

3294 RISK CONTRIBUTION: NEGLIGENCE: VERDICT (FOR ACTIONS COMMENCED BEFORE FEBRUARY 1, 2011)

Question 1: Did (plaintiff) ingest white lead carbonate?

Answer: _____
Yes or No

If your answer to Question 1 is "no," then do not answer any other question. If you answer Question 1 "yes," then answer Question 2.

Question 2: Was white lead carbonate a cause of (plaintiff)'s injuries?

Answer: _____
Yes or No

If the answer to Question 2 is "no," do not answer any other question.

Question 3: Answering separately for each defendant listed below, did that defendant produce or market the type of white lead carbonate ingested by (plaintiff)?

| | | |
|----------------|-----------|----------|
| Defendant (A): | Yes _____ | No _____ |
| Defendant (B): | Yes _____ | No _____ |
| Defendant (C): | Yes _____ | No _____ |
| Defendant (D): | Yes _____ | No _____ |

Considering only those defendants for whom you answered "yes" to Question 3, answer this question:

Question 4: Answering separately for each defendant listed below, did the defendant prove that it did not produce or market the white lead carbonate ingested by (plaintiff)?

| | | |
|----------------|-----------|----------|
| Defendant (A): | Yes _____ | No _____ |
| Defendant (B): | Yes _____ | No _____ |
| Defendant (C): | Yes _____ | No _____ |
| Defendant (D): | Yes _____ | No _____ |

Considering only those defendants for whom you answered "no" in Question 4, answer this question:

Question 5: Answering separately for each defendant, was the defendant negligent in producing or marketing the white lead carbonate?

| | | |
|----------------|-----------|----------|
| Defendant (A): | Yes _____ | No _____ |
| Defendant (B): | Yes _____ | No _____ |
| Defendant (C): | Yes _____ | No _____ |
| Defendant (D): | Yes _____ | No _____ |

Question 6: Was (plaintiff) negligent with respect to (his) (her) own safety?

Answer: _____
Yes or No

If you answered Question 6 "yes," then answer Question 7. If your answer is "no," then skip to Question 9.

Question 7: Was the negligence of (plaintiff) a cause of (his) (her) injuries?

Answer: _____
Yes or No

If you answered Question 7 "yes," then answer Question 8. If you answered Question 7 "no," then go to Question 9.

Question 8: Assuming the total negligence that caused the injury to (plaintiff) to be 100%, what percentage of the total negligence do you attribute to:

| | | |
|-----|---|---------|
| (a) | All defendants for whom you answered Question 5 "yes" | _____ % |
| (b) | (<u>Plaintiff</u>)? | _____ % |
| | TOTAL | 100 % |

Before you answer Question 9, draw a line through those producers or marketers of white lead carbonate to whom you did not answer "yes" in Question 5. As to the rest, answer this question:

Question 9: Regardless of your answer to 8(a) above, assuming the total negligence of the remaining producers or marketers to be 100%, what percentage of negligence, if any, do you attribute to:

| | | |
|----------------|-------|-----------|
| Defendant (A): | _____ | % |
| Defendant (B): | _____ | % |
| Defendant (C): | _____ | % |
| Defendant (D): | _____ | % |
| TOTAL | | 100 % |

COMMENT

This suggested verdict for a negligence claim was approved in 2009. The comment was updated in 2010 and 2011. See comment to Wis JI-Civil 3295 for a discussion of the constitutionality of the risk contribution theory. A reporter's note was deleted in 2014.

In 2011, the Wisconsin Legislature enacted Wis. Stat. § 895.46 (2011 Wisconsin Act 2) which addresses risk contribution claims. The new law (applicable to actions commenced after January 31, 2011) provides the remedy for claims where the plaintiff is unable to provide specific product identification. See Wis JI-Civil 3296.