

13-1802D. 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.

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.]