**5.5 Civil Rights – 42 U.S.C. § 1983 Claims – Eighth or**

**Fourteenth Amendment Claim – Unlawful Condition of Confinement**

**(e.g., Failure to Protect Convicted Prisoner**

**or Pretrial Detainee from Attack)**

In this case, [name of plaintiff] was a prisoner at [name of corrections facility]. [Name of plaintiff] claims that [name of defendant], while acting under color of law, intentionally deprived [name of plaintiff] of [his/her] rights under the United States Constitution while [name of plaintiff] was incarcerated.

Specifically, [name of plaintiff] claims that [name of defendant], while working as an employee of [name of corrections facility], unlawfully [describe disputed condition of confinement, *e.g.*, failed to protect [him/her] from attack by another prisoner].

The United States Constitution guarantees certain minimum conditions of confinement to incarcerated persons, including protection from attack by other prisoners. A corrections officer violates the constitutional rights of an incarcerated person by acting with deliberate indifference to a known threat of harm to that person posed by another prisoner.

An incarcerated person may sue in this court for an award of money damages against anyone who, under color of law, intentionally violates that person’s rights under the United States Constitution.

To establish the claim that [name of defendant] unlawfully [describe condition of confinement, *e.g.*, failed to protect [name of plaintiff] from attack by another prisoner], [name of plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: That there was a substantial risk to [name of plaintiff] that [describe condition of confinement, *e.g.*, [he/she] would be attacked by another prisoner];

Second: That [name of defendant] actually knew of that risk;

Third: That [name of defendant] disregarded that risk or failed to take reasonable measures to protect [name of plaintiff] in response to that risk;

Fourth: That [name of plaintiff] was [describe condition of confinement, *e.g.*, attacked by another prisoner];

Fifth: That [name of defendant]’s conduct caused [name of plaintiff]’s injuries; and

Sixth: That [name of defendant] acted under color of law.

[For the second element, it is not necessary that [name of defendant] knew precisely who would attack [name of plaintiff] if [name of defendant] knew there was a substantial risk to [name of plaintiff]’s safety. Also, if [name of plaintiff] shows that [name of defendant] had information [he/she] suspected (or believed) to be true, and if you find that such information indicated a substantial risk of serious harm to [name of plaintiff], [name of defendant] cannot escape liability for failing to confirm those facts. But it is not enough for [name of plaintiff] to show that [his/her] risk of substantial harm was obvious and that [name of defendant] should have known of the risk. [Name of plaintiff] must show that [name of defendant] actually knew of the risk.]

For the fifth element, [name of defendant]’s conduct caused [name of plaintiff]’s injuries if [name of plaintiff] would not have been injured without [name of defendant]’s conduct, and the injuries were a reasonably foreseeable consequence of [name of defendant]’s conduct.

[For the sixth element, the parties have agreed that [name of defendant] acted under color of law. So you should accept that as a proven fact.]

[For the sixth element, you must decide whether [name of defendant] acted under color of law. A government official acts “under color” of law when [he/she] acts within the limits of lawful authority. [He/She] also acts under color of law when [he/she] claims to be performing an official duty but [his/her] acts are outside the limits of lawful authority and abusive in manner, or [he/she] acts in a way that misuses [his/her] power and is able to do so only because [he/she] is an official.]

If you find in [name of plaintiff]’s favor with respect to each of the facts that [he/she] must prove, you must then decide the issue of [name of plaintiff]’s compensatory damages. To recover compensatory damages [name of plaintiff] must prove by a preponderance of the evidence that [he/she] wouldn’t have been damaged without [name of defendant]’s conduct, and the damages were a reasonably foreseeable consequence of [name of defendant]’s conduct.

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.*:

 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;

 [Name of plaintiff]’s physical injuries that are more than minimal, including ill health, physical pain and suffering, disability, disfigurement, discomfort, and any such physical harm that [name of plaintiff] is reasonably certain to experience in the future. You may not award compensatory damages for minor physical injuries such as cuts, scrapes, and bruises;

 [Name of plaintiff]’s emotional injury if accompanied by more than minimal physical injury;

 Wages, salary, profits, and the reasonable value of working time that [name of plaintiff] has 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;

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

If you award [name of plaintiff] compensatory damages for physical injuries, you may also award [name of plaintiff] damages for mental and emotional distress, impairment of reputation, and personal humiliation to the extent that [he/she] proves these damages by a preponderance of the evidence.

[**Nominal Damages:** You may award $1.00 in nominal damages and no compensatory damages if you find that: [name of plaintiff] has submitted no credible evidence of injury; or [name of plaintiff]’s injuries have no monetary value or are not quantifiable with any reasonable certainty.]

[**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:** To be used only for claims against individual defendants if plaintiff offers evidence of physical injury: [Name of plaintiff] also claims that [name of individual defendant]’s acts were done with malice or reckless indifference to [name of plaintiff]’s federally protected rights, which would entitle [name of plaintiff] to an award of punitive damages in addition to compensatory damages. [Name of plaintiff] must prove by a preponderance of the evidence that [he/she] is entitled to 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 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.]]

**NOTE:** Model Jury Interrogatory Forms may be found in the appendices after the last civil rights jury instruction (Number 5.8) for use in actions brought under 42 U.S.C. §1983. Three types of Model Jury Interrogatory Forms are provided: (A) a simplified Interrogatory Form for use in most civil right actions; (B) an Interrogatory Form for use in actions that do not require application of the Prison Litigation Reform Act, and (C) an Interrogatory Form for use in actions that do require application of the Prison Litigation Reform Act.