

13-902. Special F.E.L.A. statement of the case issues; claims; formula.

The plaintiff claims that [he] [she] sustained damages from personal injuries. [The plaintiff, as personal representative, claims damages because of the death of _____ (*name of deceased worker*).

Plaintiff also claims that one or more of the following claimed acts of negligence caused or contributed to the [injury] [death] and resulting damages.

(NOTE: Here set forth, in simple form, the specific acts of negligence which are supported by the evidence, as in UJI 13-302A to 13-302F or the following examples:

(1) The defendant railroad failed to furnish the plaintiff with a reasonably safe place in which to work;

(2) The defendant railroad failed to provide the plaintiff reasonably safe tools with which to work;

(3) The defendant railroad failed to provide plaintiff with a sufficient number of fellow employees to safely perform the work assigned; and

(4) The defendant railroad's engineer was not keeping a proper lookout for workers on the track.)

The burden is on the plaintiff to prove, by the greater weight of the evidence, the following facts:

(A) That the defendant railroad was negligent in one of the particulars alleged; and

(B) That the defendant railroad's negligence caused or contributed to the [injury] [death] and resulting damage to the plaintiff.

The defendant railroad denies the plaintiff's claims and in addition asserts, as a further defense, that plaintiff was contributorily negligent in that:

(NOTE: Here set forth, in simple form, the acts of contributory negligence relied upon by the defendant which are supported by the evidence such as:

(1) The plaintiff failed to request additional help to perform [his] [her] work, which would have been given to [him] [her]; and

(2) The plaintiff failed to heed the whistle of the oncoming train and to exercise ordinary care to remove plaintiff from danger.)

The defendant railroad has the burden of proving, by the greater weight of the evidence, that the plaintiff was contributorily negligent.

The issues to be determined by you in this case are these:

(1) Was the defendant railroad negligent in any one of the particulars claimed?

If your answer to this question is "no", you will return a verdict for the defendant; but if your answer is "yes", you then have a second issue to determine, namely:

(2) Did the negligence of the defendant railroad cause or contribute to any injury and damage to the plaintiff?

If your answer to this question is "no", you will return a verdict for the defendant railroad; but if your answer is "yes", you must then find the answer to a third question, namely:

(3) Was the plaintiff guilty of some contributory negligence?

If your answer to this question is "no", then you will proceed to determine the amount of plaintiff's damages and return a verdict in the plaintiff's favor for that amount.

On the other hand, if you should find that the [plaintiff] [plaintiff's decedent] was guilty of some negligence and that [his] [her] negligence contributed to [his] [her] [injuries] [death], then you must return a verdict for the plaintiff for a reduced amount based upon a comparison of the negligence of the parties, as I will further instruct you.

USE NOTES

The paragraphs referring to contributory negligence are not applicable if the Safety Appliance Acts, 45 U.S.C.A. §§ 1-16, or the Boiler Inspection Acts, 45 U.S.C.A. §§ 23-24, are applicable.

This follows the format of UJI 13-302A to 13-302F, and should be the first instruction given to the jury at the close of the evidence and before final argument - following UJI 13-301.

The form, above, includes only contributory negligence as an affirmative defense, and contributory negligence is not an "absolute defense" in F.E.L.A. cases. Assumption of risk and fellow-servant doctrine are not available as affirmative defenses in F.E.L.A. actions.

Should the trial judge treat such defenses as "act of God" or "independent intervening cause" as absolute, affirmative defenses, rather than as "denials of causation," then the affirmative defense format found in UJI 13-302A to 13-302F can be utilized.

[As amended, effective November 1, 1991.]