CHAPTER NINE

NEGLIGENCE — COMPARATIVE NEGLIGENCE

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Instruction No. 9.1

NEGLIGENCE — ELEMENTS OF LIABILITY

A party claiming damages has the burden of proving each of the following propositions:

First, that [he/she] has sustained injury;

Second, that the party from whom [he/she] seeks to recover was negligent;

And, third, that such negligence was a direct cause of the injury sustained by the claiming party.

Comments

The Committee considers use of the word "proximate" in these instructions to be of virtually no assistance to a jury. The earlier Oklahoma Bar Committee on Uniform Instructions (1969) recommended "proximate" be dropped and "cause" not be defined. Kansas allows either "proximate cause" or "direct cause." Missouri used "direct result" and Minnesota "direct cause." In order not to change the Oklahoma requisites of legal cause, the Committee recommends an instruction consistent with the traditional definition of proximate cause, using instead the adjective "direct" (see Instruction 9.6, "Direct Cause — Definition"). In W. Page Keeton et al., Prosser & Keeton on the Law of Torts § 42 at 273 (5th ed. 1984), the authors state, "The term 'proximate' is a legacy of Lord Chancellor Bacon, who in his time committed other sins." The Committee believes Oklahoma juries should at last be relieved of this his Lordship's indiscretion.

Instruction No. 9.2

NEGLIGENCE — DEFINED

Since this lawsuit is based on the theory of negligence, you must understand what the terms "negligence" and "ordinary care" mean in the law with reference to this case.
"Negligence" is the failure to exercise ordinary care to avoid injury to another's person or property. "Ordinary care" is the care which a reasonably careful person would use under the same or similar circumstances. The law does not say how a reasonably careful person would act under those circumstances. That is for you to decide. Thus, under the facts in evidence in this case, if a party failed to do something which a reasonably careful person would do, or did something which a reasonably careful person would not do, such party would be negligent.

**Comments**


In a professional malpractice case, the trial court should substitute the appropriate professional designation (e.g., physician, nurse, attorney, etc.) in place of "person" in the definition of ordinary care.

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**Instruction No. 9.3**

**ORDINARY CARE — DEFINED**

Ordinary care is the care which a reasonably careful person would use under the same or similar circumstances.

**Notes on Use**

This instruction should be used when "ordinary care" is used in another instruction but needs further definition. It should not be used with Instruction No. 9.2, which already has a definition of ordinary care.
Instruction No. 9.4

**CHILD’S CAPACITY FOR NEGLIGENCE**

In deciding whether [Name of Child] was negligent, you must first determine whether a child of [his/her] age was capable of being negligent. To do so, you should take into account that:

[Select the appropriate instruction from the following:]  

[For children between 7 and 14 years old] — A child between 7 and 14 years old is presumed not to be capable of being negligent, but may be shown to be capable of negligence. Since [Name of Child] was ____ years old at the time of the accident, you are to presume that [he/she] was not capable of being negligent. This presumption may be overcome, though, and the [Name of Other Party] has the burden of proving by the greater weight of the evidence that [Name of Child] was capable of negligence.

[For children 14 years and older] — A child 14 years old or older is presumed to be capable of being negligent, but may be shown not to be capable of negligence. Since [Name of Child] was ____ years old at the time of the accident, you are to presume that [he/she] was capable of being negligent. This presumption may be overcome, though, and [Name of Child] has the burden of proving by the greater weight of the evidence that [he/she] was not capable of negligence.

If you decide that [Name of Child] was capable of being negligent, you must then determine whether [he/she] was negligent in this case.

**Notes on Use**

Instruction No. 9.4 and 9.4A are both concerned with the negligence of children and should normally be given together along with the definition of negligence in Instruction No. 9.2. Instruction No. 9.4 deals with the issue whether a particular child is
capable of negligent conduct. If the jury determines that the child has the capacity for negligence, then it must decide whether the child was negligent on a specific occasion using the standard in Instruction Nos. 9.2 and 9.4A. Although a child may be charged with negligence as a defendant, more frequently a child will come to the court as a plaintiff and be charged with contributory negligence by the defense.

The trial court should select the appropriate instruction for the child’s age. Lack of capacity for negligence is subject to a rebuttable presumption for children between 7 and 14 years, and to no presumption for children 14 years and older.

Since children under 7 years old are conclusively presumed to lack capacity for negligence, the issue of a child’s negligence should not be presented to the jury if the child is less than 7 years old. Consequently, there is no option given in the Instruction to cover children under 7. If there are multiple children involved in a case and some of them are under 7 and some are over 7, it may be helpful for the court to inform the jury that it may not find the children who are under 7 to be negligent.

Comments

The Oklahoma Supreme Court appears to recognize the traditional distinctions with respect to negligence for children of differing ages that are borrowed from the criminal law. See 21 O.S. 1991 § 152 (children under 7 are incapable of committing crimes; children between 7 and 14 are presumed incapable of committing crimes in the absence of proof otherwise). But see Prosser & Keeton, Law of Torts 180 (5th ed. 1984) (criticizing traditional distinctions).

A child less than 7 years old is conclusively presumed incapable of negligence as a matter of law. Thomas v. Gilliam, 1989 OK 59, ¶ 3, 774 P.2d 462, 466 (“A child under the age of seven years or, in the absence of evidence establishing capacity, one between the ages of seven and fourteen years, is presumed incapable of negligence.”) (Simms, J., dissenting) (emphasis in original); McClelland v. Post No. 1201, VFW, 1989 OK 33, 770 P.2d 569, 572 n.8 (dictum); Strong v. Allen, 1989 OK 17, ¶ 4, 768 P.2d 369, 372 (“At common law, as it stands in Oklahoma today, a child under seven years of age is conclusively presumed to be incapable of any negligence.”) (Opala, J., dissenting) (emphasis in original); Hampton By and Through Hampton v. Hammons, 1987 OK 77, ¶ 30, 743 P.2d 1053, 1061 (“A child of tender years is generally considered incapable of negligence.”); Connor v. Houtman, 1960 OK 52, ¶ 9, 350 P.2d 311, 313 (“[T]he majority of courts hold that an infant under 5 years of age is incapable of negligence.”). Children between 7 and 14 years old are presumed incapable of negligence. Thomas v. Gilliam,
supra; McClelland v. Post No. 1201, VFW, supra; Strong v. Allen, supra, 768 P.2d at 372 n.1 ("At common law, as well as in Oklahoma, ..., in the absence of evidence establishing capacity, [a child] between the ages of seven and fourteen years, is presumed incapable of negligence"). See also Knowles v. Tripledee Drilling Co., Inc., 1989 OK 40, ¶ 4, 771 P.2d 208, 210, where the Oklahoma Supreme Court described the distinctions based on the ages of children in the context of the attractive nuisance doctrine, as follows: 
"[C]hildren under the age of 7 years and, in the absence of evidence of capacity, those children between 7 and 14 years of age have been presumed to be incapable of contributory negligence ...."

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**Instruction No. 9.4A**

**CHILDREN — STANDARD OF CARE**

Children are under a duty to use that degree of care which children of like age, experience, and intelligence are accustomed to use under similar circumstances to protect [themselves/others] from injury.

**Notes on Use**

The alternative "themselves" or "others" is to be used according to whether the minor party is alleged to have been negligent or contributorily negligent. If the minor party is alleged to have been both, then the instruction should read "themselves and others."

**Comments**

In *Federer v. Davis*, 1967 OK 208, ¶ 8, 434 P.2d 197, 199, the Oklahoma Supreme Court prescribed a child's standard of care as follows: "[T]he only standard of care the law fixes for determining [a minor's] negligence, or lack of it, in a children's activity (as distinguished from an adult activity) is that degree of care exercised by children of like age, mental capacity, and experience." The usual standard of care required of children as set out in this instruction does not apply to a minor operating a motor vehicle, *Baxter v. Fugett*, 1967 OK 72, ¶ 9, 425 P.2d 462, 464 (Okla. 1967); see Notes on Use, Instruction 10.6, "Duty of Care of Minor Operating Motor Vehicle."
Instruction No. 9.5

**Volunteer — Duty Of Care**

One who voluntarily assumes the care of another who is not capable of caring for [himself/herself] is under a duty to act as a reasonably careful person would under similar circumstances.

**Notes on Use**

In certain situations this instruction may not be applicable, as where the "Good Samaritan Act" is applicable.

**Comments**

Good Samaritan Act, 76 O.S.1991 § 5.

Instruction No. 9.6

**Direct Cause — Definition**

Direct cause means a cause which, in a natural and continuous sequence, produces injury and without which the injury would not have happened. For negligence to be a direct cause it is necessary that some injury to [the property of] a person in [Plaintiff's] situation must have been a reasonably foreseeable result of negligence.

**Notes on Use**

Use Instruction 9.7, "Concurrent Causes," if there is evidence that the injury may have been produced by two or more concurrent causes.

**Comments**

*Atherton v. Devine*, 1979 OK 132, ¶ 4, 602 P.2d 634, 636: "Foreseeability is an essential element of proximate cause in Oklahoma, and it is the standard by which proximate cause, as distinguished from the existence of a mere condition, is to be tested." *Buxton v. Hicks*, 191 Okla. 573, 576, 131 P.2d 1015, 1018-19 (1942); Osborne M. Reynolds, Jr., *Proximate Cause — What if the Scales Fell in Oklahoma?*, 28 Okla. L.
The Committee considers use of the word "proximate" in the Instruction to be of virtually no assistance to a jury. The earlier Oklahoma Bar Committee on Uniform Instructions (1969) recommended "proximate" be dropped and "cause" not be defined. Kansas allows either "proximate cause" or "direct cause." Missouri uses "direct result" and Minnesota "direct cause." In order not to change the Oklahoma requisites of legal cause, the Committee recommends an instruction consistent with the traditional definition of proximate cause, using instead the adjective "direct." In W. Page Keeton et al., Prosser & Keeton on the Law of Torts § 42 at 273 (5th ed. 1984), the authors state, "The term `proximate' is a legacy of Lord Chancellor Bacon, who in his time committed other sins." The Committee believes Oklahoma juries should at least be relieved of this his Lordship's indiscretion.

Instruction No. 9.7

**CONCURRENT CAUSES**

There may be more than one direct cause of an injury. When an injury is the result of the combined negligence of two or more persons, the conduct of each person is a direct cause of the injury regardless of the extent to which each contributes to the injury.

Instruction No. 9.8

**INTERVENING CAUSE — DEFINITION**

An intervening cause is one that interrupts or breaks the connection between a defendant's act [or omission] and a plaintiff's injury. [Defendant's] act [or omission] would not be the direct cause of [Plaintiff's] injury if another event intervened between the two and that event was:
1. Independent of [Defendant's] act [or omission];

2. Adequate by itself to cause [Plaintiff's] injury; and

3. Not reasonably foreseeable by [Defendant].

Comment

This Instruction is revised in accordance with Strong v. Allen, 1989 OK 17, ¶ 10, 768 P.2d 369, 371 (father's negligence was not the supervening cause of injuries to his two year old child), and Thompson v. Presbyterian Hosp., Inc., 1982 OK 87, ¶ 17, 652 P.2d 260, 264-65 (negligence of anesthesiologist was supervening cause of patient's injuries). See also Henry v. Merck & Co., Inc., 877 F.2d 1489, 1494-97 (10th Cir. 1989) (criminal acts of stealing sulphuric acid and throwing it on the plaintiff were a supervening cause of plaintiff's injuries).

Instruction No. 9.8A

LIABILITY FOR ADDITIONAL INJURIES BY OTHER PERSONS

If you find by the greater weight of the evidence that [Defendant] is liable to [Plaintiff], then [Defendant] is also liable for any additional injuries caused by the normal efforts of [Specify Provider of Medical or Other Care] in providing aid/treatment that [Plaintiff] reasonably required [even if the aid itself was provided in a negligent manner].

OR

If you find by the greater weight of the evidence, that [Defendant] is liable to [Plaintiff], then [Defendant] is also liable for any additional injury from a second accident that would not have happened except for the original injury and also was a normal consequence of the original injury.
Notes on Use

The first alternative in this Instruction should be used in cases such as *Atherton v. Devine*, 1979 OK 132, 602 P.2d 634, where the plaintiff received additional injuries when the ambulance in which he was being transported from the original accident was involved in another accident, or where a plaintiff suffers additional injuries while being treated in a hospital, see *Shadden v. Valley View Hosp.*, 1996 OK 140, 915 P.2d 364. The bracketed clause at the end of the first alternative should be used only if there is evidence of any negligence by the provider of medical or other care.

The second alternative should be used if the plaintiff suffered additional injuries from a second accident that was a consequence of the original accident.

Committee Comments

This Instruction is based on *Restatement (Second) of Torts* §§ 457, 460 (1965), and the Oklahoma Supreme Court's holding in *Atherton v. Devine*, 1979 OK 132, ¶ 7, 602 P.2d 634, 637, imposing liability "against the original tortfeasor for efforts of third persons in rendering aid which resulted in additional injury to the victim."

(2008 Supp.)

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Instruction No. 9.8B

LIABILITY FOR INCREASED HARM - PRODUCTS LIABILITY
If you find by the greater weight of the evidence that the [Specify Product] was defective and that the defect was a contributing factor in increasing the harm to [Plaintiff] beyond what was due to other causes, then [Defendant] is liable for the increased harm.

If you are able to separate the harm that was due to the other causes from the increased harm from the defect, [Defendant] is liable only for the increased harm from the defect.

But if you are not able to separate the harm that was due to the other causes from the increased harm from the defect, [Defendant] is liable for all the harm to [Plaintiff].

[Defendant] has the burden of proving by the greater weight of the evidence, that the increased harm from the defect can be separated from the harm due to the other causes.

**Notes on Use**

This Instruction to be used for second impact cases, such as *Lee v. Volkswagen of Am., Inc.*, 1984 OK 48, 688 P.2d 1283. It should only be used where there is an issue whether the plaintiff’s injury is separable into multiple injuries with different causes or not, and it is not needed for cases where it is clear that there is only a single injury to the plaintiff. *See Johnson v. Ford Motor Co.*, 2002 OK 24, ¶¶ 15-17, 45 P.3d 86, 92-93 (omission of instruction that defendant was liable only for enhanced injuries due to defect was not reversible error where the plaintiff’s claim was that the defect caused his injuries, rather than that the defect enhanced his injuries, and therefore instructions on causation were adequate).

**Committee Comments**

This Instruction is based on Restatement (Third) of Torts: Products Liability § 16 (1998).
Instruction No. 9.8C

LIABILITY FOR INCREASED HARM - NEGLIGENCE

If you find by the greater weight of the evidence that [Defendant] was negligent and that [Defendant]'s negligence was a contributing factor in increasing the harm to [Plaintiff] beyond what was due to other causes, then [Defendant] is liable for the increased harm.

If you are able to separate the harm that was due to the other causes from the increased harm from [Defendant]'s negligence, [Defendant] is liable only for the increased harm from [Defendant]'s negligence.

But if you are not able to separate the harm that was due to the other causes from the increased harm from [Defendant]'s negligence, [Defendant] is liable for all the harm to [Plaintiff].

[Defendant] has the burden of proving by the greater weight of the evidence, that the increased harm from [Defendant]'s negligence can be separated from the harm due to the other causes.

Notes on Use

This Instruction should be used for cases where the liability for increased harm is based on negligence, rather than products liability. Like the preceding Instruction, this Instruction should only be used where there is an issue whether the plaintiff's injury is
separable into multiple injuries with different causes or not, and it is not needed for cases where it is clear that there is only a single injury to the plaintiff. See Johnson v. Ford Motor Co., 2002 OK 24, ¶¶ 15-17, 45 P.3d 86, 92-93 (omission of instruction that defendant was liable only for enhanced injuries due to defect was not reversible error where the plaintiff’s claim was that the defect caused his injuries, rather than that the defect enhanced his injuries, and therefore instructions on causation were adequate).

**Committee Comments**

This Instruction is derived from Restatement (Third) of Torts: Products Liability § 16 (1998).

(2008 Supp.)

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**Instruction No. 9.9**

**RESCUE DOCTRINE**

One who rescues or attempts to rescue a person from a dangerous situation and incurs injury either to [his/her] person or [his/her] property caused as a result thereof, may recover for such injury from the person who has negligently caused [himself/herself] [another] to be in the dangerous situation.

**Comments**

Instruction No. 9.10

NEGLIGENCE PER SE — VIOLATION OF STATUTE OR ORDINANCE

In addition to the duty to exercise ordinary care there are also duties imposed by statutes/ordinances. If you find that a person violated [any one of] the following statutes/ordinances and the violation was the direct cause of the injury, then such violation in and of itself would make such person negligent. There was in force and effect in [Oklahoma/(the City of ________)] at the time of the occurrence the following statutes/ordinances:

[State statute or city ordinance]

Comments

Shoopman v. Travelers Ins. Co., 1974 OK 6, ¶ 12, 518 P.2d 1108, 1110-11; Gasko v. Gray, 1972 OK 141, ¶ 23, 507 P.2d 1231, 1235; Garner v. Myers, 1957 OK 224, ¶ 5, 318 P.2d 410, 413; Tulsa Fruit Co. v. Lucas, 208 Okla. 166, 170-71, 254 P.2d 788, 792-93 (1953). See Boyles v. Oklahoma Natural Gas Co., 1980 OK 163, ¶ 14, 619 P.2d 613, 618 (Okla. 1980): "The violation of an ordinance is to be deemed negligence per se if the injury complained of (a) was caused by the ordinance's violation, (b) was of the type intended to be prevented by the ordinance and (c) the injured party was one of the class meant to be protected by the ordinance." (footnotes omitted)

Instruction No. 9.11

CONDUCT IN COMPLIANCE WITH STATUTE OR ORDINANCE

Compliance with requirements of the [statute/ordinance] does not excuse one from the duty to exercise ordinary care.

Comments

Instruction No. 9.12

**Unknowning Violation of Statute or Ordinance**

It is not a defense to an alleged act of negligence that a person was unaware that this conduct constituted a violation of a [statute/ordinance].

Instruction No. 9.13

**Res Ipsa Loquitur — Inference of Negligence**

In addition to the rules which have been stated with respect to negligence, there are situations in which a jury may, but is not required to, find negligence from the mere fact that the accident occurred.

[Plaintiff] contends that this case involves such a situation, and consequently has the burden of proving each of the two following propositions:

1. That the injury was caused by [(name of the instrumentality)/(description of the act or omission)] which [was/(has been)] under the exclusive control and management of [Defendant].

2. That the event causing the injury to [Plaintiff] was of a kind which ordinarily does not occur in the absence of negligence on the part of the person [(in control of the instrumentality)/(responsible for the act or omission)].

If you find that each of these propositions is more probably true than not true, then you are permitted, but not required, to find that [Defendant] was negligent.

**Comment**

Instruction No. 9.14

ASSUMPTION OF RISK

[Plaintiff] assumed the risk of injury resulting from [Defendant's] negligence if [he/she] voluntarily exposed [himself/herself] to injury with knowledge and appreciation of the danger and risk involved. To establish this defense, [Defendant] must show by the weight of the evidence that:

1. [Plaintiff] knew of the risk and appreciated the degree of danger;
2. [Plaintiff] had the opportunity to avoid the risk;
3. [Plaintiff] acted voluntarily; and
4. [Plaintiff]'s action was the direct cause of [his/her] injury.

Notes on Use

In order to give this Instruction the court must determine that there is evidence in the record of either 1) an express agreement by the plaintiff to assume the risk of injury, 2) a pre-existing relation between the defendant and plaintiff that alters the normal duty of care that the defendant would otherwise owe to the plaintiff, or 3) the plaintiff's consent to an injury that the plaintiff knew and appreciated.

Comment

In Thomas v. Holliday By and Through Holliday, 1988 OK 116, ¶¶ 9-10, 764 P.2d 165, 170-71, the Oklahoma Supreme Court defined the contours of the defense of assumption of risk in a comparative negligence scheme. The Court emphasized that assumption of risk is a defense distinct from contributory negligence. The touchstone of assumption of risk is consent to harm. It requires either "an express agreement, a pre-existing status between the defendant and plaintiff, or an element of consent to the
harm that is known and appreciated by the plaintiff." 1988 OK 116, ¶ 10, 764 P.2d at 171.

An example of an express agreement involving an assumption of risk would be a release of liability for negligence given by a race car driver to a raceway. See Valeo v. Pocono Int'l Raceway, Inc., 500 A.2d 492 (Pa. Super. 1985) (agreement exculpating sponsor of race and owner of track did not contravene public policy). Many express agreements that purport to relieve a party of liability for negligence are unenforceable as against public policy, however. See Oklahoma Natural Gas Co. v. Appel, 266 P.2d 442, 447 (Okla. 1953) ("[A] public service corporation serving natural gas under its franchise cannot contract against its own negligence."); Oklahoma City Hotel Co. v. Levine, 116 P.2d 997 (Okla. 1941) (statement on back of luggage check that hotel would not be liable for more than $25 on account of its negligence was contrary to public policy and void); Restatement (Second) of Contracts § 195 (1979).

The most common illustration of a pre-existing status that would give rise to assumption of risk would be participation as a player in a sports activity or attendance as a fan at a sports event. Otherwise, there must be a showing that the plaintiff voluntarily consented to being exposed to a danger that he knew and appreciated.

Contributory negligence, on the other hand, is conduct by the plaintiff that falls below the standard of care that the plaintiff should exercise for his own protection and that is a legal cause of the injury. The test for contributory negligence relies on an objective standard of conduct that falls below the degree of care which would be exercised by a reasonable person.

What is in actuality lack of due care or heedlessness on the part of a plaintiff is often mislabeled assumption of risk. A plaintiff who is merely careless may be subject to a defense of contributory negligence, but the assumption of risk defense would not apply. In the Thomas case, for example, the plaintiff was a security guard who attempted to stop the defendant from driving away by jumping on the side of the defendant's car while it was moving. The Oklahoma Supreme Court held that while the plaintiff may have been contributarily negligent or even reckless, there was no basis for concluding that the plaintiff consented to being thrown from the car, and therefore, an instruction on assumption of risk was not warranted. Thomas, 1988 OK 116, ¶ 11, 764 P.2d at 171.
Instruction No. 9.15

NEGLIGENCE OF DRIVER NOT IMPUTABLE TO PASSENGER

Should you find negligence on the part of the driver of the vehicle in which [Plaintiff] was riding, that negligence cannot be charged to [Plaintiff] to prevent or reduce recovery by [him/her] for injury [he/she] may have sustained as a result of the combined negligence, if any, of [Defendant] and the driver.

Notes on Use

This instruction should not be given when there is sufficient evidence of another relationship on the basis of which the negligence or comparative negligence of the driver may be imputed to the passenger, e.g., agency, joint venture.

Comments


Instruction No. 9.16

NEGLIGENCE OF PARENT NOT IMPUTABLE TO CHILDREN

Should you find negligence on the part of a parent of [Plaintiff], that negligence cannot be charged to the child to prevent or reduce [his/her] recovery for injury [he/she] may have sustained as a result of the combined negligence, if any, of [Defendant] and that parent.

Notes on Use

This instruction should not be given when there is sufficient evidence of another relationship on the basis of which the parent's negligence may be imputable to the child, e.g., agency, joint venture.
Comments


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**Instruction No. 9.17**

**COMPARATIVE NEGLIGENCE NOT A DEFENSE TO WILLFUL AND WANTON OR INTENTIONAL CONDUCT**

You are instructed that negligence is not a defense to conduct that is either willful and wanton or intentional. Therefore, if you find that the conduct of [Defendant] was willful and wanton or intentional, then you shall use the Blue Verdict Form and not reduce the amount of [Plaintiff]'s damages on account of any negligence of [Plaintiff].

[The conduct of [Defendant] was willful and wanton if [Defendant] was either aware, or did not care, that there was a substantial and unnecessary risk that [his/her/its] conduct would cause serious injury to others. In order for the conduct to be willful and wanton, it must have been unreasonable under the circumstances, and also there must have been a high probability that the conduct would cause serious harm to another person.]

[[Defendant]'s conduct was intentional if he/she desired to cause injury to [Plaintiff] or knew that such injury was substantially certain to result from [his/her] conduct.]

**Comments**

The Oklahoma Supreme Court held in *Graham v. Keuchel*, 1993 OK 6, ¶ 52, 847 P.2d 342, 363, that a "jury must be instructed that while ordinary negligence may be used as a defense against gross negligence, it may not be considered as a defense against any form of conduct found to be willful and wanton or intentional."
Instruction No. 9.18

**COMPARATIVE NEGLIGENCE: ONE DEFENDANT — DEFINITION**

As a part of [his/her] defense, [Defendant] first denies that any negligence on [his/her] part was the direct cause of the occurrence involved in this lawsuit and any resulting injuries to [Plaintiff]. [Defendant] further contends that if, however, the jury should find that [he/she] was negligent to some degree, then it is [his/her] contention that [Plaintiff's] own negligence exceeded [Defendant's] negligence, so as to prevent any recovery by [Plaintiff] in this lawsuit. To establish this defense, [Defendant] must show by the greater weight of the evidence that [Plaintiff] was negligent and [his/her] negligence was a direct cause of [his/her] injury.

Under the law you are to compare the percentage (0%—100%) of negligence of [Plaintiff], if any, with the percentage (0%—100%) of negligence of [Defendant], if any.

The law provides that contributory negligence, which means the negligence of [Plaintiff], shall not bar recovery of damages unless such negligence of [Plaintiff] is of a greater degree, established by percentage, than the negligence of [Defendant].

The percentage (0%-100%) of negligence you find for each party should be stated in the appropriate verdict form, unless you find that [Plaintiff] or [Defendant] was free from negligence. The verdict forms have been color-coded to assist you.

**Notes on Use**

When the case involves only one plaintiff and one defendant, the following instructions must be given:

9.18 Comparative Negligence — One Defendant — Definition.

9.22 Advice Concerning Color–Coded Verdict Forms.

9.23 Blue Verdict Form — For Plaintiff — Directions.

9.27 Pink Verdict Form — For Defendant — Directions.
9.32 White Verdict Form — Comparative — One Defendant — Direction.

9.37 Blue Verdict Form — For Plaintiff.

9.40 Pink Verdict Form — For Defendant.

9.44 White Verdict Form — Comparative — One Defendant.

Because a defense of comparative negligence presents the possibility of more than one cause of the injury, the trial judge should always instruct on concurrent causes. See Instruction 9.7, supra.

Comments


Instruction No. 9.19

**COMPARATIVE NEGLIGENCE: MULTIPLE DEFENDANTS — DEFINITION**

As a part of their defense, [names of Defendants] first deny that any negligence on their part was the direct cause of the occurrence involved in this lawsuit and any resulting injuries to [Plaintiff]. [Names of Defendants] further contend that if, however, the jury should find that any of them were negligent to some degree, then it is their contention that [Plaintiff’s] own negligence exceeded the negligence of [names of Defendants], so as to prevent any recovery by [Plaintiff] in this lawsuit. To establish this defense, [names of Defendants] must show by the greater weight of the evidence that [Plaintiff] was negligent and [his/her] negligence was a direct cause of [his/her] injury.

Under the law you are to compare the percentage (0%—100%) of negligence of [Plaintiff], if any, with the percentage (0%—100%) of negligence of [names of Defendants], if any.

The law provides that contributory negligence, which means the negligence of [Plaintiff], shall not bar recovery of damages unless [his/her] negligence is of a greater
degree, established by percentage, than the total combined negligence of [names of Defendants] causing the damage.

The percentage (0%—100%) of negligence you find for each party should be stated in the appropriate verdict form. The verdict forms have been color-coded to assist you.

Notes on Use

When the case involves one plaintiff and two or more defendants the following instructions must be given:

9.19 Comparative Negligence; Multiple Defendants — Definition.
9.22 Advice Concerning Color–Coded Verdict Forms.
9.24 Blue Verdict Form, For Plaintiff — Multiple Defendants — Directions.
9.28 Pink Verdict Form, For Multiple Defendants — Directions.
9.33 White Verdict Form, Comparative, Two Defendants — Directions.

or

9.34 White Verdict Form, Comparative, Multiple Defendants — Directions.
9.39 Blue Verdict Form, For Plaintiff; Multiple Defendants.
9.41 Pink Verdict Form, For Multiple Defendants.
9.45 White Verdict Form, Comparative, Two Defendants.

or

9.46 White Verdict Form, Comparative, Multiple Defendants.

Because a defense of comparative negligence presents the possibility of more than one cause of the injury, the trial judge should always instruct on concurrent causes. See Instruction 9.7, supra.

Comments

Instruction No. 9.20

**COMPARATIVE NEGLIGENCE: COUNTERCLAIM PLEAD — DEFINITION**

As a part of [his/her] defense, [Defendant] first denies that any negligence on [his/her] part was the direct cause of the occurrence involved in this lawsuit and any resulting injuries to [Plaintiff]. [Defendant] further contends that if, however, the jury should find that [he/she] was negligent to some degree, then it is [his/her] contention that [Plaintiff’s] own negligence exceeded [Defendant's] negligence, so as to prevent any recovery by [Plaintiff] in this lawsuit. To establish this defense, [Defendant] must show by the greater weight of the evidence that [Plaintiff] was negligent and [his/her] negligence was a direct cause of [his/her] injury.

As you have been previously advised in these instructions, by way of counterclaim filed in this lawsuit, [Defendant] seeks to be awarded money damages from [Plaintiff] because of this same occurrence. As a part of [his/her] defense to [Defendant's] counterclaim, [Plaintiff] first denies that any negligence on [his/her] part was the direct cause of the occurrence and any resulting injuries to [Defendant]. [Plaintiff] further contends that if, however, the jury should find that [he/she] was negligent to some degree, then it is [his/her] contention that [Defendant's] own negligence exceeded [Plaintiff's] negligence, so as to prevent any recovery by [Defendant] in this lawsuit. To establish this defense, [Plaintiff] must show by the greater weight of the evidence that [Defendant] was negligent and [his/her] negligence was a direct cause of [his/her] injury.

Under the law you are to compare the percentage (0%—100%) of negligence of [Plaintiff], if any, with the percentage (0%—100%) of negligence of [Defendant], if any.

The law provides that [Defendant's] contributory negligence, which means the negligence of [names of the Defendant counterclaimants], shall not bar recovery of
damages on the counterclaims unless [his/her/their] negligence is of a greater degree, established by percentage, than the negligence of [Plaintiff].

The percentage (0%—100%) of negligence you find for each party should be stated in the appropriate verdict form. The verdict forms have been color-coded to assist you.

**Notes on Use**

When the case involves a defendant's counterclaim the following instructions must be given:

9.20 Comparative Negligence — Counterclaim Plead — Definition.
9.22 Advice Concerning Color-Coded Verdict Forms.
9.25 Blue Verdict Form, For Plaintiff — Counterclaim — Direction.
9.30 Pink Verdict Form, For Defendant — Counterclaim — Direction.
9.31 Green Verdict Form, For Neither — Counterclaim — Direction.
9.35 White Verdict Form, Comparative — Counterclaim — Direction.
9.38 Blue Verdict Form, For Plaintiff — Counterclaim.
9.42 Pink Verdict Form, For Defendant — Counterclaim.
9.43 Green Verdict Form, For Neither — Counterclaim.
9.47 White Verdict Form, Comparative — Counterclaim.

Because a defense of comparative negligence presents the possibility of more than one cause of the injury, the trial judge should always instruct on concurrent causes. *See Instruction 9.7, supra.*

**Comments**

Instruction No. 9.21

**COMPARATIVE NEGLIGENCE: NON–PARTY INVOLVED — DEFINITION**

As a part of [his/her] defense, [Defendant] first denies that any negligence on [his/her] part was the direct cause of the occurrence involved in this lawsuit and any resulting injuries to [Plaintiff]. [Defendant] further contends that if, however, the jury should find that [he/she] was negligent to some degree, then it is [his/her] contention that [Plaintiff's] own negligence exceeded [Defendant's] negligence, so as to prevent any recovery by [Plaintiff] in this lawsuit. To establish this defense, [Defendant] must show by the greater weight of the evidence that [Plaintiff] was negligent and [his/her] negligence was a direct cause of [his/her] injury.

[Defendant] further contends that the negligence of ______________ , who is not a party to this lawsuit but about whom you have heard testimony in this trial, was the direct cause of the occurrence, or at least had some causal connection with it.

Under the law you are to compare the percentage (0%—100%) of negligence of [Plaintiff], if any, with the percentage (0%—100%) of negligence of [Defendant], if any, and the percentage (0%—100%) of negligence of [name of the non–party], if any.

The law provides that contributory negligence, which means the negligence of [Plaintiff], shall not bar recovery of damages unless [his/her] negligence is of a greater degree, established by percentage, than the total combined negligence of [Defendant] and [name of the non–party].

The percentage (0%—100%) of negligence you find for each [party, person or entity] should be stated in the appropriate verdict form. The verdict forms have been color–coded to assist you.
Notes on Use

When the case involves one plaintiff, one defendant, and one or more non–parties, the following instructions must be given:

9.21 Comparative Negligence; Non–Party Involved — Definition.
9.22 Advice Concerning Color–Coded Verdict Forms.
9.26 Blue Verdict Form, For Plaintiff — Non–Party Involved — Directions.
9.29 Pink Verdict Form, For Defendant — Non–Party Involved — Directions.
9.36 White Verdict Form, For Comparative — Non–Party Involved — Directions.
9.37 Blue Verdict Form, For Plaintiff — Non–Party Involved.
9.40 Pink Verdict Form, For Defendant — Non–Party Involved.
9.48 White Verdict Form, Comparative — Non–Party Involved.

Because a defense of comparative negligence presents the possibility of more than one cause of the injury, the trial judge should always instruct on concurrent causes. See Instruction 9.7, supra.

Comments


Instruction No. 9.22

Advice Concerning Color–Coded Verdict Forms

Only one of several possible verdicts may be the ultimate conclusion reached by this jury. In order to facilitate your deliberations, the options available to you under the facts of this case are set out on color–coded verdict forms.

The next succeeding instructions will explain the various verdict forms and instruct you under what circumstances each form is applicable.
Instruction No. 9.23

**BLUE VERDICT FORM, FOR PLAINTIFFS — DIRECTIONS**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the negligence of [Defendant], and not by any contributory negligence on the part of [Plaintiff], then you shall use the Blue Verdict Form and find in favor of [Plaintiff]. If you so find, [Plaintiff] is entitled to recover the full amount of any damages which you may find [Plaintiff] has sustained as a result of the occurrence.

**Comments**

Under 12 O.S.1991 § 2004(B), a judgment is no longer limited to the amount of the demand in the pleadings, and 12 O.S.1991 § 2008(A)(2) provides that pleadings in many types of cases should not include demands for specific amounts of money.

Instruction No. 9.24

**BLUE VERDICT FORM, FOR PLAINTIFFS — MULTIPLE DEFENDANTS — DIRECTIONS**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the negligence of one or more of the Defendants and not by any contributory negligence on the part of [Plaintiff], then you shall use the Blue Verdict Form and find in favor of [Plaintiff] against one or more of the Defendants. If you so find, [Plaintiff] is entitled to recover the full amount of any damages which you may find Plaintiff has sustained as a result of the occurrence.

**Comments**

This Instruction should be used only if the action accrued before November 1, 2011, or was brought by or on behalf of the State of Oklahoma. See 23 O.S.2011, § 15. Instruction 9.33 or 9.34 should be used instead of this Instruction for all other actions.

*(2014 Supp.)*
**Instruction No. 9.25**

**BLUE VERDICT FORM, FOR PLAINTIFF: COUNTERCLAIM PLEAD — DIRECTIONS**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the negligence of [Defendant], and not by any contributory negligence on the part of [Plaintiff], then you shall use the Blue Verdict Form and find in favor of [Plaintiff] on his petition and against the Defendant on his counterclaim. If you so find, [Plaintiff] is entitled to recover the full amount of any damages which you may find [Plaintiff] has sustained as a result of the occurrence.

**Comments**

See Comments to Instruction No. 9.23.

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**Instruction No. 9.26**

**BLUE VERDICT FORM, FOR PLAINTIFF: NON–PARTY INVOLVED — DIRECTIONS**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the negligence of [Defendant], or was directly caused by the negligence of both [Defendant] and [Name of Non-Party], and not by any contributory negligence on the part of [Plaintiff], then you shall use the Blue Verdict Form and find in favor of [Plaintiff]. If you so find, [Plaintiff] is entitled to recover the full amount of any damages which you may find [Plaintiff] has sustained as a result of the occurrence.

**Comments**

This Instruction should be used only if the action accrued before November 1, 2011, or was brought by or on behalf of the State of
Oklahoma. See 23 O.S. 2011, § 15. Instruction 9.36 should be used instead of this Instruction for all other actions.

(2014 Supp.)

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**Instruction No. 9.27**

**PINK VERDICT FORM, FOR ONE DEFENDANT — DIRECTIONS**

If you find the occurrence with which this lawsuit is concerned was directly caused by the contributory negligence of [Plaintiff], and not by the negligence on the part of [Defendant], or, if you find that [Plaintiff] has failed to prove [Defendant] was negligent, then you shall use the Pink Verdict Form and find in favor of [Defendant].

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**Instruction No. 9.28**

**PINK VERDICT FORM, FOR MULTIPLE DEFENDANTS — DIRECTIONS**

If you find the occurrence with which this lawsuit is concerned was directly caused by the contributory negligence of [Plaintiff], and not by any negligence on the part of either [names of Defendants], or, if you find that [Plaintiff] has failed to prove that either [names of Defendants] was negligent, then you shall use the Pink Verdict Form and find in favor of [names of Defendants].
Instruction No. 9.29

**Pink Verdict Form, For Defendant; Non-Party Involved — Directions**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the contributory negligence of [Plaintiff], and not by any negligence on the part of [Defendant], or, if you find that [Plaintiff] has failed to prove that [Defendant] was negligent, then you shall use the Pink Verdict Form and find in favor of [Defendant].

In this connection you are advised that no specific finding need be made by you as to [name of non-party], since [he/she/it] is not a party to this lawsuit.

Instruction No. 9.30

**Pink Verdict Form, For Defendant on Counterclaim — Directions**

If you find that the occurrence with which this lawsuit is concerned was directly caused by the contributory negligence of [Plaintiff], and not by any negligence on the part of [Defendant], then you shall use the Pink Verdict form and find in favor of [Defendant], on [his/her/its] counterclaim and against [Plaintiff] on [his/her/its] petition. If you so find, [Defendant] is entitled to recover the full amount of any damages which you may find [Defendant] has sustained as a result of the occurrence.

Comments

See Comments to Instruction No. 9.23.
Instruction No. 9.31

**GREEN VERDICT FORM, FOR NEITHER PLAINTIFF NOR DEFENDANT — COUNTERCLAIM — DIRECTIONS**

If you find that the occurrence with which this lawsuit is concerned was not directly caused by the negligence of either [Plaintiff] or [Defendant], or if you find that neither party has proved that the other party was negligent, then you shall use the Green Verdict Form.

This form permits you to find in favor of [Defendant] on [Plaintiff's] petition and in favor of [Plaintiff] on [Defendant's] counterclaim. In other words, by using this form you will have determined that neither party may recover from the other.

Instruction No. 9.32

**WHITE VERDICT FORM, COMPARATIVE, ONE DEFENDANT — DIRECTIONS**

If you find that the occurrence was directly caused by the negligence of [Defendant] and the contributory negligence of [Plaintiff], then you shall use the White Verdict Form, and you must determine the percentages of their negligence.

You will note that the White Verdict Form first requires that you fill in some percentage of negligence for both the Plaintiff and the Defendant. These percentages must total one hundred percent (100%).

If the figure you fill in as the percentage of negligence of [Plaintiff] is greater than the figure that you insert as the percentage of negligence of [Defendant], then [Plaintiff] is not entitled to recover any damages. In this event, you need not fill in the space provided for the amount of Plaintiff’s damages, and you should sign and return the verdict as explained later in these instructions.
If, on the other hand, the figure you fill in as the percentage of negligence of [Plaintiff] is equal to or smaller than the one you insert as the percentage of negligence of [Defendant], then you shall proceed, as the verdict form directs, to fill in the total amount of damages which you find were sustained by [Plaintiff]. As the verdict form advises, in determining this damages figure, you should completely disregard the respective percentages of negligence which you have fixed for [Plaintiff] and [Defendant]. When you have filled in this damages figure, you should then properly sign and return the verdict.

You are instructed, in this latter event, that whatever dollar amount you insert as the damages sustained by [Plaintiff] will be reduced by the Court by that percentage of negligence which you have attributed to [Plaintiff].

**Instruction No. 9.33**

**White Verdict Form, Comparative, Two Defendants — Directions**

If you find that the occurrence was directly caused by the negligence of either or both of [names of the Defendants], then you shall use the White Verdict Form and you must determine the percentage of each party's negligence.

This White Verdict Form requires that you fill in some percentage of negligence for [Plaintiff], if you find that [Plaintiff] was contributorily negligent, and then requires that you fill in some percentage of negligence for either or both Defendants, if you find that either or both of them were negligent. These figures must total one hundred percent (100%), and may range from 0% to 100%.

If the figures you fill in as the percentage of negligence of [Plaintiff] is greater than the combined total of the figures you insert as the percentage of negligence of [names of the Defendants], then [Plaintiff] is not entitled to recover any damages. In this event, you need not fill in the space provided for the amount of Plaintiff’s damages, and you should sign and return the verdict as explained later in these instructions.
If, on the other hand, the figure you fill in as the percentage of negligence of [Plaintiff] is equal to or smaller than the combined total of the figures you insert as the percentages of negligence of either or both of the Defendants, then you shall proceed, as the verdict form directs, to fill in the total amount of damages which you find were sustained by [Plaintiff]. As the verdict form advises, in determining this damages figure, you should completely disregard the respective percentages of negligence which you have fixed for the parties.

You are instructed that if you use the White Verdict Form, whatever dollar amount you insert as the damages sustained by [Plaintiff] will be reduced by the Court by that percentage of negligence which you have attached to [him/her] and that the amount of damages for which each of the Defendants will be liable will be limited to that percentage of negligence which you have attached to each of them.

**Notes on Use**

This Instruction should be used for civil actions accruing after November 1, 2011.

**Comments**

This Instruction assumes that the “amount of damages allocated to that tortfeasor” in 23 O.S. § 15 refers to the percentage of negligence determined by the jury.

*(2014 Supp.)*
Instruction No. 9.34

**WHITE VERDICT FORM, COMPARATIVE, MULTIPLE DEFENDANTS — DIRECTIONS**

If you find that the occurrence was directly caused by the negligence of any or all of [names of the Defendants], then you shall use the White Verdict Form and you must determine the percentage of each party's negligence.

This White Verdict Form requires that you fill in some percentage of negligence for [Plaintiff], if you find that [Plaintiff] was contributorily negligent, and then requires that you fill in some percentage of negligence for all of the Defendants, if you find that any or all of them were negligent. These figures must total one hundred percent (100%), and may range from 0% to 100%.

If the figures you fill in as the percentage of negligence of [Plaintiff] is greater than the combined total of the figures you insert as the percentages of negligence of the Defendants, then [Plaintiff] is not entitled to recover any damages. In this event, you need not fill in the space provided for the amount of Plaintiff's damages, and you should sign and return the verdict as explained later in these instructions.

If, on the other hand, the figure you fill in as the percentage of negligence of [Plaintiff] is equal to or smaller than the combined total of the figures you insert as the percentages of negligence of the Defendants, then you shall proceed, as the verdict form directs, to fill in the total amount of damages which you find were sustained by [Plaintiff]. As the verdict form advises, in determining this damages figure, you should completely disregard the respective percentages of negligence which you have fixed for the parties.

You are instructed that if you use the White Verdict Form, whatever dollar amount you insert as the damages sustained by [Plaintiff] will be reduced by the Court by that percentage of negligence which you have attached to [him/her] and that the
amount of damages for which each of the Defendants will be liable will be limited to that percentage of negligence which you have attached to each of them.

(2014 Supp.)

Instruction No. 9.35

**WHITE VERDICT FORM, COMPARATIVE, COUNTERCLAIM — DIRECTIONS**

If you find that the occurrence was directly caused by the negligence of both [Plaintiff] and [Defendant] you shall use the White Verdict Form and you must determine the percentages of their negligence. You will note that this White Verdict Form requires that you fill in some percentage of negligence for the Plaintiff and Defendant. These percentages must total one hundred percent (100%).

If the figure you fill in as the percentage of negligence of [Plaintiff] is smaller than the percentage of negligence that you insert as that of [Defendant], then you shall proceed, as the verdict form directs, to fill in the total amount of damages which you find were sustained by [Plaintiff]. If on the other hand, the figure you fill in as the percentage of negligence of [Plaintiff] is greater than the figure that you insert as the percentage of negligence of [Defendant], then [Plaintiff] is not entitled to recover any damages on [his/her] petition and you should in that event disregard the blank space provided for Plaintiff’s damages and proceed, as the verdict form directs, to fill in that blank space provided for the Defendant's damages.

If you insert a figure of fifty percent (50%) as Plaintiff's negligence and fifty percent (50%) as Defendant's negligence, then each party is entitled to recover from the other. You should in that event, as the verdict form directs, proceed to fill in the blank space provided for both the Plaintiff’s and Defendant's damages.
As the verdict form advises in determining the damages figure for either [Plaintiff] or [Defendant] you should completely disregard the percentages of negligence which you have attached to the respective parties. When you have filled in a damages figure or figures, you should sign and return the verdict as explained later in these instructions.

You are instructed that if you use the White Verdict Form, whatever dollar amount you insert as the damages sustained by [Plaintiff] on [his/her] petition or by [Defendant] on [his/her] counterclaim will be reduced by the Court by that percentage of negligence which you have attributed to the party to whom you are awarding damages.

**Instruction No. 9.36**

**WHITE VERDICT FORM, COMPARATIVE, NON–PARTY — DIRECTIONS**

If you find that the occurrence was directly caused by the negligence of either or both [Defendant] and [name of the non-party], then you shall use the White Verdict Form and you must determine the percentage of each person's negligence.

This White Verdict Form requires that you fill in some percentage of negligence for the Plaintiff, if you find that [Plaintiff] was contributorily negligent, and then requires that you fill in some percentage of negligence for either or both the Defendant and the non-party. These figures must total one hundred percent (100%), and may range from 0% to 100%.

If the figure you fill in as the percentage of negligence of [Plaintiff] is greater than the combined total of the figures you insert as the percentages of negligence of [Defendant] and [name of the non-party], then [Plaintiff] is not entitled to recover any damages. In this event, you need not fill in the space provided for the amount of
Plaintiff’s damages, and you should sign and return the verdict as explained later in these instructions.

If, on the other hand, the figure you fill in as the percentage of negligence of [Plaintiff] is equal to or smaller than the combined total of the figures you insert as the percentages of negligence of either or both [Defendant] and [name of the non-party], then you shall proceed, as the verdict form directs, to fill in the total amount of damages which you find were sustained by [Plaintiff]. As the verdict form advises, in determining this damages figure, you should completely disregard the respective percentages of negligence which you have fixed for the Plaintiff, the Defendant, and the non-party.

You are instructed that if you use the White Verdict Form, whatever dollar amount you insert as the damages sustained by [Plaintiff] will be reduced by the Court by the sum of the percentages of negligence which you have attached to [Plaintiff] and [name of the non-party].

(2014 Supp.)
**Instruction No. 9.37**

**BLUE VERDICT FORM, FOR PLAINTIFF**

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

Plaintiff, vs. Defendant

CASE NO. ____________________

BLUE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Plaintiff, [name], and fix the dollar amount of [his/her] damages in the sum of $_______________________.

Foreperson ____________________

______________________________

______________________________

______________________________

______________________________

______________________________

**Instruction No. 9.38**

**BLUE VERDICT FORM, FOR PLAINTIFF; COUNTERCLAIM INVOLVED**

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA
We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Plaintiff, [name], on [his/her] petition against the Defendant, [name], on [his/her] counterclaim and fix the dollar amount of Plaintiff’s, [name], damages in the sum of $ _____________.

Foreperson

Instruction No. 9.39

BLUE VERDICT FORM — FOR PLAINTIFF — MULTIPLE DEFENDANTS

IN THE DISTRICT COURT OF _________ COUNTY, STATE OF OKLAHOMA
We, the Jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Plaintiff, [name], and against Defendant, [name], and Defendant, [name], but not against Defendant, [name], and fix the dollar amount of [his/her] damages in the sum of $________________.

Foreperson

Instruction No. 9.40

PINK VERDICT FORM, FOR ONE DEFENDANT

IN THE DISTRICT COURT OF __________ COUNTY, STATE OF OKLAHOMA
We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Defendant, [name].

Foreperson

Instruction No. 9.41

**PINK VERDICT FORM, FOR MULTIPLE DEFENDANTS**

IN THE DISTRICT COURT OF __________ COUNTY, STATE OF OKLAHOMA

Plaintiff,

vs.

CASE NO. ________________
We, the Jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of Defendants, [names].

Foreperson

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Instruction No. 9.42

PINK VERDICT FORM, FOR DEFENDANT ON COUNTERCLAIM

IN THE DISTRICT COURT OF __________ COUNTY, STATE OF OKLAHOMA

Plaintiff, vs. CASE NO. _______________

Defendant
We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Defendant, [name], on [his/her] counterclaim and against the Plaintiff, [name], on [his/her] petition and fix the dollar amount of the Defendant's, [name], damages in the sum of $__________.

Foreperson

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________  __________________________

__________________________

Instruction No. 9.43

GREEN VERDICT FORM, FOR NEITHER PLAINTIFF NOR DEFENDANT

IN THE DISTRICT COURT OF __________ COUNTY, STATE OF OKLAHOMA

__________________________  CASE NO. ______________________

__________________________  Plaintiff,

vs.

__________________________  Defendant

GREEN VERDICT FORM
We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find the issues in favor of the Defendant, [name], on the Plaintiff's [name], petition and in favor of the Plaintiff, [name], on the Defendant's [name], counterclaim.

Foreperson

Instruction No. 9.44

WHITE VERDICT FORM, COMPARATIVE, ONE DEFENDANT

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

Plaintiff, vs. CASE NO. ______________

Defendant

WHITE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:
1. Plaintiff's, [name], contributory negligence ______ %

2. Defendant's, [name], negligence ______ %

   (1 and 2 must total 100%) ______ %

   TOTAL 100%

The following shall be answered only if the percentage of Plaintiff's, [name], contributory negligence is equal to or of lesser percentage than the negligence of the Defendant, [name].

3. We find the dollar amount of damages sustained by the Plaintiff, [name], without regard to the percentages of contributory negligence of the Plaintiff, [name], and negligence of the Defendant, is the sum of $___________. This dollar amount will be reduced by the judge by the percentage established in Item 1 above.

Foreperson ___________________________ ___________________________

_________________________ ___________________________

_________________________ ___________________________

_________________________ ___________________________

_________________________ ___________________________

_________________________ ___________________________

_________________________ ___________________________
Instruction No. 9.45

WHITE VERDICT FORM, COMPARATIVE, TWO DEFENDANTS

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

Plaintiff,

vs.

CASE NO. ____________________

Defendant

WHITE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. Plaintiff's, [name], contributory negligence _____ %

2. Defendant's, [name], negligence _____ %

3. Defendant's, [name], negligence _____ %

   (1, 2 and 3 must total 100%) _____ %

   TOTAL 100%

The following shall be answered only if the percentage of Plaintiff's, [name], contributory negligence is equal to or of lesser percentage than the negligence of the Defendants, [name], and [name].

4. We find the dollar amount of damages sustained by the Plaintiff, [name], without regard to the percentages of contributory negligence of the Plaintiff, [name], and negligence of the Defendants, is the sum of $_______________. This dollar amount will be reduced by the judge by the percentage established in Item 1 above.
Instruction No. 9.46

WHITE VERDICT FORM, COMPARATIVE, MULTIPLE DEFENDANTS

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

Plaintiff, 

vs. 

CASE NO. _________________

Defendant

WHITE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. Plaintiff's, [name], contributory negligence ______ %
2. Defendant's, [name], negligence ______ %
3. Defendant's, [name], negligence ______ %
4. Defendant's, [name], negligence ______ %
5. Defendant's, [name], negligence ______ %

(1 through 5 must total 100%) ______ %

TOTAL 100%

The following shall be answered only if the percentage of Plaintiff's, [name], contributory negligence is equal to or of lesser percentage than the negligence of the Defendants, [names].

6. We find the dollar amount of damages sustained by the Plaintiff, [name], without regard to the percentages of contributory negligence of the Plaintiff, [name], and
negligence of the Defendants, is the sum of $______________. This dollar amount will be reduced by the judge by the percentage established in Item 1 above.

Foreperson

________________________________________  __________________________________________

________________________________________  __________________________________________

________________________________________  __________________________________________

________________________________________  __________________________________________

________________________________________  __________________________________________

________________________________________  __________________________________________
**Instruction No. 9.47**

**WHITE VERDICT FORM, COMPARATIVE, COUNTERCLAIM**

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

[Plaintiff's name] vs. [Defendant's name]

CASE NO. ______________________

WHITE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. Plaintiff's, [name], contributory negligence _____ %

2. Defendant's, [name], negligence _____ %

(1 and 2 must total 100%)

TOTAL 100%

3. Answer this section only if the negligence of the Plaintiff, [name], is of lesser percentage than the negligence of the Defendant, [name].

We find the dollar amount of damages sustained by the Plaintiff, [name], without regard to the percentage of negligence of the Plaintiff, [name], and Defendant, [name], is the sum of $ ______________. This dollar amount will be reduced by the judge by the percentage established in Item 1 above.

4. Answer this section only if the Defendant's, [name], Negligence is of a lesser percentage than the negligence of the Plaintiff, [name].
We find the dollar amount of damages sustained by the Defendant, [name], without any regard to the percentages of negligence of the Plaintiff, [name], and Defendant, [name], is the sum of $ __________. This dollar amount will be reduced by the judge by the percentage established in Item 2 above.

5. Answer this section only if the Plaintiff's, [name], and Defendant's, [name], percentages of negligence are each 50%.

We find the dollar amount of damages sustained by the parties, without any regard to their percentages of negligence, is the sum of $ ______ for the Plaintiff, (name), and $ ______ for the Defendant [name]. This dollar amount will be reduced by 50%.

Foreperson
________________________________________
________________________________________
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________________________________________
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Instruction No. 9.48

WHITE VERDICT FORM, COMPARATIVE, NON-PARTY INVOLVED

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

Plaintiff,                                        CASE NO. ________________________

vs.                                                  |

Defendant                                         |

WHITE VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1.  Plaintiff's, [name], contributory negligence _____ %

2.  Defendant's, [name], negligence _____ %

3.  Non-party's, [name], negligence _____ %

   (1, 2 and 3 must total 100%) _____ %

   TOTAL 100%

The following shall be answered only if the percentage of contributory negligence of Plaintiff, [name], is equal to or of lesser percentage than the combined percentages of the Defendant, [name], and non-party, [name].

4.  We find the dollar amount of damages sustained by the Plaintiff, [name], without regard to the percentages of contributory negligence of the Plaintiff, [name], and negligence of the Defendant, [name], and the non-party, [name], is the sum of $
___________. This dollar amount will be reduced by the judge by the sum of the percentages established in Items 1 and 3 above.

Foreperson

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________

________________________________________
Instruction No. 9.49

**WHITE VERDICT FORM, MEDICAL MALPRACTICE, LOSS OF CHANCE**

IN THE DISTRICT COURT OF ____________ COUNTY, STATE OF OKLAHOMA

[Name of Plaintiff]

**vs.**

[Name of Defendant]

CASE NO. _________________

We, the Jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. The following defendant[s] after whose name[s] we have placed an "X" [was/were] negligent and that [his/her/their] negligence combined to cause a reduced chance of survival for [Plaintiff]:

   [Defendant A] _____

   [Defendant B] _____

   [Defendant C] _____

If you have placed an "X" by any of these names, then you are instructed to complete the remainder of this Verdict Form. Do not complete the remainder of this Verdict Form if you have not placed an "X" by any of these names.

2. The percentage of [Plaintiff]'s original chance of survival before the treatment was ____%.
3. The percentage of [Plaintiff]'s reduced chance of survival after the treatment was ___%.

4. The total amount of damages that would be allowed without consideration of the original and reduced percentage chances of survival is $____________.
Instruction No. 9.50

**COMPARATIVE NEGLIGENCE — ONE DEFENDANT — DIRECTIONS**

If you find from the evidence that [Plaintiff] was negligent and that [his/her] own negligence contributed to [his/her] injury and that [Defendant] was negligent and that [his/her] negligence also contributed to [Plaintiff's] injury, then you must determine the degree of [Plaintiff's] negligence that contributed to [his/her] injury and the degree of [Defendant's] negligence that contributed to [Plaintiff's] injury. If you find that the degree of negligence of [Plaintiff] was greater than the degree of negligence of [Defendant], then [Plaintiff] is not entitled to recover. However, if you find that [Plaintiff] was negligent, but that the degree of negligence of [Plaintiff] was equal to or less than that of [Defendant], then [Plaintiff] is entitled to recover, but not the full amount of [his/her] damages. [Plaintiff's] damages, if any, should in the latter case be reduced in proportion to the degree of [Plaintiff's] negligence.

Instruction No. 9.51

**Willful and Wanton Conduct — Definition**

The conduct of [Defendant] was willful and wanton if [Defendant] was either aware, or did not care, that there was a substantial and unnecessary risk that the conduct would cause serious injury to others. In order for the conduct to be willful and wanton, it must have been unreasonable under the circumstances, and also there must have been a high probability that the conduct would cause serious harm to another person.
Comments

This definition is substantially the same as the definition of “willful and wanton” in Instruction No. 9.17, supra, and of “reckless disregard of another’s rights” in Instruction 5.6, supra. The Oklahoma Supreme Court quoted the definition of “willful and wanton” from Instruction No. 9.17 with approval in *Parret v. UNICCO Service Co.*, 2005 OK 54, ¶ 14, 127 P.3d 572, 576. The Supreme Court held in *Graham v. Keuchel*, 1993 OK 6, ¶ 49, 847 P.2d 342, 362, as follows:

>The intent in willful and wanton misconduct is not an intent to cause the injury; it is an intent to do an act—or the failure to do an act—in reckless disregard of the consequences and under such circumstances that a reasonable man would know, or have reason to know, that such conduct would be likely to result in substantial harm to another. (Emphasis in original)

*(2020 Supp.)*