**5.13**

**Civil Rights – 42 U.S.C. § 1983 Claims – Damages**

[**For cases subject to the PLRA:** [Name of plaintiff] can recover compensatory [and punitive] damages only if you find that [name of plaintiff] has suffered more than a minimal physical injury. Thus, you must first determine whether [name of plaintiff] suffered more than a minimal physical injury. Minor cuts and bruises are examples of minimal physical injuries. If [name of plaintiff] has failed to prove that [he/she] suffered more than a minimal physical injury, then you must award nominal damages of $1.00. This is because a person whose constitutional rights were violated is entitled to a recognition of that violation, even if [he/she] suffered no actual injury. If you find that [name of plaintiff] has proved more than a minimal physical injury, then you must consider [name of plaintiff]’s claims for compensatory [and punitive] damages.]

You should assess the monetary amount that a preponderance of the evidence justifies as full and reasonable compensation for all of name of plaintiff]’s damages—no more, no less. You must not impose or increase these compensatory damages to punish or penalize [name of defendant]. And you must not base these compensatory damages on speculation or guesswork. But compensatory damages are not restricted to actual loss of money—they also cover the physical aspects of the injury. [Name of plaintiff] does not have to introduce evidence of a monetary value for intangible things like physical pain. You must determine what amount will fairly compensate [him/her] for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

You should consider the following elements of damage, to the extent you find that [name of plaintiff] has proved them by a preponderance of the evidence, and no others: [List recoverable damages, *e.g.*:

* + 1. The reasonable value of medical care and supplies that [name of plaintiff] reasonably needed and actually obtained, and the present value of medical care and supplies that [name of plaintiff] is reasonably certain to need in the future;

(b) [Name of plaintiff]’s physical injuries, including ill health, physical pain and suffering, disability, disfigurement, and discomfort, including such physical harm that [name of plaintiff] is reasonably certain to experience in the future;

(c) Wages, salary, profits, and the reasonable value of working time that [name of plaintiff] lost because of [his/her] inability or diminished ability to work, and the present value of such compensation that [name of plaintiff] is reasonably certain to lose in the future because of [his/her] inability or diminished ability to work;

(d) [Name of plaintiff]’s mental and emotional distress, impairment of reputation, and personal humiliation, including such mental or emotional harm that [name of plaintiff] is reasonably certain to experience in the future; and

(e) The reasonable value of [name of plaintiff]’s property that was lost or destroyed because of [name of defendant]’s conduct.]

[**Nominal Damages:** You may award $1.00 in nominal damages and no compensatory damages if you find that: (a) [name of plaintiff] has submitted no credible evidence of injury; or (b) [name of plaintiff]’s injuries have no monetary value or are not quantifiable with any reasonable certainty; or (c) [name of defendant] used both justifiable and unjustifiable force against [name of plaintiff] and it is entirely unclear whether [name of plaintiff]’s injuries resulted from the use of justifiable or unjustifiable force.]

[**Mitigation of Damages:** Anyone who claims loss or damages as a result of an alleged wrongful act by another has a duty under the law to “mitigate” those damages—to take advantage of any reasonable opportunity that may have existed under the circumstances to reduce or minimize the loss or damage. So, if you find that [name of defendant] has proved by a preponderance of the evidence that [name of plaintiff] did not seek out or take advantage of a reasonable opportunity to reduce or minimize the loss or damage under all the circumstances, you should reduce the amount of [name of plaintiff]’s damages by the amount that [he/she] could have reasonably received if [he/she] had taken advantage of such an opportunity.]

[**Punitive Damages:**

If you find for [name of plaintiff] and find that [name of defendant] acted with malice or reckless indifference to [name of plaintiff]’s federally protected rights, the law allows you, in your discretion, to award [name of plaintiff] punitive damages as a punishment for [name of defendant] and as a deterrent to others.

[Name of plaintiff] must prove by a preponderance of the evidence that [he/she] is entitled to punitive damages.

[Name of defendant] acts with malice if [his/her] conduct is motivated by evil intent or motive. [Name of defendant] acts with reckless indifference to the protected federal rights of [name of plaintiff] when [name of defendant] engages in conduct with a callous disregard for whether the conduct violates [name of plaintiff]’s protected federal rights.

If you find that punitive damages should be assessed, you may consider the evidence regarding [name of defendant]’s financial resources in fixing the amount of punitive damages to be awarded. [You may also assess punitive damages against one or more of the individual Defendants, and not others, or against one or more of the individual Defendants in different amounts.]]