

**180 FIVE-SIXTHS VERDICT**

Agreement by ten (five) or more jurors is sufficient to become your verdict. Jurors have a duty to consult with one another and deliberate for the purpose of reaching agreement. If you can do so consistently with your duty as a juror, at least the same ten (five) jurors should agree in all the answers. I ask you to be unanimous if you can.

At the bottom of the verdict, you will find a place provided where dissenting jurors, if there be any, will sign their names and state the answer or answers (the number of the verdict question(s)) with which they do not agree. Either the blank lines or the space below them may be used for that purpose.

**COMMENT**

This instruction was approved by the Committee in 1974 and revised in 1984, 2003, and 2010. The comment was revised in 1984, 1986, 1988, 1991, 2010 and 2017. The language of this instruction is also incorporated in Wis JI-Civil 191.

Wis. Stat. § 805.09(2).

Wis. Stat. § 805.09(2) does not require that five-sixths of the jury agree on all questions in the verdict. Rather, five-sixths must agree on all questions necessary to support a judgment on a particular claim. Therefore, a verdict must be reviewed on a claim-by-claim basis. Geise v. Montgomery Ward, Inc., 111 Wis.2d 392, 400, 331 N.W.2d 585 (1983).

**Multiple Claims.** When instructing the jury in cases involving multiple claims, see In Interest of C.E.W., 124 Wis.2d 47, 368 N.W.2d 47 (1985). In that decision, the court said it was error to give this instruction in a case involving six verdict forms because the instruction's language that "at least the same ten jurors should concur in all the answers made" gives the jury the belief that the same jurors must make the same decision on all verdicts. The court said that the six verdicts were independent, and, therefore, there was no reason for the trial court to impose the requirement of unanimity across verdicts.

Other cases dealing with five-sixths rule: Scipior v. Shea, 252 Wis. 185, 31 N.W.2d 189 (1948); Vogt v. Chicago, M., St. P. & P. R.R., 35 Wis.2d 716, 151 N.W.2d 713 (1967); Krueger v. Winters, 37 Wis.2d 204, 155 N.W.2d 1 (1967); Lorbecki v. King, 49 Wis.2d 463, 182 N.W.2d 226 (1971).

The practice of providing a place at the end of the verdict for dissenting jurors to sign their names and indicate the numbers of the questions to which the dissents relate was approved in Kowalke v. Farmers Mut. Auto Ins. Co., 3 Wis.2d 389, 403, 88 N.W.2d 747, 754-55 (1958); in this case, only two signature lines were provided, but there was space below the lines for additional signatures. It is error for counsel in closing argument to "lure jurors into the belief that a verdict agreed to by less than five-sixths of their number is one that can be received by the court." Lievrouw v. Roth, 157 Wis.2d 332, 459 N.W.2d 850 (Ct. App. 1990). Thus, the trial counsel in Lievrouw was not permitted to argue that although only two spaces were designated in the verdict for dissenting jurors that did "not mean that only two of you (jurors) can dissent" and that "[if] six of you feel one way and six of you feel the other way – ." Lievrouw, supra at 360.

The supplemental instruction to be used after the jury has reported its inability to agree is Wis JI-Civil 195.

If the jury returns a verdict which is defective because there are too many dissenters, the judge may direct the jury to return to the jury room with appropriate instructions and to reconsider their answers. Bensend v. Harper, 2 Wis.2d 474, 478, 87 N.W.2d 258 (1958); Husting v. Dietzen, 224 Wis. 639, 272 N.W. 851 (1937); Jackson v. Robert L. Reisinger & Co., 219 Wis. 535, 263 N.W. 641 (1935).