600.00

CONTRIBUTION

INTRODUCTION

Contribution cases fall into three general categories and these instructions follow those categories: (1) where contribution is sought in the same action, tried either concurrently with the main action or consecutively, but to the same jury; (2) where contribution is sought in a separate trial and to a separate jury; and (3) where contribution is sought after settlement. The contribution action is basically the same in each of the three categories. However, significant differences exist which require separate approaches in the instructions, as explained in the Notes on Use.

Contribution should not be confused with either indemnity or equitable apportionment. Although these instructions deal only with contribution, some of the distinctions that exist among these concepts are discussed later in this introduction.

CONTRIBUTION

Tort practice in Illinois was revolutionized by the Supreme Court's historic decision in *Skinner v. Reed--Prentice Div. Package Mach. Co.,* 70 Ill.2d 1, 374 N.E.2d 437, 15 Ill.Dec. 829 (1977), as modified March 1, 1978, *cert. denied*, 436 U.S. 946, 98 S.Ct. 2849, 56 L.Ed.2d 787 (1978). That decision gave birth to a doctrine of contribution based on "equitable principles," in which the court held that "ultimate liability for plaintiff's injuries be apportioned on the basis of the relative degree to which the defective product and the employer's conduct proximately caused them." *Skinner*, 70 Ill.2d at 14, 374 N.E.2d at 442, 15 Ill.Dec. at 834. The opinion gave the doctrine prospective operation to "causes of action arising out of occurrences on and after March 1, 1978." *Skinner*, 70 Ill.2d at 17, 374 N.E.2d at 444, 15 Ill.Dec. at 836.

On September 14, 1979, "An Act in Relation to Contribution Among Joint Tortfeasors" became effective, retroactively applying to all causes of action on and after March 1, 1978. 740 ILCS 100/1-5 (1994).

Skinner and the contribution statute govern only the rights of tortfeasors inter se. They have no application to the liability of the tortfeasors to the injured plaintiff. 740 ILCS 100/4 (1994); *Henry v. St. John's Hosp.,* 138 Ill.2d 533, 542, 563 N.E.2d 410, 414, 150 Ill.Dec. 523, 527 (1990), *cert. denied*, 499 U.S. 976, 111 S.Ct. 1623, 113 L.Ed.2d 720 (1991). Those tortfeasors may, by third-party action, counterclaim, or in a separate suit, ask the trier of fact to apportion the plaintiff's damages among them in accordance with their "relative degree of fault." *Skinner, supra*; 740 ILCS 100/1-5 (1994).

Although *Skinner* was a strict product liability case, a subsequent decision applied the doctrine of contribution in a negligence case. *Erickson v. Gilden,* 76 Ill.App.3d 218, 394 N.E.2d 1076, 31 Ill.Dec. 758 (2d Dist. 1979). The contribution statute has expressly extended the doctrine to all cases "where two or more persons are subject to liability in tort arising out of the same injury to person or property, or the same wrongful death." 740 ILCS 100/2(a) (1994). It has

been held that contribution can be based on a violation of the Road Construction Injuries Act (*Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984)) and on a violation of the now repealed Structural Work Act (*Wilson v. Hoffman Group, Inc.,* 131 Ill.2d 308, 546 N.E.2d 524, 137 Ill.Dec. 579 (1989)).

Intentional tortfeasors are not entitled to obtain contribution under the Act. *Gerill Corp. v. J. L. Hargrove Builders,* 128 Ill.2d 179, 206, 538 N.E.2d 530, 542, 131 Ill.Dec. 155, 167 (1989), *cert. denied*, 493 U.S. 894, 110 S.Ct. 243, 107 L.Ed.2d 193 (1989). *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 641 N.E.2d 402, 204 Ill.Dec. 178 (1994), held that a tortfeasor whose willful and wanton conduct is "intentional" cannot obtain contribution, but a tortfeasor whose willful and wanton conduct is "reckless" can.

Punitive damages are not subject to contribution. *Hall v. Archer--Daniels--Midland Co.,* 122 Ill.2d 448, 455, 524 N.E.2d 586, 589, 120 Ill.Dec. 556, 559 (1988).

Employers may be subject to contribution but their liability is limited to the amount of their workers' compensation liability. *Kotecki v. Cyclops Welding Corp.,* 146 Ill.2d 155, 585 N.E.2d 1023, 166 Ill.Dec. 1 (1991).

The statute is entitled "An Act in Relation to Contribution Among Joint Tortfeasors" but it does not require that the tortfeasors' actions be joint in the sense that they acted simultaneously or in concert before contribution can be sought. *People v. Brockman,* 148 Ill.2d 260, 268-69, 592 N.E.2d 1026, 1029-30, 170 Ill.Dec. 346, 349-50 (1992). The only requirement is that the liability sought to be imposed arises out of the same injury. Liability in tort, governing the right of contribution among tortfeasors, is determined at the time of injury to the plaintiff. *Joe & Dan Int'l Corp. v. U.S. Fid. & Guar. Co.,* 178 Ill.App.3d 741, 750, 533 N.E.2d 912, 917, 127 Ill.Dec. 830, 835 (1st Dist. 1988).

The words "subject to liability in tort" mean that the persons from whom contribution is sought are potentially liable to the injured person. *People v. Brockman,* 143 Ill.2d 351, 371-72, 574 N.E.2d 626, 633-34, 158 Ill.Dec. 513, 520-21 (1991). For example, the Dramshop Act does not create tort liability for purposes of the Contribution Act because liability under the Dramshop Act does not arise in tort. *Hopkins v. Powers,* 113 Ill.2d 206, 497 N.E.2d 757, 100 Ill.Dec. 579 (1986). Likewise, an action for breach of fiduciary duty is not a tort for purposes of the Contribution Act. *American Environmental, Inc. v. 3--J Co.,* 222 Ill.App.3d 242, 247, 583 N.E.2d 649, 653, 164 Ill.Dec. 733, 737 (2d Dist. 1991). One liable for a breach of fiduciary duty is not subject to liability in tort under the Contribution Act because breach of fiduciary duty is controlled by the substantive laws of agency, contract and equity. *Giordano v. Morgan,* 197 Ill.App.3d 543, 549, 554 N.E.2d 810, 814, 143 Ill.Dec. 875, 879 (2d Dist. 1990).

Defenses which any tortfeasor might have against the injured person as a result of status or immunity do not necessarily bar an action for contribution against that tortfeasor. *People v. Brockman,* 143 Ill.2d 351, 373-74, 574 N.E.2d 626, 634-35, 158 Ill.Dec. 513, 521-22 (1991); *see also Wirth v. City of Highland Park,* 102 Ill.App.3d 1074, 430 N.E.2d 236, 58 Ill.Dec. 294 (2d Dist. 1981) (interspousal immunity not a bar to contribution); *Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984); *Kotecki v. Cyclops Welding Corp.,* 146 Ill.2d 155, 585 N.E.2d 1023, 166 Ill.Dec. 1 (1991) (status as employer not a bar to contribution but the amount of contribution is limited to the amount of the workers' compensation liability); *Larson v.*

Buschkamp, 105 Ill.App.3d 965, 435 N.E.2d 221, 61 Ill.Dec. 732 (2d Dist. 1982) (parental immunity not a bar to contribution); *Hartigan v. Beery,* 128 Ill.App.3d 195, 470 N.E.2d 571, 83 Ill.Dec. 445 (1st Dist. 1984) (same, contribution claim based on negligent supervision); *Stephens v. McBride,* 97 Ill.2d 515, 455 N.E.2d 54, 74 Ill.Dec. 24 (1983) (notice requirement of Local Governmental and Governmental Employees Tort Immunity Act does not apply in contribution action against municipality). Whether other statutory and common law immunities affect the contribution statute remains to be seen.

The right to seek contribution exists from the time of the initial injury, and "may be asserted by a separate action before or after payment, by counterclaim or by third-party complaint in a pending action." 740 ILCS 100/5 (1994). It is not necessary for judgment to be entered against any tortfeasor before that tortfeasor may bring an action seeking contribution. 740 ILCS 100/2(a) (1994). However, the Illinois Supreme Court has interpreted section 5 (740 ILCS 100/5 (1994)) to mean that, if there is an action brought by the injured person(s), then the contribution claim must be asserted by counterclaim or third-party claim in that action, or else it will be barred. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984).

Under section 2(b) (740 ILCS 100/2(b) (1994)), a tortfeasor's liability for contribution may not exceed his pro rata share of the common liability. "Pro rata" as used in this statute merely means the percentage share as assessed by the trier of fact. "Common liability" means the total sum of the liability of all persons who contributed as a cause to the plaintiff's injury, no matter how small each share of that liability might be. *Ziarko v. Soo Line R.R. Co.,* 234 Ill.App.3d 860, 602 N.E.2d 5, 176 Ill.Dec. 698 (1st Dist. 1992); *Mallaney v. Dunaway,* 178 Ill.App.3d 827, 831, 533 N.E.2d 1114, 1116, 128 Ill.Dec. 26, 28 (3d Dist. 1988). One tortfeasor may seek contribution from another, even though the one seeking contribution is more at fault. "Active" or "major" fault does not bar an action for contribution.

Under the Contribution Act, if a settlement is found to be in good faith, the settling party is discharged from liability for contribution to any other tortfeasors. 740 ILCS 100/2(c) & (d) (1994). A party who settles may seek contribution only from parties whose liability was extinguished by that same settlement. *Dixon v. Chicago & N.W. Transp. Co.,* 151 Ill.2d 108, 601 N.E.2d 704, 176 Ill.Dec. 6 (1992).

The pro rata share of each tortfeasor shall be determined in accordance with his relative culpability (740 ILCS 100/3 (1994)) and expressed as a percentage set by the trier of fact.

MODIFIED JOINT AND SEVERAL LIABILITY

At least one provision of the tort reform legislation passed in 1986 has a direct impact on the work of the jury in the contribution area. 735 ILCS 5/2-1117 (1994) provides for joint and several liability only for those parties whose "fault" is found to be 25% or more of the "total fault" attributable to certain parties. The statute originally permitted consideration of the total fault of the plaintiff, the defendants sued by the plaintiff, and any third-party defendant who could have been sued by the plaintiff. It was thereafter amended to exclude plaintiff's employer from the calculation. 735 ILCS 5/2-1117.

735 ILCS 5/2-1118 (1994) provides that this rule of limited joint and several liability does not apply to certain pollution actions nor to medical negligence actions. Both 2-1117 and

2-1118 are silent as to whether the jury should be instructed as to the effect of any percentage findings in this regard. It is the opinion of the Committee that the jury should not be instructed on the concept of joint and several liability, just as there is currently no instruction on that topic. *Accord, Mikolajczyk v. Ford Motor Co.,* 374 Ill.App.3d 646, 859 N.E.2d 201, 222 (1st Dist. 2007), *rev'd on other grounds,* 213 Ill.2d 516 (2008).

The instructions given to the jury must be as simple and direct as possible, consistent with the various rules of law which apply to determinations of relative fault. Furthermore, it is important to guard against inconsistency in verdicts. *See Hackett v. Equip. Specialists, Inc.,* 201 Ill.App.3d 186, 200, 559 N.E.2d 752, 761, 147 Ill.Dec. 412, 421 (1st Dist. 1990) (jury found the defendant to have been 55% at fault with respect to the plaintiff but not at fault at all with respect to this third-party defendant.)

The relative fault of the parties has relevance to a number of different issues, but the application of that fault may vary depending upon the use to which it is put. These issues include plaintiff's contributory negligence, joint and several liability, and contribution liability. Section 3 of the Contribution Act, 740 ILCS 100/3 (1994), provides that "the pro rata share of each tortfeasor shall be determined in accordance with his relative culpability." Section 3 also deals with joint and several liability.

However, no person shall be required to contribute to one seeking contribution an amount greater than his pro rata share unless the obligation of one or more of the joint tortfeasors is uncollectible. In that event, the remaining tortfeasors shall share the unpaid portions of the uncollectible obligation in accordance with their pro rata liability.

IPI B45.03A, which informs the jury of the manner in which plaintiff's contributory negligence is to be determined, has been judicially approved. *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053, 1060, 466 N.E.2d 1064, 1069, 81 Ill.Dec. 262, 267 (1st Dist. 1984). The jury is instructed to "determine what proportion or percentage is attributable to that plaintiff or decedent of the total combined negligence of that plaintiff or decedent and the negligence ... of the defendant and of all other persons whose negligence ... proximately contributed to that plaintiff's injury ...." *Bofman*, at 1060. The jury is then instructed to reduce the total damages sustained by the plaintiff only by the percentage of negligence attributable to the plaintiff.

Including absent tortfeasors in the calculation for the purpose of arriving at the percentage of plaintiff's negligence serves to reduce the percentage of negligence attributable to the plaintiff. It does not, however, dilute or reduce the responsibility of the defendants for the entire portion of the damages otherwise not attributable to the plaintiff's negligence. "The purpose of considering the liability of nonparty tortfeasors is not ... to limit defendant's share of responsibility, but to determine the extent of plaintiff's responsibility for his own injuries." *Bofman*, at 1064, 81 Ill.Dec., at 270.

For the reasons discussed in this introduction, the committee has formulated new alternative forms of contribution verdict form, IPI 600.14 and 600.14A. In an appropriate case, by this form the jury reports all of the applicable percentages as part of its verdict. The trial court, with the assistance of the parties, is then to compute the percentages applicable for various purposes, e.g., joint and several liability and the contribution percentages. IPI 600.14 is identical to IPI B45.03A with the exception of the paragraph "Second." For cases involving contribution

claims among defendants, tried concurrently with the plaintiff's claim, use IPI B45.03A or B45.03A2 instead of IPI 600.14 or 600.14A. The Notes on Use found at IPI B45.03A contain illustrative examples and calculations. In those cases where a party has a role as both a plaintiff and a defendant, the percentage of negligence which is determined for that person's comparative negligence is not necessarily equivalent to the percentage of negligence found in the contribution equation. *Ogg v. Coast Catamaran Corp.,* 141 Ill.App.3d 383, 490 N.E.2d 111, 95 Ill.Dec. 638 (4th Dist. 1986); *Laue v. Leifheit,* 120 Ill.App.3d 937, 458 N.E.2d 622, 76 Ill.Dec. 222 (2d Dist. 1983), *rev'd on other grounds*, 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984); *Carter v. Chicago & Ill. Midland Ry. Co.,* 140 Ill.App.3d 25, 487 N.E.2d 1267, 94 Ill.Dec. 390 (4th Dist. 1986). The rationale behind those holdings is that an injured party's negligence relates only to a lack of due care for his own safety while the defendant's negligence relates to a lack of due care for the safety of others. The courts have stated that a defendant's negligence is tortious but that an injured party's contributory negligence is not.

Using IPI 600.14 or 600.14A(Verdict Form A in this series), the jury can find and report all applicable percentages and after the verdict the trial and appellate courts can calculate the appropriate results based upon the decisions made then as to the substantive law. *See Larsen v. Wis. Power & Light,* 120 Wis.2d 508, 355 N.W.2d 557 (1984).

Further caution is given that in an appropriate case, a defendant might attempt to be found only severally liable but yet not wish to seek contribution. Either B45.03A or B45.03A2 should be used in that situation.

Ready v. United/Goedecke Services, Inc., 232 Ill.2d 369, 385 (2008) held that the percentage fault of defendants who settled before trial is not part of the calculation of modified joint and several liability under 735 ILCS 5/2-1117: "We hold that section 21117 does not apply to good-faith settling tortfeasors who have been dismissed from the lawsuit." However, if the issue of plaintiff's contributory fault will be decided by the jury, parties who settled before trial should be listed on the verdict form because the settlors' percentage of fault must be considered to determine the extent of plaintiff's responsibility for his injuries. *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482, 496 (4th Dist. 1988).

The necessity for and value of the use of computational verdict forms was strongly emphasized by the Appellate Court, Fourth District:

> Some prior decisions of this court and the appellate courts of other districts hold that failure to provide the jury with computational verdict forms in comparative negligence cases is not reversible error .... [However,] [t]he use of such verdict forms allows for the correction of jury errors, forces detailed consideration of the case by the jury, and enables the trial court to avoid using long, complicated jury instructions which would invite reversible error.
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> Where, as in this case, counsel fail to tender proper computational verdict forms, the court should direct counsel to do so; if the court finds their product to be unsatisfactory, then it is the duty of the court *sua sponte* to provide the jury with such verdict forms. Further, in bench trials, we suggest that the trial court make the same findings on the record which are required by computational verdict forms. [Citation omitted]

> In suggesting the use of computational verdict forms in all jury cases where comparative fault is an issue, we are mindful that it generally is not incumbent upon the trial court to give jury instructions on its own motion. [Citation omitted] The Illinois Supreme Court has, however, recognized that there may be exceptions to this rule where "special circumstances" exist. [Citation omitted] The necessity of safeguarding the process of effective review of apportionment of fault is the type of "special circumstance" which justifies a departure from the principle that courts generally have no duty to instruct the jury in a manner not requested by any of the parties; this is likewise the basis of our suggestion that in bench trials comparable findings be made of record. *Johnson v. O'Neal*, 216 Ill.App.3d 975, 985-86, 576 N.E.2d 486, 493-94, 159 Ill.Dec. 817, 824-25 (4th Dist. 1991).

AVAILABILITY OF 100% CONTRIBUTION

In *Doyle v. Rhodes,* 101 Ill.2d 1, 461 N.E.2d 382, 77 Ill.Dec. 759 (1984), the court suggested that there may be instances in which one tortfeasor may receive indemnity or 100% contribution from another. The court indicated that a right of total contribution might exist under circumstances, not before the court in that case, where evidence shows that, if one of the tortfeasors had complied with a safety statute, compliance would have prevented the other tortfeasor from engaging in his "negligent" act. The court also suggested, in *American Nat'l Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Med. Ctr.,* 154 Ill.2d 347, 353-54, 609 N.E.2d 285, 288-89, 181 Ill.Dec. 917, 920-21 (1992), that "in a true action for indemnification arising from vicarious liability, application of the theory of contribution should achieve a result identical to that of implied indemnity--apportionment to the indemnitor of 100% of the fault for the plaintiff's injuries." But, according to the court:

> The statutory contribution scheme is premised on fault-based considerations. As such, it is theoretically 'ill-suited to the task of addressing' quasi-contractual relationships (citation omitted). In cases of vicarious liability, there is only a basis for indemnity, not for apportionment of damages as between the principal and agent (citation omitted). Only the agent is at fault in fact for the plaintiff's injuries (citation omitted). The viability of implied indemnity in the quasi-contractual situation insures that a blameless principal cannot be found legally accountable. We therefore hold that common law implied indemnity was not abolished by the Contribution Act in quasicontractual relationships involving vicarious liability. *American Nat. Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Medical Center*, 154 Ill.2d 347, 353-54, 609 N.E.2d 285, 288-89, 181 Ill.Dec. 917, 920-21 (1992).

Hackett v. Equip. Specialists, Inc., 201 Ill.App.3d 186, 559 N.E.2d 752, 147 Ill.Dec. 412 (1st Dist. 1990), held that 100% contribution was inappropriate under the circumstances of that case. In *Hackett,* the defendant manufacturer of a corn husking system which injured the plaintiff brought a third-party complaint seeking contribution from the plaintiff's employer who had failed to provide a safety guard. The jury found defendant liable to plaintiff, finding that plaintiff had assumed 45% of the risk, and attributing 55% of the fault to defendant. In resolving the third-party claim, the jury apportioned 100% liability to the third-party defendant employer and zero percent to the third-party plaintiff. The appellate court reversed and remanded the case for a new trial, explaining that a tortfeasor's liability is predicated upon his culpability to the plaintiff

and that culpability does not disappear when that tortfeasor proceeds against another. The verdicts were inconsistent, so a new trial was necessary.

INDEMNITY

Before Skinner, there were three types of indemnity in Illinois: (1) implied indemnity based on qualitative differences in the relative fault of the parties (i.e. "active-passive" or "major-minor" fault), which was the most common theory of third-party recovery; (2) indemnity by operation of law or quasi-contractual indemnity, such as where a principal may seek indemnity from an agent whose tortious conduct caused the principal to be vicariously liable; and (3) express indemnity--i.e., where the parties' contract expressly provides that one party will indemnify another under specified circumstances.

Common law implied indemnity was not abolished by the Contribution Act if the parties' liability to plaintiff is based solely upon vicarious liability. *American Nat'l Bank & Tr. Co. v. Columbus--Cuneo--Cabrini Med. Ctr.,* 154 Ill.2d 347, 609 N.E.2d 285, 181 Ill.Dec. 917 (1992); *Faier v. Ambrose & Cushing, P.C.,* 154 Ill.2d 384, 609 N.E.2d 315, 182 Ill.Dec. 12 (1993).

Examples of pre-tort relationships which give rise to a duty to indemnify include: lessor and lessee; employer and employee; owner and lessee; and master and servant. *Coleman v. Franklin Boulevard Hosp.,* 227 Ill.App.3d 904, 908, 592 N.E.2d 327, 329, 169 Ill.Dec. 840, 842 (1st Dist. 1992); *Kemner v. Norfolk & W. Ry.,* 188 Ill.App.3d 245, 250, 544 N.E.2d 124, 127, 135 Ill.Dec. 767, 770 (5th Dist. 1989).

The IPI instructions applicable in indemnity cases begin at 500.00.

EQUITABLE APPORTIONMENT

Equitable apportionment differs from both indemnity and contribution. While contribution deals with the apportionment of damages based on joint liability for the same injury, equitable apportionment focuses on liability for separate and distinct injuries to the injured person. The leading case illustrating this doctrine is *Gertz v. Campbell,* 55 Ill.2d 84, 302 N.E.2d 40 (1973), where the defendant responsible for the plaintiff's fractured leg sought reimbursement from a physician for that part of the plaintiff's damages attributable to the alleged negligence of the physician. Under applicable tort law, defendant was subject to liability for all of plaintiff's damages, including the amputation for which the doctor was responsible; therefore, the court held that the defendant, third-party complainant, had a right to bring an action against the physician for the damages to the plaintiff attributable to the malpractice under the doctrine of equitable apportionment. *See also Burke v. 12 Rothschild's Liquor Mart,* 148 Ill.2d 429, 437-38, 593 N.E.2d 522, 525-26, 170 Ill.Dec. 633, 636-37 (1992) (explaining that *Gertz* applies where there are separate and distinct injuries for which the defendants could not be held jointly liable.) It has been held that equitable apportionment is not available to an intentional tortfeasor. *Neuman v. City of Chicago,* 110 Ill.App.3d 907, 443 N.E.2d 626, 66 Ill.Dec. 700 (1st Dist. 1982).

Cram v. Showalter, 140 Ill.App.3d 1068, 489 N.E.2d 892, 95 Ill.Dec. 330 (2d Dist. 1986), extended the reasoning in *Gertz.* There, a release of one party responsible for the injury, did not, in the absence of specific language, preclude an equitable apportionment action by the injured party against a subsequent treating physician where the tortious conduct resulted in a separate

and distinct injury, and plaintiff had not been fully compensated for the injury. *But see O'Keefe v. Greenwald,* 214 Ill.App.3d 926, 574 N.E.2d 136, 158 Ill.Dec. 342 (1st Dist. 1991) (finding the injury by the physician not to be separate and distinct.)

In *Mayhew Steel Prod., Inc. v. Hirschfelder,* 150 Ill.App.3d 328, 331, 501 N.E.2d 904, 907, 103 Ill.Dec. 587, 590 (5th Dist. 1986), the Appellate Court, Fifth District, disagreed with the Cram court's statement that an original tortfeasor can bring an action to be indemnified for the damage attributable to a subsequent tortfeasor. According to the court, the Contribution Act replaces the common-law concept of equitable apportionment. *See also Cleggett v. Zapianin,* 187 Ill.App.3d 872, 543 N.E.2d 892, 135 Ill.Dec. 324 (1st Dist. 1989).

The medical malpractice statute of limitation and repose, 735 ILCS 5/13-212, 13212(a) (1994), applies to equitable actions in general and equitable apportionment in particular. In *Pederson v. West,* 205 Ill.App.3d 200, 562 N.E.2d 578, 150 Ill.Dec. 48 (1st Dist. 1990), the court found that it was immaterial whether the third-party complaint was for "contribution" or "equitable apportionment," and dismissed the complaint as time barred.

Introduction revised January 2010.

600.01 Apportionment of Responsibility--Contribution--General Statement of Law

One who [is required to pay] [may be required to pay] [has paid] money for causing injury to another may be entitled to contribution for a percentage of that sum from a third-party. The circumstances under which such contribution is permitted will be explained to you in the following instructions.

Notes and Comment revised January 2010.

Notes on Use

If this instruction applies to fewer than all counts, it should be so limited by an introductory phrase.

An action for contribution is available against alleged tortfeasors whose liability is based on theories other than, or in addition to, negligence--e.g., strict liability in tort. The following series of contribution instructions were drafted for use in tort cases. An intentional tortfeasor may not recover contribution, but a reckless tortfeasor may recover contribution. *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 280 (1994).

One of the modifications required will be the substitution of an appropriate term in lieu of the terms "negligence" and "fault," such as the term "responsibility" or "legal responsibility." Those terms were selected as alternatives to "negligence" and "fault" because they are broad and meet the problem described in the dissenting opinions in the *Skinner* decision. *See also Heinrich v. Peabody Int'l Corp.,* 99 Ill.2d 344, 349 (1984) and *Mikolajczyk v. Ford Motor Co.,* 373 Ill.App.3d 646, *rev'd on other grounds,* 231 Ill.2d 516 (2008).

> That strict liability is not based on fault is well recognized. In *Suvada v. White Motor Co.* (1965), 32 Ill.2d 612, 210 N.E.2d 182, where this State adopted the doctrine as well as section 402A of the Restatement (Second) of Torts (1965), such considerations as public interest in human life and health, the manufacturer's solicitations to purchase, and the justice of imposing liability on one who creates the risk and reaps the profit, are described as the motivating forces for the adoption of the doctrine.
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> * * *
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> Under strict liability, responsibility is imposed because of the character of the product, not because of fault. *Skinner v. Reed-Prentice Div. Package Mach. Co.,* 70 Ill.2d at 24-26, 15 Ill.Dec. at 839-40.

The committee concluded that the terms "responsibility" or "legal responsibility" are readily understandable and do not require definition.

In addition to this substitution, other modifications may be necessary to accommodate any other theory or theories.

If indemnity is also sought, see the indemnity instructions in the 500-series.

Comment

The amount of the settlement or the judgment determines the amount of the common liability to the plaintiff which will be allocated among the contribution parties. *Mallaney v. Dunaway,* 178 Ill.App.3d 827, 533 N.E.2d 1114, 128 Ill.Dec. 26 (3d Dist. 1988). Where there has been a post-verdict settlement, it is the good-faith settlement amount that represents the common liability, not the verdict amount. *Ziarko v. Soo Line R.R. Co.,* 161 Ill.2d 267, 286-288 (1994). Punitive damages are not subject to contribution. *Hall v. Archer-Daniels-Midland Co.,* 122 Ill.2d 448, 524 N.E.2d 586, 120 Ill.Dec. 556 (1988).

No Illinois court has as yet addressed the question of whether a contribution defendant's pro rata liability includes any fault attributable to an absent (non-party) tortfeasor. The Contribution Act makes the contribution defendant responsible only for his "pro rata share of the common liability." The instructions in this chapter may have to be modified depending upon the development of case law on this issue.

600.02 Apportionment of Responsibility--Complaint and Claims for Contribution Tried Concurrently (Same Issues)

If you find that [any of the defendants][the defendant] [are] [is] legally responsible for proximately causing plaintiff's [injuries] [damages], then you must apportion damages by determining the relative degree of legal responsibility of each [person] [and] [entity] named or described on the Verdict Form.

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict form, you will state the percentage of legal responsibility of each of the [persons] [and] [entities] named on the verdict form. The total of these percentages must add up to 100%.

Notes and Comment revised January 2010.

Notes on Use

This instruction should be used for all cases where contribution actions are tried concurrently with plaintiff's primary suit. It should also be used in cases where issues arising under 735 ILCS 5/2-1117 need to be decided. This instruction can be used with complaints or third-party complaints having theories of liability other than negligence. Appropriate bracketed phrases should be utilized to reflect the legal theories at issue.

This instruction is intended for use in conjunction with a contribution form of verdict, IPI 600.14 or 600.14A. The trial court should determine as a matter of law which persons or entities should be named on the form of verdict for purposes of allocating fault. Under 735 ILCS 5/2-1117, fault can be allocated among plaintiff, defendant, and third-party defendants other than plaintiff's employer. *See* Comment to IPI 600.14 (form of verdict).

Issues and burden of proof instructions should be used to advise the jury of the claims of the parties and the respective burdens of proof.

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault.

This form of instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *rev'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and *Heinrich v. Peabody,* 99 Ill.2d 344, 349 (1984).

If there is an action brought by an injured person, then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191 (1984). *Laue* does not address the right to contribution when a suit is settled before defendant files a contribution action.

600.03 Apportionment of Responsibility--Complaint and Claims for Contribution Tried or Submitted Consecutively to Same Jury (Same Issues)

You have found that defendant(s) [is] [are] liable to ____. You must now apportion damages by determining, under the instructions already given you in ____ case, the relative degree of legal responsibility of [each of those defendant's][and] [any persons identified in the verdict form] for ____[injuries] [and] [damages].

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict, you will state the percentage of fault of each person identified on the form of verdict and the total of those percentages must add up to 100%.

Instruction, Notes and Comment revised January 2010.

Notes on Use

This instruction should be used when any contribution claims--whether counterclaims between original defendants or third-party claims--are tried consecutively to the same jury which has awarded damages to the plaintiff. All relevant instructions from the primary action should be submitted to the jury.

The jury should receive new issues and burden of proof instructions on each counterclaim or third-party claim with appropriate supporting instructions as to the theories of liability presented.

This instruction is intended for use in conjunction with one of the contribution verdict forms, IPI 600.14 or 600.14A. The trial court should determine as a matter of law which parties (or non-parties) should be named on the form of verdict for purposes of allocating fault. See Comment to IPI 600.14.

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault under contribution law.

The language in the second paragraph of this instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *reve'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and *Heinrich v. Peabody,* 99 Ill.2d 344, 349 (1984).

600.04 Issues--Apportionment of Responsibility--Third-Party Complaint Tried and Submitted Concurrently

[1] In addition to the claim of ____ against ____, ____ makes a claim against ____. ____ claims that if he is liable to ____ for damages, then he is entitled to contribution from ____ for a percentage of those damages.

[2] If you find [____] [one or more defendants] liable to ____, then you must consider the claim for contribution by [____] [each such defendant].

[3] ____ claims that _____ was negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis or repetition, those allegations of the third-party complaint as to the conduct of the third-party defendant which have not been withdrawn or ruled out by the court and which are supported by evidence.*]

____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[4] ____ [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by ____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[5] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form without undue emphasis or repetition those affirmative defenses in the third-party answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[6] [____denies (that) (those) affirmative defense(s).]

Notes and Comment revised January 2010.

Notes on Use

This instruction is to be used where parties who were not sued by the plaintiff are brought into the suit in a claim for contribution.

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.05 Issues--Apportionment of Responsibility--Separate or Third-Party Complaint Tried and Submitted Consecutively to Same Jury

[1] You have found that ____ [is] [are] liable to ____. You must now decide ____'s claim that he is entitled to contribution from ____ for a percentage of the damages awarded to ____.

[2] ____ claims that _____ was also negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis or repetition, those allegations of the third-party complaint as to the conduct of the third-party defendant which have not been withdrawn or ruled out by the court and which are supported by the evidence.*]

____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[3] ____ [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by _____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[4] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form, without undue emphasis or repetition, those affirmative defenses in the third-party answer which have not been withdrawn or ruled out by the court and which are supported by the evidence.*)]

[5] [____denies (that) (those) affirmative defense(s).]

Notes and Comment revised January 2010.

Notes on Use

All relevant instructions submitted in the prime action should be resubmitted to the jury.

This instruction is to be used where parties who were not sued by the plaintiff are brought into the suit in a claim for contribution.

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

In this instruction, use only the parties' names; do *not* refer to their pleading status (i.e., plaintiff, counterplaintiff, etc.).

As used in this instruction, the term “affirmative defense(s)” refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative

defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.06 Burden of Proof--Apportionment of Responsibility--Third-Party Complaint Tried and Submitted Concurrently or Consecutively to the Same Jury

As to the claim of ____ against _____, ____ has the burden of proving each of the following propositions:

First, that ____ acted or failed to act in one of the ways claimed in these instructions, and that in so acting, or failing to act, ____ was negligent;

Second, that the negligence of ____ was a proximate cause of ____'s [injuries] [and] [damages].

If you find from your consideration of all the evidence that both of these propositions have been proved, then your verdict should be for ____ and against ____, and you should include ____ in [any] [the] apportionment of damages.

If, on the other hand, you find from your consideration of all the evidence that either one or both of these propositions has not been proved, then your verdict should be for ____ and you will have no occasion to consider the apportionment of damages against ____.

Comment revised January 2010.

Notes on Use

This instruction should be used in conjunction with the contribution verdict form, IPI 600.14.

A burden of proof instruction should be submitted as to each party who is claimed to be responsible for the plaintiff's injury and who the trial court determines should be named on the verdict form.

If more than one legal theory is alleged against any tortfeasor (e.g., negligence and strict products liability), this instruction must be modified to include the burden of proof for those causes of action and to state the burdens in the alternative.

This instruction should be given in conjunction with appropriate issues instructions as well as appropriate definitions, etc. It can be used in cases tried either concurrently or consecutively with the primary action.

Comment

The attribution of a percentage of fault to non-party tortfeasors may be sought by various parties in several different contexts. The plaintiff may seek to establish fault on the part of a non-party in order to reduce the plaintiff's percentage of comparative negligence. A third-party defendant tortfeasor, not subject to liability by judgment to the plaintiff, may seek to apportion fault to a non-party tortfeasor in order to limit the thirdparty defendant's proportionate share of fault to a lesser figure (this has not yet been approved or rejected under Illinois cases).

600.07 Apportionment of Responsibility--Complaint and Claims for Contribution Tried and Submitted Concurrently to the Same Jury--Third Party Complaint--Negligence

This instruction is replaced by IPI 600.02, which has been expanded to include both concurrent submissions of counterclaims for contribution and also third-party complaints. Those two situations were previously split between IPI 600.02 and IPI 600.07.

600.08 Apportionment Of Responsibility--Complaint And Claims For Contribution Tried And Submitted Consecutively To The Same Jury--Third Party Complaint--Negligence

IPI 600.08 has been withdrawn because its function has been superseded by modified IPI 600.03.

600.09 Issues--Contribution Following Settlement

[1] ____ has paid a sum of money to ____ in settlement of ____'s claim for his [injuries] [and] [damages]. ____ now claims that he is entitled to contribution from ____ for a percentage of that sum paid.

[2] [____ further claims that the payment was made in reasonable anticipation of his liability to ____.]

[3] ____ claims that ____ was negligent in one or more of the following respects:

[*Set forth in simple form, without undue emphasis, those allegations as to the conduct of the defendant which are set forth in the complaint for contribution which have not been withdrawn or ruled out by the court and are supported by the evidence.*]

[4] ____ further claims that one or more of the foregoing was a proximate cause of ____'s [injuries] [and] [damages].

[5] ____ [denies that the payment was made in reasonable anticipation of liability;] [denies that he did any of the things claimed by ____;] [denies that he was negligent (in doing any of the things claimed by ____);] [and denies that any claimed act or omission on the part of ____ was a proximate cause of ____'s (injuries) (and) (damages)].

[6] [____ also asserts the following affirmative defense(s):

(*Set forth in simple form, without undue emphasis or repetition, those affirmative defenses in the defendant's answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[7] [____denies (that) (those) affirmative defense(s).]

[8] [____(also) claims that ____was negligent in one or more of the following respects:

(*Set forth in simple form, without undue emphasis, those allegations as to the conduct of the plaintiff which have been set forth in the defendant's answer which have not been withdrawn or ruled out by the court and are supported by the evidence.*)]

[9] [____ further claims that one or more of the foregoing was (a) (the) proximate cause of ____'s (injuries) (and) (damages).]

[10] [____ (admits) (denies)

(*Set forth in simple form, without undue emphasis, the admissions, if any, and denials contained in plaintiff's reply to defendant's allegations.*)]

Notes and Comment revised January 2010.

Notes on Use

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

The instruction presumes that there is no issue that payment was made. If an issue as to payment arises, the instruction should be modified.

Paragraphs 8, 9 and 10 should be used only if the defendant alleges in his pleadings specific acts or omissions of the plaintiff.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

Paragraph 2 is consistent with the requirement in indemnity cases that the plaintiff show that his payment was made in the reasonable anticipation of liability. *St. Paul Fire & Marine Ins. Co. v. Michelin Tire Corp.,* 12 Ill.App.3d 165, 298 N.E.2d 289 (1st Dist. l973); *Nogacz v. Procter & Gamble Mfg. Co.,* 37 Ill.App.3d 636, 347 N.E.2d 112, 122- 24 (1st Dist. l975); *N.E. Finch Co. v. R. C. Mahon Co.,* 54 Ill.App.3d 573, 370 N.E.2d 160, 12 Ill.Dec. 537 (3d Dist. l977); *Houser v. Witt,* 111 Ill.App.3d 123, 443 N.E.2d 725, 66 Ill.Dec. 799 (4th Dist. 1982). This paragraph has been held to be a required element of proof in all contribution actions following settlement. See *Patel v. Trueblood, Inc.,* 281 Ill.App.3d 197, 217 Ill.Dec. 109, 666 N.E.2d 778 (1st Dist. 1996).

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.10 Burden of Proof--Contribution Following Settlement

____ has the burden of proving each of the following propositions:

First, that ____ acted or failed to act in one of the ways claimed in these instructions, and that in so acting, or failing to act, ____ was negligent;

Second, that the negligence of ____ was a proximate cause of [the injury to ____] [and] [the damage to ____'s property][;][.]

[Third, that the payment ____ made was in reasonable anticipation of liability to ____.]

[____ has the burden of proving the affirmative defense(s) that:

(*Concisely state any affirmative defenses.*)]

If you find from your consideration of all the evidence that each of the propositions required of ____ has been proved [and that none of the affirmative defenses has been proved] [and that the affirmative defense has not been proved], then your verdict should be for ____ and you should apportion damages.

If, on the other hand, you find from your consideration of all the evidence that any of the propositions required of ____ has not been proved, [or that any one of the affirmative defenses has been proved,] [or that the affirmative defense has been proved,] then your verdict should be for ____and you will have no occasion to consider the apportionment of damages.

Notes and Comment revised January 2010.

Notes on Use

If the right of contribution is based on a theory other than negligence, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

As used in this instruction, the term "affirmative defense(s)" refers *only* to the traditional affirmative defenses that operate as a *complete bar* to recovery--for example, statute of limitations, release, and satisfaction. *See* 735 ILCS 5/2-613(d) (1994). Do *not* include comparative negligence or other comparative fault in the paragraphs referring to affirmative defenses, even if comparative negligence or comparative fault are referred to as affirmative defenses in the pleadings. Comparative negligence or comparative fault only reduces damages; neither has any effect on liability.

Comment

If there is an action brought by the injured person(s), then the contribution claim *must* be asserted by counterclaim or third-party claim in that action. *Laue v. Leifheit,* 105 Ill.2d 191, 473 N.E.2d 939, 85 Ill.Dec. 340 (1984). *Laue* does not address the right to contribution when a suit is filed but settled before judgment. *See* Introduction.

600.11 Apportionment of Responsibility--Contribution Following Settlement

To apportion damages, you must determine from all the evidence the relative degree of legal responsibility of [each party to this lawsuit] [of any persons identified in the verdict form] who proximately caused ____ [injuries] [damages].

In making that determination, you should consider the degree to which the [condition of the product] [and] [person's] [and] [entity's] conduct proximately caused plaintiff's [injuries] [damages].

In your verdict form, you will state the percentage of legal responsibility of each of these persons. The total of these percentages must add up to 100%.

Instruction, Notes and Comment revised January 2010.

Notes on Use

This instruction should be given in a suit for contribution following a complete settlement with the injured person(s). In cases tried and submitted concurrently (IPI 600.04) or consecutively (IPI 600.05) to the same jury, IPI 600.02 or 600.03 will be given.

If the right of contribution is based on a theory other than negligence, willful and wanton misconduct or product liability, the instruction should be modified as necessary. *See* Notes on Use to IPI 600.01.

For actions for contribution following settlement with the plaintiff by one or more tortfeasors, it is anticipated that consideration of the injured person's contributory negligence or other conduct, such as assumption of the risk, will not be necessary for the proper calculation of the contribution percentages. For that reason, reference to the fault of the injured person is not included in this instruction nor is it included within IPI 600.12. If, in the circumstances of a particular case, consideration of the injured person's fault becomes necessary, this instruction would need to be modified.

The committee recommends that a non-party not be included on the verdict form in contribution cases tried after settlement with the plaintiff. Non-party legal responsibility is only relevant if plaintiff's contributory fault is at issue. *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984); *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

Comment

This form of instruction is a change from the prior version. The changes were intended to simplify the instruction and to make the second paragraph consistent with case law concerning apportionment of fault.

The language in the second paragraph of this instruction was used in *Mikolajczyk v. Ford Motor Co.,* 369 Ill.App.3d 78, 859 N.E.2d 201 (1st Dist. 2006), *rev'd on other grounds,* 231 Ill.2d 516 (2008). It was drafted to conform to *Skinner v. Reed-Prentice,* 70 Ill.2d 1, 14 (1977) and Heinrich v. Peabody, 99 Ill.2d 344, 349 (1984).

600.12 Apportionment of Responsibility--Instruction on Use of Verdict Forms--Contribution Following Settlement

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate forms of verdict and return them to the court.

Each verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiffs:	[name of first plaintiff] [name of second plaintiff]
Defendants:	[name of first defendant] [name of second defendant]

You must fill in a percentage for each party. If you find in favor of [the defendant] [one or more defendants], then you must fill in zero percent for [that defendant] [or those defendants]. The total of the percentages must equal 100.

Instruction and Notes revised January 2010.

Notes on Use

See Note on Use at IPI 600.11. This instruction is to be used only in actions for contribution following settlement. Fill in the names of the parties before submitting this instruction to the jury.

600.13 Apportionment of Responsibility--Instruction on Use of Verdict Forms--Contribution Claims Tried Concurrently or Consecutively to Same Jury

When you retire to the jury room you will first select a foreperson. He or she will preside during your deliberations.

Your verdicts must be unanimous.

Forms of verdict are supplied with these instructions. After you have reached your verdict, fill in and sign the appropriate forms of verdict and return them to the court.

Each verdict should be signed by each of you. You should not write or mark upon this or any of the other instructions given to you by the court.

The parties in this case are:

Plaintiffs:	[name of first plaintiff] [name of second plaintiff]
Defendants-3rd Party Plaintiffs	[name of first defendant-3rd party plaintiff] [name of second defendant-3rd party plf.]
3rd Party Defendants	[Name of 3rd party defendant]

You must fill in a percentage for each party. If you find in favor of [the defendant] [one or more defendants], [or the third-party defendant], then you must fill in zero percent for [that defendant] [or those defendants] [or the third-party defendant]. The total of the percentages must equal 100.

Instruction and Notes revised January 2010.

Notes on Use

This instruction is to be used in any action in which contribution is sought, except actions for contribution following a settlement by one alleged tortfeasor that settles the liability of all. In that case, use IPI 600.12. Fill in the names of the parties before submitting this instruction to the jury. IPI 600.14 should be modified and used as the accompanying verdict form.

600.14. Contribution Verdict Form--Comparative Negligence an Issue--Verdict for Plaintiff

Verdict Form A

We, the jury, find for [plaintiff's name] and against the following defendant or defendants:

[name of defendant 1]	Yes __	No __
[name of defendant 2]	Yes __	No __

We further find the following:

First: Without taking into consideration the question of reduction of damages due to the [negligence] [other damage reducing defense] of [name of plaintiff], if any, we find that the total amount of damages suffered by [name of plaintiff] as a proximate result of the occurrence in question is ____, itemized as follows:

List each category of damages, e.g.

The disfigurement resulting from the injury	$_____
Insert other damages categories from IPI 30.05, 30.05.01, 30.07, 30.08, 30.09 or as applicable	$_____
PLAINTIFF'S TOTAL DAMAGES	$_____

Second: As to the contribution claims brought by [third-party plaintiff's name], we find:

Against [third-party defendant 1]	Yes __	No __
Against [third-party defendant 2]	Yes __	No __

Third: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] who [that] proximately caused [name of plaintiff] injury, we find the percentage of legal responsibility attributable to each as follows:

a) [plaintiff's name] ____%

b) [defendant #1 name] ____%

c) [defendant #2 name] ____%

d) [3rd party defendant 1 name] ____%

e) [3rd party defendant 2 name] ____%

f) [other name[1]]

1The Committee recommends that non-parties be excluded from the verdict form until the trial judge first makes the determination that sufficient evidence has been presented to support a jury finding of fault with respect to that non-party. Assuming such is presented and if the jury will need to decide whether plaintiff was contributorily negligent, then the non-party should be listed on the verdict form based on *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) and *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988). For contribution cases in which plaintiff's contributory fault is not an issue, use IPI 600.14A.

(*Instructions to Jury: If you find that plaintiff was not [contributorily negligent] [other damage reducing defense], or if you find any other party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter a zero (0)% as to that party.*)

Fourth: After reducing the plaintiff's total damages [(from paragraph First)] by the percentage of [negligence] [fault], if any, of ____ [(from line (a) in paragraph Third)], we award ____ recoverable damages in the amount of ____.

[Signature lines]

Verdict Form revised January 2010. Notes revised June 1, 2012.

Notes on Use

This verdict form is appropriate to use in cases where there are contribution claims involving one or more third-party complaints and where the issue of contributory fault will be decided by the jury. However, if the plaintiff suffers multiple, separable injuries and not all of the defeants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. *See Auten v. Franklin,* 404 Ill.App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec.297 (4th Dist. 2010). If there is no issue of contributory fault, use *IPI 600.14A.* This verdict form serves as a basis to determine all fact issues relating to comparative negligence, joint and several liability and contribution.

B45.03A is similar to this verdict form, except it lacks the paragraph "Second" providing for findings for or against third-party defendants. B45.03A is intended for use in cases involving contribution claims among defendants, tried concurrently with the plaintiff's claim.

600.14A Contribution Verdict Form--Comparative Negligence Not an Issue--Verdict for Plaintiff

Verdict Form A

We, the jury, find for _____ and against the following defendant or defendants:

	Yes	No
Defendant #1	__	__

	Yes	No
Defendant #2	__	__

We further find the following:

First: We find that the total amount of damages suffered by [name of plaintiff] as a proximate result of the occurrence in question is $_____, itemized as follows:

List each category of damages, e.g.

The disfigurement resulting from the injury	$_____
Insert other damages categories from IPI 30.05, 30.05.01, 30.07, 30.08, 30.09 or as applicable	$_____
PLAINTIFF'S TOTAL DAMAGES	$_____

Second: As to the contribution claims brought by [name of third-party plaintiff], we find:

		Yes	No
Against	Third-party defendant #1	__	__

		Yes	No
Against	Third-party defendant #2	__	__

Third: Assuming that 100% represents the total combined legal responsibility of all [persons] [or] [entities] [who] [that] proximately caused [plaintiff's name] injury, we find the percentage of legal responsibility attributable to each as follows:

a) Defendant #1's name	____%
b) Defendant #2's name	____%
c) Third-party defendant #1's name	____%
d) Third-party defendant #2's name	____%
TOTAL	100%

(*Instructions to Jury: If you find that any party listed on the verdict form was not legally responsible in a way that proximately caused plaintiff's injury, you should enter zero (0)% as to that party.*) *[Signature lines]*

Verdict Form and Notes adopted January 2010. Notes revised June 1, 2012.

Notes on Use

This verdict form is appropriate to use in cases where there are contribution claims involving one or more third-party complaints and where the issue of contributory fault will not be decided by the jury. However, if the plaintiff suffers multiple, separable injuries and not all of the defendants are alleged to have caused each of the separable injuries then a modified verdict form may be necessary. *See Auten v. Franklin,* 404 Ill. App.3d 1130, 942 N.E.2d 500, 347 Ill.Dec. 297 (4th Dist. 2010). If there is an issue of contributory fault, use IPI 600.14. This instruction serves as a basis to determine all fact issues relating to liability of the defendants, third-party defendants, joint and several liability and contribution.

B45.03A2 is similar to this verdict form, except it lacks the paragraph "Second" providing for findings for or against third-party defendants. B45.03A2 is intended for use in cases involving contribution claims among defendants tried concurrently with the plaintiff's claim.

If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Compare Ready v. United/Goedecke Services, Inc.,* 232 Ill.2d 369, 385 (2008) *and Jones v. DHR Cambridge Homes, Inc.,* 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008) *with Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) *and Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

600.15 Verdict Form--Verdict for Defendant

IPI 600.15 has been withdrawn because its function has been superseded by the new verdict forms and by the direction to the jury to place a zero on the line for each contribution defendant which the jury finds to be not at fault.

600.16 Verdict Form--Apportionment of Responsibility--Contribution Following Settlement

We, the jury, apportion responsibility as follows:

Name of contribution plaintiff	%
Name of contribution defendant #1	%
Name of contribution defendant #2	%
TOTAL	100%

(Instruction to Jury: If you find that any person or entity was not legally responsible in a way that proximately caused the injured person's injury, then you should enter a zero (0)% as to that person or entity.)

[Signature Lines]

Verdict Form and Notes revised January 2010.

Notes on Use

Fill in the names of all parties to the contribution action, including the contribution plaintiff(s), before submitting this form to the jury.

As stated in the Notes on Use to IPI 600.11, it is anticipated that in contribution actions following settlement, the fault attributable to the injured person will not need to be considered to arrive at the contribution apportionment among the contribution parties.

If there is no issue of contributory negligence, the Committee recommends against including non-parties on the verdict form. *Compare Ready v. United/Goedecke Services, Inc.,* 232 Ill.2d 369, 385 (2008) and *Jones v. DHR Cambridge Homes, Inc.,* 381 Ill.App.3d 18, 31-32, 885 N.E.2d 330 (1st Dist. 2008) with *Bofman v. Material Serv. Corp.,* 125 Ill.App.3d 1053 (1st Dist. 1984) and *Smith v. Central Ill. Pub. Serv. Co.,* 176 Ill.App.3d 482 (4th Dist. 1988).

600.17 Apportionment of Responsibility--Treatment of Parties as a Unit

For the purposes of these instructions, you will consider ____ and ____ as one [defendant] [plaintiff] [party].

Notes revised January 2010.

Notes on Use

This instruction must be given when two or more parties are combined as a unit as described in 740 ILCS 100/3 (1994), which provides, "[i]f equity requires, the collective liability of some as a group shall constitute a single share."

When this instruction is used, place the names of both such parties on a single line of the apportionment verdict form, IPI 600.14, IPI 600.14A or IPI 600.16.