

1592 COMPARATIVE NEGLIGENCE: GUEST PASSIVELY NEGLIGENT; CLAIMS AGAINST AND AMONG DRIVERS; APPORTIONMENT OF COMPARATIVE NEGLIGENCE FROM TWO QUESTIONS

You are to answer question 1 (negligence of drivers which caused the accident) if you have found one or more drivers causally negligent. If by your previous answers you are required to answer this question, you will answer the subdivisions of this question, assigning to each driver such percentage, or part of 100%, which you find is attributable to that driver in causing the accident and the extent to which the conduct of one made a larger, equal, or smaller contribution than the other. You will fix the percentage attributable to each driver in proportion to the fault that each driver contributed to cause the accident.

You are to answer question 2 (negligence which caused (plaintiff)'s injuries) if you find at least one driver as well as (plaintiff) negligent in causing (plaintiff)'s injuries. You will assign to the drivers taken as a group such percentage, or part of 100%, which you find is attributable to them in causing the injuries sustained by (plaintiff) and assign to (plaintiff) the percentage, or part of 100%, which is attributable to (plaintiff) in causing (his) (her) own injuries.

The burden of proof on these subdivisions is on the one who asserts the percentage of causal negligence attributable to the other, and that party must satisfy you by the greater weight of the credible evidence, to a reasonable certainty, what your answer should be.

COMMENT

This instruction and comment were approved by the Committee in 1979. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. The comment was revised in 1989.

These questions are submitted under McConville v. State Farm Mut. Auto Ins. Co., 15 Wis.2d 374, 113 N.W.2d 14 (1961). In this example, the guest sued three drivers and all drivers sued each other.

SPECIAL VERDICT EXAMPLE

No. 1. What percentage of all causal negligence which produced the accident do you attribute to:

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|-----|------------|--------------|------------------|
| (a) | Driver A - | 30%) | |
| (b) | Driver B - | 50%) | as to causes |
| (c) | Driver C - | <u>20%</u>) | of the accident? |

100%

No. 2. What percentage of all causal negligence which produced plaintiff's injuries do you attribute to:

- | | | | |
|-----|---|--------------|--------------------------------------|
| (a) | The combined causal negligence of drivers A, B, and C | 90%) | as to cause of plaintiff's injuries? |
| (b) | The causal negligence of the plaintiff | <u>10%</u>) | |

100%

The court translates the findings of question No. 1 as follows:

Driver A	30	x	90% =	27%)	
Driver B	50	x	90% =	45%)	90%
Driver C	20	x	90% =	18%)	
Plaintiff					<u>10%</u>

100%

On the above questions and translations, the plaintiff would recover 90% of his or her award, and defendants would pay in accordance with their percentage of negligence as found in the translation.

In the claims among the drivers, Driver A would recover 70% of his or her award from B. B would have no right to contribution from C, as to A. C would have to contribute only to the award to plaintiff. C would recover 80% of his or her award from A and B on the basis of their percentage of liability. B would recover nothing.

If more than one guest is involved, question 2 would be repeated to accommodate the pertinent inquiries as to him or her. The added question would determine the percentage of plaintiff's contribution to his or her injuries compared to the found percentages of the combined negligence of the drivers. One guest may be more or less negligent than another guest.