

**3296 RISK CONTRIBUTION: NEGLIGENCE: VERDICT (WIS. STAT. § 895.046)
(FOR ACTIONS COMMENCED AFTER JANUARY 31, 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 (manufacture) (distribute) (sell) (promote) the white lead carbonate ingested by (plaintiff)?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

If you answered "yes" to a defendant in Question 3, then do not answer Questions 4 or 5 and go to Question 6. If you answered Question 3 "no" to all defendants, then answer Question 4.

Question 4: Answering separately for each defendant listed below, did that defendant (manufacture) (distribute) (sell) (promote) a completely integrated product in the form (used by the plaintiff) (to which the plaintiff was exposed)?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

Question 5: If you answered Question 4 "yes," as to any defendant, then as to those defendants only answer these questions.

(a). Did that defendant (manufacture) (distribute) (sell) (promote) a product chemically and physically identical to the product (used by the plaintiff) (to which the plaintiff was exposed).

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

(b). Did that defendant (manufacture) (distribute) (sell) (promote) the product in the geographic market where the plaintiff was injured?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

(c). Did that defendant (manufacture) (distribute) (sell) (promote) the product during the time period in which the product that caused the plaintiff's injury was (manufactured) (distribute) (sold) (promoted)?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

(d). Was the product (manufactured) (distributed) (sold) (promoted) by the defendant distributed or sold without any labeling or other distinctive characteristics that identified that (manufacturer) (distributor) (seller) (promoter)?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

Considering only those defendants for whom you answered "yes" to Question 5(a), 5(b), 5(c), or 5(d), answer Question 6. If you answered "no" as to all defendants, then do not answer any further questions in this verdict.

Question 6: Answering separately for each defendant, was the defendant negligent in producing or marketing the product?

Defendant (A): (Yes or No)

Defendant (B): (Yes or No)

Defendant (C): (Yes or No)

Defendant (D): (Yes or No)

Question 7: Was (plaintiff) negligent with respect to (his) (her) own safety?

Answer: _____

Yes or No

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

Question 8: Was the negligence of (plaintiff) a cause of (his) (her) injuries?

Answer: _____

Yes or No

If you answered Question 8 "yes," then answer Question 9. If you answered Question 8 "no," then go to Question 10.

Question 9: 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 6 "yes" | _____ % |
| (b) | (<u>Plaintiff</u>)? | _____ % |
| | TOTAL | 100% |

Before you answer Question 10, draw a line through those manufacturers or marketers of white lead carbonate to whom you did not answer "yes" in Question 6. As to the rest, answer Question 10.

Question 10: Regardless of your answer to 9(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 verdict was approved in 2011. A reporter's note was deleted in 2011. The verdict is tailored for use in a trial involving the ingestion of lead paint and can be adapted for claims involving other products. It is based on a claim for negligence. The verdict will need to be modified for a claim based on strict liability.

New Law. In 2011, the Wisconsin Legislature enacted Wis. Stat. § 895.046 (2011 Wisconsin Act 2) covering remedies against manufacturers, distributors, sellers, and promoters of products.

This new section, effective for actions commenced after January 31, 2011, recognizes two categories of actions against manufacturers and others in the stream of commerce: (1) actions involving specific product identification, and (2) actions without specific product identification.

The suggested verdict is structured for a case where the plaintiff presents evidence of specific product identification (i.e. a specific defendant (manufactured) (distributed) (sold) (promoted) the specific product alleged to have harmed plaintiff); and also evidence without specific product identification (i.e. risk contribution).

Risk Contribution. Under Wis. Stat. § 895.046(4), product liability attaches only if the plaintiff shows:

1. That no other lawful process exists for the claimant to seek any redress from any other person for the injury or harm.
2. That the claimant has suffered an injury or harm that can be caused only by a manufactured product chemically and physically identical to the specific product that allegedly caused the claimant's injury or harm.
3. That the manufacturer, distributor, seller, or promoter of a product manufactured, distributed, sold, or promoted a complete integrated product, in the form used by the claimant or to which the claimant was exposed, and that meets all of the following criteria:
 - a. Is chemically and physically identical to the specific product that allegedly caused the claimant's injury or harm.
 - b. Was manufactured, distributed, sold, or promoted in the geographic market where the injury or harm is alleged to have occurred during the time period in which the specific product that allegedly caused the claimant's injury or harm was manufactured, distributed, sold, or promoted.
 - c. Was distributed or sold without labeling or any distinctive characteristic that identified the manufacturer, distributor, seller, or promoter.

The plaintiff must also name manufacturers of at least 80% of all of the product sold in Wisconsin during the relevant time period. Section 895.046(5) establishes a 25-year statute of limitations from the date of last manufacture, distribution, sale, or promotion of the product and the date the plaintiff's claim occurred.