

7.32 **COMPARATIVE NEGLIGENCE: INTERROGATORIES**
(Approved before 1985)

NOTE TO JUDGE

The interrogatories selected by the Committee for submission to the jury on the issue of comparative negligence represent a compromise between the extremely general and the extremely specific type of interrogatory and have been included in the model charge because it was thought that they would have the widest possible application. Questions more general or more specific in nature could be and should be utilized in a particular case where either more specificity or more generality is required. Thus, in a case where proximate cause is not a seriously contested question, the court might properly choose to combine the questions of negligence and proximate cause into one question. The same would be true with respect to questions bearing on plaintiff's negligence and causal relationship to that question and the cause of the accident.

This charge deals only with the simplest of factual situations wherein one plaintiff is suing one defendant. Where a counterclaim is asserted, the same six questions should be submitted with an additional question being put to the jury in such a case requiring them to evaluate the defendant's damage claims. In cases dealing with multiple plaintiffs' injuries, question 3, 4 and 6 would have to be submitted with respect to each additional plaintiff. For each additional defendant, sued as a joint-tortfeasor, interrogatory questions 1 and 2 would have to be submitted for each defendant so joined.

1. Follow usual form of charge with respect to the nature of the jury's function as distinguished from the court's obligations in the trial of the case, including charges concerning credibility, use of pretrial discovery devices, expert witnesses, and the like.

2. Follow with the normal charge concerning burden of proof in the context of the elements of the plaintiff's case with respect to which he or she has the burden of proof.
3. Define the term "negligence" generally and as applied to this specific case, as you would in a normal charge involving concepts of negligence and proximate cause.
4. The Committee recommends that the term "contributory negligence" be omitted and the term "plaintiff's negligence" used in its place. Define this term in the same manner in which contributory negligence has heretofore been defined, leaving out any portions of that model charge which suggest to the jury that degrees of negligence between a plaintiff and a defendant are irrelevant.
5. This portion of the charge should be followed by a more detailed description of the jury's function with respect to evaluating the quantum of negligence on the part of all parties, comparing their respective degrees of fault with respect to the accident, and computing or translating these degrees of fault into a percentage of the total amount of negligence causing the accident.
6. Read the specific interrogatories (section B below) to the jury together with an explanation of each one (section A below).
7. Define for the jury the several measures of damages applicable to this specific case and follow with an explanation that the full amount of plaintiff's loss is to be calculated irrespective of fault, or degrees thereof, or irrespective of whose obligation the payment of damages is finally determined to be.

A. Explanation of Interrogatories

I have just described to you the various concepts with which you are going to have to deal in deciding the present case. To assist you in reaching a verdict you will have with you in the jury room a form consisting of questions calling for certain answers. Your duty will be discharged by answering such of these questions as under the evidence and the court's instructions it becomes necessary to answer in order to arrive at a complete verdict.

Question #1 deals with plaintiff's allegations as to defendant's negligence. In order to answer this question you are going to have to decide whether the plaintiff has sustained his/her burden of proof with respect to defendant's negligence. I am going to read to you question #1; it reads:

Was defendant, _____, negligent?

Yes _____

No _____

If you conclude that plaintiff has failed to sustain the burden of proving defendant's negligence, the answer to question #1 would be "No"; you would check the appropriate answer and then you have no need to answer further questions but you would return your verdict at this point. If, however, on the other hand, you conclude that plaintiff has proven defendant's negligence, you will answer question #1 "Yes"

and proceed to answer question #2.

Question #2 deals with plaintiff's allegations that defendant's negligent conduct was a proximate cause of the accident (injuries) to plaintiff. Question #2 reads as follows:

Was the negligence of defendant, _____, a proximate cause of the accident?

Yes _____

No _____

If you find the plaintiff has failed to prove that the negligent conduct of the defendant was a proximate cause of the accident, then you will answer question #2 "No" and check the appropriate answer on the form. If that should be your answer to question #2, you would not need to answer further questions but would return the verdict at this point. However, if you conclude that the plaintiff has met the burden of proving that defendant's negligent conduct was a proximate cause of this accident, then you will answer question #2 "Yes", check the appropriate answer, and proceed to deal with question #3.

Question #3 deals with defendant's allegation that plaintiff was negligent.

Question #3 reads as follows:

Was plaintiff negligent?

Yes _____

No _____

If you find the defendant has failed to meet its burden of proving plaintiff's negligence, you will answer question #3 "No", check the appropriate answer to question #3, and then pass directly on to the damage question, question #6, which is described on the form as a "damage question". If, on the other hand, you find the defendant has proven the plaintiff was negligent, you will answer question #3 "Yes" and go on to deal with question #4.

Question #4 deals with defendant's allegations that plaintiff's negligence was a proximate cause of the accident. Question #4 reads as follows:

Was plaintiff's negligence a proximate cause of the accident?

Yes _____

No _____

If you find that the defendant has met its burden of proving that the plaintiff's negligence was a proximate cause of this accident, then you will answer question #4

"Yes", check the appropriate answer on the form and return your verdict at this point.¹

However, if you find, on the other hand, that defendant has failed to prove plaintiff's negligent conduct was a proximate cause of the accident, then you will answer question #4 "No" and go on to answer question #6, which is the question requiring evaluation of damages.

After you have answered those questions these instructions have required you to answer, examine your answers. If you find that the answers to all four questions are "Yes", then you will have to answer question #5. In other words, if you find from your answers that you have concluded that both the defendant and the plaintiff were negligent and that their respective negligent conduct was a proximate cause of the accident, then you are going to have another task to perform and another question to answer - question #5. You are going to have to evaluate the conduct of both the plaintiff and the defendant with a view to determining the degree of fault attributable to each with respect to this accident, and express that degree of fault in terms of a percentage figure — taking the combined fault of all parties to this lawsuit as being 100%.

In other words, you shall assume that the negligence of all parties to this

¹ In trials wherein both liability and damages are in issue, the jury will then be instructed to proceed to consider the damages phase of the case.

lawsuit is taken to be 100%; then determine what percentage of that total amount of negligence is to be attributable to defendant and what percentage of that total negligence is to be attributable to the plaintiff. Your answer will be expressed in percentage terms and the total of all percentages which you assign to each party must add up to 100%.

Thus, I will now read to you question #5. You will note that it recites the instructions that I have just given you in oral form. Question #5 reads as follows:

If you find that you have answered all the previous four questions "Yes", *i.e.*, you have found that both the plaintiff and the defendant were negligent and that their respective negligent conduct proximately caused the accident, then you must answer this question — taking the combined negligence of all parties to this lawsuit which proximately contributed to the happening of this accident as being 100% — what percentage of such total negligence is attributable to:

- a. Defendant _____ Answer _____%
- b. Plaintiff _____ Answer _____%

- TOTAL 100 %

[NOTE: The question and the instructions will have to be modified to accommodate the number of claims, the number of plaintiffs, and the number of defendants.]

If you have determined that the defendant was solely negligent or that both

plaintiff and defendant were negligent, it then becomes your duty to determine the amount of money which would reasonably compensate plaintiff for the injuries proximately caused by the accident in question. For that reason, I am going to give you instructions with respect to the measure of damages in a case such as the present one, for your guidance, in the event you need to consider this question.

[Proceed with your charge on damages.]

After having considered the evidence in this case bearing on plaintiff's injuries and their consequences, you will determine what amount of money would fairly and reasonably compensate plaintiff for his/her injuries and losses proximately resulting from the accident in accordance with the law as just given you and state the dollar amount of your conclusion in answer to question #6 which, you will note, requires a lump sum dollar amount. The evaluation of plaintiff's injuries and damages in money terms should be made irrespective of which party is at fault or to what degree, or who is ultimately to pay any damages that may be assessed. Here, you, members of the jury, are only concerned with evaluating plaintiff's injuries and damages without regard to whose fault proximately caused them. Question #6 reads as follows:

What amount of money would reasonably
and fairly compensate the plaintiff
for his/her injuries and losses?

\$ _____

