plaintiff];
- (5) the statement was false; and
- (6) [defendant] knew the communication to be false or, believing it to be true, failed to use reasonable care to determine its truth.

If you decide in favor of [plaintiff], the law presumes that [plaintiff] has been damaged due to the nature of the statements made, and you may award such presumed damages. These may include reasonable compensation for harm to [plaintiff]'s reputation.

There is no definite standard or method of calculation to decide reasonable compensation for presumed damages. [Plaintiff] is not required to present evidence of actual harm, or the opinion of any witness as to the amount of reasonable compensation. Any award for presumed damages must be just and reasonable.

If you decide in favor of [plaintiff], then in addition to presumed damages, you may also award money for other proven damages caused by [defendant]'s communication. You must determine the amount of money you believe will fairly compensate [plaintiff] for these other proven damages, including, but not limited to:

- (1) personal humiliation;
- (2) mental anguish and suffering
- (3) physical harm; and
- (4) financial harm, if any, such as loss of business or income.

[Plaintiff] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

### **2725 Private Figure Plaintiff/No Public Concern/Media Defendant/Without Presumed Damages**

To recover damages from [defendant], [plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] made the following communication: [insert alleged communication];
- (2) the communication was about [plaintiff];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was [heard][seen][received] by someone other than [plaintiff];
- (5) the statement was false; and
- (6) [defendant] knew the communication to be false or, believing it to be true, failed to use reasonable care to determine its truth; and
- (7) [plaintiff] was damaged as a result of [defendant]'s communication.

If you decide in favor of *[plaintiff]*, you may decide the amount of money that will fairly compensate *[plaintiff]* for financial harm, if any, caused by *[defendant]*'s communication, such as loss of business or income. *[Plaintiff]* must prove by the greater weight of the evidence that *[he][she]* suffered such financial harm.

If you decide in favor of *[plaintiff]*, then in addition to presumed damages, you may also award money for other proven damages caused by *[defendant]*'s communication. You must determine the amount of money you believe will fairly compensate *[plaintiff]* for these other proven damages, including, but not limited to:

- (1) harm to *[plaintiff]*'s reputation;
- (2) personal humiliation;
- (3) mental anguish and suffering; and
- (4) physical harm.

*[Plaintiff]* must prove by the greater weight of the evidence that *[he][she]* actually suffered these other damages and that *[defendant]*'s communication was a responsible cause of these other damages.

#### **2727 Private Figure Plaintiff/No Public Concern/Non-Media Defendant/Presumed Damages**

To recover damages from *[defendant]*,

*[plaintiff]* must prove by the greater weight of the evidence that:

- (1) *[defendant]* made the following communication: *[insert alleged communication]*;
- (2) the communication was about *[plaintiff]*;
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was *[heard][seen][received]* by someone other than *[plaintiff]*; and
- (5) *[defendant]* knew the communication to be false or, believing it to be true, failed to use reasonable care to determine its truth.

If you decide in favor of *[plaintiff]*, the law presumes that *[plaintiff]* has been damaged due to the nature of the statements made, and you may award such presumed damages. These may include reasonable compensation for harm to *[plaintiff]*'s reputation.

There is no definite standard or method of calculation to decide reasonable compensation for presumed damages. *[Plaintiff]* is not required to present evidence of actual harm, or the opinion of any witness as to the amount of reasonable compensation. Any award for presumed damages must be just and reasonable.

If you decide in favor of *[plaintiff]*, then in addition to presumed damages, you may also award money for other proven damages caused by *[defendant]*'s communication. You must determine the amount of money you believe will fairly compensate *[plaintiff]* for these other proven damages, including, but not limited to:

- (1) personal humiliation;
- (2) mental anguish and suffering;
- (3) physical harm; and
- (4) financial harm, if any, such as loss of business or income.

[*Plaintiff*] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

### **2729 Private Figure Plaintiff/No Public Concern/Non-Media Defendant/Without Presumed Damages**

To recover damages from [*defendant*],

[*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] made the following communication: [*insert alleged communication*];
- (2) the communication was about [*plaintiff*];
- (3) the communication is of a kind that tends to lower a person's reputation in the community or to discourage others from dealing or associating with the person;
- (4) the communication was [heard][seen][received] by someone other than [*plaintiff*];
- (5) [*defendant*] knew the communication to be false or, believing it to be true, failed to use reasonable care to determine its truth; and
- (6) [*plaintiff*] was damaged as a result of [*defendant*]'s communication.

If you decide in favor of [*plaintiff*], you may decide the amount of money that will fairly compensate [*plaintiff*] for financial harm, if any, caused by [defendant]'s communication, such as loss of business or income. [*Plaintiff*] must prove by the greater weight of the evidence that [he][she] suffered such financial harm.

If you decide in favor of [*plaintiff*], then in addition to presumed damages, you may also award money for other proven damages caused by [*defendant*]'s communication. You must determine the amount of money you believe will fairly compensate [*plaintiff*] for these other proven damages, including, but not limited to:

- (1) harm to [*plaintiff*]'s reputation;
- (2) personal humiliation;
- (3) mental anguish and suffering; and
- (4) physical harm.

[*Plaintiff*] must prove by the greater weight of the evidence that [he][she] actually suffered these other damages and that [defendant]'s communication was a responsible cause of these other damages.

### **2731 Ill Will**

In deciding whether [*defendant*] knew the communication was false or had serious doubts as to the truth of the communication, you may consider [*defendant*]'s attitude or ill will toward [*plaintiff*].

### **2733 Punitive Damages**

[*The Committee recommends that judges use Instruction Nos. 737 to 745.*]

**2735 Truth as a Defense—(Not Applicable to Matters of Public Concern Involving Media Defendants)**

Truth is a complete defense to a claim for [defamation][libel][slander]. [Defendant] has the burden to prove this defense. If [defendant] proves by the greater weight of the evidence that the statements were true, then you must decide in favor of [defendant].

**2737 Qualified Privilege**

Sometimes, people who make defamatory statements are not liable for those statements, because they were made under circumstances requiring full and unrestricted communication. This is called the defense of qualified privilege. [Defendant] has claimed this defense.

[I have decided that [defendant] is protected by qualified privilege.]

OR

[To establish this defense, (defendant) must prove by the greater weight of the evidence that:

(1) (defendant) made the statement in good faith.

(2) (defendant) had:

(a) an interest or stake in the subject matter of the statement, or

(b) a duty relating to the subject matter of the statement. This duty can be public or private and must be of a legal, moral, or social nature.

AND

(3) (defendant) made the statement to another person having a similar or corresponding interest or duty.]

[Plaintiff] can still recover, however, if [plaintiff] proves by the greater weight of the evidence that:

(1) [defendant] was primarily motivated by ill will toward [plaintiff]; or

(2) [defendant] caused excessive publication or communication of the statement; or

(3) [defendant] made the statement without belief or grounds for belief in its truth.

**2739 Slander of Title**

Slander of title occurs when a person makes a malicious and false statement or claim concerning ownership of, or a security interest in, someone else's property that results in financial loss to the owner or interest holder. A malicious statement or claim is one made with knowledge of its falsity or with reckless disregard for whether it is false.

To recover damages for slander of title, [plaintiff] must prove by the greater weight of the evidence that:

(1) [plaintiff] owned or had a security interest in property;

(2) [defendant] made a false spoken or written statement concerning ownership or a security interest in the property;

(3) [defendant] made the statement with knowledge of its falsity or with reckless disregard for whether it is false;

(4) [plaintiff] was damaged as a result.

## CHAPTER 2900 EMOTIONAL DISTRESS SYNOPSIS

### 2901 Negligent Infliction of Emotional Distress—Elements

### 2903 Negligent Infliction of Emotional Distress—Bystander or Relative Bystander— Elements

### 2905 Intentional Infliction of Emotional Distress—Definition

### 2907 Intentional Infliction of Emotional Distress—Elements

### 2909 Extreme and Outrageous Conduct—Definition

### 2911 Emotional Distress Damages

#### 2901 Negligent Infliction of Emotional Distress—Elements

To recover damages for negligent infliction of emotional distress, [*plaintiff*] must prove all of the following by the greater weight of the evidence:

- (1) [*defendant*] was negligent,
- (2) [*plaintiff*] was [directly involved in][impacted by] an incident related to [*defendant*]'s negligence [even if (*plaintiff*) was not physically injured],
- (3) [*plaintiff*] suffered serious emotional distress of the type that a reasonable person would expect to occur, and
- (4) [*defendant*]'s negligence was a responsible cause of [*plaintiff*]'s emotional distress.

#### 2903 Negligent Infliction of Emotional Distress—Bystander or Relative Bystander— Elements

To recover damages for negligent infliction of emotional distress, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] was negligent,
- (2) [*plaintiff*] [witnessed][came on the scene of] an incident caused by [*defendant*]'s negligence,
- (3) [*plaintiff*] suffered serious emotional distress of the type that a reasonable person would expect to occur, and
- (4) [*defendant*]'s negligence was a responsible cause of [*plaintiff*]'s emotional distress.

#### 2905 Intentional Infliction of Emotional Distress—Definition

Intentional infliction of emotional distress occurs when a person, by extreme and outrageous conduct, intentionally or recklessly causes severe emotional distress to another.

#### 2907 Intentional Infliction of Emotional Distress—Elements

To recover damages for intentional infliction of emotional distress, [*plaintiff*] must prove all of the following by the greater weight of the evidence:

- (1) [*defendant*], by [his][her] extreme and outrageous conduct,
- (2) intentionally or recklessly
- (3) caused
- (4) severe emotional distress to [*plaintiff*].

#### 2909 Extreme and Outrageous Conduct—Definition

Conduct is extreme and outrageous when it goes beyond all possible bounds of decency, is atrocious, and is utterly intolerable in a civilized community.

#### 2911 Emotional Distress Damages

emotional distress experienced by [\_\_\_\_\_];

**CHAPTER 3100 INTENTIONAL TORTS  
SYNOPSIS**

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#### **A. Fraud/Constructive Fraud**

##### **3101 Issues for Trial; Burden of Proof**

The Plaintiff, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

##### **3103 Fraud—Definition**

Fraud is an act, course of action, omission, or concealment by which a person cheats or deceives another person.

“Omission” means leaving out.

“Concealment” means hiding.

##### **3105 Fraud—Elements—Burden of Proof**

To recover damages for fraud, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] made false statements of important past or existing fact[s];
- (2) [*defendant*] knew the statements were false, or made them recklessly without knowing whether they were true or false;
- (3) [*defendant*] made the statements to cause [*plaintiff*] to act upon them;
- (4) [*plaintiff*] justifiably or reasonably relied and acted upon the statements; and
- (5) [*plaintiff*] was damaged as a result.

##### **3107 Fraud—Promise of Future Events**

Fraud cannot be based on unfulfilled promises or on statements concerning future events.

##### **3109 Fraud—Reliance**

[*Plaintiff*] must use reasonable care in guarding against fraud.

Reasonable care means being careful and using good judgment and common sense.

### **3111 Constructive Fraud—Definition and Elements—Burden of Proof**

[*Defendant*] was obligated to deal fairly with [*plaintiff*] [if][because] a [special][fiduciary] relationship existed between them. To recover damages for constructive fraud, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) A [special][fiduciary] relationship existed between [*defendant*] and [*plaintiff*];
- (2) [*defendant*] violated the obligation to deal fairly by misrepresenting important past or present facts or by remaining silent when [he][she] had an obligation to speak;
- (3) [*plaintiff*] justifiably relied on [*defendant*]'s representations or silence;
- (4) [*defendant*] gained an advantage at the expense of [*plaintiff*]; and
- (5) [*plaintiff*] was damaged as a result.

To recover damages from [*defendant*], [*plaintiff*] does not need to prove that [*defendant*] was dishonest or intended to deceive [*plaintiff*].

## **B. False Imprisonment/False Arrest**

### **3113 False Imprisonment—False Arrest—Definition**

False [imprisonment][arrest] is the unlawful restraint of a person's freedom of movement or liberty without that person's consent.

### **3115 False Imprisonment or False Arrest by Law Enforcement Officer—Elements**

To recover damages for false [imprisonment][arrest], [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] was a law enforcement officer;
- (2) [*defendant*] restrained [*plaintiff*]'s freedom of movement or liberty without [*plaintiff*]'s consent;
- (3) [*defendant*] did not act pursuant to [a warrant][a judicial order][statutory authority]; and
- (4) [*plaintiff*] was damaged as a result.

### **3117 Liability of Employer for Intentional Torts Committed by Employee**

An employer is liable for [assault][battery][false imprisonment][false arrest] committed by an employee when the employee acts:

- (1) within the scope of his or her employment, and
- (2) on the express or implied authority of the employer.

### **3119 Arrest by Citizen—Elements**

To recover damages for false [imprisonment][arrest], [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] restrained [*plaintiff*]'s freedom of movement or liberty without [*plaintiff*]'s consent; and
- (2) [*plaintiff*] was damaged as a result.

[However, (*defendant*) is not liable if (he)(she) proves by the greater weight of the evidence that (he)(she) acted with legal authority.]

### **3121 Emotional Distress Damages**

emotional distress experienced by [\_\_\_\_\_];

## C. Unfair Competition/Interference with Contractual or Business Relationship

### 3123 Unfair Competition—Definition

Unfair competition includes [passing off, or attempting to pass off, one's goods and services as those of someone else][the interference with contract or business relationships][predatory price cutting].

### 3125 Unfair Competition—Passing Off—Elements—Burden of Proof

To recover damages for unfair competition, [the plaintiff] must prove by the greater weight of the evidence that:

- (1) [defendant] [passed off][attempted to pass off] [plaintiff]'s [goods][business][services] as [that][those] of [defendant],
- (2) [defendant]'s conduct had the natural and probable tendency to deceive the public, and
- (3) [plaintiff] was damaged as a result.

### 3127 Unfair Competition—Predatory Pricing; Relevant Cost Standard

Predatory pricing is pricing below an appropriate measure of cost intended to eliminate competitors in the short run and reduce competition in the long run. Predatory pricing does not include price cutting that is merely aimed at increasing market share.

You must determine the relevant cost standard for the average or marginal cost of the product to establish whether predatory pricing has occurred.

To determine the relevant cost standard, you must consider:

- (1) the market share of the product in the relevant market;
- (2) the market share of the product controlled by [defendant];
- (3) [defendant]'s ability to exclude competitors from the market;
- (4) the appropriate measure of costs for [defendant]'s product; and
- (5) other relevant market information.

### 3129 Unfair Competition Based on Predatory Pricing—Elements—Burden of Proof

To recover damages for unfair competition based on predatory pricing, [plaintiff] must prove by the greater weight of the evidence that:

- (1) [plaintiff] had a property interest in [a license][a franchise][a contract][goods or services];
- (2) [plaintiff] had a valid potential of a business relationship but for [defendant]'s interference by predatory pricing;
- (3) [defendant] cut the price(s) of its [products][goods or services] below an appropriate measure of cost;
- (4) the price cutting was for the sole purpose of causing economic injury to [plaintiff];
- (5) no justification existed for the price cutting; and
- (6) [plaintiff] was damaged as a result.

### 3131 Wrongful Interference with Contractual Relations—Elements—Burden of Proof

To recover damages for wrongful interference with contractual relations, [plaintiff] must prove by the greater weight of the evidence that:

- (1) a valid and enforceable contract existed between [plaintiff] and [name of third party];
- (2) [defendant] knew the contract existed;
- (3) [defendant] intentionally caused a breach of the contract;
- (4) no justification existed for [defendant]'s conduct; and

(5) [*plaintiff*] was damaged as a result.

### **3133 Wrongful Interference with a Business Relationship—Elements—Burden of Proof**

To recover damages for wrongful interference with a business relationship, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) a business relationship existed between [*plaintiff*] and [*name of third party*];
- (2) [*defendant*] knew of the business relationship;
- (3) [*defendant*] intentionally interfered with the business relationship;
- (4) no justification existed for [*defendant*]'s conduct;
- (5) [*defendant*] acted illegally in achieving [*defendant*]'s end; and
- (6) [*plaintiff*] was damaged as a result.

### **3135 Factors Used in Determining Absence of Justification**

For [*defendant*]'s conduct to be justified, it must have been done for a legitimate reason and not solely to injure and damage [*plaintiff*]. The overriding question is whether [*defendant*]'s conduct was fair and reasonable under the circumstances.

In determining whether [*defendant*]'s conduct was justified, you may consider:

- (1) [*defendant*]'s conduct;
- (2) [*defendant*]'s motive;
- (3) [*plaintiff*]'s interest that was affected;
- (4) the interest [*defendant*] tried to advance;
- (5) the public interest in protecting [*defendant*]'s freedom of action;
- (6) the public interest in protecting [*plaintiff*]'s [contractual][business] relationship;
- (7) the proximity or remoteness of [*defendant*]'s conduct to the interference; and
- (8) the relations between the parties.

## **D. Assault/Battery**

### **3137 Assault—Definition**

An assault occurs when:

- (1) One person performs an act with the intent to cause:
  - (a) harmful or offensive contact with [another person][a third person], or
  - (b) the fear that harmful or offensive contact is about to occur, and
- (2) The act of the first person has caused the other person to have a reasonable fear that the contact is about to occur.

### **3139 Assault—Elements**

To recover damages caused by assault, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] acted with the intent to cause:
  - (a) harmful or offensive contact with [*plaintiff*][a third person], or
  - (b) [*plaintiff*]'s fear that harmful or offensive contact is about to occur, and
- (2) [*defendant*]'s act caused [*plaintiff*] to reasonably fear that the contact was about to occur.

### **3141 Battery—Definition**

A battery is the [reckless][knowing][intentional] unauthorized touching of a person in a rude, insolent, or angry manner.

### 3143 Battery—Elements

To recover damages for battery, [*plaintiff*] must prove by the greater weight of the evidence that [*defendant*] touched [*plaintiff*]:

- (1) [recklessly][knowingly][intentionally],
- (2) in a rude, insolent, or angry manner, and
- (3) without [*plaintiff*]'s authorization.

### 3145 Liability of Employer for Intentional Torts Committed by Employee

An employer is liable for [assault][battery][false imprisonment][false arrest] committed by an employee when the employee acts:

- (1) within the scope of his or her employment, and
- (2) on the express or implied authority of the employer.

### 3147 Self-Defense (Person)

It is an issue whether [*defendant*] acted in [self-defense][defense of another person].

A person is justified in using reasonable force against another person to protect [himself][herself][another person] from what [he][she] reasonably believes to be the imminent use of unlawful force.

A person is justified in using deadly force and does not have a duty to retreat, only if [he][she] reasonably believes that deadly force is necessary to prevent [serious bodily injury to (himself)(herself)(a third person)][the commission of a forcible felony].

However, a person may not use force if:

[(he)(she) is committing a crime]

[(he)(she) is escaping after the commission of a crime]

[(he)(she) provokes unlawful action by another person with intent to cause bodily injury to that person]

[(he)(she) has willingly entered into combat with another person or is the initial aggressor, unless (he)(she) withdraws from the encounter and communicates to the other person (his)(her) intent to withdraw, and the other person nevertheless continues or threatens to continue unlawful action].

[*Defendant*] has the burden of proving self-defense by the greater weight of the evidence.

### 3149 Self-Defense (Property)

It is an issue whether [*defendant*] acted in defense of [his][her] property other than a dwelling, curtilage, or occupied motor vehicle.

A person may use reasonable force, but not deadly force, against another person if [he][she] reasonably believes that the force is necessary to immediately prevent or terminate the other person's [trespass on][criminal interference with] property [lawfully in the defendant's possession][lawfully in possession of a member of the defendant's immediate family][belonging to a person whose property the defendant has authority to protect].

A person is justified in using deadly force, and does not have a duty to retreat, if the person reasonably believes that force is necessary to prevent serious bodily injury to the person or another person, or to prevent the commission of a forcible felony.

However, a person may not use force if:

[(he)(she) is committing a crime]

[(he)(she) is escaping after the commission of a crime]

[(he)(she) is escaping after the commission of a crime]

[(he)(she) provokes unlawful action by another person with intent to cause bodily injury to that person]

[(he)(she) has willingly entered into combat with another person or is the initial aggressor, unless (he)(she) withdraws from the encounter and communicates to the other person (his)(her) intent to withdraw, and the other person nevertheless continues or threatens to continue unlawful action].

[*Defendant*] has the burden of proving self-defense by the greater weight of the evidence.

### **3151 Self-Defense of Dwelling, Curtilage, Occupied Motor Vehicle**

It is an issue whether [*defendant*] acted in defense of [his][her] [dwelling][curtilage][occupied motor vehicle].

A person may use reasonable force, including deadly force, against another person and does not have a duty to retreat if [he][she] reasonably believes that the force is necessary to prevent or terminate the other person's unlawful entry or attack on [his][her] [dwelling][curtilage][occupied motor vehicle].

However, a person may not use force if:

[(he)(she) is committing a crime]

[(he)(she) is escaping after the commission of a crime]

[(he)(she) provokes unlawful action by another person with intent to cause bodily injury to that person]

[(he)(she) has willingly entered into combat with another person or is the initial aggressor, unless (he)(she) withdraws from the encounter and communicates to the other person (his)(her) intent to withdraw, and the other person nevertheless continues or threatens to continue unlawful action].

[*Defendant*] has the burden of proving self-defense by the greater weight of the evidence.

### **3153 Curtilage—Definition**

“Curtilage” means land (including buildings on that land) adjoining a dwelling and used for family and domestic purposes. The curtilage does not need to be fenced or enclosed.

When you decide whether an area or building is within the “curtilage,” consider how close it is to the dwelling and whether it is used for family and domestic purposes.

### **3155 Emotional Distress Damages**

emotional distress experienced by [\_\_\_\_\_];

### **3156 Sporting Event Injuries—Co-Participants, Spectators, and/or Third Persons**

A participant in [*sport*] must act reasonably and must not create an unreasonable risk of injury. A participant's conduct is reasonable if it is within the range of ordinary behavior of participants in the sport, even if the conduct might, in a different setting, be considered reckless or

intentional.

In determining whether [*defendant*] acted reasonably, you may consider:

- (1) the nature of [*sport*],
- (2) the customs and practices of [*sport*] [at the level being played] [including the types of contact and the level of violence generally accepted],
- (3) what rules governed the game, and
- (4) any other relevant circumstances.

## **E. Malicious Prosecution/Abuse of Process**

### **3157 Malicious Prosecution—Definition—Elements—Burden of Proof**

Malicious prosecution is a [legal proceeding][criminal prosecution] started or continued maliciously and without probable cause.

To recover damages for malicious prosecution, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] [started][caused to be started][continued][caused to be continued] a [legal proceeding][criminal prosecution] against [*plaintiff*];
- (2) [*defendant*] acted maliciously in doing so;
- (3) the [legal proceeding][criminal prosecution] ended in [*plaintiff*]'s favor; and
- (4) [*plaintiff*] was damaged as a result.

### **3159 Probable Cause—Definition**

A person has probable cause to act when [he][she] reasonably believes, based on information the person knows, that another person [has committed][is committing] a wrongful act.

### **3161 Malicious Act—Definition**

A malicious act is a wrongful act done willfully or on purpose, and without probable cause, that results in [injury][damage] to another.

Malice may be proven directly, or it may be inferred from a complete lack of probable cause or from a total failure to investigate.

### **3163 Defense—Advice of Counsel—Initiation of Civil Proceeding**

[*Defendant*] defends [herself][himself] by claiming [she][he] filed [her][his] lawsuit on the advice of an attorney.

If you decide by the greater weight of the evidence that:

- (1) [*defendant*] consulted with a disinterested, competent attorney;
- (2) [*defendant*] fully and truthfully disclosed to that attorney all information that [*defendant*] knew or could have reasonably discovered; and
- (3) the attorney advised [*defendant*] to file the lawsuit

then you must decide [*defendant*] was not at fault.

### **3165 Abuse of Process—Definition—Elements—Burden of Proof**

Abuse of process is the improper use of a legal procedure with an ulterior motive to achieve a result other than what the procedure was designed to accomplish.

To recover damages caused by abuse of process, [*plaintiff*] must prove by the greater weight of the evidence that:

- (1) [*defendant*] intentionally used a legal procedure that would not be proper in the normal course of the case;
- (2) [*defendant*] used the procedure with an ulterior motive to achieve a result it was not designed to accomplish; and
- (3) [*plaintiff*] was damaged as a result.

## F. Employment Law

### 3173 Wrongful (Retaliatory) Discharge

In this case [*plaintiff*] claims [*defendant*] fired [him][her] in retaliation for [*plaintiff*]'s [filing for a worker's compensation claim][*set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable*].

[*Defendant*] denies the firing was in retaliation for [filing a worker's compensation claim][*set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable*].

[*Defendant*] claims [it][he][she] fired [*plaintiff*] for [a] reason[s] other than [filing for a worker's compensation claim][*set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable*]. [*Plaintiff*] claims the reason[s] given by [*defendant*] [is][are] not the real reason for [his][her] firing.

[*Plaintiff*] has the burden of proving by the greater weight of the evidence that [his][her] firing was solely in retaliation for [filing a worker's compensation claim][*set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable*].

### 3175 Employment Law—Employment At Will

Employment at will is an employment relationship that has no definite length of time. Except for a few limited exceptions, an employment-at-will relationship may be terminated by the employer or employee at any time and for any reason, or for no reason at all.

### 3177 Exception to At Will Employment—Statutorily Conferred Right/Retaliatory Discharge

An exception to employment at will occurs when an employer fires an employee in retaliation for exercising a right made available by Indiana statute.

Indiana statute allows an employee to [file a claim for workers' compensation benefits][*insert (other) statutorily conferred right(s) exercised by the employee*]. The employer may not fire an employee for filing this type of claim.

### 3179 Exception to Employment At Will—Employee's Refusal to Commit an Illegal Act

An exception to employment at will occurs when an employer fires an employee in retaliation for refusing to commit an illegal act for which the employee could be personally liable.

An employer is prohibited from firing an employee for refusing to [*set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable*].

### 3181 Constructive Discharge—Elements

To recover on this claim, [\_\_\_\_\_plaintiff] must prove by the greater weight of the evidence that:

1. [\_\_\_\_\_plaintiff] filed a claim under [(set out the statutorily conferred right)][set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable];
2. because [plaintiff] filed a claim under [(set out the statutorily conferred right)][set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable], [defendant] made [plaintiff]'s working conditions so unbearable that a reasonable person in [plaintiff]'s position would have quit; and
3. as a result of [defendant]'s action, [plaintiff] quit.

### 3182 Constructive Discharge—Medical Restriction

To recover on this claim, [\_\_\_\_\_plaintiff] must prove by the greater weight of the evidence that:

1. [\_\_\_\_\_plaintiff] filed a claim under [(set out the statutorily conferred right)][(set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable)];
2. [\_\_\_\_\_defendant] was aware that [\_\_\_\_\_plaintiff] had [set out medical restriction];
3. because [\_\_\_\_\_plaintiff] filed a claim under [(set out the statutorily conferred right)][(set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable)], [\_\_\_\_\_defendant] knowingly or with deliberate indifference ordered [\_\_\_\_\_plaintiff] to perform work duties in violation of the medical restriction;
4. putting [\_\_\_\_\_plaintiff] at risk of physical harm; and
5. as a result of [\_\_\_\_\_defendant]'s action, [plaintiff] quit.

### 3183 Constructive Discharge—Failure to Exhaust

To claim constructive discharge, [\_\_\_\_\_plaintiff] is not required to exhaust all of [\_\_\_\_\_defendant]'s official means of complaining about work conditions before [\_\_\_\_\_plaintiff] quit.

However, you may consider any failure to exhaust all official means of complaining about work conditions in determining whether a reasonable person would have found the conditions unbearable.

### 3184 Retaliatory Discharge—Elements

To recover damages from [defendant], [plaintiff] must prove each of the following by the greater weight of the evidence:

- (1) [defendant] employed [plaintiff];
- (2) the only reason [defendant] fired [plaintiff] was that [plaintiff] [set out the right exercised by the plaintiff and made available to the plaintiff under Indiana statute][set out the illegal act that the plaintiff refused to commit and for which plaintiff could be personally liable]; and,
- (3) [plaintiff] was damaged as a result.

### 3185 Burden Shifting / Pretext / Honest Belief

[Defendant] has given [a] reason[s] for why [he][she][it] fired [plaintiff]. As a result, [plaintiff] must show by the greater weight of the evidence that [defendant]'s reason[s] [was][were] not the real

reason [defendant] fired [plaintiff].

In deciding if [defendant]'s reason[s] [was][were] the real reason [defendant] fired [plaintiff], you must limit your review to the question of whether [defendant] honestly believed the reason that [he][she][it] fired [plaintiff].

[Defendant]'s firing of [plaintiff] was not retaliatory just because [defendant] was mistaken in [his][her][its] belief, or just because you disagree with it or think it unwise.

### **3187 Damages**

If you decide from the greater weight of the evidence that [defendant] is liable to [plaintiff], then you must decide the amount of money that will fairly compensate [plaintiff].

In deciding the amount you award, if any, you may consider:

- (1) The income and benefits [plaintiff] has lost through today;
- (2) The income and benefits [plaintiff] is reasonably likely to lose in the future for a reasonable length of time; and
- (3) The mental anguish, emotional distress, and humiliation suffered by [plaintiff] as a result of the firing.

### **3189 Mitigation of Damages**

A plaintiff must use reasonable care to minimize [his][her] damages after [he][she] is harmed.

You may consider failure to minimize damages to reduce the amount of damages that [plaintiff] claims.

[Defendant] has the burden of proving by the greater weight of the evidence that [plaintiff] failed to use reasonable care to minimize [his][her] damages.

### **3190 Punitive Damages**

[Punitive damages may be recoverable under intentional and constitutional torts. For punitive damages instructions, see Instruction Nos. 737–745.]

**CHAPTER 3300 CONTRACTS  
SYNOPSIS**

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**3301 Issues for Trial; Burden of Proof**

The *Plaintiff*, \_\_\_\_\_, sued \_\_\_\_\_, the Defendant.

[*Plaintiff*] claims that [*defendant*] [*insert claimed action(s)*]. [*Plaintiff*] must prove [his][her][its] claims by the greater weight of the evidence.

[*Defendant*] denies [*plaintiff*]'s claims. [*Defendant*] is not required to disprove [*plaintiff*]'s claims.

[*Defendant*] has claimed certain defenses. [*Defendant*] must prove [his][her][its] defense[s] of [*specify affirmative defense(s)*] by the greater weight of the evidence.

[(*Plaintiff*) also claims (he)(she)(it) is entitled to an award of punitive damages because (*insert brief statement of claim for punitive damages*). (*Plaintiff*) must prove this claim by clear and convincing evidence.]

**3303 Contract—Definition**

A contract is an agreement that arises from an offer made by one [person][entity] and acceptance of that offer by another [person][entity].

**3305 “Something of Value” (Consideration)**

A contract becomes enforceable when the parties who agree to enter into the contract exchange something of value.

“Something of value” may include:

- (1) an act, such as the payment of money, performance of services, or delivery of goods;
- (2) a promise to act; or
- (3) a promise *not* to do something, such as a promise not to sue, compete, or act in a certain way.

### **3307 Breach of Contract**

A breach of contract occurs when:

- (1) a party fails to perform all the duties [he][she][it] agreed to do; or
- (2) a party places [himself][herself][itself] in such a position that it is beyond [his][her][its] power to perform the contract.

### **3309 Breach of Contract—Elements—Burden of Proof**

To recover damages from [defendant], [plaintiff] must prove all of the following by the greater weight of the evidence:

- (1) The parties entered into a contract;
- (2) [plaintiff] performed [his][her][its] part of the contract;
- (3) [defendant] failed to perform [his][her][its] part of the contract [or performed in a defective manner];
- (4) [defendant]’s breach of contract damaged [plaintiff];
- (5) the parties reasonably anticipated those damages when they entered into the contract; and
- (6) [defendant]’s breach of contract was a responsible cause of those damages.

#### **3311 Responsible Cause (Proximate Cause)—Definition**

A person’s conduct is legally responsible for causing [an injury][property damage][a death] if:

- (1) the [injury][property damage][a death] would not have occurred without the conduct, and
- (2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a “responsible cause.”

[There can be more than one responsible cause for an injury.]

### **3312 Foreseeable—Defined**

[An injury][Property damage][A death] is “foreseeable” when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

### **3313 Measure of Damages**

If you decide that [defendant] has breached the contract, the measure of [plaintiff]’s damages is the amount that would put [plaintiff] in the same position [he][she][it] would have been in had the contract been fulfilled.

[Plaintiff] may only recover the loss actually suffered and should not be placed in a better position than if [defendant] had not breached the contract.

### **3315 Unilateral Contract**

A unilateral contract begins when one person promises to do something if another person acts or refrains from acting in a certain way. The contract is formed when the second person acts or refrains from acting. Then, the first person must fulfill his promise.

An example of a unilateral contract is the offer of a reward for the return of a lost dog. When the dog is returned, the reward must be paid.

### **3317 Contract Implied in Law—Elements—Burden of Proof**

[*Plaintiff*] claims [*defendant*] owes [him][her] damages, because their contract was “implied in law,” even though they did not formally agree in writing or in speech.

To prove an implied contract, [*plaintiff*] must prove all of the following by the greater weight of the evidence:

- (1) [*plaintiff*] provided something of value to [*defendant*];
- (2) at either the [express][explicit] or implied request of [*defendant*];
- (3) under circumstances where fairness requires that [*plaintiff*] be compensated; and
- (4) compensation is necessary to prevent [*defendant*] from being unjustly enriched at [*plaintiff*]'s expense.

### **3319 Contract Implied in Fact**

A contract may be created by the conduct of the parties, without any written or spoken words.

You may decide that the parties entered into a contract if you decide from their conduct that they mutually intended to agree.

### **3321 Promissory Estoppel**

If [*plaintiff*] proves all of the following by the greater weight of the evidence:

- (1) [*defendant*] made a definite and substantial promise, expecting [*plaintiff*] to rely on it;
- (2) [*plaintiff*] reasonably relied on [*defendant*]'s promise;
- (3) [*plaintiff*] was harmed as a result; and
- (4) fairness requires that [*defendant*]'s promise be enforced,

then [*defendant*] is bound by that promise.

### **3323 Substantial Performance**

**[A person who][An entity that] acts in good faith under a contract, and substantially performs what the contract requires, may recover damages from the other party to the contract.**

[He][She][It] may recover the agreed contract price, minus the lost value caused by minor defects in that work.

### **3325 Performance Prevented by Party**

When one party to a contract prevents another party from performing any part of the contract, the party who is prevented is excused from completing the rest of [his][her][its] duties under the contract.

The excused party may recover compensation for the work [he][she][it] has completed.

The excused party may also recover compensation for damages suffered when [he][she][it] was prevented from performing duties under the contract.

### **3327 Impossibility of Performance**

If performance of a contract becomes impossible, through no fault of either party or because of

facts unknown to either party at the time the contract was made, then both parties are excused from performance.

### **3329 Time of Performance**

If you decide that performance at the exact time agreed upon was vitally important to the parties, you may decide that failure of a party to perform on time is a breach of contract.

In a contract that fixes no specific time, the law implies a reasonable time for performance.

### **3331 Accord and Satisfaction**

An accord and satisfaction is an agreement that [relieves the parties from the obligations of a contract][settles a dispute], and the performance of that agreement.

The “accord” is a new agreement that [relieves the parties from the obligations of a contract][settles a dispute].

The “satisfaction” is the actual performance of the new agreement.

[*Name of party*] has the burden of proving both the accord and satisfaction by the greater weight of the evidence.

### **3333 Mutual Mistake of Fact**

A contract may be set aside because of mutual mistake of fact.

To set aside a contract based on a mutual mistake of fact, [*defendant*] must prove all of the following:

- (1) [both][all] parties to the contract had a common belief about a fact crucial to the contract;
- (2) [both][all] parties were mistaken in their belief; and
- (3) if the parties had not been mistaken, [*defendant*]'s decision about whether to enter into the contract reasonably might have been different.

### **3335 Undue Influence—Operation of Law**

The law presumes that trust and confidence existed between [*defendant*] and [*plaintiff*] because of their relationship, and that the relationship influenced [*defendant*].

You must decide whether the transaction between [*defendant*] and [*plaintiff*] gave [*plaintiff*] an advantage.

If you decide that the transaction gave [*plaintiff*] an advantage, then you must assume that the transaction resulted from undue influence and is void.

However, if [*plaintiff*] proves by clear and convincing evidence that the transaction was not a result of the relationship and was fair, then you should not assume that the transaction resulted from undue influence.

### **3337 Undue Influence—Finding of Relationship**

The law presumes that trust and confidence exists between people in certain relationships, including legal, moral, social, domestic, or personal relationships.

Trust and confidence can influence decisions people make. Sometimes people use trust and confidence to unduly influence decisions. The law voids transactions that are the result of undue influence.

If [*defendant*] proves by the greater weight of the evidence that:

- (1) a relationship of confidence and trust existed between the parties;
- (2) because of that relationship, the parties did not deal on equal terms, because [*plaintiff*]:
  - (a) had superior knowledge of the matters involved in the transaction, or
  - (b) was in a position to exercise excessive influence over [*defendant*]; and
- (3) the result gave an unfair advantage to [*plaintiff*]

then you must assume that the transaction resulted from undue influence and is void.

However, if [*plaintiff*] proves by the greater weight of the evidence that [*insert elements at issue*], then you should not assume that the transaction resulted from undue influence.

### **3339 Waiver**

A person can waive his or her known right by voluntarily and intentionally giving it up.

If [*name of party claiming waiver*] proves by the greater weight of the evidence that when [*name of other party*] acted, [*he*][*she*][*it*]:

- (1) knew [*he*][*she*][*it*] had the right to [*insert right claimed to be waived*];
- (2) fully understood that right; and
- (3) intentionally gave up that right,

then you should decide that [*name of other party*] waived that right.

### **3341 Duress**

A document signed under duress is invalid. Duress means any restraint, threat, intimidation, or bodily harm directed at a person that coerces the person to sign a document, when that person lacks the strength of mind or will to resist.

The party claiming duress has the burden of proving duress by the greater weight of the evidence. To decide whether a person has proved duress, you must consider [*his*][*her*] power to resist, under the circumstances shown by the evidence. Among other things, you may consider evidence such as the person's age, experience, health, and mental state.

## CHAPTER 3500 AGENCY SYNOPSIS

### **3501 Partnership—Definition**

### **3503 Partnership—Partnership Bound by Partner’s Wrongful Act; Nature of Partner’s Liability**

### **3505 Agency—Corporate Officers or Employees**

### **3507 Principal, Agent—Defined**

### **3509 General Agent—Definition**

### **3511 Special Agent—Definition**

### **3513 Agent—Express Authority**

### **3515 Agent—Implied Authority**

### **3517 Apparent Authority—Definition**

### **3519 Independent Contractor as Agent**

### **3521 Principal Sued but Not Agent—Agency Existence Is Not Contested**

### **3523 Principal and Agent Both Sued—Agency Existence Is Not Contested**

### **3525 Principal and Agent Both Sued—Agency Denied—Acting in Scope of Authority Denied**

### **3527 Respondeat Superior—Vicarious Liability**

#### **3501 Partnership—Definition**

A partnership is an association of two or more people to conduct a business for profit as co-owners.

#### **3503 Partnership—Partnership Bound by Partner’s Wrongful Act; Nature of Partner’s Liability**

If, in the ordinary course of business or with the authority of the other partners, a partner wrongfully acts or fails to act, the partnership and each partner is liable to the same extent as the partner who acted or failed to act.

#### **3505 Agency—Corporate Officers or Employees**

A corporation acts through its agents.

If, within the scope of [his][her][its] authority, a corporation’s agent wrongfully acts or fails to act, the corporation is liable for that action or inaction.

#### **3507 Principal, Agent—Defined**

A principal is one who authorizes another to act on [his][her][its] behalf, subject to the principal’s control. The authorized [person][entity] is called an agent.

#### **3509 General Agent—Definition**

A general agent is one who agrees with a principal to handle [all of the principal’s business][all of the principal’s business of a particular kind][all of the principal’s business at a particular place]. The principal has given the general agent the authority to handle that business.

#### **3511 Special Agent—Definition**

A special agent is one authorized by a principal to perform one or more specific acts, either: (1) according to the principal’s specific instructions; or

(2) within the limits implied by the authorized acts.

### **3513 Agent—Express Authority**

An agent acts within the scope of [her][his][its] express authority when the agent handles business the principal has specifically authorized.

### **3515 Agent—Implied Authority**

By giving the agent express authority, the principal also gives the agent implied authority to use the usual and reasonably necessary methods required to handle the principal's business.

### **3517 Apparent Authority—Definition**

In addition to express and implied authority, an agent may also have apparent authority. "Apparent" means apparent to a third person, that is, someone other than the principal or the agent.

An agent has apparent authority when the principal places the agent in a position to act on behalf of the principal, and a third person reasonably believes that the principal authorized the agent to act.

If the third person reasonably relies on the agent's apparent authority, the principal is liable to the third person, even if the agent exceeded the authority given to [him][her][it] by the principal.

If, however, the third person knows, or by using reasonable care should have known, that the agent exceeded [his][her][its] authority, the principal is not liable for the agent's actions.

Reasonable care means being careful and using good judgment and common sense.

### **3519 Independent Contractor as Agent**

*[The Committee recommends that no instruction be given, because whether a person is an independent contractor is irrelevant to the determination of whether he or she is an agent.]*

### **3521 Principal Sued but Not Agent—Agency Existence Is Not Contested**

[Agent] was an agent of [principal] at all times relevant to this lawsuit.

If, within the scope of [his][her][its] authority, [agent] wrongfully acted or failed to act, [principal] is liable for that action or inaction.

### **3523 Principal and Agent Both Sued—Agency Existence Is Not Contested**

[Agent] was an agent of [principal] at all times relevant to this lawsuit.

If, within the scope of [his][her][its] authority, [agent] wrongfully acted or failed to act, both [principal] and [agent] are liable for that action or inaction.

If you decide that [agent] is liable, then you must decide that [principal] is liable. However, if you decide that [agent] is not liable, then you must also decide that [principal] is not liable.

**3525 Principal and Agent Both Sued—Agency Denied—Acting in Scope of Authority Denied**  
If you decide that:

(1) [agent] was an agent of [principal]; and

(2) [agent] was acting within the scope of [his][her][its] authority when [describe the occurrence];

and  
(3) [agent] is [liable],

then [principal] is also liable.

If you decide that [agent] is not liable, then [principal] is not liable.

If, however, you decide that [agent] is liable but was not acting [as an agent for the principal][or][within the scope of the agent's authority] when [describe the occurrence], then [principal] is not liable for the acts of [agent].

### **3527 Respondeat Superior—Vicarious Liability**

An employer is liable for the negligent act of its employee done within the scope of [his][her] employment, if the act is a responsible cause of injury to the plaintiff.

[However, even if the employee is acting within the scope of (his)(her) employment, an employer is not liable for the negligent act of its employee where the act is done on the employee's own initiative and is not done in the service of the employer.]

**CHAPTER 3700 CONDEMNATION  
SYNOPSIS**

**A. Appraiser Instructions**

**3701 Oath of Appraisers**

**3703 Instructions to Appraisers**

**3705 Appraisers' Report**

**B. Jury Instructions**

**3707 Constitutional Provision**

**3709 Just Compensation—Defined**

**3711 Residue of the Property—Defined**

**3713 Issues—Preliminary Instruction**

**3715 Burden of Proof**

**3717 Damages—Date of Taking**

**3719 Damages—Statute**

**3721 Juror Worksheet**

**3723 Fair Market Value—Defined**

**3725 Damages—Highest and Best Use**

**3729 Damages—Loss of Access**

**3731 Damages to Residue**

**3733 Benefits to Residue**

**A. Appraiser Instructions**

**3701 Oath of Appraisers**

[Caption]

Oath of Appraisers

We solemnly swear or affirm under the penalties of perjury that we will honestly and impartially assess the damages [and the benefits] the defendant[s] in this case may sustain due to the acquisition of the property described in the complaint and that we have no interest in these condemnation proceedings or in any of the property being condemned by [*condemning authority*].

\_\_\_\_\_  
John Doe

\_\_\_\_\_  
Richard Roe

\_\_\_\_\_  
Peter Snow

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Clerk of the \_\_\_\_\_ Court  
of the \_\_\_\_\_ County

**3703 Instructions to Appraisers**

[Caption]

## Instructions to Appraisers

1. The property to be appraised is located at \_\_\_\_\_ in [the City of \_\_\_\_\_] \_\_\_\_\_ County, Indiana, and is described as follows: [*Insert legal description of land to be appraised*].
2. You will determine the value of the property as of the \_\_\_\_\_ day of [*month and year*].
3. You are to appraise the fair market value of each parcel of property being acquired [and the value of each separate estate or interest in the property].
4. You are to appraise the fair market value of all improvements, if any, on the property being acquired.
5. If [*condemning authority*] is taking only a part of the owner[‘s][s] property, you are to determine the amount of damages, if any, caused to the residue of that property by the taking.
6. You are to determine the other damages, if any, that will result from construction of the improvements in the manner proposed by the plaintiff.
7. If the property is to be acquired by the state or by a county for a public highway or a municipal corporation for a public use that confers benefits on any property of the owner, your report must state the benefits that will accrue to each parcel of property, set opposite the description of each parcel of property whether described in the complaint or not. You must also deduct benefits assessed from the amount of damage allowed, if any, under Ind. Code § 32-24-1-9(c)(3) and (4) [the damages, if any, to the residue of the property of the owner[s] caused by taking out the part being acquired and the other damages, if any, that will result to any persons from construction of the improvements in the manner proposed by the plaintiff] and the difference, if any, plus the damages allowed under subsection (c)(1) and (c)(2) [the fair market value of each parcel of property being acquired, and the fair market value of all improvements if any, on the property being acquired] will be the amount of the award. However, the damages awarded may not be less than the damages allowed under subsection (c)(1) and (c)(2).
8. “Fair market value” means the price the property would bring after fair and reasonable negotiations between a seller who is willing, but not compelled to sell, and a buyer who is willing and able, but not compelled to buy. Anything affecting the sale value on the date of the taking is a proper matter for your consideration in attempting to arrive at a fair market value.
9. The term “benefits” means the amount that the fair market value of the residue of [any interest in] the property will increase as a natural and proximate result of the construction of the improvements in the manner proposed by [*condemning authority*]. To consider the value of benefits to the residue, the benefits must be substantially greater in degree to the owner than to other owners in the community. Do not consider general benefits to the community at large.
10. The term “damages to the residue” means the amount that the fair market value of the residue of [any interest in] the property will be decreased by the taking and by the construction of the proposed improvements.
11. The fact that [*condemning authority*] has the authority to appropriate the property should not,

in any way, affect your assessment of damages.

12. You may use any fair and accepted method to determine the fair market value of the property and improvements and the amount of any damages or benefits.

13. The previous use to which property is put is not the only criteria for measuring its value. In determining the fair market value of the property of the owner, you may consider its past and present use and the highest and best use for which the property is available and can reasonably be adapted at the time of the taking.

14. You may consider recent sales of like or similar property in the area.

15. You may examine such plats, blueprints, drawings and plans prepared by [*condemning authority*] as are necessary to understand the nature and extent of the proposed improvements.

16. You may examine any books and records, and other documents of the property owner that will assist you in determining damages.

17. You should make your report on the form provided by the court, and each of you should sign in the place indicated. You must file your report with the court on or before the \_\_\_\_\_ day of [*month and year*].

\_\_\_\_\_  
Judge

Given this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
3705 Appraisers' Report

[*Caption*]

Report of Appraisers

We assess and determine the damages the property owners will sustain as follows:

1. The fair market value of each parcel of property being acquired [and the value of each separate estate or interest in the property].

\_\_\_\_\_ \$ \_\_\_\_\_

2. The fair market value of all improvements, if any, located on the property being acquired.

\_\_\_\_\_ \$ \_\_\_\_\_

3. The damages, if any, to the residue of the property caused by taking of the property being acquired.

\_\_\_\_\_ \$ \_\_\_\_\_

4. Such other damages, if any, as will result to any persons from the construction of the improvements in the manner proposed by [*condemning authority*].

\_\_\_\_\_ \$ \_\_\_\_\_

[5. Less benefits that will accrue to (any interest in) the residue of the property caused by the construction of the improvements in the manner proposed by (*condemning authority*) (not to

exceed the damages assessed in Nos. 3 and 4)].

\_\_\_\_\_ \$ \_\_\_\_\_

Total Damages \_\_\_\_\_ \$ \_\_\_\_\_

## **B. Jury Instructions**

### **3707 Constitutional Provision**

Article 1, Section 21 of the Constitution of Indiana provides in part, “no person’s property shall be taken by law without just compensation.”

### **3709 Just Compensation—Defined**

“Just compensation” means the amount of money that returns the property owner to the financial position [he][she][they] would have been in had the property not been taken.

### **3711 Residue of the Property—Defined**

The “residue of the property” means the part of the property that the owner retains after the taking, when the land that was taken is part of a larger tract. “Damages to the residue” means the decrease in value of the property left after the taking.

### **3713 Issues—Preliminary Instruction**

This case involves the taking of [*property owner*]’s property by [*condemning authority*] for [*insert the purpose of the taking*]. I have already decided that [*condemning authority*] can take the property. What you must decide is the amount of damages, if any, [*property owner*] is entitled to recover because of the taking.

### **3715 Burden of Proof**

[*Property owner*] must prove by the greater weight of the evidence the value of the damage to the property caused by the taking.

[(*Condemning authority*) must prove by the greater weight of the evidence the value of any benefits to the property caused by the taking.]

### **3717 Damages—Date of Taking**

[*Condemning authority*] took [*property owner*]’s property on [*insert date*]. You must determine the value of the property taken and other damages, if any, as of that date.

### **3719 Damages—Statute**

[*Property owner(s)*] [are][is] entitled to the following damages:

- (1) The fair market value of the property that was taken;
- (2) The fair market value of all buildings or other improvements located on the property that was taken;
- (3) Damages, if any, to the residue of the property caused by the taking; and
- (4) Other damages, if any, resulting from the construction of the improvements in the manner proposed by [*condemning authority*].

The damages you award must be based on the evidence and not on guess, speculation, or your independent knowledge of property values.

[If you decide that the taking benefits the property, deduct the value of the benefit from the total of elements (3) and (4). You may not, however, reduce the damages to an amount less than the sum of elements (1) and (2). I have attached a worksheet to guide you through this process.]

### 3721 Juror Worksheet

(1) The fair market value of the property that was taken \$ \_\_\_\_\_  
(2) The fair market value of all buildings or other improvements located on the property that was taken + \$ \_\_\_\_\_  
(A) Total of (1) plus (2) = \$ \_\_\_\_\_

(3) Damages, if any, to the residue of the property caused by the taking \$ \_\_\_\_\_  
(4) Other damages, if any, resulting from the construction of the improvements in the manner proposed by [*condemning authority*] + \$ \_\_\_\_\_  
(5) The value of the benefit to the property of the taking - \$ \_\_\_\_\_  
(B) Total of (3) plus (4) minus (5) = \$ \_\_\_\_\_

NOTE: If (B) is a negative number (in other words, if (5) is more than the total of (3) plus (4)), enter zero in line (B) above.

TOTAL DAMAGES are equal to (A) plus (B) = \$ \_\_\_\_\_

### 3723 Fair Market Value—Defined

“Fair market value” means the price the property would bring after fair and reasonable negotiations between a seller who is willing, but not compelled to sell, and a buyer who is willing and able, but not compelled to buy.

### 3725 Damages—Highest and Best Use

To decide the fair market value of the property, you should consider the highest and best use for which the property is available and to which it can reasonably be adapted at the time of the taking. A property’s “highest and best use” is the use that will bring the highest dollar amount of return over time. The property’s use at the time of the taking might not be the “highest and best use,” as it might not be the most valuable use of the property.

### 3729 Damages—Loss of Access

You may award damages to a property owner for loss of access to the property, but only when the loss of access is special and unique to that property and not the inconvenience suffered by the general public.

You may only award loss of access damages if the loss of access deprives the property owner

of all or substantially all economic or productive use of the property at its highest and best use.

If, after the loss of access, the property was still suitable for a less valuable use, you may award damages that reflect the reduced value of the property.

### **3731 Damages to Residue**

When only part of an owner's property is taken, the damages must include the fair market value of the land that was taken, and any damage to the rest, or "residue," of the property.

[For there to be damages to the residue, three conditions must be met: (1) The residue must be under the same ownership as the parcel taken, (2) the two parcels must be adjoining, and (3) the parcels must have been used by the property owner in the same way.]

Damage to the residue is the difference between the fair market value of the residue before the taking and the fair market value after the taking.

### **3733 Benefits to Residue**

To consider the value of benefits to the residue, the benefits must be substantially greater in degree to the owner than to other owners in the community. Do not consider general benefits to the community at large.

**CHAPTER 3900 WILL CONTEST  
SYNOPSIS**

**3901 Action to Contest or Resist Probate of a Will—Issues for Trial—Burdens of Proof**

**3903 Will—Definition**

**3905 Right of Disposition**

**3907 Testamentary Capacity—Definition**

**3909 Requirements of Due Execution—Will Other than Oral (Nuncupative) Will**

**3911 Undue Influence—Definition**

**3913 Duress**

**3915 Validity of Will and Codicil**

**3917 Requirements of Due Execution—Nuncupative (Oral) Will**

**3919 Responsible Cause (Proximate Cause)—Definition**

**3920 Foreseeable—Defined**

**3901 Action to Contest or Resist Probate of a Will—Issues for Trial—Burdens of Proof**  
[Plaintiff(s)] claim[s] that the document at issue should be set aside, because [*insert a brief statement of the basis for the claim, e.g., the instrument was not executed in the manner required by statute, the decedent lacked sound mind at the time the instrument was made, etc.*]

[Plaintiff(s)] must prove [his][her][their] claims by the greater weight of the evidence.

[Defendant(s)] den[ies][y] [*insert aspects of plaintiff's claims that defendant denies*].

[Defendant(s)] [is][are] not required to disprove [*plaintiff('s)(s')*] claims.

**3903 Will—Definition**

A will is a written document that determines what will happen to a person's property after the person's death.

**3905 Right of Disposition**

A person of sound mind, acting under [his][her] own free will, has the right to make a will to leave [her][his] property to whom [he][she] chooses, no matter how unfair or unjust [his][her] decisions may appear to others.

**3907 Testamentary Capacity—Definition**

A person is of sound mind if [he][she] is able to:

- (1) know the extent and value of [his][her] property;
- (2) know the number and names of people who might naturally be expected to receive property under the will;
- (3) know what each person should receive, given the person's conduct toward the person making the will; and
- (4) keep these facts in mind long enough to complete a will.

**3909 Requirements of Due Execution—Will Other than Oral (Nuncupative) Will**

There must be at least two witnesses to a will. To properly complete a will, a person must [signify to][tell] those witnesses that the document is [his][her] will, and in the witnesses' presence must either:

- (1) sign the will; or

- (2) acknowledge that [he][she] has already signed the will; or
- (3) at the person's direction and in the person's presence, have someone else sign the person's name on the will.

The witnesses must also sign the will in the presence of the person making the will and in the presence of each other.

### **3911 Undue Influence—Definition**

[*Plaintiff(s)*] claim[s] that the person who made the will in this case was unduly influenced by [*insert name of alleged influencers*] and therefore claim[s] that the will should be set aside.

Undue influence is influence that overpowers the mind of the person making the will, destroying the person's freedom to decide at the time the will is written.

It must be directly related to making the will and of such force that the will in reality represents the intentions of another person.

### **3913 Duress**

A document signed under duress is invalid. Duress means any restraint, threat, intimidation, or bodily harm directed at a person that pressures the person to sign a document, when that person lacks the strength of mind or will to resist.

The party claiming duress must prove by the greater weight of the evidence that the person who signed the document did not have the power to resist under the circumstances.

Among other things, you may consider evidence such as the person's age, experience, health, mental state, and relationships with other people involved.

### **3915 Validity of Will and Codicil**

A "codicil" is an amendment or change to a valid will after the will was originally written, witnessed, and signed.

You may decide that the codicil and the will are valid or you may decide both are invalid. Or, you may decide the will is valid and the codicil is invalid.

### **3917 Requirements of Due Execution—Nuncupative (Oral) Will**

You must decide whether the oral will made by [*decedent*] shortly before [*his*][*her*] death is a valid will.

[*Decedent*]'s oral will is a valid will if:

- (1) [*decedent*] was in imminent peril of death;
- (2) [*decedent*] died as a result of that peril;
- (3) [*decedent*] stated, before two disinterested witnesses, that the gift of property [he][she] wished to make was [*his*][*her*] will at that time;
- (4) one of the witnesses wrote down, or directed someone else to write down, [*decedent*]'s statement within thirty days after [*decedent*] made it; and
- (5) the written statement was submitted to the Court within six months after [*decedent*] died.

### **3919 Responsible Cause (Proximate Cause)—Definition**

A person's conduct is legally responsible for causing [an injury][property damage][a death] if:  
(1) the [injury][property damage][a death] would not have occurred without the conduct, and  
(2) the [injury][property damage][a death] was a natural, probable, and foreseeable result of the conduct.

This is called a "responsible cause."

[There can be more than one responsible cause for an injury.]

### **3920 Foreseeable—Defined**

[An injury][Property damage][A death] is "foreseeable" when a person should realize that [his][her] act or failure to act might cause that [injury][property damage][death].

**CHAPTER 5000 VERDICT FORMS  
SYNOPSIS**

**A. Comparative Fault**

- 5001(A) Comparative Fault—One Plaintiff/One Defendant
- 5001(B) Comparative Fault—One Plaintiff/One Defendant
- 5001(C) Comparative Fault—One Plaintiff/One Defendant
- 5003(A) Comparative Fault—One Plaintiff/Two Defendants
- 5003(B) Comparative Fault—One Plaintiff/Two Defendants
- 5003(C) Comparative Fault—One Plaintiff/Two Defendants
- 5004 Comparative Fault—Apportionment—One Plaintiff/Two Defendants (One Common Law Defendant)—If All Parties Agree Judge Calculates Each Defendant's Liability
- 5005(A) Comparative Fault—Plaintiff and Spouse (Consortium Claim)
- 5005(B) Comparative Fault—Plaintiff and Spouse (Consortium Claim)
- 5005(C) Comparative Fault—Plaintiff and Spouse (Consortium Claim)
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- 5007(B1) Comparative Fault—Two Plaintiffs Both Claimed at Fault
- 5007(B2) Comparative Fault—Two Plaintiffs Both Claimed at Fault
- 5007(C1) Comparative Fault—Two Plaintiffs Both Claimed at Fault
- 5007(C2) Comparative Fault—Two Plaintiffs Both Claimed at Fault
- 5009(A) Comparative Fault—Two Plaintiffs with One Claimed at Fault
- 5009(B) Comparative Fault—Two Plaintiffs with One Claimed at Fault
- 5009(C1) Comparative Fault—Two Plaintiffs with One Claimed at Fault
- 5009(C2) Comparative Fault—Two Plaintiffs with One Claimed at Fault
- 5011(A) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One
- 5011(B) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One
- 5011(C1) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One
- 5011(C2) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One
- 5012 Comparative Fault—For Plaintiff with Punitive Damages

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- 5015 Common Law Negligence—For Plaintiff with Punitive Damages
- 5017 Common Law Negligence—For Defendant
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- 5020 Common Law Negligence—For Plaintiff Against All Defendants—Separate and Distinct Harms
- 5021 Common Law Negligence—For Plaintiff Against Some Defendants
- 5022 Common Law Negligence—For Plaintiff Against Some, But Not All, Defendants—Separate and Distinct Harms
- 5023 Common Law Negligence—For Defendants Against Plaintiff
- 5025 Common Law Negligence—Counterclaim—For Plaintiff
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- 5031 Common Law Negligence—Complaint and Counterclaim

**C. Condemnation & Will Contests**

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**5043(B) Wrongful Death—Surviving Dependent Children, Surviving Spouse, Surviving Dependent Next of Kin—Comparative Fault**  
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**A. Comparative Fault**

**5001(A) Comparative Fault—One Plaintiff/One Defendant**

*[Caption]*

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, *[name]*, was not at fault, and therefore decide in favor of the Defendant, *[name]*, and against the Plaintiff, *[name]*.

\_\_\_\_\_

Date

\_\_\_\_\_

Presiding Juror

**5001(B) Comparative Fault—One Plaintiff/One Defendant**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiff, [name].

_____	_____
Date	Presiding Juror

**5001(C) Comparative Fault—One Plaintiff/One Defendant**

[Caption]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is 50% or less, we therefore decide in favor of the Plaintiff, [name], and against the Defendant, [name].

We also decide that the total amount of damages the Plaintiff, [name], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Plaintiff's Verdict Amount as follows:

Total Damages \_\_\_\_\_  
 Defendant's percentage of fault x \_\_\_\_\_ %  
 Plaintiff's Verdict Amount = \_\_\_\_\_

\_\_\_\_\_  
 Date Presiding Juror

**5003(A) Comparative Fault—One Plaintiff/Two Defendants**

[Caption]

VERDICT FOR DEFENDANTS

We, the Jury, decide that the Defendants, [names], were not at fault, and therefore decide in favor of the Defendants, [names], and against the Plaintiff, [name].

\_\_\_\_\_  
 Date Presiding Juror

**5003(B) Comparative Fault—One Plaintiff/Two Defendants**

[Caption]

VERDICT FOR DEFENDANTS

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	_____ %
1st Defendant, [name]	_____ %
2nd Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is greater than 50%, we therefore decide in favor of the Defendants, [names], and against the Plaintiff, [name].

\_\_\_\_\_  
 Date Presiding Juror

**5003(C) Comparative Fault—One Plaintiff/Two Defendants**

[Caption]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	_____ %
1st Defendant, [name]	_____ %
2nd Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is 50% or less, we therefore decide in favor of the Plaintiff, [name], and against the Defendants, [names].

We also decide that the total amount of damages the Plaintiff, [name], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Plaintiff's Verdict Amount as follows:

1st Defendant [name]:

We calculate damages against the 1st Defendant [name] as follows:

Total Damages	_____
1st Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount against 1st Defendant	= _____

2nd Defendant [name]:

We calculate damages against the 2nd Defendant [name] as follows:

Total Damages	_____
2nd Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount against 2nd Defendant	= _____

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5004 Comparative Fault—Apportionment—One Plaintiff/Two Defendants (One Common**

**Law Defendant)—If All Parties Agree Judge Calculates Each Defendant’s Liability**

[Caption]

VERDICT

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	[ ]%
1st Defendant, [name]	[ ]%
2nd Defendant, [name]	[ ]%
[Non-party, (name)]	[ ]%
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

We also decide that the total amount of damages the Plaintiff, [name], is entitled to recover, without considering the fault percentages, is \$ [ ].

_____	_____
Date	Presiding Juror

**5005(A) Comparative Fault—Plaintiff and Spouse (Consortium Claim)**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [name], was not at fault, and therefore decide in favor of the Defendant, [name], and against the Plaintiffs, [both names].

_____	_____
Date	Presiding Juror

**5005(B) Comparative Fault—Plaintiff and Spouse (Consortium Claim)**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, assign the following percentages of fault:

Plaintiff, [primary plaintiff's name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]

TOTAL 100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiffs, [both names].

\_\_\_\_\_  
Date Presiding Juror

**5005(C) Comparative Fault—Plaintiff and Spouse (Consortium Claim)**

[Caption]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Plaintiff, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Plaintiff's fault is 50% or less, we therefore decide in favor of the Plaintiff, [primary plaintiff's name], and against the Defendant, [name].

We also decide that the total amount of damages the Plaintiff, [primary plaintiff's name], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Plaintiff's Verdict Amount as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount	= _____

We further decide that the total amount of damages that the Plaintiff's Spouse, [plaintiff's spouse's name], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Spouse's Total Damages.)

We therefore calculate the Plaintiff's Spouse's Verdict Amount as follows:

Spouse's Total Damages	_____
Defendant's percentage of fault	x _____ %
Plaintiff's Spouse's Verdict Amount	= _____

\_\_\_\_\_  
Date Presiding Juror

**5007(A) Comparative Fault—Two Plaintiffs Both Claimed at Fault**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [name], was not at fault, and therefore decide in favor of the Defendant, [name], and against the Plaintiffs, [names].

\_\_\_\_\_  
Date Presiding Juror

**5007(B1) Comparative Fault—Two Plaintiffs Both Claimed at Fault**

[Caption]

VERDICT FOR DEFENDANT

AS TO CLAIM OF PLAINTIFF [NAME OF 1ST PLAINTIFF]

We, the Jury, assign the following percentages of fault:

1st Plaintiff, [name]	_____ %
2nd Plaintiff, [name]	_____ %
Defendant, [name]	_____ %]
[Non-party, (name)	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [1st Plaintiff's name] is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiff, [1st Plaintiff's name].

\_\_\_\_\_

Date

Presiding Juror

**5007(B2) Comparative Fault—Two Plaintiffs Both Claimed at Fault**

[Caption]

VERDICT FOR DEFENDANT

AS TO CLAIM OF PLAINTIFF [NAME OF 2nd PLAINTIFF]

We, the Jury, assign the following percentages of fault:

1st Plaintiff, [name]	_____ %
2nd Plaintiff, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [2nd Plaintiff's name] is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiff, [2nd Plaintiff's name].

\_\_\_\_\_

\_\_\_\_\_

Date

Presiding Juror

**5007(C1) Comparative Fault—Two Plaintiffs Both Claimed at Fault**

[Caption]

VERDICT FOR PLAINTIFF [NAME OF 1ST PLAINTIFF]

We, the Jury, assign the following percentages of fault:

1st Plaintiff, [name]	_____ %
2nd Plaintiff, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [1st Plaintiff's name] is 50% or less, we therefore decide in favor of

the Plaintiff, [*1st Plaintiff's name*], and against the Defendant, [*name*].

We also decide that the total amount of damages the Plaintiff, [*1st Plaintiff's name*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*1st Plaintiff's name*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>1st Plaintiff's name</i> ]	= _____

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

### 5007(C2) Comparative Fault—Two Plaintiffs Both Claimed at Fault

[*Caption*]

VERDICT FOR PLAINTIFF [*NAME OF 2nd PLAINTIFF*]

We, the Jury, assign the following percentages of fault:

1st Plaintiff, [ <i>name</i> ]	_____ %
2nd Plaintiff, [ <i>name</i> ]	_____ %
Defendant, [ <i>name</i> ]	_____ %]
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [*2nd Plaintiff's name*] is 50% or less, we therefore decide in favor of the Plaintiff, [*2nd Plaintiff's name*], and against the Defendant, [*name*].

We also decide that the total amount of damages the Plaintiff, [*2nd Plaintiff's name*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*2nd Plaintiff's name*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>2nd Plaintiff's name</i> ]	= _____

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5009(A) Comparative Fault—Two Plaintiffs with One Claimed at Fault**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [name], was not at fault, and therefore decide in favor of the Defendant, [name], and against the Plaintiffs, [names].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5009(B) Comparative Fault—Two Plaintiffs with One Claimed at Fault**

[Caption]

VERDICT FOR DEFENDANT

AS TO CLAIM OF PLAINTIFF [NAME OF PLAINTIFF CLAIMED AT FAULT]

We, the Jury, assign the following percentages of fault:

Plaintiff, [name of plaintiff claimed at fault]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [name of plaintiff claimed at fault] is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiff, [name of plaintiff claimed at fault].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5009(C1) Comparative Fault—Two Plaintiffs with One Claimed at Fault**

[Caption]

VERDICT FOR PLAINTIFF [NAME OF PLAINTIFF CLAIMED AT FAULT]

We, the Jury, assign the following percentages of fault:

Plaintiff, [ <i>name of plaintiff claimed at fault</i> ]	_____ %
Defendant, [ <i>name</i> ]	_____ %
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [*name of plaintiff claimed at fault*] is 50% or less, we therefore decide in favor of the Plaintiff, [*name of plaintiff claimed at fault*], and against the Defendant, [*name*].

We also decide that the total amount of damages the Plaintiff, [*name of plaintiff claimed at fault*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*name of plaintiff claimed at fault*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>name of plaintiff claimed at fault</i> ]	= _____

\_\_\_\_\_  
Date Presiding Juror

### 5009(C2) Comparative Fault—Two Plaintiffs with One Claimed at Fault

[*Caption*]

VERDICT FOR PLAINTIFF [*NAME OF NO-FAULT PLAINTIFF*]

We, the Jury, decide that the total amount of damages the Plaintiff, [*name of no-fault plaintiff*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*name of no-fault plaintiff*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>name of no-fault plaintiff</i> ]	= _____

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5011(A) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One**

[Caption]

VERDICT FOR DEFENDANTS

We, the Jury, decide that the Defendants, [names], were not at fault, and therefore decide in favor of the Defendants, [names], and against the Plaintiffs, [names].

\_\_\_\_\_  
Date

**5011(B) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One**

[Caption]

VERDICT FOR DEFENDANT

AS TO CLAIM OF PLAINTIFF [NAME OF PLAINTIFF CLAIMED AT FAULT]

We, the Jury, assign the following percentages of fault:

Plaintiff, [name of plaintiff claimed at fault]	_____ %
Defendants, [names]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [name of plaintiff claimed at fault] is greater than 50%, we therefore decide in favor of the Defendants, [names], and against the Plaintiff, [name of plaintiff claimed at fault].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5011(C1) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One**

[Caption]

VERDICT FOR PLAINTIFF [NAME OF PLAINTIFF CLAIMED AT FAULT]

We, the Jury, assign the following percentages of fault:

Plaintiff, [ <i>name of plaintiff claimed at fault</i> ]	_____ %
Defendants, [ <i>names</i> ]	_____ %
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because the fault of Plaintiff [*name of plaintiff claimed at fault*] is 50% or less, we therefore decide in favor of the Plaintiff, [*name of plaintiff claimed at fault*], and against the Defendants, [*names*].

We also decide that the total amount of damages the Plaintiff, [*name of plaintiff claimed at fault*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*name of plaintiff claimed at fault*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>name of plaintiff claimed at fault</i> ]	= _____

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5011(C2) Comparative Fault—Two Plaintiffs with One Claimed at Fault/Two Defendants Treated as One**

[Caption]

VERDICT FOR PLAINTIFF [NAME OF NO-FAULT PLAINTIFF]

We, the Jury, decide that the total amount of damages the Plaintiff, [*name of no-fault plaintiff*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We therefore calculate the Verdict Amount in favor of Plaintiff, [*name of no-fault plaintiff*] as follows:

Total Damages	_____
Defendants' percentage of fault	x _____ %
Verdict Amount in favor of Plaintiff, [ <i>name of no-fault plaintiff</i> ]	= _____

\_\_\_\_\_  
Date Presiding Juror

**5012 Comparative Fault—For Plaintiff with Punitive Damages**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, further decide that the Plaintiff, [*name*] is entitled to receive \$\_\_\_\_\_ in punitive damages. (Please write 'zero' in the space provided if you decide that the Plaintiff is not entitled to receive punitive damages.)

\_\_\_\_\_  
Date Presiding Juror

**B. Common Law Negligence**

**5013 Common Law Negligence—For Plaintiff**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*], and decide Plaintiff's damages are \$\_\_\_\_\_ .

\_\_\_\_\_  
Date Presiding Juror

**5015 Common Law Negligence—For Plaintiff with Punitive Damages**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*], and decide that Plaintiff's damages (excluding punitive damages, if any) are \$\_\_\_\_\_ .

We, the Jury, further decide that the Plaintiff, [*name*] is entitled to receive \$\_\_\_\_\_ in punitive damages. (Please write 'zero' in the space provided if you decide that the Plaintiff is not entitled to receive punitive damages.)

\_\_\_\_\_  
Date Presiding Juror

**5017 Common Law Negligence—For Defendant**

[[*Caption*]]

VERDICT FOR DEFENDANT

We, the Jury, decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date Presiding Juror

**5019 Common Law Negligence—For Plaintiff Against All Defendants**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff [*name*] and against all Defendants, [*names*], and decide that Plaintiff's damages are \$\_\_\_\_\_ .

\_\_\_\_\_  
Date Presiding Juror

**5020 Common Law Negligence—For Plaintiff Against All Defendants—Separate and Distinct Harms**

We, the Jury, decide in favor of the Plaintiff [\_\_\_\_\_ *name*] and against the Defendants, [\_\_\_\_\_ *names*].

We, the Jury, decide that [\_\_\_\_\_ *Plaintiff*]'s damages against Defendant [\_\_\_\_\_ *name*] are \$\_\_\_\_\_ ; that [\_\_\_\_\_ *Plaintiff*]'s damages against Defendant [\_\_\_\_\_ *name*] are \$\_\_\_\_\_ .

**5021 Common Law Negligence—For Plaintiff Against Some Defendants**

[*Caption*]

VERDICT

We, the Jury, decide in favor of the Plaintiff, [*name*], and against the following Defendants: \_\_\_\_\_, and decide that Plaintiff's damages are \$\_\_\_\_\_.

We, the Jury, decide in favor of the following Defendant(s): \_\_\_\_\_, and against the Plaintiff.

\_\_\_\_\_  
Date Presiding Juror

**5022 Common Law Negligence—For Plaintiff Against Some, But Not All, Defendants—Separate and Distinct Harms**

We, the Jury, decide in favor of the Plaintiff [\_\_\_\_\_ *name*] and against the following Defendants, [\_\_\_\_\_ *names*].

We, the Jury, decide that [\_\_\_\_\_ *Plaintiff*]'s damages against Defendant [\_\_\_\_\_ *name*] are \$\_\_\_\_\_; that [\_\_\_\_\_ *Plaintiff*]'s damages against Defendant [\_\_\_\_\_ *name*] are \$\_\_\_\_\_.

We, the Jury, decide in favor of Defendant [\_\_\_\_\_ *name*], and against the Plaintiff [\_\_\_\_\_ *name*].

**5023 Common Law Negligence—For Defendants Against Plaintiff**

[*Caption*]

VERDICT FOR DEFENDANTS

We, the Jury, decide in favor of the Defendants, [*names*], and against the Plaintiff [*name*].

\_\_\_\_\_  
Date Presiding Juror

**5025 Common Law Negligence—Counterclaim—For Plaintiff**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*], on the Plaintiff's claim, and decide that Plaintiff's damages are \$\_\_\_\_\_.

We further decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*], on the Defendant's counterclaim.

\_\_\_\_\_  
Date Presiding Juror

**5027 Common Law Negligence—Counterclaim—For Counterclaimant**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, decide in favor of the Defendant, [name], and against the Plaintiff, [name], on the Plaintiff's claim.

We, the Jury, further decide in favor of the Defendant, [name], and against the Plaintiff, [name], on the Defendant's counterclaim, and decide that Defendant's damages are \$\_\_\_\_\_ .

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5029 Common Law Negligence—Counterclaim—Against Plaintiff and Counterclaimant**

[[Caption]

VERDICT

We, the Jury, decide in favor of the Defendant, [name], and against the Plaintiff, [name], on the Plaintiff's claim.

We further decide in favor of the Plaintiff, [name], and against the Defendant, [name], on the Defendant's counterclaim.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5031 Common Law Negligence—Complaint and Counterclaim**

[Caption]

VERDICT

(1) (Check one):

We, the Jury, decide in favor of the Plaintiff, [name], and against the Defendant, [name], on the Plaintiff's claim, and decide that the Plaintiff's damages are \$\_\_\_\_\_ .

OR

We, the Jury, decide against the Plaintiff, [name], on the Plaintiff's claim, and decide that the Plaintiff should recover no damages.

(2) (Check one):

We, the Jury, decide in favor of the Defendant, [name], and against the Plaintiff, [name], on the Defendant's counterclaim, and decide that the Defendant's damages are \$\_\_\_\_\_ .

OR

We, the Jury, decide against the Defendant, [name], on the Defendant's counterclaim, and decide that Defendant should recover no damages.

(3) (Check one):

We therefore award \$\_\_\_\_\_ (subtract the smaller amount from the larger amount) to the \_\_\_\_\_ (choose Plaintiff or Defendant).

OR

We have decided against both Plaintiff and Defendant on their claims, and therefore award no damages to either party.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

### **C. Condemnation & Will Contests**

#### **5033 Verdict in Eminent Domain Proceedings**

[Caption]

VERDICT

We, the Jury, decide that the Defendant [landowner][property owner]'s damages are \$\_\_\_\_\_ .

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5035 Will Invalid—Probated or Unprobated**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide that the document dated [*date*] and claimed to be the last will of [*decedent*], is invalid, and is not the last will of [*decedent*].

We therefore decide in favor of the Plaintiff, [*name*] and against the Defendant, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5037 Will Valid—Probated or Unprobated**

[*Caption*]

VERDICT

We, the Jury, decide that the document dated [*date*] and claimed to be the last will of [*decedent*], is valid, and is the last will of [*decedent*].

We therefore decide in favor of the Defendant, [*name*] and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5039 Codicil Invalid—Probated or Unprobated**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide that the document dated [*date*], is invalid, and is not a codicil to the last will of [*decedent*].

We therefore decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5041 Codicil Valid—Probated or Unprobated**

*Caption]*

VERDICT FOR DEFENDANT

We, the Jury, decide that the document dated [*date*], is valid, and is a codicil to the last will of [*decedent*].

We therefore decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**D. Wrongful Death (Both Comparative Fault and Common Law Negligence)**

**5043(A) Wrongful Death—Surviving Dependent Children, Surviving Spouse, Surviving Dependent Next of Kin—Comparative Fault**

*[Caption]*

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [*name*], was not at fault, and therefore decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5043(B) Wrongful Death—Surviving Dependent Children, Surviving Spouse, Surviving Dependent Next of Kin—Comparative Fault**

*[Caption]*

VERDICT FOR DEFENDANT

We, the Jury, assign the following percentages of fault:

Decedent, [ <i>name</i> ]	_____ %
Defendant, [ <i>name</i> ]	_____ %
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is greater than 50%, we therefore decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_

Date

\_\_\_\_\_

Presiding Juror

**5043(C) Wrongful Death—Surviving Dependent Children, Surviving Spouse, Surviving Dependent Next of Kin—Comparative Fault**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Decedent, [ <i>name</i> ]	_____ %
Defendant, [ <i>name</i> ]	_____ %
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is 50% or less, we therefore decide in favor of the Plaintiff, [*name*], and against the Defendant, [*name*].

We also decide that the total amount of damages the Plaintiff, [*name*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We, the Jury, now decide in favor of the Plaintiff and assess damages against the Defendant, [*name*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount	= _____

We further specify that the amount of damages to be awarded to [*name of personal representative*], in [*his*][*her*][*its*] capacity as personal representative of [*decedent*]'s estate, and [*names of surviving dependent children, surviving spouse, and surviving dependent next of kin*] are as follows:

[*name of personal representative*] \$\_\_\_\_\_ (only for reasonable medical, hospital, funeral, and burial expenses, and the cost of administering decedent's estate)

[*names of surviving dependent* \$\_\_\_\_\_

children, surviving spouse, and surviving dependent next of kin]

TOTAL \$\_\_\_\_\_

(The TOTAL above must equal the Plaintiff's Verdict Amount.)

\_\_\_\_\_  
Date Presiding Juror

**5045 Damages for Wrongful Death—Surviving Dependent Children, Surviving Spouse, Surviving Dependent Next of Kin—Common Law Negligence**

[Caption]

**VERDICT FOR PLAINTIFF**

We, the Jury, decide in favor of the Plaintiff [name], and against the Defendant, [name].

We further specify that the amount of damages to be awarded to [name of personal representative], in [his][her][its] capacity as personal representative of [decedent]'s estate, and [names of surviving dependent children, surviving spouse, and surviving dependent next of kin] are as follows:

[name of personal representative] \$\_\_\_\_\_ (only for reasonable medical, hospital, funeral, and burial expenses, and the cost of administering decedent's estate)

[names of surviving dependent children, surviving spouse, and surviving dependent next of kin] \$\_\_\_\_\_

TOTAL \$\_\_\_\_\_

\_\_\_\_\_  
Date Presiding Juror

**5046(A) Wrongful Death—No Surviving Spouse, Dependent Children or Dependent Next of Kin—Comparative Fault**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [name], was not at fault, and therefore decide in favor of the Defendant, [name], and against the Plaintiff, [name of personal representative], in [his][her][its] capacity as personal representative of [decedent]'s estate.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5046(B) Wrongful Death—No Surviving Spouse, Dependent Children or Dependent Next of Kin—Comparative Fault**

[Caption]

VERDICT FOR DEFENDANT

We, the Jury, assign the following percentages of fault:

Decedent, [ name ]	_____ %
Defendant, [ name ]	_____ %
[Non-party, ( name )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is greater than 50%, we therefore decide in favor of the Defendant, [name], and against the Plaintiff, [name of personal representative], in [his][her][its] capacity as personal representative of [decedent]'s estate.

\_\_\_\_\_  
Date

**5046(C) Wrongful Death—No Surviving Spouse, Dependent Children or Dependent Next of Kin—Comparative Fault**

[Caption]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Decedent, [ name ]	_____ %
Defendant, [ name ]	_____ %
[Non-party, ( name )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is 50% or less, we therefore decide in favor of the Plaintiff, [*name of personal representative*], in [his][her][its] capacity as personal representative of [*decedent*]'s estate, and against the Defendant, [*name*].

We also decide that the total amount of damages the Plaintiff, [*name of personal representative*], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We, the Jury, now decide in favor of the Plaintiff and assess damages against the Defendant, [*name*] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount	= _____

\_\_\_\_\_  
Date Presiding Juror

**5046(D) Wrongful Death—No Surviving Spouse, Dependent Children or Dependent Next of Kin—Common Law Negligence**

[*Caption*]

VERDICT FOR DEFENDANT

We, the Jury, decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name of personal representative*], in [his][her][its] capacity as personal representative of [*decedent*]'s estate.

\_\_\_\_\_  
Date Presiding Juror

**5046(E) Wrongful Death—No Surviving Spouse, Dependent Children or Dependent Next of Kin—Common Law Negligence**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff, [*name of personal representative*], in [his][her][its]

capacity as personal representative of [*decedent*]'s estate, and against the Defendant, [*name*], and decide Plaintiff's damages are \$\_\_\_\_\_ .

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5047(A) Wrongful Death—Unmarried Adult Person with Nondependent Parents or Children—Comparative Fault**

[*Caption*]

VERDICT FOR DEFENDANT

We, the Jury, decide that the Defendant, [*name*], was not at fault, and therefore decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5047(B) Wrongful Death—Unmarried Adult Person with Nondependent Parents or Children—Comparative Fault**

[*Caption*]

VERDICT FOR DEFENDANT

We, the Jury, assign the following percentages of fault:

Decedent, [ <i>name</i> ]	_____ %
Defendant, [ <i>name</i> ]	_____ %
[Non-party, ( <i>name</i> )	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is greater than 50%, we therefore decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5047(C) Wrongful Death—Unmarried Adult Person with Nondependent Parents or Children—Comparative Fault**

[*Caption*]

VERDICT FOR PLAINTIFF

We, the Jury, assign the following percentages of fault:

Decedent, [name]	_____ %
Defendant, [name]	_____ %
[Non-party, (name)]	_____ %]
TOTAL	100%

(The fault percentages listed in the blanks must total 100%)

Because Decedent's fault is 50% or less, we therefore decide in favor of the Plaintiff, [name], and against the Defendant, [name].

We also decide that the total amount of damages the Plaintiff, [name], is entitled to recover, without considering the fault percentages, is \$\_\_\_\_\_. (Enter this amount below as Total Damages.)

We, the Jury, now decide in favor of the Plaintiff and assess damages against the Defendant, [name] as follows:

Total Damages	_____
Defendant's percentage of fault	x _____ %
Plaintiff's Verdict Amount	= _____

We further specify that the amount of damages to be awarded to [name of personal representative], in [his][her][its] capacity as personal representative of [decedent]'s estate, and [names of nondependent parents or children] are as follows:

[name of personal representative]	\$_____ (only for reasonable medical, hospital, funeral, and burial expenses, and the cost of administering decedent's estate)
[name of nondependent parent]	\$_____ (which includes \$_____ for loss of love and companionship)
[name of nondependent child]	\$_____ (which includes \$_____ for loss of love and companionship)
TOTAL	\$_____

(The TOTAL above must equal the Plaintiff's Verdict Amount.)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5049 Wrongful Death—Unmarried Adult Person with Nondependent Parents or Children—Common Law Negligence**

*Caption]*

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff [*name*], and against the Defendant, [*name*].

We further specify that the amount of damages to be awarded to [*name of personal representative*], in [*his*][*her*][*its*] capacity as personal representative of [*decedent*]'s estate, and [*names of nondependent parents or children*] are as follows:

[*name of personal representative*]      \$\_\_\_\_\_ (only for reasonable medical, hospital, funeral, and burial expenses, and the cost of administering decedent's estate)

[*name of nondependent parent*]      \$\_\_\_\_\_ (which includes \$\_\_\_\_\_ for loss of love and companionship)

[*name of nondependent child*]      \$\_\_\_\_\_ (which includes \$\_\_\_\_\_ for loss of love and companionship)

TOTAL      \$\_\_\_\_\_

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

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**E. Loss of Chance**

**5051(A) Loss of Chance—Elimination of a Probability of Recovery**

VERDICT FOR DEFENDANT

We, the Jury, decide in favor of the Defendant, [*name*], and against the Plaintiff, [*name*].

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror

**5051(B) Loss of Chance—Elimination of a Probability of Recovery**

VERDICT FOR PLAINTIFF

We, the Jury, decide in favor of the Plaintiff [*name*], and against the Defendant, [*name*], and we find the following:

[ <i>decedent</i> ]'s chance of survival before [ <i>defendant</i> ] fell below the appropriate standard of care	_____
	%
- [ <i>decedent</i> ]'s chance of survival after [ <i>defendant</i> ] fell below the appropriate standard of care	_____
	%
= Percentage value of lost chance of survival	_____
	%

We further specify that the amount of damages to be awarded to [*name of personal representative*], in [*his*][*her*][*its*] capacity as personal representative of [*decedent*]'s estate, and [*names of surviving dependent children, surviving spouse, and surviving dependent next of kin*] are as follows:

[ <i>name of personal representative</i> ]	\$_____	(only for reasonable medical, hospital, funeral, and burial expenses, and the cost of administering decedent's estate)
+ [ <i>names of surviving dependent children, surviving spouse, and surviving dependent next of kin</i> ]	\$_____	
Total damages	\$_____	
x Percentage value of lost chance of survival	_____	%
= Plaintiff's verdict amount	\$_____	

\_\_\_\_\_  
Date

\_\_\_\_\_  
Presiding Juror