

**52B PRELIMINARY INSTRUCTION: BIFURCATED PROCEEDINGS:  
EXPLANATION OF SECOND PHASE PROCEEDINGS AND STANDARD  
OF PROOF**

I will now explain to you the rules of law that apply to determining (insert second phase issue). When I finish with these instructions, the parties will present additional evidence. You should consider this additional evidence along with the evidence already presented in phase 1. [You must decide (insert second phase issue) by (insert standard of proof)<sup>1</sup>]<sup>2</sup> [Define standard of proof].

The fact that a second phase is occurring does not mean you should doubt or reconsider the first-phase answers. Accept the phase 1 findings as established, and use all evidence from both phases only to decide the new issues in phase 2.

**NOTE**

1. The bracketed language is optional and may be included at the discretion of the trial court. Its purpose is to highlight the burden of proof during the preliminary instruction phase, rather than limiting its discussion to the substantive instruction. The decision to include or omit the bracketed language rests with the trial court, depending on the needs of the case.

2. The purpose of this language is not to permit the parties to relitigate, through new evidence or argument, the threshold question, determined in the first phase of the proceeding. Rather, this instruction is designed to inform the jury that, during the second phase, evidence and argument may be presented to help the jury decide second phase questions.

**COMMENT**

This instruction was approved in September 2025.

This instruction should be given at the beginning of the second phase of a bifurcated trial (and adapted for any third phase). Use the optional bracketed language to emphasize any change in the burden of proof for phase 2.

The purpose of this preliminary instruction is to orient the jury to the second phase without retrying the first. The jury may need to be told not to reexamine issues already decided in phase 1. All findings from phase 1 remain in effect, and phase 2 is for new issues (such as amount of damages, insurance coverage, bad faith, punitive damages, etc.).

If the case involves a first-party insurance bad faith claim joined with a contract claim (UIM, etc.), Wisconsin law requires bifurcation and a stay of the bad faith claim until the contract claim is resolved. See Majorowicz v. Allied Mut. Ins. Co., 212 Wis. 2d 513, 569 N.W.2d 472 (Ct. App. 1997). In such a scenario, this instruction would be used at the start of the bad faith phase (phase 2) after the contract phase is completed. See Dahmen v. American Family Mut. Ins. Co., 2001 WI App 198, ¶¶1–8, 247 Wis. 2d 541, 635 N.W.2d 1.

For a more in-depth discussion of the bifurcation process and the types of issues suitable for bifurcated proceedings, see Wis JI-Civil 53 Law Note: Bifurcation Proceedings.