

## CHAPTER 2

### STATEMENT OF THE CASE TO BE DETERMINED

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## 2:1 LIABILITY IN ISSUE — NO COUNTERCLAIM

**(The Court) (I) will now explain the claims and defenses of each party to the case and the law governing the case. Please pay close attention to these instructions. These instructions include both general instructions and instructions specific to the claims and defenses in this case. You must consider all the general and specific instructions together. You must all agree on your verdict, applying the law (, as you are now instructed,) to the facts as you find them to be.**

**The parties to this case are: (name), the plaintiff and (name), the defendant.**

**The plaintiff claims:** *(state the essential elements of the claim using simple language based on the pleadings, evidence and the pretrial order and avoiding use of technical terms and words such as “allege” or “contend.” Each statement should include reference to time, place and circumstances).*

**The defendant admits** *(describe briefly the admitted facts, if any).* **The defendant denies** *(describe briefly the defendant’s position regarding plaintiff’s claims).* **As (an) affirmative defense(s), the defendant claims** *(describe briefly the defendant’s affirmative defense[s]).*

**These are the issues you are to decide.**

### Notes on Use

1. This instruction should be appropriately modified or supplemented to comply with C.R.C.P. 47(a)(2)(IV) and (V). *See also* C.R.C.P. 47 cmt.

2. The statement of the case should not include the amount of damages sought by any party. **Rodrigue v. Hausman**, 33 Colo. App. 305, 519 P.2d 1216 (1974).

3. In a district court case, if the parties have stipulated pursuant to C.R.C.P. 48 that the verdict will be by some stated majority rather than by unanimous vote, the first paragraph of this instruction should be modified accordingly, for example, “You must arrive at your verdict by majority vote, with not less than 4 of your 6 members agreeing, applying the law, as you are now instructed, to the facts as you find them to be.”

4. Use only those sentences in the fourth paragraph which are appropriate.

5. In cases in which the defendant has given notice under section 13-21-111.5(3)(b), C.R.S., that a designated nonparty may be wholly or partially at fault under section 13-21-111.5(2) for having caused the plaintiff’s claimed damages, the fourth paragraph of this instruction must be appropriately modified to include that claim and provide an appropriate identification of the nonparty.

6. In dependency and neglect proceedings, Instruction 41:4 should be used rather than this instruction.

### **Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(2)(IV) and 347(a)(2)(IV).

## 2:2 LIABILITY IN ISSUE — COUNTERCLAIM

**(The Court) (I) will now explain the claims and defenses of each party to the case and the law governing the case. Please pay close attention to these instructions. These instructions include both general instructions and instructions specific to the claims and defenses in this case. You must consider all the general and specific instructions together. You must all agree on your verdict, applying the law (, as you are now instructed,) to the facts as you find them to be.**

**Each party to this action claims to be entitled to damages from the other. The parties to this case are: *(name)*, the plaintiff and *(name)*, the defendant.**

**The plaintiff claims:** *(state the essential elements of the claim using simple language based on the pleadings, evidence, and the pretrial order, and avoiding use of technical terms and words such as “allege” or “contend.” Each statement should include reference to time, place and circumstances).*

**The defendant admits** *(describe briefly the admitted facts, if any).* **The defendant denies** *(describe briefly the defendant’s position regarding plaintiff’s claims).* **As an affirmative defense, the defendant claims** *(describe briefly the defendant’s affirmative defense[s]).*

**As a counterclaim against the plaintiff, the defendant further claims:** *(state the essential elements of the counterclaim).*

**As to the counterclaim, the plaintiff admits** *(describe briefly the admitted facts, if any).* **The plaintiff denies** *(describe briefly the plaintiff’s position regarding defendant’s claims).* **As an affirmative defense, the plaintiff claims** *(describe briefly the plaintiff’s affirmative defense[s]).*

**These are the issues you are to decide.**

### Notes on Use

1. This instruction should be appropriately modified or supplemented to comply with C.R.C.P. 47(a)(2)(IV) and (V). *See also* C.R.C.P. 47 cmt.
2. The Notes on Use to Instruction 2:1 are also applicable to this instruction.

### Source and Authority

This instruction is supported by C.R.C.P. 47(a)(2)(IV) and 347(a)(2)(IV).

## 2:3 LIABILITY IN ISSUE — THIRD-PARTY COMPLAINT

**(The Court) (I) will now explain the claims and defenses of each party to the case and the law governing the case. Please pay close attention to these instructions. These instructions include both general instructions and instructions specific to the claims and defenses of this case. You must consider all the general and specific instructions together. You must all agree on your verdict, applying the law (, as you are now instructed,) to the facts as you find them to be.**

**The parties to this case are: (name), the plaintiff, (name), the defendant, who is also the third-party plaintiff, and (name), the third-party defendant.**

**The plaintiff claims:** *(state the essential elements of the claim using simple language based on the pleadings, evidence and the pretrial order, and avoiding use of technical terms and words such as “allege” or “contend.” Each statement should include reference to time, place, and circumstances).*

**The defendant admits** *(describe briefly the admitted facts, if any).* **The defendant denies** *(describe briefly the defendant’s position regarding plaintiff’s claims).* **As an affirmative defense, the defendant claims** *(describe briefly the defendant’s affirmative defense[s]).*

**As a third-party claim against the third-party defendant, (name), the defendant, (name), who is also the third-party plaintiff, further claims:** *(state the essential elements of the third-party claim, using simple language based on the pleadings, evidence and the pretrial order and avoiding use of technical terms and words such as “allege” or “contend.” Each statement should include reference to time, place and circumstances).*

**The third-party defendant, (name), admits** *(describe briefly the admitted facts, if any).* **The third-party defendant denies** *(describe briefly the third-party defendant’s position regarding the third-party plaintiff’s claims).* **As an affirmative defense, the third-party defendant claims** *(describe briefly the third-party defendant’s affirmative defense[s]).*

**These are the issues you are to decide.**

### Notes on Use

1. This instruction should be appropriately modified or supplemented to comply with C.R.C.P. 47(a)(2)(IV) and (V). *See also* C.R.C.P. 47 cmt.
2. The Notes on Use to Instruction 2:1 are also applicable to this instruction.
3. When stating the claims and defenses of the parties in the latter part of this instruction, the actual names of the parties should be used with or without their party designations as seems necessary to avoid confusion.
4. This instruction should be used only in district courts where, under C.R.C.P. 14, the joinder of third-party defendants is allowed. There is no comparable rule in county courts.

## **Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(2)(IV) and 347(a)(2)(IV).

## 2:4 ADMITTED LIABILITY

**The defendant, (*name*), has admitted legal liability for any injury and damages the plaintiff, (*name*), may have suffered that were caused by (*describe specific occurrence*). The only issues remaining for the jury to determine are the nature and extent of injury, if any, and the amount of damages, if any, caused by (*describe specific occurrence*).**

**The fact that the defendant has admitted that (he) (she) (it) was (negligent) (at fault) must not influence how you decide the remaining issues.**

### Notes on Use

1. If inappropriate, omit the parenthetical phrases “if any.”
2. If the admitted liability relates to a counterclaim or third-party claim, this instruction should be modified accordingly.
3. This instruction should also be appropriately modified if the defendant alleges that the plaintiff has failed to mitigate his or her damages, *see* Instruction 5:2, or if the defendant has alleged aggravation of a preexisting condition, *see* Instruction 6:8.
4. This instruction should be used only when the defendant has admitted sole responsibility for the plaintiff’s injuries.

### Source and Authority

This instruction is supported by **Foster v. Phillips**, 6 P.3d 791 (Colo. App. 1999) (where defendant admitted duty and breach of that duty, it was appropriate to instruct jury that defendant was liable as a matter of law for the damages suffered by plaintiff).

**2:5 DIRECTED VERDICT AS TO LIABILITY — DAMAGES ONLY IN ISSUE — GENERAL**

**(The Court) (I) will now explain the claims of each party to the case and law governing the case. Please pay close attention to these instructions. You must all agree on your verdict, applying the law (, as you are now instructed,) to the facts as you find them to be.**

**The parties to this case are: (name), the plaintiff, and (name), the defendant.**

**The plaintiff claims:** *(state the essential elements of the claim, using simple language based on the pleadings, evidence and the pretrial order, and avoiding use of technical terms and words such as “allege” or “contend.” Each statement should include reference to time, place and circumstances).*

**The defendant claims:** *(describe the defendant’s denials as to those issues of fact on which the Court is not directing a verdict).*

**(The Court) (I) (has) (have) determined as a matter of law that** *(describe those facts which the Court is directing the jury to find).*

**Because (the Court) (I) (has) (have) found these facts to be true, the only matter(s) remaining for you to decide (is) (are):** *(describe those facts on which the Court is not directing a verdict and which remain in dispute).*

**The Court’s decision that the defendant** *(insert appropriate description, e.g., “breached the contract,” etc.)* **should not influence you in deciding (this) (these) remaining issue(s).**

**Notes on Use**

1. See the first two Notes on Use to Instruction 2:1.
2. Use whichever parenthesized portions are appropriate.

**Source and Authority**

1. This instruction is supported by C.R.C.P. 47(a)(2)(IV) and 347(a)(2)(IV).
2. As to when the court may properly direct a verdict as to any or all of the issues of liability, see **CeBuzz, Inc. v. Sniderman**, 171 Colo. 246, 249-50, 252-53, 466 P.2d 457, 458, 460 (1970), holding that it was proper to direct a verdict on the issues of negligence and proximate cause where, when viewing the evidence in the light most favorable to the party against whom the motion was made, the evidence was not only undisputed but reasonable minds could draw only one reasonable conclusion, that is, negligence; where “neither the evidence nor the inferences deducible therefrom are in dispute, and the measure of the defendant’s duty is clearly defined, the issues of negligence and proximate cause become . . . issues of law.” *See also*



**Thompson v. Tartler**, 166 Colo. 247, 443 P.2d 365 (1968) (directed verdict proper) (quoting and reaffirming rules of **Blount v. Romero**, 157 Colo. 130, 401 P.2d 611 (1965), and **Bates v. Stagg**, 157 Colo. 456, 459, 404 P.2d 530, 531 (1965) (viewing the evidence most favorable to the defendant, “it is only in the clearest of cases, where the facts are undisputed and reasonable minds could draw but one inference from them, that the question of just what constitutes reasonable care is ever one of law to be taken from the jury and decided by the court.”)).

**2:6 DIRECTED VERDICT AS TO LIABILITY — DAMAGES ONLY IN ISSUE — NEGLIGENCE**

**(The Court) (I) will now explain the claims of each party to the case and the law governing the case. Please pay close attention to these instructions. You must all agree on your verdict, applying the law, as you are now instructed, to the facts as you find them to be.**

**The parties to this case are: *(name)*, the plaintiff, and *(name)*, the defendant.**

**The plaintiff claims that on *(insert date)*, (he) (she) (it) had (injuries) (damages) (losses) caused by the negligence of the defendant.**

**The defendant has denied that the plaintiff had any (injuries) (damages) (losses) caused by the negligence of the defendant.**

**The (Court) (I) (have) (has) decided that the defendant was negligent in that (he) (she) (it) *(insert description of conduct which the Court has determined constitutes negligence as a matter of law)*.**

**In view of this decision the only matters remaining for you to decide are:**

**1. Did the plaintiff have (injuries) (damages) (losses) caused by the negligence of the defendant?**

**2. If so, what is the total amount of damages that the plaintiff had that were caused by the negligence of the defendant?**

**The Court's decision that the defendant was negligent should not influence you in determining either of these two issues.**

**Notes on Use**

1. The Notes on Use to Instruction 2:5 are also applicable to this instruction.
2. When this instruction is given, the appropriate instruction or instructions relating to cause (Instructions 9:18 – 9:21) should also be given.
3. If the court is directing a verdict not only on the issue of negligence but also on the issue of whether or not the plaintiff sustained injury as a result of such negligence, this instruction should be appropriately modified.
4. Whenever this instruction would be applicable to the defendant's conduct, but there is also sufficient evidence of comparative negligence on the plaintiff's part, the instruction, along with the appropriate comparative negligence instructions (Instructions 9:26 – 9:28D), must be appropriately modified. Also, in a comparative negligence case, if the court directs a finding or verdict of negligence against one or more of the parties, the court must also instruct the jury as to

the conduct on which such finding is based as well as any other conduct the jury could reasonably find constituted negligence, in order to permit the jury to make a proper comparison of such negligence with any negligence of other parties the jury may find. **Ricklin v. Smith**, 670 P.2d 1239 (Colo. App. 1983).

#### **Source and Authority**

This instruction is supported by C.R.C.P. 47(a)(2)(IV) and 347(a)(2)(IV).