

**13-302B. Statement of factual contentions of plaintiff(s), causation and burden of proof.**

To establish \_\_\_\_\_ (*theory of recovery by name, e.g., negligence*) on the part of [a] defendant(s), the plaintiff(s) [has] [have] the burden of proving [at least one of] [each of] the following:

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(NOTE: List by number each claimed act, omission, or condition, etc., referenced to specific defendant(s), which is supported by substantial evidence and that remains at issue.)

The plaintiff(s) [has] [have] the burden of proving that such \_\_\_\_\_ (*theory of recovery by name*) was a cause of the [injuries and] damages.

**USE NOTE**

It is important to note that, unless two or more contentions must be proved, each numbered contention must contain a statement of facts which, standing alone, establishes a breach of duty, e.g., "Unguarded gears were in a condition not substantially changed from the condition in which (the supplier) placed the product on the market or in which (the supplier) could have reasonably expected it to be used, and this condition presented an unreasonable risk of injury to the plaintiff who was a person whom (the supplier) could reasonably have expected to use the product for the purpose or in the manner it was being used at the time of the injury". If "supplier", "change in condition", or "foreseeability" have not been contested, then those elements would be false issues, and the statement of the contention would simply be that "The unguarded gears presented an unreasonable risk of injury".

If there are no alternative contentions, a compound contention may be stated under the "each of the following contentions" format, e.g.:

1. The unguarded gears presented an unreasonable risk of injury.
2. They were in a condition not substantially changed from the condition in which (the supplier) placed the product on the market or in which (the supplier) could have reasonably expected it to be used.
3. The plaintiff was a person whom (the supplier) could reasonably have expected to use the product for the purpose or in the manner it was being used at the time of the injury".

The "each of the following contentions" format is specifically designed for claims that have several essential elements, e.g., defamation, which cannot be stated well in a single compound contention. Very special care must be taken in developing an instruction that presents alternative contentions, each of which are stated in the "each of the following contentions" format, i.e., "at least one of" the contentions, each of which requires proof of "each of" the stated elements.

Where multiple contentions are not common to two or more defendants, the alternative "[a] defendant" and "[applicable to that defendant]" are to be used.

As an acceptable alternative to listing all contentions against multiple defendants under a single paragraph introducing contentions, this instruction may be drafted with a separate introductory paragraph for each defendant. (See Example B, *infra*.)

Because each contention must state facts which show a breach of duty, it is not sufficient to state, e.g., "Defendant was driving 30 miles per hour" or "Defendant struck

plaintiff's car". Rather, the contention should state that "Defendant was driving 30 miles per hour which was an unsafe speed under the circumstances" or "Defendant struck plaintiff's car because he failed to keep a proper lookout".  
[As amended, March 1, 2005.]