

CHAPTER 4

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A. DELIBERATIONS

4:1 SUMMARY CLOSING INSTRUCTION

These instructions contain the law that you must use in deciding this case. No single instruction states all the applicable law. All the instructions must be read and considered together.

You must not be concerned with the wisdom of any rule of law. Regardless of any opinion you may have as to what the law should be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in the instructions of the Court.

(The Court) (I) (does) (do) not, by these instructions, express any opinions as to what has or has not been proved in the case, or to what are or are not the facts of the case.

Notes on Use

1. This instruction should be given after the court has completed giving the jury all the instructions relating to the merits of the case.
2. If the court has taken judicial notice of any facts or the parties have stipulated to any facts, the last paragraph of this instruction should be modified accordingly.

Source and Authority

This instruction is supported by STANDARD FORMS APPROVED BY THE FORMS STANDARDIZATION COMMITTEE OF THE COLORADO BAR ASSOCIATION, *Form No. 11, "Jury Instructions-Civil," No. 13*; 2 E. DEVITT & C. BLACKMAR, *FEDERAL JURY PRACTICE AND INSTRUCTIONS: CIVIL AND CRIMINAL* § 71.01 (3d ed. 1977). *See also* COLORADO JURY INSTRUCTIONS—CRIMINAL 3:01 (rev. ed. 1983).

4:1A APPLYING LAW TO THE EVIDENCE

In your deliberations, your duty is to apply (the Court’s) (my) instructions of law to the evidence that you have seen and heard in the courtroom. You are not allowed to look at, read, consult, or use any material of any kind, including any newspapers, magazines, television and radio broadcasts, dictionaries, medical, scientific, technical, religious, or law books or materials, or the Internet in connection with your jury service. I want to emphasize that you must not seek or receive any information about this case from the Internet, which includes all social networking, Google, Wikipedia, blogs, and any other website. You are not allowed to do any research of any kind about this case.

Do not use any information from any other source concerning the facts or the law applicable to this case other than the evidence presented and the instructions that I give you. Do not do your own investigation about this case. (You are not allowed to visit any place[s] mentioned in the evidence. If this is an area that you normally go through, you should try to take an alternate route. If you are not able to take an alternate route, you should not gather any information from that location.)

Notes on Use

1. This instruction, for use before the jury begins deliberations, parallels the admonitions in Instructions 1:1, 1:4, and 1:5, which are given at the beginning of the trial, and Instruction 1:10, which is given at recess.

2. In some circumstances, the trial court may choose to give Instruction 1:5 with this instruction.

Source and Authority

This instruction is supported by **People v. Harlan**, 109 P.3d 616 (Colo. 2005); **People v. Wadle**, 97 P.3d 932 (Colo. 2004); and **People v. Kriho**, 996 P.2d 158 (Colo. App. 1999).

4:2 DUTIES UPON RETIRING — SELECTION OF FOREPERSON

The original forms of the written instructions and the exhibits are a part of the court record. Do not place any marks or notes on them. (The instructions labeled “copy” may be marked or used in any way you see fit.)

The Bailiff will now escort you to the jury room. After you get to the jury room you shall select one of your members to be the foreperson of the jury. That person will be in charge of your discussions. You must all agree on your verdict, and you must sign the original form of whatever verdict(s) you reach.

Please notify the Bailiff when you have reached a verdict, but do not tell the Bailiff what your verdict is. You shall keep the verdict forms, these instructions, and the exhibits until (the Court) (I) (gives) (give) you further instructions.

Notes on Use

1. Omit the parenthesized sentence in the first paragraph of this instruction if copies of the original instructions have not been given to the jury.

2. In a district court case, if the parties have stipulated pursuant to C.R.C.P. 48 that the verdict or finding shall be by some stated majority rather than by unanimous vote, this instruction should be modified accordingly.

3. In county court cases, the jury’s verdict must always be unanimous. C.R.C.P. 347(s).

4. While all members of the jury are directed to sign the verdict, the names of the jurors should still be called, in accord with the requirements of C.R.C.P. 47(q) or 347(q), and the jurors asked, at least collectively, by the court or clerk, if they have agreed upon a verdict, and if the foreperson’s answer is affirmative, the verdict should then be handed to the clerk. **Kading v. Kading**, 683 P.2d 373 (Colo. App. 1984) (failure to call the names of the jurors prior to receiving the verdict held harmless where all jurors had signed the verdict form). “Individual polling of the jurors is required under the rule only when requested by a party.” *Id.* at 376. On its own motion, the court may poll the jury individually to determine the validity of the verdict and should do so, for example, if one or more members of the jury failed to sign the verdict form returned. *See* C.R.C.P. 47(r) & (s), 347(r) & (s).

5. The jury may retire for their deliberations or arrive at a verdict in court. C.R.C.P. 47(l), 347(l). These same rules prescribe the responsibilities of the bailiff if the jury does retire for their deliberations.

4:2A QUESTIONS DURING DELIBERATIONS

Once you begin your deliberations, if you have a question about the evidence in this case or about the instructions (or) (verdict forms) (special interrogatories) that you have been given, your foreperson should write the question on a piece of paper, sign it and give it to the Bailiff who will bring it to me.

(The Court) (I) will then confer with the attorneys as to the appropriate way to answer your question. However, there may be some questions that, under the law, (the Court is) (I am) not permitted to answer. If it is improper for (the Court) (me) to answer the question, (the Court) (I) will tell you that. Please do not speculate about what the answer to your question might be or why (the Court is) (I am) not able to answer a particular question.

Notes on Use

The “Report of the Colorado Supreme Court Committee on the Effective and Efficient Use of Juries,” which was adopted in principle by the Colorado Supreme Court in February 1997, recommends:

The trial judge should instruct jurors about what they should do if they have a question during deliberations and how the judge will deal with it. Additionally, judges should be directed by the Chief Justice to attempt to answer the jurors’ questions. If the question cannot be answered, the judge should explain why that is so in a courteous and complete manner.

Id. at p. 52, ¶ 24.

4:3 INSTRUCTION WHEN JURY APPEARS DEADLOCKED OR DELIBERATIONS ARE UNUSUALLY PROLONGED

Because it appears that your deliberations are taking awhile, I would like to offer some suggestions to help you come to a decision.

(The Court) (I) wish(es) you to continue your deliberations keeping in mind the following:

- 1. You have a duty to discuss the evidence with each other. Your goal should be to reach an agreement;**
- 2. You must each decide for yourself, but you should consider the views of the other jurors with an open mind;**
- 3. You should not hesitate to re-examine your own views and change your opinion if you become convinced that you were wrong; and**
- 4. You should not change your mind just to agree with the other jurors or just to return a verdict.**

Notes on Use

1. For guidance as to the appropriate time and circumstances when this instruction may be given, see **Luster v. Brinkman**, 205 P.3d 410 (Colo. App. 2008) (no coercive effect in giving this instruction and suggesting that the jury call it “quits” for the day and resume deliberations next morning). *See also* **Ford v. Bd. of Cty. Comm’rs**, 677 P.2d 358 (Colo. App. 1983) (not an abuse of discretion to give this instruction when jury was unable to agree on total amount of damages but the trial court, after appropriate inquiries, concluded there was a reasonable probability of agreement).

2. Having determined the jury is not unanimous, the court may either discharge it or direct it to deliberate further. C.R.C.P. 47(s); **Neil v. Espinoza**, 747 P.2d 1257 (Colo. 1987).

3. In rare circumstances, the court should consider exercising its discretion to instruct a deadlocked jury about the possibility of a mistrial when the instruction will not have a coercive effect on the jury. **Fain v. People**, 2014 CO 69, ¶ 16, 329 P.3d 270; **Martin v. People**, 2014 CO 68, ¶ 17, 329 P.3d 247; **Gibbons v. People**, 2014 CO 67, ¶ 14, 328 P.3d 95. Likewise, while a time-fuse instruction is discouraged, its use should be evaluated on a case-by-case basis depending on its coercive effect. **Gibbons**, ¶¶ 19-20; **Allen v. People**, 660 P.2d 896 (Colo. 1983).

Source and Authority

This instruction is supported by **Allen**, 660 P.2d at 898 (Colo.1983); and **Luster**, 205 P.3d at 415-16.

B. VERDICTS

4:4 VERDICT FORM FOR PLAINTIFF — SINGLE PLAINTIFF AND SINGLE DEFENDANT — ACTUAL OR NOMINAL DAMAGES ONLY

IN THE _____ COURT IN AND FOR THE COUNTY OF _____, STATE OF COLORADO

Civil Action No. _____

_____)
Plaintiff,)
v.) VERDICT
_____)
Defendant.)

We, the jury, find for the plaintiff, (*name*), and award damages of \$_____ against the defendant, (*name*).

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instruction 4:2.
2. For special interrogatories or verdict forms that may be necessary to determine the amount of recoverable damages in civil actions involving noneconomic losses, see the Notes on Use to Instructions 6:1, 6:1A, and 6:1B.
3. For other special verdict instructions and forms, see the Notes on Use to Instruction 4:15.
4. While all members of the jury are directed to sign the verdict, *see* Instruction 4:2, polling the jury is nonetheless proper, and should be done by the court in order to determine the validity of the verdict if one or more members of the jury failed to sign the verdict form returned. *See* C.R.C.P. 47(q)–(s), 347(q)–(s). Though all members of the jury may have signed the verdict form, the names of the jurors should still be called, in accord with the requirements of C.R.C.P. 47(q) or 347(q), and the jurors asked, at least collectively, by the court or clerk if they have

agreed upon a verdict, and if the foreperson's answer is affirmative, the verdict should then be handed to the clerk. **Kading v. Kading**, 683 P.2d 373 (Colo. App. 1984) (failure to call the names of the jurors prior to receiving the verdict held harmless where all the jurors had signed the verdict form; individual polling required under the rule only when requested by the party).

5. Pursuant to C.R.C.P. 47(s), if the verdict is not unanimous, the trial court can either send the jury out for further deliberations or discharge it. **Neil v. Espinoza**, 747 P.2d 1257 (Colo. 1987). If during the polling of the jury, a juror clearly and unequivocally states that the verdict is not unanimous, it is reversible error for the trial court to delve into the deliberations and mental processes of the jury by engaging in extended questioning of the dissenting juror. **Simpson v. Stjernholm**, 985 P.2d 31 (Colo. App. 1998); *see also* CRE 606(b).

4:6 VERDICT FORM FOR DEFENDANT — SINGLE PLAINTIFF AND SINGLE DEFENDANT

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT
_____)	
Defendant.)	

We, the jury, find for the defendant, (*name*), and against the plaintiff, (*name*).

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

See the Notes on Use to Instruction 4:4.

**4:7 VERDICT FORMS FOR SINGLE PLAINTIFF AND MULTIPLE DEFENDANTS,
MULTIPLE PLAINTIFFS AND SINGLE DEFENDANT, AND MULTIPLE
PLAINTIFFS AND MULTIPLE DEFENDANTS**

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT
_____)	
Defendant.)	

**YOU ARE TO SIGN EITHER PART A. OR PART B. BELOW OF THIS
VERDICT, BUT NOT BOTH.**

Part A.

**We, the jury, find for the plaintiff, *(name)*, and award damages of \$_____ against
the defendant, *(name)*.**

_____	_____
	Foreperson
_____	_____
_____	_____

Part B.

We, the jury, find for the defendant, *(name)*, and against the plaintiff, *(name)*.

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instruction 4:4.
2. A separate verdict form should be submitted for each possible combination of a single plaintiff against a single defendant, with the appropriate names of the individual parties inserted.
3. Where there is sufficient evidence relating to punitive damages, Part A. should be appropriately modified. *See* Instruction 4:5.
4. This instruction may be used in cases where a jury could properly find against two or more defendants, but in differing amounts, for example, where one tortfeasor causes an accident and a second tortfeasor, as a result, is put in a position where he is able and does add to the plaintiff's damages, thus becoming a joint tortfeasor as to those damages.

4:8 VERDICT FORM FOR PLAINTIFF ON COUNTERCLAIM

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT — COUNTERCLAIM
_____)	
Defendant.)	

We, the jury, find for the plaintiff, (*name*), and against the defendant, (*name*), on the defendant's counterclaim.

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

See the Notes on Use to Instruction 4:4.

4:9 VERDICT FORM FOR DEFENDANT ON COUNTERCLAIM

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT – COUNTERCLAIM
)	
_____)	
Defendant.)	

We, the jury, find for the defendant, (*name*), and against the plaintiff, (*name*), and award damages of \$ _____ on the defendant’s counterclaim.

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instructions 4:4 and 4:8.
2. In appropriate cases, this instruction should be modified to include an insertion for punitive damages. *See* Instruction 4:5.

4:10 VERDICT FORM FOR THIRD-PARTY PLAINTIFF

IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT — THIRD-PARTY
_____)	COMPLAINT
Defendant.)	

We, the jury, find for the third-party plaintiff, *(name)*, and award damages of
\$ _____ against the third-party defendant, *(name)*.

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instruction 4:4.
2. In appropriate cases, this instruction should be modified to include an insertion for punitive damages. See Instruction 4:5.

4:11 VERDICT FORM FOR THIRD-PARTY DEFENDANT

IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	VERDICT — THIRD-PARTY
_____)	COMPLAINT
Defendant.)	

We, the jury, find for the third-party defendant, (*name*), and against the third-party plaintiff, (*name*).

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instruction 4:4.
2. In appropriate cases, this instruction should be modified to include an insertion for punitive damages. *See* Instruction 4:5.

4:12 VERDICT FORM FOR CROSS-CLAIMANT

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____))
 Plaintiff,))
v.) **VERDICT — CROSS-CLAIM**
))
_____))
 Defendant.))

**We, the jury, find for the cross-claimant, (*name*), and award damages of \$ _____
against the defendant, (*name*).**

_____))
) **Foreperson**
_____))
_____))

Notes on Use

1. See the Notes on Use to Instruction 4:4.
2. In appropriate cases, this instruction should be modified to include an insertion for punitive damages. *See* Instruction 4:5.
3. When appropriate, this form together with Instruction 4:13 should be submitted to the jury along with any other forms necessary for the jury to render their decisions on all other issues among the parties.

4:13 VERDICT FORM AGAINST CROSS-CLAIMANT

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	VERDICT — CROSS-CLAIM
v.)	
_____)	
Defendant.)	

We, the jury, find for the defendant, (*name*), and against the cross-claimant, (*name*).

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

See the Notes on Use to Instructions 4:4 and 4:12.

4:14 RENDERING A SEALED VERDICT

If you agree upon your verdict after the adjournment of court for the day, your foreperson will complete and sign the verdict and enclose and seal the verdict forms in an envelope. Your foreperson shall deliver the sealed envelope to *(insert description of appropriate court official)*. You may then separate, but you must each return and be present in the jury box *(insert date and time)* when the sealed envelope will be delivered to the Court. You are not to discuss the case or your deliberations, and you are not to reveal the verdict to anyone until after your verdict is read in court.

Notes on Use

This instruction should be used when the court, pursuant to C.R.C.P. 47(p) or 347(p), desires to “direct the jury to bring in a sealed verdict at the opening of court, in case of an agreement during a recess or adjournment for the day.”

Source and Authority

This instruction is supported by C.R.C.P. 47(p) and 347(p).

4:15 SPECIAL VERDICT (OR SPECIAL INTERROGATORIES) — SAMPLE OF MECHANICS FOR SUBMITTING

You are instructed to answer the following questions which will be on a form for Special Verdict:

- 1. Did the plaintiff, (*name*), own a white horse?**
- 2. Did the defendant, (*name*), ride the white horse without the plaintiff's permission?**
- 3. Was the plaintiff damaged as a result of the defendant's riding of the white horse?**
- 4. State the amount of damages, if any, that the plaintiff had that were caused by the conduct of the defendant.**

Before you return the Special Verdict answering these questions, you must all agree on the answers to each of the questions. Upon arriving at such agreement, your foreperson will insert each answer in the verdict and then he or she and all other jurors will sign it upon completion of all answers.

Notes on Use

1. The questions contained in the above instruction are for the purpose of illustration only.
2. This instruction, appropriately modified, may also be used for submitting special interrogatories to the jury.
3. For the special verdict instructions and forms to be used generally, and for determining the individual and several liability of defendants on a comparative basis among themselves and any nonparties under section 13-21-111.5, C.R.S., see Instructions 9:28 and 9:28A through 9:28D (when there is also a comparative negligence issue) or Instructions 9:29, 9:29A, and 9:29B (when there is no comparative negligence issue). For certain other cases, special verdict forms and instructions for their submission have also been prepared. *See, e.g.*, Instructions 9:26 – 9:27D (comparative negligence); 14:30 – 14:33 (product liability comparative fault); 35:1, 35:2, 35:7, 35:8 (mental health); 41:17, 41:18 (dependency and neglect).
4. If, in a district court case, the parties have stipulated to a verdict or finding by some stated majority pursuant to C.R.C.P. 48, the last paragraph of this instruction should be modified accordingly.
5. If, depending on how certain questions are answered, not all the remaining questions need be answered, this instruction should be appropriately modified.
6. In submitting a case for a special verdict, instructions defining the various legal terms used in the questions must also be given.

7. This form with the first and last paragraphs appropriately modified may be used, under C.R.C.P. 49(b), to submit written interrogatories to the jury to accompany a general verdict. There is no similar provision for use in county court.

8. See also the Notes on Use to Instruction 4:4.

Source and Authority

This instruction is supported by C.R.C.P. 49.

4:16 SPECIAL VERDICT (OR SPECIAL INTERROGATORIES) FORM — SAMPLE

**IN THE _____ COURT IN AND FOR THE
COUNTY OF _____, STATE OF COLORADO**

Civil Action No. _____

_____)	
Plaintiff,)	
v.)	SPECIAL VERDICT
_____)	
Defendant.)	

We, the jury, present our Answers to Questions submitted by the Court, to which we have all agreed:

QUESTION NO. 1: Did the plaintiff, (*name*), own a white horse? (yes or no)

ANSWER NO. 1: _____

QUESTION NO. 2: Did the defendant, (*name*), ride the white horse without the plaintiff's permission? (yes or no)

ANSWER NO. 2: _____

QUESTION NO. 3: Was the plaintiff damaged as a result of the defendant's riding of the white horse? (yes or no)

ANSWER NO. 3: _____

QUESTION NO. 4: State the amount of damages, if any, which the plaintiff had that were caused by the conduct of the defendant? (insert the amount or "none")

ANSWER NO. 4: \$_____.

_____	_____
	Foreperson
_____	_____
_____	_____

Notes on Use

1. See the Notes on Use to Instructions 4:4 and 4:15.
2. When this form is used under C.R.C.P. 49(b) to submit written interrogatories to the jury to accompany a general verdict, the caption title “Special Verdict” should be changed to “Answers to Written Interrogatories.”

Source and Authority

This instruction is supported by C.R.C.P. 49.

4:17 RESERVED FOR FUTURE USE

4:18 RESERVED FOR FUTURE USE

4:19 RESERVED FOR FUTURE USE

4:20 MODEL UNIFIED VERDICT FORM

You are instructed to answer the following questions. You must apply the law in the instructions that the Court gave you to the facts that were proved by the evidence. You must all agree on your answer to each question and you must all sign the completed form on the signature lines.

ANSWERS

We, the jury, present our answers to questions submitted by the Court, to which we have all agreed:

(INSERT TITLE OF [FIRST] CLAIM AGAINST FIRST DEFENDANT

1. Do you find in favor of the plaintiff, (name), and against the defendant, (name of the first defendant), on (his) (her) (its) claim of (insert appropriate description, e.g., “negligence,” “breach of the warranty of . . . ,” etc.) under Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of liability for the claim)? (Yes or No)

ANSWER: _____

Insert title[s] of claim[s] and additional separately numbered similar paragraphs with the titles of applicable claims, so as to include all claims being made against the first defendant.)

(INSERT TITLE OF [FIRST] CLAIM AGAINST SECOND DEFENDANT

2. Do you find in favor of the plaintiff, (name), and against the defendant, (name of second defendant), on (his) (her) (its) claim of (insert appropriate description, e.g., “negligence,” “breach of the warranty of . . . ,” etc.) under Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of liability for the claim)? (Yes or No)

ANSWER: _____

Insert additional separately numbered similar paragraphs with the titles of applicable claims, so as to include all claims being made against the second defendant.)

If you answered all of the above questions “No,” then STOP HERE, go to the end of this Verdict Form, and sign as indicated.

If, on the other hand, you answered “Yes” to any or all of the above questions, THEN ANSWER THE FOLLOWING QUESTIONS.

(Note: examples for cases in which special interrogatories are appropriate instead of these general verdict questions are in the boxes directly below.)

NEGLIGENCE

Answer each of the questions below concerning the claim of the plaintiff, (name), for negligence under Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of liability for the claim):

a. Did the plaintiff, (*name*), have (injuries) (damages) (losses)? (Yes or No)

ANSWER: _____

b. Was the defendant, (*name of first defendant*), negligent? (Yes or No)

ANSWER: _____

c. Was the defendant's negligence, if any, a cause of the (injuries) (damages) (losses) claimed by the plaintiff? (Yes or No)

ANSWER: _____

If you answered any of the above questions "No," then you must find for the defendant on the plaintiff's claim for negligence, and you do not need to answer any of the following questions with respect to that claim.

If, on the other hand, you answered "Yes" to all of the above questions, THEN ANSWER THE FOLLOWING QUESTIONS.

BREACH OF CONTRACT

Answer each of the questions below concerning the claim of the plaintiff, (name), for breach of contract under Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of liability for the claim):

a. Did the defendant, (name), enter into a contract with the plaintiff to (insert the alleged promise on which plaintiff is suing)? (Yes or No)

ANSWER: _____

b. Did the defendant fail to (insert the alleged promise on which the plaintiff is suing)? (Yes or No)

ANSWER: _____

c. Did the plaintiff, (name), [substantially] perform [his] [her] [its] part of the contract) (or (Is the plaintiff, (name), excused from performance of [his] [her] [its] part of the contract because [insert facts that, if proven, would as a matter of law justify non-performance])? (Yes or No)

ANSWER: _____

If you answered any of the above questions “No,” then you must find for the defendant on the plaintiff’s claim for breach of contract, and you do not need to answer any of the following questions with respect to that claim.

If, on the other hand, you answered “Yes” to all of the above questions, THEN ANSWER THE FOLLOWING QUESTIONS.

(3. Was the plaintiff, (name), (negligent) (or) (at fault) in causing (his) (her) (its) own (injuries) (damages) (losses) as set forth in Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of any form of comparative negligence or fault)? (Yes or No)

ANSWER: _____)

(Insert, as shown above in question 3, additional separately numbered similar paragraphs so as to include other defenses to the plaintiff’s claims.)

(4. Was (name or appropriate description of [first] designated nonparty) (negligent) (or) (at fault) in causing the plaintiff’s (injuries) (damages) (losses) as set forth in Instruction No. (insert the number assigned in the case to the instruction that sets forth the basic elements of any form of nonparty negligence or fault)? (Yes or No)?

ANSWER: _____)

(Insert additional separately numbered similar paragraphs for any other designated nonparties.)

5. State the total amount of the plaintiff's damages[, without considering the percentages of (negligence) (and) (or) (fault) of any of the parties (or nonparties).] The categories of damages or losses are described in Instruction No. __.

- a. What is the total amount of the plaintiff's damages, if any, for non-economic losses or injuries? Non-economic losses or injuries are those losses or injuries described in paragraph 1 of Instruction __. You should answer "0" if you determine there were none.

ANSWER: \$ _____

- b. What is the total amount of the plaintiff's damages, if any, for economic losses? Economic losses are those losses described in numbered paragraph 2 of Instruction No. __. You should answer "0" if you determine there were none.

ANSWER: \$ _____

- c. What is the total amount of the plaintiff's damages, if any, for physical impairment or disfigurement? In computing damages in this category, you shall not include any damages for losses or injuries already determined above. You should answer "0" if you determine there were none.

ANSWER: \$ _____

(Note: an example for damages questions in a property damage case is below.)

(Alternative or additional language for claims involving property damage)

State below the amount of dollars that will compensate the plaintiff for (his) (her) (its) damages, as set forth in Instruction No. ____.

- a. Reasonable repair and/or replacement costs, if any:

ANSWER: \$ _____

- b. Other reasonable costs or losses, if any:

ANSWER: \$ _____

- c. The decrease in market value of the property, if any, as repaired:

ANSWER: \$ _____

(Alternative or additional language for claims involving breach of contract)

State below the amount of dollars that will compensate the plaintiff for (his) (her) (its) damages that were the natural and probable consequences of the defendant's breach of contract and that the defendant reasonably could have foreseen at the time the parties entered into the contract could probably occur if the defendant breached the contract, as set forth in Instruction No. ____.

a. (Insert proper measure of general damages that have been proved depending on the kind of contract involved), if any:

ANSWER: \$ _____

b. (Insert the proper measure of any recoverable special damages that have been proved), if any:

ANSWER: \$ _____

(6. Taking as 100 percent the combined (negligence) (or) (fault) that caused the plaintiff's (injuries) (damages) (losses), what percentage of the plaintiff's damages was caused by the (negligence) (or) (fault), if any, of:

a. The plaintiff; (and)

b. Each of the defendants from whom you have found the plaintiff is entitled to recover; (and)

c. (The designated nonparty) (Any one or more of the designated nonparties).

You must enter "0" for any party and designated nonparty you have found was not (negligent) (or) (at fault).

ANSWER:

Percentage, if any, charged to the plaintiff, (name): _____ %

Percentage, if any, charged to defendant, (name of first defendant): _____ %

Percentage, if any, charged to defendant, (name of second defendant): _____ %

Percentage, if any, charged to designated nonparty, (name of first designated nonparty): _____ %

Percentage charged to designated nonparty, (name of second designated nonparty): _____ %

MUST TOTAL: 100%

(7. Do you find that the plaintiff has proved beyond a reasonable doubt (his) (her) (its) claim for punitive damages against the defendant, as set forth in Instruction No. ____? (Yes or No)

ANSWER: _____

If you answered this question “No,” then sign the verdict form. If you answered “Yes,” state the amount of punitive damages that you determine the plaintiff should recover.

ANSWER: \$_____)

Please sign this form. If any verdict forms for other plaintiffs remain unanswered, complete them.

_____	_____
_____	Foreperson
_____	_____

Notes on Use

1. This model unified form has been developed by the Committee for the 2012 edition of this book with the intent that it will eventually be used in all cases, with appropriate modifications. An alternative to the verdict forms used in other Chapters, the model form incorporates questions for a tort case, but also includes substitute or additional language for cases involving other claims, such as contract and property cases. The Committee invites comments from judges and practitioners with respect to the utility and application of this model form. Please forward your comments to bal@robertslevin.com.

2. For medical malpractice cases, Special Verdict Forms set forth in Instruction 15:15 should be used to comply with the requirements of the Health Care Availability Act, §§ 13-64-204, 13-64-205(d), C.R.S. **HealthONE v. Rodriguez**, 50 P.3d 879 (Colo. 2002); **Preston v. Dupont**, 35 P.3d 433 (Colo. 2001); **Garhart ex rel. Tinsman v. Columbia/HealthONE, L.L.C.**, 168 P.3d 512 (Colo. App. 2007).

3. In tort cases where the jury is asked to make findings regarding the comparative negligence or fault of the parties and any designated nonparties on the amount of damages recoverable by the plaintiff, it must be instructed regarding the effects of its findings. *See* § 13-21-111.5(5), C.R.S. *See also* Instructions 9:26, 9:27, 9:28, 14:30, 14:31, 14:32, 14:33.

Source and Authority

1. This instruction is supported by C.R.C.P. 49. *See also* §§ 13-21-111, -111.5, C.R.S.

2. In **Slack v. Farmers Insurance Exchange**, 5 P.3d 280, 282 (Colo. 2000), the Colorado Supreme Court addressed the issue of whether section 13-21-111.5, C.R.S., “requires the pro rata distribution of civil liability among intentional and negligent tortfeasors who jointly cause indivisible injuries.” The court concluded that the statute required such a distribution and explained that the statutory term “fault” means “more than mere negligence, and includes intentional acts.” *Id.* at 285; *accord* **Pedge v. R.M. Holdings, Inc.**, 75 P.3d 1126 (Colo. App.

2002) (tortfeasors who commit intentional torts can be designated as nonparties). *But see* **Toothman v. Freeborn & Peters**, 80 P.3d 804 (Colo. App. 2002) (nothing in the pro rata statute suggests that plaintiff's fault should reduce a defendant's liability for his intentional torts). In cases where the pro rata liability statute is applicable, this instruction may be used.

3. The provisions of section 13-21-111.5 are not limited to negligence actions, but may be applicable to, for example, a strict products liability action. **Miller v. Byrne**, 916 P.2d 566 (Colo. App. 1995). However, section 13-21-111.5(1) limits the scope of the pro rata liability statute to only those actions "brought as a result of a death or an injury to person or property." **Broderick v. McElroy & McCoy, Inc.**, 961 P.2d 504, 507 (Colo. App. 1997) (pro rata liability statute was not applicable to action by sellers of real estate against purchasers and broker alleging breach of contract and breach of fiduciary duty).

4. The negligence or fault of a nonparty cannot be considered unless the nonparty has been properly designated by the defendant in a pleading that complies with section 13-21-111.5(3). **Redden v. SCI Colo. Funeral Servs. Inc.**, 38 P.3d 75 (Colo. 2001); **B.G.'s, Inc. v. Gross**, 23 P.3d 691 (Colo. 2001); **Nat'l Farmers Union Prop. & Cas. Co. v. Frackelton**, 662 P.2d 1056 (Colo. 1983); **Thomson v. Colo. & E.R.R.**, 852 P.2d 1328 (Colo. App. 1993). However, the defendant's failure to give proper statutory notice of the nonparty does not preclude a defendant from contending at trial that the plaintiff's damages were solely caused by the negligence of a third party and not by the negligence of the defendant. **Redden**, 38 P.3d at 81. In these circumstances, the name or other identification of the nonparty whose conduct may be involved will not appear on the verdict form for an allocation of negligence or fault. *See* **Thomson**, 852 P.2d at 1330.

5. To be properly designated under section 13-21-111.5(3), a nonparty need not have been engaged in the same kind of tortious conduct as the defendant. **Moody v. A.G. Edwards & Sons, Inc.**, 847 P.2d 215 (Colo. App. 1992). However, generally, a party designated under section 13-21-111.5(3) must have owed a duty recognized at law to the injured party. **Miller v. Byrne**, 916 P.2d 566 (Colo. App. 1995); *see also* **Fried v. Leong**, 946 P.2d 487 (Colo. App. 1997) (when plaintiff seeks damages for aggravation of preexisting condition, liability cannot be prorated among nonparties whose conduct merely created the preexisting condition, nor can liability be prorated among nonparties who breached no duty to the plaintiff, even though their conduct contributed to the preexisting condition). It is not proper to prorate liability between a defendant and a nonparty where the designating defendant fails to establish a prima facie case that the nonparty owed and breached a legal duty to the plaintiff. **Stone v. Satriana**, 41 P.3d 705 (Colo. 2002); **Barton v. Adams Rental, Inc.**, 938 P.2d 532 (Colo. 1997) (liability may be apportioned between a defendant and a designated nonparty only if admissible evidence has been presented showing that nonparty contributed to the plaintiff's injuries).

6. Where a settlement is reached with one or more parties, the damages are reduced by the percentage of negligence or fault attributed to the settling defendants, now designated nonparties. **Smith v. Zufelt**, 880 P.2d 1178 (Colo. 1994).