

13-1802C. Successive tortfeasor only defendant; no question for jury on divisibility of injuries.

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*).

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, if liable, caused a separate or causally distinct injury and where the suit is brought only against alleged successive tortfeasors. 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.]