

1 **13-2222. Successive tortfeasors; sample verdict form; divisible injuries.**

2 On the questions submitted, the jury finds as follows:

3 Question No. 1: Were any of the following negligent?

| | | | |
|---|-------------|-------|-------|
| 4 | Answer: | Yes | No |
| 5 | Defendant 1 | _____ | _____ |
| 6 | Defendant 2 | _____ | _____ |
| 7 | Defendant 3 | _____ | _____ |
| 8 | Defendant 4 | _____ | _____ |

9 If the answer to Question No. 1 is "No" for each [person] [company] listed, you are not to
10 answer further questions. Your foreperson must sign this special verdict, which will be your verdict
11 for all defendants and against the plaintiff, and you will all return to open court.

12 If the answer to Question No. 1 is "Yes" as to at least one of the persons [or companies]
13 listed, you are to answer Question 2.

14 Question No. 2: For each [person] [company] you found negligent in response to Question
15 No. 1, was the negligence of that [person] [company] a cause of any injury or damage to the
16 plaintiff? For each [person] [company] you found not negligent in answer to Question No. 1, check
17 answer "Not applicable."

| Answer: | Yes | No | Not applicable |
|-------------|-------|-------|----------------|
| _____ | | | |
| Defendant 1 | _____ | _____ | _____ |
| Defendant 2 | _____ | _____ | _____ |
| Defendant 3 | _____ | _____ | _____ |
| Defendant 4 | _____ | _____ | _____ |

1 If you answered "No" or "Not applicable" as to each [person] [company] listed, you are not
2 to answer further questions. Your foreperson must sign this special verdict, which will be your
3 verdict for all defendants and against the plaintiff, and you will all return to open court. If you
4 answered "Yes" as to one or more of the parties listed, then you are to answer the next question.

5 Question No. 3: Do you find that the plaintiff was negligent?

6 Answer: _____ Yes _____ No

7 If you answered "No" then you should skip the next question, and your foreperson should
8 sign this verdict form, and you will now return to open court. After reviewing your answers to the
9 questions above, the court will give you additional questions to answer.

10 If you answered "Yes," then go to Question No. 4.

11 Question No. 4: Was the negligence of the plaintiff a cause of any injury or damages to
12 ~~[[himself] [herself]]~~ that plaintiff?

13 Answer: _____ Yes _____ No

14 Your foreperson should sign this verdict form, and you will now return to open court. After
15 reviewing your answers to the questions above, the court will give you additional questions to
16 answer.

Foreperson

17 **SUPPLEMENTAL QUESTIONS FOR USE WHEN**
18 **THERE IS NO NEED TO SUBMIT QUESTION OF**
19 **DIVISIBLE INJURIES TO THE JURY**

1 Question No. 5: Using the damage instructions given by the court, we find the total amount
2 of damages suffered by the plaintiff to be \$_____. (Here enter the total amount of
3 damages without any reduction for comparative negligence.)

4 Go to Question No. 6.

5 Question No. 6: Compare the negligence of the following persons and find a percentage
6 for each. The total of the percentages must equal 100%.

7 Answer:

| | |
|-----------------|---------|
| Defendant No. 1 | _____ % |
| Defendant No. 2 | _____ % |
| Plaintiff | _____ % |
| _____ | _____ |
| Total | 100% |

8 The court will multiply the percentage of negligence for each defendant by the plaintiff's
9 total damages. Then the court will enter judgment against each defendant and in favor of the
10 plaintiff in the proportion of damages for which each defendant is responsible.

Foreperson

11 **SUPPLEMENTAL QUESTIONS FOR USE WHEN THE**
12 **JURY MUST DETERMINE THE QUESTION OF**
13 **DIVISIBLE INJURIES**

1 Question No. 5: Using the court's instruction No. ___ regarding distinct injuries, did
2 _____ [(*the successive tortfeasor or tortfeasors*)] [_____ (*the original*
3 *tortfeasor or tortfeasors*)] cause an injury that is distinct from any [separate] [enhanced] [or]
4 [avoidable] injury caused by _____ [(*the original tortfeasor or tortfeasors*)]
5 [(*the successive tortfeasor or tortfeasors*)]?
6

6 Answer: _____ Yes _____ No

7 If the answer to Question No. 5 is "Yes," then skip Question Nos. 6 and 7 and answer
8 Question Nos. 8 - 11. If the answer to Question No. 5 is "No," then answer Question Nos. 6 and 7.

9 Question No. 6: Using the instructions on damages given by the court, we find the total
10 amount of damages suffered by the plaintiff to be \$_____. (*Here enter the total*
11 *amount of damages without any reduction for comparative negligence.*)

12 Go to Question No. 7.

13 Question No. 7: Compare the negligence of the following persons and find a percentage
14 for each. The total of the percentages must equal 100%.

15 Answer:

| | |
|-----------------|---------|
| Defendant No. 1 | _____ % |
| Defendant No. 2 | _____ % |
| Plaintiff | _____ % |
| _____ | _____ |
| Total | 100% |

1 The court will multiply the percentage of negligence for each defendant by the plaintiff's
2 total damages. The court will then enter judgment against each defendant and in favor of the
3 plaintiff in the proportion of damages for which each defendant is responsible.

4 **You are not to answer further questions.** Your foreperson should sign this verdict form
5 at the bottom, and you will return to open court.

6 _____
7 Foreperson

8 Question No. 8: Using the instructions given by the court, determine the damages suffered
9 by the plaintiff as a result of the negligence of _____ (*original tortfeasor or*
10 *tortfeasors*) and the damages suffered by the plaintiff as a result of the distinct or enhanced injury
11 caused by the negligence of _____ (*successive tortfeasor or tortfeasors*).

12 Answer:

 Damages caused by [original tortfeasor or tortfeasors] _____

 Damages caused by [successive tortfeasor or tortfeasors] _____

 Total damages(*must be the sum of the two numbers above*) _____

13 Go to Question No. 9.

14 Question No. 9: Compare the negligence of the following persons who contributed to the
15 separate damages caused by _____ (original tortfeasor or tortfeasors) and find
16 a percentage for each. The total of the percentages must equal 100%. [The percentage for the
17 plaintiff may be zero if the plaintiff was not negligent in causing the original injury to ~~[[himself]]~~
18 ~~[[herself]]~~ themselves.]

| | |
|-----------------|---------|
| Defendant No. 1 | _____ % |
| Defendant No. 2 | _____ % |
| Plaintiff | _____ % |
| _____ | _____ |
| Total | 100% |

1 Go to Question No. 10.

2 Question No. 10: Compare the negligence of the following persons who contributed to the
3 separate or enhanced injuries caused by _____ (*the successive tortfeasor or*
4 *tortfeasors*) and find a percentage for each. The total of the percentages must equal 100%. The
5 percentage for the plaintiff may be zero if you find the plaintiff was not negligent in causing the
6 separate or enhanced injury.

| | |
|-----------------|---------|
| Defendant No. 3 | _____ % |
| Defendant No. 4 | _____ % |
| Plaintiff | _____ % |
| _____ | _____ |
| Total | 100% |

7 The court will multiply the percentage of each defendant contributing to
8 _____ (*the original injury*) and _____ (*the successive*
9 *injury*) by the plaintiff's damages from each injury. The court will then enter judgment for the
10 plaintiff and against each defendant in the proportion of damages for which that defendant is
11 responsible.

Foreperson

1 USE NOTES

2 This sample verdict form is to be used when the trial court will present a second set of
3 questions to the jury, based on the jury's response to the initial set of questions. In simpler cases,
4 the trial court may prefer to use a single set of questions covering all issues.

5 When a case presents the potential that the jury will find that successive tortfeasors caused
6 separate and divisible injuries to the plaintiff, the jury should first be presented an initial set of
7 questions designed to permit the court to determine whether there is any need for the jury to make
8 the determination of divisibility. *Cf. Payne v. Hall*, 2006-NMSC-029, ¶ 44, 139 N.M. 659, 137
9 P.3d 599 (suggesting that the jury may need to be provided with alternative sets of instructions).
10 Unless the jury finds at least one defendant involved in the original injury to be liable and at least
11 one defendant involved in the subsequent injury to be liable, it is unnecessary to present the
12 question of divisibility to the jury because the defendants liable will be concurrent tortfeasors as
13 regards either the original or successive injuries. This sample special verdict form above asks the
14 jury to identify which parties were negligent and whether they caused injuries to the plaintiff.
15 Question No. 3 should only be included when there is evidence to support a finding of negligence
16 on the part of the plaintiff.

17 Once the jury has determined which defendants are liable, the court can decide whether
18 there is a need to allow the jury to determine whether injuries are divisible. If there is no such need,
19 the first set of supplemental set of questions allows the jury, as in a routine case, to determine the
20 plaintiff's total damages and then to compare the fault of each person who contributed to those

1 damages. If there is a need to allow the jury to determine whether damages arising from two
2 incidents are divisible, the second set of supplemental questions asks the jury to make that
3 determination. In the second supplemental set of instructions, if the jury determines the plaintiff's
4 injuries are not divisible, the jury then determines the plaintiff's total damages and compares the
5 negligence of all defendants who are liable. If the jury determines the injuries are divisible, the
6 jury determines the portion of damages attributable to each injury and then separately compares
7 the negligence of the parties responsible for the separate injuries.

8 In drafting a set of questions based on this sample verdict form, the court may find it more
9 convenient, depending on the context, to refer to the divisible injuries as either injuries caused by
10 a particular party (e.g., "injuries caused by Fred Johnson and Mark Jackson" or "injuries caused
11 by Dr. Smith or Dr. Wilger") or injuries related to a particular incident (e.g., "injuries received in
12 the automobile accident" or "injuries received at the hospital"). The method of shorthand that
13 works best for the particular case should be used consistently throughout the instructions to avoid
14 confusing the jury. The verdict form should be drafted to make clear that the damages and injuries
15 for which an award may be made are those caused by some fault of a defendant.

16 Because the supplemental sets of questions are to be presented to the jury only after the
17 jury determines which defendants are liable, the questions in the supplemental sets should be
18 customized to eliminate the names of parties the jury has already determined not to be liable.

19 This sample verdict form contains no question regarding the foreseeability of the risk of a
20 successive injury as a result of the original injury. It will usually be the case that the court will
21 decide this issue as a matter of law. *See Lewis v. Samson*, 2001-NMSC-035, ¶ 33, 131 N.M. 317,
22 35 P.3d 972 (imposing, "as a `positive rule of decisional law' the requirement of joint and several
23 liability upon the original tortfeasor for the original and enhanced injuries"). When the trial court

1 does not decide foreseeability as a matter of law, it may be necessary to draft an additional question
2 on this issue for the jury.

3 [Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008; as amended by
4 Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after
5 December 31, 2025.]

6 **Committee commentary.** — The trial court should be careful to use the sample verdict form as a
7 guide only. The sample form and exemplars in the Appendix reflect the state of the law at a
8 particular time and, as the Supreme Court acknowledged in *Payne v. Hall*, 2006-NMSC-029, ¶
9 2,139 N.M. 659, 137 P.3d 599, the legal issues surrounding successive tortfeasor liability continue
10 to evolve. The court and counsel, therefore, will want to be sure, when drafting successive
11 tortfeasor instructions, to be sensitive to the context of the particular case and any legal
12 developments after the drafting of these guides.

13 The sample form makes no attempt to inform the jury that a finding of divisibility may cause the
14 original tortfeasor to be jointly and severally liable with the successive tortfeasor for the distinct
15 injuries caused by the latter. The sample form assumes that the trial court will take into account
16 the consequences of the jury's finding on such issues as joint and several liability and indemnity
17 when entering judgment.