

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS-CIVIL  
PROPOSAL 2026-025**

**March 6, 2026**

The Uniform Jury Instructions-Civil Committee has recommended adoption of new Uniform Jury Instructions (UJIs) 13-2222A, 13-2222B, 13-2222C, and 13-2222D NMRA; amendments to UJIs 13-1802B, 13-1802C, 13-1802D, and 13-1802E NMRA; and withdrawal of UJI 13-2222 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
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**Your comments must be received by the Clerk on or before April 5, 2026**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

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**13-1802B. Suit against original tortfeasor; divisibility of injuries not in dispute or decided as a matter of law; ~~medical treatment~~].**

~~[In this case, if you find that \_\_\_\_\_ (one or more original tortfeasors) [was] [were] negligent and caused injury to the plaintiff, [he] [she] [it] [they] [is] [are] also responsible for any harm caused by medical care that the plaintiff’s injury reasonably required, even if the medical care was negligently performed.]~~

In this case, \_\_\_\_\_ (plaintiff) seeks to recover damages from \_\_\_\_\_ (original tortfeasor(s)/defendant(s)) for \_\_\_\_\_ (specify injury allegedly caused by original tortfeasor(s)/defendant(s)) and \_\_\_\_\_ (specify injury allegedly caused by successive tortfeasor(s)).

New Mexico law allows a plaintiff who was initially injured by the [negligence] [fault] of the defendant to recover damages caused by the initial injury and by any [enhanced] [or] [additional] injury resulting from [medical care that the plaintiff’s injury reasonably required, even if the medical care was negligently performed] [the [negligence] [fault] of another person].

In determining damages, you should award the plaintiff damages, if any, caused by the [negligence] [fault] of \_\_\_\_\_ (original tortfeasor(s)/defendant(s)) as well as any [enhanced] [or] [additional] damages caused by the [negligence] [fault] of \_\_\_\_\_ (successive tortfeasor(s)).

## USE NOTES

This instruction, intended to be a part of UJI 13-1802 NMRA, is to be given in a successive tortfeasor case where the successive tortfeasor is not a party and the court determines that the tortfeasor responsible for the original injury is also liable for ~~[the]~~ an enhanced or additional [harm] injury caused by subsequent medical treatment for the original injury or another successive tort. ~~[If, however, an enhanced injury is so remote in time or likelihood that its foreseeability may not be presumed as a matter of law, the jury would be required to determine the foreseeability of the injury before attributing the total damages to the original tortfeasor. See *Lewis v. Samson*, 2001-NMSC-035, ¶ 33, 131 N.M. 317, 35 P.3d 972.]~~

These instructions should be customized to refer to injuries and parties. The instructions should avoid the use of legal terms such as “successive tortfeasor” and “original injury,” which likely have little meaning to the jury.

The court will usually decide as a matter of law the foreseeability of the risk of a successive injury as a result of the original injury. See *Lewis v. Samson*, 2001-NMSC-035, ¶ 33, 131 N.M. 317, 35 P.3d 972 (imposing, “as a ‘positive rule of decisional law’ the requirement of joint and several liability upon the original tortfeasor for the original and enhanced injuries”). In cases involving medical care, the New Mexico Supreme Court has determined that, “[w]hen a person causes an injury to another which requires medical treatment, it is foreseeable that the treatment, whether provided properly or negligently, will cause additional harm.” *Lujan v. Healthsouth Rehab. Corp.*, 1995-NMSC-057, ¶ 14, 120 N.M. 422, 902 P.2d 1025. However, if an enhanced or additional injury is so remote in time or likelihood that its foreseeability may not be decided as a matter of law, the jury would be required to determine the foreseeability of the enhanced or additional injury before attributing the total damages to the original tortfeasor. See *Lewis*, 2001-NMSC-035, ¶ 33. When the trial court does not decide foreseeability as a matter of law, it may be necessary to draft additional language for use in this instruction.

[Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — The need to instruct the jury on successive tortfeasor principles arises when, as a result of a course of events set in motion by one tortfeasor, an act or omission of another causes injury “which can be causally apportioned on the basis [of] distinct harms.” NMSA 1978, § 41-3A-1(D). “Because successive-tortfeasor liability is an exception to the general rule of several liability among concurrent tortfeasors, the doctrine is limited to a ‘narrow class of cases,’ in which a plaintiff can show more than one distinct injury successively caused by more than one tortfeasor.” *Payne v. Hall*, 2006-NMSC-029, ¶ 36, 139 N.M. 659, 137 P.3d 599.

Throughout the successive tortfeasor instructions, UJI 13-1802B–E, the committee elected to use the terms “successive tortfeasor” and “original tortfeasor” to distinguish between types of defendants, even though the terms are being applied to defendants before any determination that any of them are liable for causing any injury. While it may not be technically correct to employ such terms prior to a determination of liability, the terms are employed for convenience and should be replaced with the names of the parties in the final instructions given to the jury.

[Adopted by Supreme Court Order No. \_\_\_\_\_.]

**13-1802C. ~~[Successive tortfeasor only defendant]~~ Suit against successive tortfeasor; [no question for jury on divisibility of injuries] divisibility not in dispute or decided as a matter of law.**

~~[In this case, the plaintiff says and has the burden of proving by the greater weight of the evidence that \_\_\_\_\_ (one or more successive tortfeasors) caused injuries that were separate and distinct from, or that caused a measurable worsening of, injuries the plaintiff received from \_\_\_\_\_ (the original injury).~~

~~In determining what damages, if any, were caused by \_\_\_\_\_ (the successive tortfeasor or tortfeasors), you should award the plaintiff compensation only for [the separate injury caused by \_\_\_\_\_ (the successive tortfeasor or tortfeasors)] [the measurable worsening of the plaintiff's condition caused by \_\_\_\_\_ (the successive tortfeasor or tortfeasors)] [harm that would have been avoided had \_\_\_\_\_ (the successive tortfeasor or tortfeasors) [not been negligent][acted within the standard of care]], but not for damages from \_\_\_\_\_ (the first or original injury).~~

~~In this case, \_\_\_\_\_ (plaintiff) seeks to recover damages from \_\_\_\_\_ (successive tortfeasor(s)/defendant(s)) for \_\_\_\_\_ (specify enhanced or additional injury allegedly caused by successive tortfeasor(s)/defendant(s)).~~

~~New Mexico law allows a plaintiff who was initially injured by the [negligence] [fault] of another person to recover damages from the defendant for any [enhanced] [or] [additional] injury caused by the [negligence] [fault] of the defendant.~~

~~In determining damages, you should only award the plaintiff damages, if any, resulting from [the injury caused by the [negligence] [fault] of \_\_\_\_\_ (successive tortfeasor(s)/defendant(s)) that is separate and distinct from the injury caused by \_\_\_\_\_ (original tortfeasor)] [the measurable worsening of the plaintiff's condition caused by the [negligence] [fault] of \_\_\_\_\_ (successive tortfeasor(s)/defendant(s))] [the harm to the plaintiff that would have been avoided had \_\_\_\_\_ (successive tortfeasor(s)/defendant(s)) not been [negligent] [at fault].~~

USE NOTES

This instruction, intended to be a part of UJI 13-1802 NMRA, should be used when there is no disagreement, or the court determines as a matter of law, that the successive tortfeasor(s), if liable, caused a separate or causally distinct injury and where the suit is brought only against alleged successive tortfeasor(s). When there is no jury question regarding divisibility of injuries and there are potential original and successive tortfeasors present, the trial court should use UJI 13-1802D NMRA in place of this instruction. This instruction should not be used in those cases presenting only an issue of preexisting injury but not involving successive torts. In those cases, the general language of UJI 13-1802 and the separate instruction on preexisting condition, UJI 13-1808 NMRA, provide guidance to the jury.

~~[These instructions should be customized to refer to injuries and parties. The instructions should avoid the use of legal terms such as "successive tortfeasor" and "original injury," which likely have little meaning to the jury.]~~

~~[Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]~~

~~[Committee commentary. — The need to instruct the jury on successive tortfeasor principles arises when, as a result of a course of events set in motion by one tortfeasor, an intervening act or omission of another causes injury "which can be causally apportioned on the~~

basis [of] distinct harms.” Paragraph D of Section 41-3A-1 NMSA 1978. “Because successive-tortfeasor liability is an exception to the general rule of several liability among concurrent tortfeasors, the doctrine is limited to a ‘narrow class of cases’, in which a plaintiff can show more than one distinct injury successively caused by more than one tortfeasor.” *Payne v. Hall*, 2006-NMSC-029, ¶ 36, 139 N.M. 659, 137 P.3d 599. In those cases where the parties stipulate, or the court determines as a matter of law that any injury caused by the defendant is either separate or causally distinct from injuries caused by the original tortfeasor or rendered the original injuries measurably worse, then there is no need to instruct the jury on the divisibility of injuries or the placement of the burden of proving distinct or enhanced injuries. In such cases, the damages instructions should focus the jury’s attention on the distinct or enhanced injuries caused by the defendant’s act or omission.

Throughout the successive tortfeasor instructions, the committee elected to use the terms “successive tortfeasor” and “original tortfeasor” to distinguish between types of defendants, even though the terms are being applied to defendants before any determination that any of them are liable for causing any injury. While it may not be technically correct to employ such terms prior to a determination of liability, the terms are employed for convenience and should be replaced with the names of the parties in the final instructions given to the jury.]

[Withdrawn by Supreme Court Order No. \_\_\_\_\_.]

**13-1802D. [~~Successive tortfeasors~~] Suit against original and successive tortfeasors; divisibility [of injury] not in dispute or decided as a matter of law.**

[In this case, if you find that \_\_\_\_\_ (*one or more original tortfeasors*) [was] [were] negligent and caused injury to the plaintiff, and \_\_\_\_\_ (*one or more successive tortfeasors*) [was] [were] negligent and caused injury to the plaintiff, you will first decide the amount of damages from \_\_\_\_\_ (*the original injury*) and you will then decide the amount of damages from \_\_\_\_\_ (*the successive injury*).

You will next compare the negligence of each person whose [negligence] [fault] contributed to the first injury. You will then compare the negligence of each person whose [negligence] [fault] contributed to the second injury.]

In this case, \_\_\_\_\_ (*plaintiff*) seeks to recover damages from \_\_\_\_\_ (*original tortfeasor(s)/defendant(s)*) for \_\_\_\_\_ (*specify original injury allegedly caused by original tortfeasor(s)/defendant(s)*) and from \_\_\_\_\_ (*successive tortfeasor(s)/defendant(s)*) for \_\_\_\_\_ (*specify enhanced or additional injury allegedly caused by successive tortfeasor(s)/defendant(s)*).

New Mexico law allows a plaintiff who was initially injured by the [negligence] [fault] of a defendant and then suffered an [enhanced] [or] [additional] injury caused by the [negligence] [fault] of another defendant to recover damages from both defendants.

In awarding damages, you will determine separately the amount of damages resulting from \_\_\_\_\_ (*specify original injury*) and the amount of damages resulting from \_\_\_\_\_ (*specify enhanced or additional injury*).

USE NOTES

This instruction is to be given in a successive tortfeasor case where the court determines or the parties agree that the case involves separate and distinct injuries and the case includes defendants who are potential original and successive tortfeasors.

These instructions should be customized to refer to injuries and parties. [The last paragraph of this instruction should be modified or deleted when there is only one original or only one

~~successive tortfeasor and it is not necessary to compare negligence.]~~ The instructions should avoid the use of legal terms such as “successive tortfeasor” and “original injury,” which likely have little meaning to the jury.

In drafting the verdict form, attorneys should take care that (1) the jury does not compare the negligence of tortfeasors who caused the original injury with the negligence of the tortfeasors who caused the second injury and (2) damages are separately determined. These principles are reflected in the exemplar verdict forms appearing in the Appendix.

[Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**13-1802E. [~~Successive tortfeasors~~] Suit against original and successive tortfeasors; divisibility [of injury is submitted to the jury] presents jury issue.**

~~[In this case, if you find that \_\_\_\_\_ (one or more original tortfeasors) negligently caused injury to the plaintiff and \_\_\_\_\_ (one or more successive tortfeasors) negligently caused injury to the plaintiff, then you will need to decide whether the plaintiff's injuries are divisible; or, in other words, whether the negligence of \_\_\_\_\_;~~

~~Alternative A: the \_\_\_\_\_ (successive tortfeasors) caused a separate injury or made the original injury measurably worse.~~

~~Alternative B: the \_\_\_\_\_ (original tortfeasor(s)) caused an injury that is separate, in nature or extent, from the injury(ies) caused by \_\_\_\_\_ (the successive tortfeasors).~~

~~If you find that the plaintiff's injuries are not divisible, then you will compare the negligence of all parties you find to be responsible for the injuries and each defendant will be responsible for its proportionate share of the plaintiff's damages.~~

~~If you find that the plaintiff suffered divisible injuries, then you will compare the negligence of each person whose [negligence/fault] contributed to \_\_\_\_\_ (the first injury) and then compare the negligence of each person whose [negligence/fault] contributed to \_\_\_\_\_ (the second injury).~~

~~\_\_\_\_\_ says that the plaintiff received injuries caused by [\_\_\_\_\_ (the original tortfeasor or tortfeasors)] [\_\_\_\_\_ (the successive tortfeasor or tortfeasors)] that are distinct from injuries caused by [\_\_\_\_\_ (the original tortfeasor or tortfeasors)] \_\_\_\_\_ therefore bears the burden of proving, by the greater weight of the evidence, both that the plaintiff received [an original injury] [a second injury] that is separate and distinct from [a second injury or from enhanced injuries] [the original injury] and the amount of damages and injuries from the separate injuries.]~~

~~In this case, \_\_\_\_\_ (plaintiff) seeks to recover damages from \_\_\_\_\_ (original tortfeasor(s)/defendant(s)) and from \_\_\_\_\_ (successive tortfeasor(s)/defendant(s)) for \_\_\_\_\_ (specify original injury allegedly caused by original tortfeasor(s)/defendant(s) and enhanced or additional injury allegedly caused by successive tortfeasor(s)/defendant(s)).~~

~~New Mexico law allows a plaintiff who was initially injured by the [negligence] [fault] of a defendant and then suffered an [enhanced] [or] [additional] injury caused by the [negligence] [fault] of another defendant to recover damages from both defendants.~~

In awarding damages, you will determine whether \_\_\_\_\_ (specify original injury to the plaintiff) and \_\_\_\_\_ (specify enhanced or additional injury to the plaintiff) can be divided because they are separate and distinct injuries or because the later injury made the original injury measurably worse.

If you find that the plaintiff's injuries can be divided, then you will determine separately the amount of damages resulting from each injury.

If you find that the plaintiff's injuries cannot be divided, then you will determine the total amount of damages resulting from the injuries in combination.

#### USE NOTES

This instruction should be given when successive torts are at issue and the jury is to decide whether the plaintiff has suffered divisible injuries.

~~[When suit is brought only against the original tortfeasor, this instruction should be drafted using "Alternative B" to ask the jury to determine whether the original tortfeasor caused injury that is separate and causally distinct from any injury caused by the successive tortfeasor. See *Payne v. Hall*, 2006-NMSC-028, 139 N.M. 659, 137 P.3d 599. However, in other cases, the issue will be framed using "Alternative A" as whether the successive tortfeasor caused an injury that is separate and distinct from an injury caused by the original tortfeasor. This issue is for the trial court. Accordingly, the terms "original" and "successive," describing the tortfeasors, are bracketed so that the order may be changed, depending on the trial court's determination of how to frame the question of divisibility.]~~

These instructions should be customized to refer to injuries and parties. The instructions should avoid the use of legal terms such as "successive tortfeasor" and "original injury," which likely have little meaning to the jury.

In drafting the verdict form, attorneys should take care that (1) the jury does not compare the negligence of tortfeasors who caused the original injury with the negligence of tortfeasors who caused the second injury and (2) damages are separately determined. These principles are reflected in the exemplar verdict forms appearing in the Appendix. ~~[The fourth paragraph of this instruction should be modified or deleted when there is only one successive tortfeasor and it is not necessary to compare negligence.]~~

[Approved by Supreme Court Order No. 07-8300-036, effective February 1, 2008; as amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — When there is conflicting evidence whether the plaintiff suffered injuries that may be separate and distinct, the jury must be permitted to decide the issue. *Payne v. Hall*, 2006-NMSC-029, ¶ 43, 139 N.M. 659, 137 P.3d 599 (“[W]hen the existence of causally-distinct, divisible injuries is not clear, then the question should be given to the jury to decide.”). If the injuries are divisible, the original tortfeasor is jointly and severally liable both for the original injury and for the subsequent injuries; the successive tortfeasor is liable only for the successive injury; and the original tortfeasor may be entitled to indemnification or comparative contribution from the successive tortfeasor. *Lujan v. Healthsouth Rehabilitation Corp.*, 1995-NMSC-057, ¶ 16, 120 N.M. 422, 427, 902 P.3d 1025[–1030 (1995)] (“In cases involving successive tortfeasors whose separate causal contributions to the plaintiff’s harm can be measured, the doctrine of joint and several liability applies ... to the enhanced portion of the injury.”); *Lewis v. Samson*, 2001-NMSC-035, ¶ 14, 131 N.M. 317, 35 P.3d 972 (determining medical provider would be liable for the entirety of an enhanced injury when the plaintiff successfully demonstrated

an enhanced injury and the degree of enhancement). This instruction is written on the assumption that the trial court will place the burden of proving divisible injuries on the party asserting divisibility, but the law on this point is not perfectly clear. *See Couch v. Astec Indus., Inc.*, 2002-NMCA-084, ¶ 34, 132 N.M. 631, 53 P.3d 398 (assuming without deciding that the plaintiff asserting enhanced injury bore burden of proof on the issue); *Lewis [v. Samson]*, 1999-NMCA-145, ¶ 83[, 128 N.M. 269, 992 P.2d 282] (Hartz, J., dissenting) (noting that who bears the burden of proving enhanced damages is not clear under New Mexico law), *rev'd on other grounds*, 2001-NMSC-035.

[As amended by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**[WITHDRAWN]**

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

On the questions submitted, the jury finds as follows:

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

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No  
 Defendant 1 \_\_\_\_\_  
 Defendant 2 \_\_\_\_\_  
 Defendant 3 \_\_\_\_\_  
 Defendant 4 \_\_\_\_\_

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

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

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

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

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

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

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

Question No. 4: Was the negligence of the plaintiff a cause of any injury or damages to that plaintiff?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

\_\_\_\_\_  
Foreperson

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

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

Go to Question No. 6.

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

Answer:

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

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

\_\_\_\_\_  
Foreperson

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

Question No. 5: Using the court's instruction No. \_\_\_ regarding distinct injuries, did \_\_\_\_\_ [(the successive tortfeasor or tortfeasors)] [\_\_\_\_\_ (the original tortfeasor or tortfeasors)] cause an injury that is distinct from any [separate] [enhanced] [or] [avoidable] injury caused by \_\_\_\_\_ [(the original tortfeasor or tortfeasors)] [(the successive tortfeasor or tortfeasors)]?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

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

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

Go to Question No. 7.

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

\_\_\_\_\_ Answer:

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

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

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

\_\_\_\_\_  
Foreperson

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

\_\_\_\_\_ Answer:

Damages caused by [original tortfeasor or tortfeasors]	_____
Damages caused by [successive tortfeasor or tortfeasors]	_____
Total damages ( <i>must be the sum of the two numbers above</i> )	_____

Go to Question No. 9.

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

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

Go to Question No. 10.

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

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

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

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Foreperson

#### USE NOTES

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

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

Once the jury has determined which defendants are liable, the court can decide whether there is a need to allow the jury to determine whether injuries are divisible. If there is no such need, the first set of supplemental set of questions allows the jury, as in a routine case, to determine the plaintiff's total damages and then to compare the fault of each person who contributed to those damages. If there is a need to allow the jury to determine whether damages arising from two incidents are divisible, the second set of supplemental questions asks the jury to make that determination. In the second supplemental set of instructions, if the jury determines the plaintiff's

injuries are not divisible, the jury then determines the plaintiff's total damages and compares the negligence of all defendants who are liable. If the jury determines the injuries are divisible, the jury determines the portion of damages attributable to each injury and then separately compares the negligence of the parties responsible for the separate injuries.

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

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

This sample verdict form contains no question regarding the foreseeability of the risk of a successive injury as a result of the original injury. It will usually be the case that the court will decide this issue as a matter of law. *See Lewis v. Samson*, 2001 NMSC 035, ¶ 33, 131 N.M. 317, 35 P.3d 972 (imposing, "as a positive rule of decisional law" the requirement of joint and several liability upon the original tortfeasor for the original and enhanced injuries). When the trial court does not decide foreseeability as a matter of law, it may be necessary to draft an additional question on this issue for the jury.]

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

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

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

[Withdrawn by Supreme Court Order No. \_\_\_\_\_.]

### **[NEW MATERIAL]**

#### **13-2222A. Successive tortfeasors; sample verdict form; suit against original tortfeasor(s); divisibility not in dispute.**

On the questions submitted, the jury finds as follows:

Question No. 1: Were any of the following [negligent] [at fault]?

Answer:        Yes    No  
 Defendant 1    \_\_\_\_\_  
 Defendant 2    \_\_\_\_\_  
 Defendant 3    \_\_\_\_\_  
 Defendant 4    \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 2.  
 If you answered “No” for each defendant listed above, you are not to answer further questions.  
 Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

Question No. 2:        For each defendant you found [negligent] [at fault] in response to Question No. 1, was the [negligence] [fault] of that defendant a cause of injury to the plaintiff? For each defendant you found not [negligent] [at fault] in answer to Question No. 1, check answer “Not Applicable.”

Answer:        Yes    No    Not Applicable  
 Defendant 1    \_\_\_\_\_  
 Defendant 2    \_\_\_\_\_  
 Defendant 3    \_\_\_\_\_  
 Defendant 4    \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 3.  
 If you answered “No” or “Not Applicable” for each defendant listed above, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

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

Answer:        \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” proceed to Question No. 4.

If you answered “No,” skip Question No. 4 and proceed directly to Question No. 5.

Question No. 4:        Was the negligence of the plaintiff a cause of injury to [himself] [herself] [themselves]?

Answer:        \_\_\_\_\_ Yes \_\_\_\_\_ No

Proceed to Question No. 5.

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

This amount must include damages resulting from any injury caused by the [negligence] [fault] of the defendants you found liable, in addition to damages resulting from [medical care that the plaintiff’s injury reasonably required, even if the medical care was negligently performed] [the [negligence] [fault] of another person].

Proceed to Question No. 6.

Question No. 6: Compare the [negligence] [fault] of the following persons and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff or any defendant may be zero if you found the plaintiff or defendant was not [negligent] [at fault] in causing injury to the plaintiff.

Answer:

Defendant 1	_____ %
Defendant 2	_____ %
Defendant 3	_____ %
Defendant 4	_____ %
Plaintiff	_____ %
Total	100%

The court will multiply the percentage of [negligence] [fault] for each defendant by the plaintiff's total damages. Then the court will enter judgment against each defendant and in favor of the plaintiff in the resulting amount for that defendant.

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Foreperson  
USE NOTES

The sample verdict forms at UJI 13-2222A–D, are intended for use in cases involving successive tortfeasor liability.

Where a suit is against the original tortfeasor(s) only, and divisibility is not in dispute or has been decided as a matter of law, UJI 13-2222A is appropriate. Where only one original tortfeasor is a defendant, only one defendant will be listed. Where multiple original tortfeasors are defendants, multiple defendants will be listed, and their negligence or fault may be compared—but only to the negligence or fault of the other original tortfeasors and, if appropriate, the plaintiff.

The amount of damages awarded, if any, must include damages resulting from the original injury and damages resulting from the additional or enhanced injury.

This sample verdict form contains no question regarding the foreseeability of the risk of a successive injury as a result of the original injury. The court will usually decide the foreseeability of the risk of a successive injury as a matter of law. *See Lewis v. Samson*, 2001-NMSC-035, ¶ 33, 131 N.M. 317, 35 P.3d 972 (imposing, “as a ‘positive rule of decisional law’ the requirement of joint and several liability upon the original tortfeasor for the original and enhanced injuries”). In cases involving medical care, the New Mexico Supreme Court has determined that, “[w]hen a person causes an injury to another which requires medical treatment, it is foreseeable that the treatment, whether provided properly or negligently, will cause additional harm.” *Lujan v. Healthsouth Rehab. Corp.*, 1995-NMSC-057, ¶ 14, 120 N.M. 422, 902 P.2d 1025. If an enhanced or additional injury is so remote in time or likelihood that its foreseeability may not be decided as a matter of law, it may be necessary to draft an additional question on this issue for the jury.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**Committee commentary.** — The sample verdict forms at UJI 13-2222A–D reflect the state of the law at a particular time and, as the Supreme Court acknowledged in *Payne v. Hall*, 2006-NMSC-029, ¶ 2, 139 N.M. 659, 137 P.3d 599, the legal issues surrounding successive tortfeasor liability continue to evolve. The court and counsel, therefore, will want to be sure, when drafting successive tortfeasor instructions, to be sensitive to the context of the particular case and any legal developments after the drafting of these guides.

[Adopted by Supreme Court Order No. \_\_\_\_\_.]

**[NEW MATERIAL]**

**13-2222B. Successive tortfeasors; sample verdict form; suit against successive tortfeasor(s); divisibility not in dispute.**

On the questions submitted, the jury finds as follows:

Question No. 1: Were any of the following [negligent] [at fault]?

Answer:	Yes	No
Defendant 1	_____	_____
Defendant 2	_____	_____
Defendant 3	_____	_____
Defendant 4	_____	_____

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 2.

If you answered “No” for each defendant listed above, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

Question No. 2: For each defendant you found [negligent] [at fault] in response to Question No. 1, was the [negligence] [fault] of that defendant a cause of the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff’s condition]? For each defendant you found not [negligent] [at fault] in answer to Question No. 1, check answer “Not Applicable.”

Answer:	Yes	No	Not Applicable
Defendant 1	_____	_____	_____
Defendant 2	_____	_____	_____
Defendant 3	_____	_____	_____
Defendant 4	_____	_____	_____

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 3.

If you answered “No” or “Not Applicable” for each defendant listed above, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

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

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” proceed to Question No. 4.

If you answered “No,” skip Question No. 4 and proceed directly to Question No. 5.

Question No. 4: Was the negligence of the plaintiff a cause of [his] [her] [their] [additional injury] [enhanced injury] [the worsening of the plaintiff’s condition]?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

Proceed to Question No. 5.

Question No. 5: Using the damage instructions given by the court, we find the total amount of damages suffered by the plaintiff to be \$\_\_\_\_\_. (*Here*

enter the total amount of damages without any reduction for comparative negligence.)

This amount must include only damages resulting from the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff's condition] caused by the [negligence] [fault] of the defendants you found liable. It must not include damages resulting from any separate and distinct original injury caused by \_\_\_\_ (*original tortfeasor*).

Proceed to Question No. 6.

Question No. 6: Compare the [negligence] [fault] of the following persons and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff or any defendant may be zero if you found the plaintiff or defendant was not [negligent] [at fault] in causing the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff's condition].

Answer: Defendant 1 \_\_\_\_\_ %  
Defendant 2 \_\_\_\_\_ %  
Defendant 3 \_\_\_\_\_ %  
Defendant 4 \_\_\_\_\_ %  
Plaintiff \_\_\_\_\_ %  
Total 100%

The court will multiply the percentage of [negligence] [fault] for each defendant by the plaintiff's total damages. Then the court will enter judgment against each defendant and in favor of the plaintiff in the resulting amount for that defendant.

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Foreperson

USE NOTES

Where a suit is against the successive tortfeasor(s) only, and divisibility is not in dispute or has been decided as a matter of law, UJI 13-2222B is appropriate. Where only one successive tortfeasor is a defendant, only one defendant will be listed. Where multiple successive tortfeasors are defendants, multiple defendants will be listed, and their negligence or fault may be compared—but only to the negligence or fault of the other successive tortfeasors and, if appropriate, the plaintiff.

The amount of damages awarded, if any, must include only damages resulting from the enhanced or additional injury caused by the successive tortfeasor(s). It may not include damages resulting from any initial injury caused by an original tortfeasor.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**[NEW MATERIAL]**

**13-2222B. Successive tortfeasors; sample verdict form; suit against successive tortfeasor(s); divisibility not in dispute.**

On the questions submitted, the jury finds as follows:

Question No. 1: Were any of the following [negligent] [at fault]?

Answer: Yes No

Defendant 1 \_\_\_\_\_  
 Defendant 2 \_\_\_\_\_  
 Defendant 3 \_\_\_\_\_  
 Defendant 4 \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 2.  
 If you answered “No” for each defendant listed above, you are not to answer further questions.  
 Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

Question No. 2: For each defendant you found [negligent] [at fault] in response to Question No. 1, was the [negligence] [fault] of that defendant a cause of the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff’s condition]? For each defendant you found not [negligent] [at fault] in answer to Question No. 1, check answer “Not Applicable.”

Answer: Yes No Not Applicable  
 Defendant 1 \_\_\_\_\_  
 Defendant 2 \_\_\_\_\_  
 Defendant 3 \_\_\_\_\_  
 Defendant 4 \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 3.  
 If you answered “No” or “Not Applicable” for each defendant listed above, you are not to answer further questions. Your foreperson must sign this special verdict, which will be your verdict for all defendants and against the plaintiff, and you will all return to open court.

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

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

If you answered “Yes,” proceed to Question No. 4.

If you answered “No,” skip Question No. 4 and proceed directly to Question No. 5.

Question No. 4: Was the negligence of the plaintiff a cause of [his] [her] [their] [additional injury] [enhanced injury] [the worsening of the plaintiff’s condition]?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

Proceed to Question No. 5.

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

This amount must include only damages resulting from the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff’s condition] caused by the [negligence] [fault] of the defendants you found liable. It must not include damages resulting from any separate and distinct original injury caused by \_\_\_\_ (*original tortfeasor*).

Proceed to Question No. 6.

Question No. 6: Compare the [negligence] [fault] of the following persons and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff or any defendant may be zero if you found the plaintiff or defendant was not [negligent] [at fault] in causing the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff's condition].

Answer: Defendant 1 \_\_\_\_\_ %  
Defendant 2 \_\_\_\_\_ %  
Defendant 3 \_\_\_\_\_ %  
Defendant 4 \_\_\_\_\_ %  
Plaintiff \_\_\_\_\_ %  
Total 100%

The court will multiply the percentage of [negligence] [fault] for each defendant by the plaintiff's total damages. Then the court will enter judgment against each defendant and in favor of the plaintiff in the resulting amount for that defendant.

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Foreperson  
USE NOTES

Where a suit is against the successive tortfeasor(s) only, and divisibility is not in dispute or has been decided as a matter of law, UJI 13-2222B is appropriate. Where only one successive tortfeasor is a defendant, only one defendant will be listed. Where multiple successive tortfeasors are defendants, multiple defendants will be listed, and their negligence or fault may be compared—but only to the negligence or fault of the other successive tortfeasors and, if appropriate, the plaintiff.

The amount of damages awarded, if any, must include only damages resulting from the enhanced or additional injury caused by the successive tortfeasor(s). It may not include damages resulting from any initial injury caused by an original tortfeasor.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]

**[NEW MATERIAL]**

**13-2222C. Successive tortfeasors; sample verdict form; suit against original and successive tortfeasors; divisibility not in dispute.**

On the questions submitted, the jury finds as follows:

Original Injury to Plaintiff

Question No. 1: Were any of the following defendants (*original tortfeasors only*) [negligent] [at fault]?

Answer:        Yes    No  
Defendant 1    \_\_\_\_\_  
Defendant 2    \_\_\_\_\_  
Defendant 3    \_\_\_\_\_  
Defendant 4    \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 2.

If you answered “No” for each defendant listed above, skip Question Nos. 2–5 and proceed directly to Question No. 6.

Question No. 2: For each defendant you found [negligent] [at fault] in response to Question No. 1, was the [negligence] [fault] of that defendant a cause of the original injury to the plaintiff? For each defendant you found not [negligent] [at fault] in answer to Question No. 1, check answer “Not Applicable.”

Answer: Yes No Not Applicable

Defendant 1 \_\_\_\_\_

Defendant 2 \_\_\_\_\_

Defendant 3 \_\_\_\_\_

Defendant 4 \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 3.

If you answered “No” for each defendant listed above, skip Question Nos. 3–5 and proceed directly to Question No. 6.

Question No. 3: Do you find that the plaintiff was negligent and that [his] [her] [their] negligence was a cause of [his] [her] [their] original injury?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

Proceed to Question No. 4.

Question No. 4: Using the damage instructions given by the court, we find the total amount of damages suffered by the plaintiff resulting from [his] [her] [their] original injury alone to be: \$ \_\_\_\_\_. (*Here enter the total amount of damages resulting from the original injury alone without any reduction for comparative negligence.*)

Proceed to Question No. 5.

Question No. 5: Compare the [negligence] [fault] of the following persons in causing the original injury to the plaintiff, and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff or any defendant may be zero if you found the plaintiff or defendant was not [negligent] [at fault] in causing the original injury to the plaintiff.

Answer:

Defendant 1	_____	%
Defendant 2	_____	%
Defendant 3	_____	%
Defendant 4	_____	%
Plaintiff	_____	%
Total	_____	100%

The court will multiply the percentage of each defendant contributing to the plaintiff’s original injury by the plaintiff’s related damages. Then the court will enter judgment against each defendant and in favor of the plaintiff in the resulting amount for that defendant.

Proceed to Question No. 6.

[Enhanced] [Additional] Injury to Plaintiff

Question No. 6: Were any of the following defendants (*successive tortfeasors only*) [negligent] [at fault]?

Answer: Yes No  
Defendant 5 \_\_\_\_\_  
Defendant 6 \_\_\_\_\_  
Defendant 7 \_\_\_\_\_  
Defendant 8 \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 7.  
If you answered “No” for each defendant listed above, you are not to answer further questions.  
Your foreperson must sign this special verdict and you will all return to open court.

Question No. 7: For each defendant you found [negligent] [at fault] in response to Question No. 6, was the [negligence] [fault] of that defendant a cause of the [additional injury to the plaintiff] [enhanced injury to the plaintiff] [worsening of the plaintiff’s condition]? For each defendant you found not [negligent] [at fault] in answer to Question No. 6, check answer “Not Applicable.”

Answer: Yes No Not Applicable  
Defendant 5 \_\_\_\_\_  
Defendant 6 \_\_\_\_\_  
Defendant 7 \_\_\_\_\_  
Defendant 8 \_\_\_\_\_

If you answered “Yes” for at least one defendant listed above, proceed to Question No. 8.  
If you answered “No” for each defendant listed above, you are not to answer further questions.  
Your foreperson must sign this special verdict and you will all return to open court.

Question No. 8: Do you find that the plaintiff was negligent and that [his] [her] [their] negligence was a cause of [his] [her] [their] [additional injury] [enhanced injury] [the worsening of the plaintiff’s condition]?

Answer: \_\_\_\_\_ Yes \_\_\_\_\_ No

Proceed to Question No. 9.

Question No. 9: Using the damage instructions given by the court, we find the total amount of damages suffered by the plaintiff resulting from the [additional injury] [enhanced injury] [the worsening of the plaintiff’s condition] alone to be: \$\_\_\_\_\_. (*Here enter the total amount of damages resulting from the [additional injury] [enhanced injury] [worsening of the plaintiff’s condition] alone without any reduction for comparative negligence.*)

Proceed to Question No. 10.

Question No. 10: Compare the [negligence] [fault] of the following persons in causing [additional injury to the plaintiff] [enhanced injury to the plaintiff] [the worsening of the plaintiff’s condition], and find a percentage for each. The total of the percentages must equal 100%. The percentage for the plaintiff or any defendant may be zero if you found the plaintiff or defendant was



If you answered “No,” use Special Verdict Form B. Do not answer any question in Special Verdict Form A.

[Adopted by Supreme Court Order No. \_\_\_\_\_, effective for all cases pending or filed on or after \_\_\_\_\_.]