

**13-2222. Successive tortfeasors; sample verdict form; divisible injuries.**

On the questions submitted, the jury finds as follows:

Question No. 1: Were any of the following negligent?

Answer:	Yes	No
Defendant 1	_____	_____
Defendant 2	_____	_____
Defendant 3	_____	_____
Defendant 4	_____	_____

If the answer to Question No. 1 is "No" for each [person] [company] listed, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

If the answer to Question No. 1 is "Yes" as to at least one of the persons [or companies] listed, you are to answer Question 2.

Question No. 2: For each [person] [company] you found negligent in response to Question No. 1, was the negligence of that [person] [company] a cause of any injury or damage to the plaintiff? For each [person] [company] you found not negligent in answer to Question No. 1, check answer "Not applicable."

Answer:	Yes	No	Not applicable
Defendant 1	_____	_____	_____
Defendant 2	_____	_____	_____
Defendant 3	_____	_____	_____
Defendant 4	_____	_____	_____

If you answered "No" or "Not applicable" as to each [person] [company] listed, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court. If you answered "Yes" as to one or more of the parties listed, then you are to answer the next question.

Question No. 3: Do you find that the plaintiff was negligent?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered "No" then you should skip the next question, and your foreperson should sign this verdict form, and you will now return to open court. After reviewing your answers to the questions above, the court will give you additional questions to answer.

If you answered "Yes," then go to Question No. 4.

Question No. 4: Was the negligence of the plaintiff a cause of any injury or damages to [himself] [herself]?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

Your foreperson should sign this verdict form, and you will now return to open court. After reviewing your answers to the questions above, the court will give you additional questions to answer.

\_\_\_\_\_  
Foreperson

**SUPPLEMENTAL QUESTIONS FOR USE WHEN  
THERE IS NO NEED TO SUBMIT QUESTION OF  
DIVISIBLE INJURIES TO THE JURY**

Question No. 5: Using the damage instructions given by the court, we find the total amount of damages suffered by the plaintiff to be \$ \_\_\_\_\_. (*Here enter the total amount of damages without any reduction for comparative negligence.*)

Go to Question No. 6.

Question No. 6: Compare the negligence of the following persons and find a percentage for each. The total of the percentages must equal 100%.

Answer:

Defendant No. 1	_____	%
Defendant No. 2	_____	%
Plaintiff	_____	%
_____	_____	
Total		100%

The court will multiply the percentage of negligence for each defendant by the plaintiff's total damages. Then the court will enter judgment against each defendant and in favor of the plaintiff in the proportion of damages for which each defendant is responsible.

\_\_\_\_\_  
Foreperson

**SUPPLEMENTAL QUESTIONS FOR USE WHEN THE  
JURY MUST DETERMINE THE QUESTION OF**

## DIVISIBLE INJURIES

Question No. 5: Using the court's instruction No. \_\_\_\_ regarding distinct injuries, did \_\_\_\_\_ [(*the successive tortfeasor or tortfeasors*)] [\_\_\_\_\_ (*the original tortfeasor or tortfeasors*)] cause an injury that is distinct from any [separate] [enhanced] [or] [avoidable] injury caused by \_\_\_\_\_ [(*the original tortfeasor or tortfeasors*)] [(*the successive tortfeasor or tortfeasors*)]?

Answer:        \_\_\_\_\_ Yes        \_\_\_\_\_ No

If the answer to Question No. 5 is "Yes," then skip Question Nos. 6 and 7 and answer Question Nos. 8 - 11. If the answer to Question No. 5 is "No," then answer Question Nos. 6 and 7.

Question No. 6: Using the instructions on damages given by the court, we find the total amount of damages suffered by the plaintiff to be \$ \_\_\_\_\_. (*Here enter the total amount of damages without any reduction for comparative negligence.*)

Go to Question No. 7.

Question No. 7: Compare the negligence of the following persons and find a percentage for each. The total of the percentages must equal 100%.

Answer:

Defendant No. 1	_____	%
Defendant No. 2	_____	%
Plaintiff	_____	%
_____	_____	
Total		100%

The court will multiply the percentage of negligence for each defendant by the plaintiff's total damages. The court will then enter judgment against each defendant and in favor of the plaintiff in the proportion of damages for which each defendant is responsible.

**You are not to answer further questions.** Your foreperson should sign this verdict form at the bottom, and you will return to open court.

---

Question No. 8: Using the instructions given by the court, determine the damages suffered by the plaintiff as a result of the negligence of \_\_\_\_\_ (*original tortfeasor or tortfeasors*) and the damages suffered by the plaintiff as a result of the distinct or enhanced injury caused by the negligence of \_\_\_\_\_

(*successive tortfeasor or tortfeasors*).

Answer:

Damages caused by [original tortfeasor or tortfeasors] \_\_\_\_\_  
Damages caused by [*successive tortfeasor or tortfeasors*] \_\_\_\_\_  
Total damages (*must be the sum of the two numbers above*) \_\_\_\_\_

Go to Question No. 9.

Question No. 9: Compare the negligence of the following persons who contributed to the separate damages caused by \_\_\_\_\_ (*original tortfeasor or tortfeasors*) and find a percentage for each. The total of the percentages must equal 100%. [The percentage for the plaintiff may be zero if the plaintiff was not negligent in causing the original injury to [himself] [herself].]

Defendant No. 1	_____	%
Defendant No. 2	_____	%
Plaintiff	_____	%
<hr/>		
Total		100%

Go to Question No. 10.

Question No. 10: Compare the negligence of the following persons who contributed to the separate or enhanced injuries caused by \_\_\_\_\_ (*the successive tortfeasor or tortfeasors*) and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff may be zero if you find the plaintiff was not negligent in causing the separate or enhanced injury.

Defendant No. 3	_____	%
Defendant No. 4	_____	%
Plaintiff	_____	%
<hr/>		
Total		100%

The court will multiply the percentage of each defendant contributing to \_\_\_\_\_ (*the original injury*) and \_\_\_\_\_ (*the successive injury*) by the plaintiff's damages from each injury. The court will then enter judgment for the plaintiff and against each defendant in the proportion of damages for which that defendant is responsible.

\_\_\_\_\_  
Foreperson

## USE NOTES

This sample verdict form is to be used when the trial court will present a second set of questions to the jury, based on the jury's response to the initial set of questions. In simpler cases, the trial court may prefer to use a single set of questions covering all issues.

When a case presents the potential that the jury will find that successive tortfeasors caused separate and divisible injuries to the plaintiff, the jury should first be presented an initial set of questions designed to permit the court to determine whether there is any need for the jury to make the determination of divisibility. *Cf. Payne v. Hall*, 2006-NMSC-029, ¶ 44, 139 N.M. 659, 137 P.3d 599 (suggesting that the jury may need to be provided with alternative sets of instructions). Unless the jury finds at least one defendant involved in the original injury to be liable and at least one defendant involved in the subsequent injury to be liable, it is unnecessary to present the question of divisibility to the jury because the defendants liable will be concurrent tortfeasors as regards either the original or successive injuries. This sample special verdict form above asks the jury to identify which parties were negligent and whether they caused injuries to the plaintiff. Question No. 3 should only be included when there is evidence to support a finding of negligence on the part of the plaintiff.

Once the jury has determined which defendants are liable, the court can decide whether there is a need to allow the jury to determine whether injuries are divisible. If there is no such need, the first set of supplemental set of questions allows the jury, as in a routine case, to determine the plaintiff's total damages and then to compare the fault of each person who contributed to those damages. If there is a need to allow the jury to determine whether damages arising from two incidents are divisible, the second set of supplemental questions asks the jury to make that determination. In the second supplemental set of instructions, if the jury determines the plaintiff's injuries are not divisible, the jury then determines the plaintiff's total damages and compares the negligence of all defendants who are liable. If the jury determines the injuries are divisible, the jury determines the portion of damages attributable to each injury and then separately compares the negligence of the parties responsible for the separate injuries.

In drafting a set of questions based on this sample verdict form, the court may find it more convenient, depending on the context, to refer to the divisible injuries as either injuries caused by a particular party (e.g., "injuries caused by Fred Johnson and Mark Jackson" or "injuries caused by Dr. Smith or Dr. Wilger") or injuries related to a particular incident (e.g., "injuries received in the automobile accident" or "injuries received at the hospital"). The method of shorthand that works best for the particular case should be used consistently throughout the instructions to avoid confusing the jury. The verdict form should be drafted to make clear that the damages and injuries for which an award may be made are those caused by some fault of a defendant.

Because the supplemental sets of questions are to be presented to the jury only after the jury determines which defendants are liable, the questions in the supplemental sets should be customized to eliminate the names of parties the jury has already determined not to be liable.

This sample verdict form contains no question regarding the foreseeability of the

risk of a successive injury as a result of the original injury. It will usually be the case that the court will decide this issue as a matter of law. See *Lewis v. Samson*, 2001-NMSC-035, ¶ 33, 131 N.M. 317, 35 P.3d 972 (imposing, "as a 'positive rule of decisional law' the requirement of joint and several liability upon the original tortfeasor for the original and enhanced injuries"). When the trial court does not decide foreseeability as a matter of law, it may be necessary to draft an additional question on this issue for the jury.

[Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008.]