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PRODUCT LIABILITY VERDICT FORMULATION IN WISCONSIN

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I. INTRODUCTION

Our judicial system is presently experiencing a product liability revolution of massive proportions.[1] Ever increasing quantities of time and energy are being invested in product liability litigation and absent legislative intervention, the trend is likely to continue.[2] In itself, this trend should not necessarily be condemned, nor does this discussion advocate any sort of restriction on the adjudication of product liability claims. The increasing complexity that attends modern litigation does, however, impose a formidable and extremely challenging burden upon our judicial system. The response of the judiciary and bar to this challenge has been commendable, but much remains to be done.

Since Wisconsin's adoption of the theory of "strict" product liability in the case of *Dippel v. Sciano,*[3] a number of product related trials involving the dual theories of negligence and

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1. *See* U.S. DEP'T OF COMMERCE, INTERAGENCY TASK FORCE ON PRODUCT LIABILITY—FINAL REPORT, II-3 (1977).

2. Legislatures around the country are being flooded with proposals for modifications to our present system of compensating those injured by defective or unsafe products. *Id.* at VII-1, 2.

3. 37 Wis. 2d 443, 155 N.W.2d 55 (1967).

strict liability have culminated with juries returning inconsistent verdicts necessitating appellate review,[4] retrial of the action,[5] or both.[6] The primary cause of this verdict inconsistency is the lack of agreement on the proper form of verdict to be used in complex products litigation. It is the obligation of trial judges and litigators to structure the special verdict in a way that will eliminate or at least minimize the potential for inconsistent results. This article will examine the causes of the problem and offer what the authors believe to be an appropriate solution to the problem of inconsistent verdict results in dual theory product liability actions.

II. CAUSES OF THE INCONSISTENCY PROBLEM

A. *The Blurred Distinction Between Strict Liability and Negligence*

Although the strict product liability action is a creature of comparatively recent origin,[7] the law has long recognized a cause of action for the negligent manufacture or sale of a product,[8] and for breach of an express or implied warranty relating to a product.[9] The creation of the tort action in strict liability

4. *See, e.g.*, Bjerk v. Universal Engineering Corp., 552 F.2d 1314 (8th Cir. 1977); Sterner v. United States Plywood-Champion Paper, Inc., 519 F.2d 1352 (8th Cir. 1975); Schuldies v. Service Machine Co., No. 72-619 (E.D. Wis., judgment entered May 3, 1977); Hansen v. Cessna Aircraft Co., No. 74-502 (E.D. Wis., judgment entered Mar. 18, 1977) *appeal docketed*, No. 77-1753 (7th Cir. 1977); Fisher v. Cleveland Punch & Sheer Works Co., No. 417-603 (Cir. Ct. Milwaukee County, judgment entered April 9, 1976) *appeal docketed*, No. 76-337 (Wis. S. Ct. 1976).

5. *See, e.g.*, Sterner v. United States Plywood-Champion Paper, Inc., 519 F.2d 1352 (8th Cir. 1975); Halvorson v. American Hoist & Derrick Co., 240 N.W.2d 303 (Minn. 1976).

6. Bjerk v. Universal Engineering Corp., 552 F.2d 1314 (8th Cir. 1977).

7. The genesis of the strict products action sounding in tort can be traced to the case of Henningsen v. Bloomfield Motors, Inc., 32 N.J. 358, 161 A.2d 69 (1960). However, it was not until the later case of Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1963), and the subsequent adoption by the American Law Institute of the RESTATEMENT (SECOND) OF TORTS § 402A (1965) that the strict tort action, as we know it today, came into play. *See* Twerski, *From Defect to Cause to Comparative Fault—Rethinking Some Products Liability Concepts*, 60 MARQ. L. REV. 297 (1977) [hereinafter cited as Twerski, *Rethinking*]; Prosser, *The Fall of the Citadel (Strict Liability to the Consumer)*, 50 MINN. L. REV. 791, 804 (1966) [hereinafter cited as Prosser, *Fall of the Citadel*].

8. *See, e.g.*, MacPherson v. Buick Motor Co., 217 N.Y. 382, 111 N.E. 1050 (1916); Huset v. J.I. Case Threshing Machine Co., 120 F. 865 (8th Cir. 1903); Blood Balm Co. v. Cooper, 83 Ga. 457, 10 S.E. 118 (1889); Thomas v. Winchester, 6 N.Y. 397, 57 Am. Dec. 455 (1852).

9. *See* Prosser, *Fall of the Citadel*, *supra* note 7, at 799-800. The warranty action was originally an action in tort, based upon a breach of an assumed duty. The wrong

resulted from judicial dissatisfaction with the difficulty of proving a case under the negligence theory[10] and the inability of warranty law to provide an adequate remedy for those not in privity with the defendant.[11] The modern product liability boom is the offspring of the strict liability concept as set forth in section 402A of the Restatement (Second) of Torts.[12]

For the plaintiff, the primary advantage of proceeding under section 402A is that it not only "relieves him of proving specific acts of negligence . . ." on the part of a defendant, but also frees him[13] from the warranty defenses of notice of breach, disclaimer and lack of privity.[14] Although the strict liability action eases the plaintiff's burden of proof and allows for recovery in a larger number of cases, many litigants shall choose to proceed solely on the negligence theory,[15] or rely on alternative theories of negligence and strict liability.[16] This continued adherence to the negligence theory in modern products liability actions can best be attributed to several factors:

(1) In Wisconsin, comparative negligence concepts require trial counsel to deal with the extent of deviation from an established standard of conduct (negligence) and/or product danger (strict liability). Obviously, a plaintiff's position is enhanced if he can broaden his criticism to include both the defendant's conduct and the product;

(2) Most practitioners in the field have a much greater familiarity with the negligence action type;

(3) Many trial attorneys feel that the negligence theory is more easily understood by juries because it seeks to base

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was considered to be a form of misrepresentation, similar to deceit, but not clearly defined. Ames, *History of Assumpsit,* 2 HARV. L. REV. 1, 8 (1888).

10. *See* Note, *"Unreasonable Danger" Eliminated From the Theory of Strict Liability—The Restatement Restated,* 42 FORDHAM L. REV. 943, 951 (1974); L. FLEMING, AN INTRODUCTION TO THE LAW OF TORTS, 95 (1967); Ehrenzweig, *Negligence Without Fault,* 54 CALIF. L. REV. 1422 (1966).

11. *See* Prosser, *Fall of the Citadel, supra* note 7, at 799-804.

12. *Id.* at 791-98.

13. According to WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 1041 (3d ed. 1961), the pronouns "he" and "his", despite their masculine connotation, may properly be used to refer to indefinite objects or persons. Since the use of "he or she" or "his or her" is awkward and consumes needless space, the writers use only one indefinite pronoun to convey their meaning. It is hoped that use of this expedient will not offend the readers' sensibilities.

14. Dippel v. Sciano, 37 Wis. 2d 443, 460, 155 N.W.2d 55, 63 (1967).

15. *See, e.g.,* Greiten v. LaDow, 70 Wis. 2d 589, 235 N.W.2d 677 (1975).

16. *See, e.g.,* Howes v. Deere & Co., 71 Wis. 2d 268, 238 N.W.2d 76 (1976); Halvorson v. American Hoist & Derrick Co., 240 N.W.2d 303 (Minn. 1976).

> liability on the defendant's fault while the strict liability doctrine requires that they determine liability by examining the product without any consideration of the manufacturer's conduct;
>
> (4) Some aspects of the rapidly developing body of strict products liability law are still confusing and uncertain.[17]

Increasingly, since the case of *Howes v. Deere & Co.*,[18] the two theories of liability have been asserted together, resulting in a good deal of overlap in their development. The end result has been a gradual blurring of the distinction between strict liability and negligence.[19]

This slow but perceptible merger of strict liability and negligence principles has served to heighten the potential for confusion in dual theory products liability litigation.[20] For example, the highly respected Wisconsin Supreme Court has recently experienced some difficulty in explaining the relationship between strict tort liability and common law negligence.[21] Indeed, in *Howes* the court conceded that "[i]t may be that some of the difficulty in distinguishing the elements encompassed in the common-law negligence rule and the negligence per se doctrine are attributable to the opinions of this court."[22] The Wisconsin court clearly does not stand alone in this regard.

It may be that some of the problems continuing to plague the Wisconsin court are a natural incident of the manner in which the doctrine of strict liability evolved and was assimilated into existing tort law. Rather than conceptualize product liability as an entirely new cause of action as some courts had

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17. *See* W. PROSSER & J. WADE, CASES AND MATERIALS ON TORTS, 691 n. 5 (5th ed. 1971).

18. 71 Wis. 2d 268, 238 N.W.2d 76 (1976).

19. Perhaps the best illustration of this point is seen by comparing the "majority" and "concurring" opinions in Greiten v. LaDow, 70 Wis. 2d 589, 235 N.W.2d 677 (1975). *See also* Rheingold, *Proof of Defect in Product Liability Cases*, 38 TENN. L. REV. 325 (1971) [hereinafter cited as Rheingold, *Proof of Defect*].

20. *See* Twerski, *Rethinking*, *supra* note 7, at 300.

21. *See* the concurring opinion of the late Chief Justice Hallows in Dippel v. Sciano, 37 Wis. 2d 443, 463, 155 N.W.2d 55, 65 (1967). *See also* Greiten v. LaDow, 70 Wis. 2d 589, 235 N.W.2d 677 (1975); Vincer v. Esther Williams All-Aluminum Swimming Pool Co., 69 Wis. 2d 326, 230 N.W.2d 794 (1975); Powers v. Hunt-Wesson Foods, Inc., 64 Wis. 2d 532, 219 N.W.2d 393 (1974).

22. 71 Wis. 2d at 27, 238 N.W.2d at 80. Commentators on Wisconsin law have expressed some doubt as to whether the Wisconsin negligence per se doctrine is really a rule of strict liability. *See* Twerski, *Rethinking*, *supra* note 7, at 321-25; Note, *Strict Product Liability in Wisconsin*, 1977 WIS. L. REV. 227.

done,[23] Wisconsin chose to fit the concept within its existing framework of highly sophisticated comparative negligence law. This was accomplished by making a judicial determination that, taken together, the elements of section 402A would be treated as the equivalent of negligence per se.[24] Clearly, strict liability (negligence per se) focuses attention on the condition of the product rather than the conduct of the defendant.[25] Thus, under the ruling of *Dippel,* a manufacturer who causes an injury by selling an unreasonably dangerous and defective product which is expected to and does reach the ultimate consumer without substantial change "is regarded by law as *negligent* even though he has exercised all possible care in the preparation and sale of the product."[26]

In the typical product injury action based on negligence alone, it is the conduct of the defendant which serves as the basis for liability. In such actions "[t]he plaintiff is simply required to prove that the defendant failed to exercise ordinary care and that the act or omission complained of was the cause, in the legal sense, of the plaintiff's injury."[27] There is no explicit requirement that the plaintiff prove that the product, as marketed, contained an unreasonably dangerous defect.[28]

As simple as the foregoing proposition may sound, the application of the principle to actual trial facts has proven to be a source of endless trouble for the Wisconsin Supreme Court. In *Greiten v. LaDow,*[29] the court sharply divided over this very issue: Is proof that a product is unreasonably dangerous a prerequisite to recovery in a product liability action based on the theory of negligence?[30] Justice Heffernan, in his "concurring" opinion (later properly denominated the majority opinion)[31] took the position that:

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23. *See* Greenman v. Yuba Power Products, Inc., 59 Cal. 2d 57, 63, 377 P.2d 897, 901, 27 Cal. Rptr. 697, 701 (1963); Prosser, *Fall of the Citadel, supra* note 7, at 802-03.

24. Greiten v. LaDow, 70 Wis. 2d 589, 600, 235 N.W.2d 677, 684 (1975) (Heffernan, J., concurring opinion); Dippel v. Sciano, 37 Wis. 2d 443, 461-62, 155 N.W.2d 55, 64 (1967); Twerski, *Rethinking, supra* note 7, at 319-20.

25. Howes v. Deere & Co., 71 Wis. 2d 268, 275, 238 N.W.2d 76, 80 (1976).

26. WIS. J.I.—CIVIL No. 3260 [emphasis added].

27. Greiten v. LaDow, 70 Wis. 2d 589, 601, 235 N.W.2d 677, 684 (1975).

28. *Id.* at 604, 235 N.W.2d at 684.

29. 70 Wis. 2d 589, 235 N.W.2d 677 (1975).

30. For critical discussions of the court's struggle in *Greiten, see* Twerski, *Rethinking, supra* note 7, at 331-35, and Note, *Strict Liability in Wisconsin,* 1977 WIS. L. REV. 227, 236-41.

31. Howes v. Deere & Co., 71 Wis. 2d 268, 274, 238 N.W.2d 76, 80 (1976). *See also* Twerski, *Rethinking, supra* note 7, at 322 n.65.

> Where a plaintiff proves negligence—in this case, the lack of ordinary care in the design of a product—there is no doubt that there may be recovery in the event the defective design results in an unreasonably dangerous product, *but there may be recovery for the negligent design of a product even though it is not unreasonably dangerous in the 402A sense.* All that is necessary to prove is that the product is designed with a lack of ordinary care and that the lack of care resulted in injury. No test of negligence has been called to the attention of this writer that requires that the product be unreasonably dangerous in order to predicate liability.[32]

The words in the above quotation by Justice Heffernan are quite clear. The point made is that the threshold question in a negligent design product liability case is not whether the product was unreasonably dangerous, but whether the defendant failed to exercise ordinary care. In reaching the holding that the plaintiff failed to adequately prove his case, however, Justice Heffernan took a stance 180 degrees from the above-quoted statement. "Accordingly, in the instant case, where the action is grounded on negligence, it was necessary for the plaintiff to show that the respondent LaDow, in the exercise of ordinary care, should have foreseen that his design and method of installation would be *unreasonably dangerous* to others."[33]

The apparent contradiction may, in part, stem from the fact that Justice Heffernan did not expect his opinion to be that of the court and, therefore, did not take pains to insure that the opinion was free from potentially confusing dicta. Unfortunately, some members of the bench and bar have interpreted Justice Heffernan's opinion in *Greiten* far too literally, thus detracting from the actual holding of the case.

Justice Robert Hansen, joined by two other members of the court in his "majority" opinion (later denominated the concurring opinion[34]), sought to further merge the doctrines of strict liability and negligence. Relying on a subsequently withdrawn[35] statement in *Vincer v. Ester Williams All Aluminum Swimming Pool Co.*,[36] Justice Hansen took the position that a plaintiff in a negligence products action must prove that the injury-

32. 70 Wis. 2d at 603, 235 N.W.2d at 685-86 (emphasis added).
33. *Id.* at 602, 235 N.W.2d at 684 (emphasis added).
34. Howes v. Deere & Co., 71 Wis. 2d 268, 274, 238 N.W.2d 76, 80 (1976).
35. *Id.*
36. 69 Wis. 2d 326, 230 N.W.2d 794 (1975).

causing product was unreasonably dangerous.[37] He also held that the determination of whether a product contains an unreasonably dangerous defect depends on the reasonable expectations of the ordinary consumer conerning the characteristics of the product.[38]

It is obvious that the members of the court in *Greiten* were struggling with a problem of semantics. To date, the problem has not been resolved. It was indeed surprising to see the Wisconsin court, long the leading exponent on the law of negligence in our country, go through such gyrations to determine whether the plaintiff had failed to make out a prima facie case of negligence. Perhaps the most disturbing aspect of the case is that both the majority and concurring opinions correctly analyze certain aspects of the problem but miss the mark entirely on others.

Justice Heffernan's opinion in *Greiten* has recently been the subject of considerable critical comment.[39] Perhaps some of the criticism would more properly be directed at those members of the bench and bar who place undue emphasis on Justice Heffernan's gratuitous statement that "there may be recovery for negligent design of a product even though it is not unreasonably dangerous in the 402A sense."[40] Those who unduly emphasize this dictum ignore the statement, which served as a focal point for the case, that in a negligence action "it is necessary to prove what was done and to prove what was done was foreseeably hazardous to someone."[41] It is difficult to conceive in theory or in practice how a product can be "foreseeably hazardous" (*i.e.*, a prerequisite to a finding of negligence) under circumstances where the product has been factually or legally determined to be free of "unreasonable danger."

In several recent Wisconsin cases, both in state and federal courts, where both strict liability and negligence inquiries were submitted to the jury, verdicts were returned finding first that

37. 70 Wis. 2d 589, 596, 235 N.W.2d 677, 682 (1975).

38. *Id.*

39. *See* Twerski, *Rethinking, supra* note 7, at 331-35; and Note, *Strict Liability in Wisconsin,* 1977 WIS. L. REV. 227, 236-41.

40. 70 Wis. 2d at 603, 235 N.W.2d at 685.

41. *Id.* at 602, 235 N.W.2d at 685. This becomes especially clear when one examines those negligence product injury actions where the plaintiff relies on the res ipsa loquitor inference. *See* Gierach v. Snap-On Tools, 79 Wis. 2d 47, 255 N.W.2d 465 (1977); *cf.* Utica Mut. Ins. Co. v. Ripon Coop., 50 Wis. 2d 431, 184 N.W.2d 65 (1971) (jury free to accept or reject inference of negligence from expert testimony).

the product was not in a defective and unreasonably dangerous condition, and, second, that its manufacture was causally negligent with respect to the plaintiff's injuries.[42] Although such verdict results clearly cannot be supported by reason or logic,[43] those who would literally read the majority opinion in *Greiten* would find no inconsistency. Such an interpretation of the law not only opens the door for verdict inconsistency, but encourages it. The meaning of such inconsistent verdict results should be clear from the analysis that follows. If a defendant failed to act reasonably in the manufacture or design of a product, his negligence must somehow be manifested in the resultant product:

> It simply will not do to state that the negligence which causes harm is grounds for liability in a products case. The crucial middle step cannot be eliminated in that negligence has to result in a finding that some aspect of the product is below acceptable quality, otherwise the negligence has simply washed out into nothingness.[44]

Insofar as Justice Hansen feels that the plaintiff in a products action based on negligence must show that the product was in some way unreasonably dangerous, he is correct in his analysis.[45] However, the requirement of proof of the dangerous defect is more a matter of practicality than a black letter rule of law. Sometimes the plaintiff will need to establish the unreasonable danger only by implication. For instance, where the plaintiff relies on a res ipsa loquitur inference to establish his case, there is no explicit requirement that he prove that the product was in a defective condition which was unreasonably dangerous. Instead, it must only be shown that "(1) The event in question [was] of a kind which does not ordinarily occur in the absence of negligence; and (2) the agency or instrumental-

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42. Schuldies v. Service Machine Co., No. 72-619 (E.D. Wis., judgment entered May 3, 1977); Hansen v. Cessna Aircraft Co., No. 74-502 (E.D. Wis., judgment entered Mar. 18, 1977) *appeal docketed*, No. 77-1753 (7th Cir. 1977); Fisher v. Cleveland Punch & Sheer Works Co., No. 417-603 (Cir. Ct. Milwaukee County, judgment entered April 9, 1976) *appeal docketed*, No. 76-337 (Wis. S. Ct. 1976).

43. Sterner v. United States Plywood-Champion Paper, Inc., 517 F.2d 1352, 1355 (8th Cir. 1975) (Henley, J., concurring); Halvorson v. American Hoist & Derrick Co., 240 N.W.2d 303, 307 (Minn. 1976); Twerski, *Rethinking*, *supra* note 7, at 332-33; Note, *Strict Liability in Wisconsin*, 1977 WIS. L. REV. 227, 239-41.

44. Twerski, *Rethinking*, *supra* note 7, at 333.

45. *See* Rheingold, *Proof of Defect*, *supra* note 19, at 325; Wade, *On the Nature of Strict Tort Liability for Products*, 44 MISS. L.J. 825, 836-37 (1973).

ity causing the harm [was] within the exclusive control of the defendant."[46] However, the basis of the liability imposed is that there is some unreasonably dangerous quality of the product which is not present in the typical product of its type, produced without negligence on the part of the defendant.

An examination of the underpinnings of negligence liability will reveal that a plaintiff in a standard negligence products case will, in some fashion, have to establish that the product was in an unreasonably dangerous condition. Negligence is, by definition, the creation of an unreasonable risk of harm to others.[47] Liability is imposed if the defendant should have foreseen that his design or method of production "would be unreasonably dangerous to others."[48]

Viewed from another perspective, the reasonableness of a manufacturer's conduct in marketing the product is determined by balancing the utility of the product against the risk or danger involved with its use.[49] When the danger associated with the use, manufacture or sale of the product is foreseeably unreasonable, the manufacturer or seller is subject to liability for the harm which results. If there is no unreasonable danger, there should be no liability based on negligence. A manufacturer cannot be considered negligent for producing a safe product.[50]

Although it is likely that the court will have an opportunity in the very near future, the Wisconsin Supreme Court has not yet been confronted with a case where the jury returned a verdict absolving the defendant from strict liability, but nevertheless finding him negligent. This problem, however, was squarely confronted by the Minnesota Supreme Court in the case of *Halvorson v. American Hoist and Derrick Co.*[51] This

46. Gierach v. Snap-On Tools Corp., 79 Wis. 2d 47, 53, 255 N.W.2d 465, 467 (1977); *cf.* Utica Mut. Ins. Co. v. Ripon Coop., 50 Wis. 2d 431, 436, 184 N.W.2d 65, 67 (1971) (jury free to accept or reject inference of negligence from expert testimony).

47. *See* W. PROSSER, HANDBOOK OF THE LAW OF TORTS, 145 (4th ed. 1971).

48. Greiten v. LaDow, 70 Wis. 2d 589, 602, 235 N.W.2d 677, 685 (1975).

49. Note, *Strict Products Liability in Wisconsin,* 1977 WIS. L. REV. 227, 240.

50. Halvorson v. American Hoist & Derrick Co., 240 N.W.2d 303, 307 (Minn. 1976); Sterner v. United States Plywood-Champion Paper, Inc., 519 F.2d 1352, 1355 (8th Cir. 1975) (Henley, J., concurring).

51. 240 N.W.2d 303 (Minn. 1976). Minnesota has adopted basically the same comparative negligence concepts and reading of section 402A as has Wisconsin. *See* MINN. STAT. § 604.01 (1976); Ferguson v. Northern States Power Co., 239 N.W.2d 190 (Minn. 1976); Holkstead v. Coca-Cola Bottling Co., Inc., 288 Minn. 249, 180 N.W.2d 860 (1970); Farr v. Armstrong Rubber Co., 288 Minn. 83, 179 N.W.2d 64 (1970).

case involved a situation where a crane boom struck an electric wire and electrocuted the plaintiff who was attempting to steady the load being held by the crane. The jury returned a verdict, finding the crane manufacturer not strictly liable, but went on to find the defendant negligent and ascribed twenty-five percent of the causal negligence to the crane manufacturer on proof that there was an absence of certain safety devices on the crane.[52] The remaining seventy-five percent was apportioned to the plaintiff's employer who had paid benefits under the Minnesota Compensation Act. The pertinent questions on the jury verdict with regard to strict liability and negligence were phrased as follows:

> Question Number 1:
> At the time the truck crane left American Hoist and Derrick Co., was it in a defective condition, unreasonably dangerous to a user of the crane, because of the absence of a sensor device or insulated swivel?
> Answer:
> No.
> . . .
> Question Number 5:
> Was American Hoist and Derrick Co. negligent in the design, manufacture, inspection or testing of the crane?
> Answer:
> Yes.[53]

The Minnesota court, managing to avoid the semantic vortex which troubled the Wisconsin Supreme Court in *Greiten*, found that the verdict was clearly inconsistent.

> The common element in both negligence and strict liability theories of product liability is some kind of dangerous defect rendering the product unreasonably dangerous for its intended use. Unless such a dangerous defect can be found, our previous cases would impliedly support a holding of no liability as a matter of law.
> . . .
> Based on the above analysis, and under the facts of this case, the jury's findings of no strict liability but 25 percent negligence are inconsistent and irreconcilable. Implicit in the former finding is the conclusion that the crane was not a danger-

52. Plaintiff alleged that a sensor device which would sound a warning when the boom approached a power line and an insulaulated hook were missing.

53. 240 N.W.2d 303 (Minn. 1976).

> ous, defective product because of the absence of safety devices. Implicit in the latter finding is the contrary conclusion that the crane created an unreasonable risk of harm because of the absence of the same safety devices. These conclusions cannot be reasonably reconciled. If a product is not dangerous and defective in the absence of safety devices, it is not negligent to manufacture it that way.[54]

The court went on to observe that normally such inconsistent findings of a jury would result in a remand of the case for a new trial. The proof in *Halvorson,* however, failed to establish liability under either theory as a matter of law, and the case was therefore dismissed.[55]

The logic and consistency of the *Halvorson* opinion is evident when compared with the opinion in *Sterner v. U.S. Plywood-Champion Paper, Inc.,*[56] which reached a contrary conclusion. There the jury, through its answers to special interrogatories, found that the defendant manufacturer was not liable under a strict liability theory but was negligent. In this case, which centered on the adequacy of flammability warnings accompanying a can of all-purpose adhesive, the Eighth Circuit Court of Appeals briefly and unpersuasively found that there was "no prejudicial error" in the verdict.

> The jury's rejection of plaintiff's theory of strict liability as to its defective product was not inconsistent with a finding of negligence based on the inadequacy of the warning. The jury could have rationally concluded the product was fit for its intended use so long as the defendant properly warned its users of the dangers involved.[57]

What the Eighth Circuit Court of Appeals failed to consider was the fact that the absence of adequate label warnings in itself constitutes a defect under section 402A, which, if unreasonably dangerous, would subject the manufacturer to strict liability in tort.[58] If adequate warnings were not provided, the

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54. *Id.* at 307 (footnote omitted).

55. *Id.* at 308.

56. 519 F.2d 1352 (8th Cir. 1975).

57. *Id.* at 1354-55.

58. *Id.* at 1355 (Henley, J., concurring); RESTATEMENT (SECOND) OF TORTS § 402A, Comment 1 (1965); WIS. J.I.—CIVIL No. 3262; Crane v. Sears Roebuck & Co., 218 Cal. App. 2d 855, 32 Cal. Rptr. 754 (1963). *See also* Schuh v. Fox River Tractor Co., 63 Wis. 2d 728, 218 N.W.2d 279 (1974); Noel, *Products Defective Because of Inadequate Directions or Warnings,* 23 SW. L. J. 256 (1969).

product was unreasonably dangerous under the definition of section 402A.

The concurring opinion in *Sterner* pointed out the inconsistency of the verdict and the weakness of the majority's reasoning:

> Common to both plaintiff's theories was his claim that the [inadequate warnings] rendered the product unreasonably dangerous or "defective." Since strict liability in tort is a broader theory of liability than common law negligence in that there may be a recovery on a strict liability theory without a showing of negligence, the jury's finding for plaintiff on the basis of his narrower negligence theory while refusing to find for him on his broader theory was logically inconsistent, and the inconsistency cannot be reconciled.[59]

In this particular case, however, the concurrence did not call for a new trial since there was sufficient evidence to support a finding of strict liability by the jury.[60]

It would appear that the reasoning of the *Halvorson* court and the concurring opinion in *Sterner* correctly assess the problem. While the common law negligence doctrine and the theory of strict product liability each have their own focus and terminology, the ultimate question of each theory is whether the defendant will be considered liable for his association with an injury-producing product. The broader strict liability doctrine establishes that a defendant will be liable if he produces an "unreasonably dangerous" product even though there is an absence of proof as to his specific conduct in the production of that product. In contrast, the proof may go further and afford a basis for criticizing the defendant's conduct in producing that dangerous product and thus support a cause of action in negligence. But to argue that a party's conduct in producing a product which has been legally or factually determined to be safe should be the occasion for attaching liability is wholly untenable.[61]

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59. 519 F.2d at 1355.

60. *Id.*

61. If the Wisconsin court's reasoning in *Greiten* is followed, it would seem that the plaintiff in a negligence product liability case would not be required to prove that the product was "defective." This view is equally unsound:

> It becomes apparent from a study of the pertinent cases that a defect for strict liability purposes is a defect for negligence purposes and warranty purposes. The differences between the theories—if there is much today—must therefore rest on factors other than the type and amount of proof required to

B. *The Inadequacy of Present Verdict Forms*

In factually complicated and lengthy litigation special verdicts should be constructed not only to comply with the dictates of substantive law but should also be formulated to aid the jury in understanding and deciding the case. A disservice is done when jurors in dual theory product liability cases are forced to decipher long and complicated melanges of questions filled with unfamiliar jargon and technically confusing concepts after receiving only a scant "crash course" in the same legal principles which have troubled the bench and bar for a number of years.[62] If the legal profession has so complicated the form of the modern jury verdict in dual theory product liability actions that jurors cannot understand what they are doing, or what they are supposed to be doing, then it becomes the profession's responsibility to provide an understandable form which will eliminate the inconsistency problem and, at the same time, facilitate a fair and just determination of all the issues. In order to accomplish this, the bench and bar must identify those matters which must be included in a jury submission and present them in a concise and coherent form.

In any given case, a plaintiff may submit proof both critical of the product (strict liability) and proof critical of the conduct of the manufacturer in producing the product (negligence). Under the rule laid down by the Wisconsin Supreme Court in *Howes v. Deere & Co.*,[63] the trial court may then submit the case to the jury on both theories of recovery.[64] The submission of the dual liability inquiries to the jury does not in itself in-

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show that the product is defective.

Rheingold, *Proof of Defect*, *supra* note 19, at 325-26.

62. Professor Moore disfavors the special verdict form and advocates use of the general verdict because:

> Its chief value is that it applies the "law," oftentimes a body of technical and refined theoretical principles and sometimes edged with harshness, in an earthy fashion that comports with "justice" as conceived by the masses, for whom after all the law is mainly meant to serve. The general verdict is the answer from the man in the street.

5A MOORE'S FEDERAL PRACTICE ¶ 49.05, at 2235-36 (2d ed. 1948). It is the opinion of the authors that a simplified special verdict form, like the one proposed herein, provides many of the advantages of the general verdict—simplicity, understandability and preservation of the jury function—while still retaining the beneficial features of the special verdict.

63. 71 Wis. 2d 268, 238 N.W.2d 76 (1976).

64. The supreme court in *Howes* did not specify when both theories should be submitted. *Id.* at 272, 238 N.W.2d at 79.

crease the poential for verdict inconsistency. Rather, it is the manner in which the two theories are presented that potentiates inconsistent results. The Wisconsin Academy of Trial Lawyers, appearing as amicus curiae in the *Howes* case, attempted to clarify the matter while still retaining the plaintiff's so-called "two kicks at the cat" by suggesting that the court present first the negligence question and then the section 402A question in the verdict form. The supreme court, however, declined to deal with this issue, consigning the matter instead to the discretion of the trial courts.

> The brief of amicus curiae also suggests that we decide whether the jury should be required to answer the negligence question before approaching the negligence per se question. At this stage in the development of the law in this state relating to special liability of the seller, we decline to do so.[65]

Whether the court's inaction was intended to encourage the trial bar to develop a workable verdict format or an attempt to avoid locking the trial courts and practicing bar into a rigid and unworkable system is not particularly relevant. What is important is that experience since *Howes v. Deere & Co.* has shown that the verdict forms presently utilized are inadequate; fortunately, this experience has also indicated what the proper approach should be.

It appears that most trial courts present both sets of inquiries to the jury where the plaintiff has pleaded both theories of liability, made a proper request at trial, and adduced some credible evidence supporting each theory. Most courts then submit two sets of questions to the jury: first, a 402A negligence per se inquiry, followed by an ordinary negligence inquiry.

The leading commentary on verdict formulation in Wisconsin, authored by the Honorable John A. Decker and John R. Decker, indicates a preference for this order of submission "because of the relative ease of proof of 402A negligence."[66] In contrast to the Deckers, the authors of this article advocate a more simplified form which employs only one broad negligence inquiry to cover both bases of liability. If, however, two inquiries are to made, it seems imperative to first inquire into the common law negligence liability. This is so, despite any lan-

65. *Id. See also* Decker & Decker, *Special Verdict Formulation in Wisconsin,* 60 MARQ. L. REV. 201, 275 (1977) [hereinafter cited as Decker & Decker].

66. Decker & Decker, *supra* note 65, at 275, 290-94.

guage to the contrary in *Greiten*, because a plaintiff who proves an ordinary negligence product liability case will generally have adduced sufficient evidence to support a negligence per se verdict.[67] If the jury finds the defendant(s) negligent, it is unnecessary to answer the 402A negligence question. If, on the other hand, a jury finds no ordinary negligence on the part of the defendant, it is still logically possible to find 402A negligence due to the less demanding burden of proof of section 402A.[68] Submitting the ordinary negligence inquiry first will, to a degree, eliminate some of the potential for inconsistency as it eradicates the danger that a verdict will be returned finding a manufacturer negligent even though he has produced a safe product. Even when structured in this fashion, however, the multiple inquiry format is still unnecessarily complicated, and does not achieve the optimum level of verdict performance.

The Decker article offers an "experimental"[69] verdict form for use in dual theory products litigation which has served as the model for most verdicts submitted in recent trials in this

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67. Professor Keeton has written that:

> [W]hile strict liability obviates the necessity for convincing the jury as to the existence of negligence, it does not alter in any substantial way the plaintiff's proof problems, and the satisfaction of plaintiff's proof requirements for strict liability will generally result also in a finding of negligence. I cannot overemphasize this. In a products case the primary task of the plaintiff's lawyer is establishing that the damaging event which occurred in the course of the use of a product was the result of a defect and not due to some other cause such as misuse.

Keeton, *Manufacturer's Liability: The Meaning of "Defect" in the Manufacture and Design of Products*, 20 SYRACUSE L. REV. 559, 563 (1969). Professor Wade concurs in this view:

> In the case of the improper design which makes the product dangerous, whatever is enough to show that it is so dangerous that strict liability should apply (that it has a "defective design," to use the Cronin approach), will also be enough to show negligence on the part of the manufacturer. Even if the manufacturer is not aware of the danger created by the bad design, he is negligent in not learning of it. This is also true if the product is unsafe because it did not carry a suitable warning or adequate instruction. The proof necessary to establish strict liability will certainly be sufficient to establish negligence liability as well. . . . There are thus innate similarities between the actions in negligence and in strict liability, and changing the terminology does not alter this. [footnotes omitted].

Wade, *On the Nature of Strict Tort Liability for Products*, 44 MISS. L.J. 825, 836-37 (1973). *See also* Rheingold, *Proof of Defect*, *supra* note 19, at 325-26.

68. "[S]trict liability in tort is a broader theory of liability than common law negligence in that there may be a recovery on a strict liability theory without a showing of negligence." Sterner v. United States Plywood-Champion Paper, Inc., 519 F.2d 1352, 1355 (8th Cir. 1975) (Henley, J., concurring).

69. Decker & Decker, *supra* note 65, at 290-94.

state. The wide use of this "experimental" verdict form is understandable since the article was the first serious attempt to address the subject. The experimental verdict form is quite complete in that it painstakingly makes all relevant inquiries and comparisons. Although the format is laudable for its completeness, and should be commended as the initial and most thorough attempt to clarify this muddled segment of product liability litigation, it has proven to be unsatisfactory in actual practice.

Any multiple inquiry verdict is subject to an increased potential for inconsistency. Placing the ordinary negligence inquiry first undoubtedly helps to alleviate this facet of the problem, but other perplexing situations remain. The verdict form proposed in the Decker article covers five pages and may require more than twenty separate questions, many of them long and confusing. Judging by what juries have indicated in their attempts to respond to such verdicts,[70] it appears that this format is simply too complex to consistently elicit logically coherent results. It is quite possible that many attorneys and judges who have not thoroughly examined the Decker article before using the suggested verdict form do not fully understand its meaning and implications. What is required is a verdict form which can be understood by an "average jury," as well as by members of the legal profession, that can still be used on a practical basis and result in internally consistent verdicts.

III. A Proposed Verdict Form For Use in Dual Theory Product Liability Litigation

The proposed verdict format, which is set forth in the appendix to this article,[71] only inquires into the negligence of each person or entity who may be causally negligent or strictly liable to the plaintiff. Each negligence inquiry is followed by a causation question to be answered if there is a finding of negligence. The jury is then required to compare the negligence of all those actors found to be causally involved. Finally, a standard damage question is presented.

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70. Schuldies v. Service Machine Co., No. 72-619 (E.D. Wis., judgment entered May 3, 1977); Hensen v. Cessna Aircraft Co., No. 74-502 (E.D. Wis., judgment entered Mar. 18, 1977) *appeal docketed*, No. 77-1753 (7th Cir. 1977); Fisher v. Cleveland Punch & Sheer Works Co., No. 417-603 (Cir. Ct. Milwaukee County, judgment entered April 9, 1976) *appeal docketed*, No. 76-337 (Wis. S. Ct. 1976).

71. See Appendix, *infra* at 403-04.

A critic's natural reaction at this point would be to argue that *Howes v. Deere & Co.* requires that the case be submitted to the jury on both theories of 402A and ordinary negligence and, for this reason, the verdict format given in the appendix is defective. As a matter of fact, however, the verdict is designed to accommodate both 402A negligence per se and ordinary negligence. The vehicle by which this is accomplished is the jury instructions.

From *Dippel v. Sciano* to the present, the Wisconsin court has consistently referred to these two theories of liability as "two grounds of negligence"[72] and the jury is instructed in the Wisconsin Civil Jury Instructions that a manufacturer or seller is "regarded as negligent" if the 402A elements are proved.[73] Since the only focus of this portion of the verdict is to determine whether the defendant was negligent, whether that negligence be "strict" or "traditional," there is no barrier, theoretical or otherwise, to a single inquiry format,[74] nor is there any change required in the instructions proposed by the Wisconsin Board of Circuit Judges. A similar single inquiry format is commonly used, if not exclusively, in auto accident cases where only one negligence question is asked per actor. The jury is instructed that negligence includes a failure to exercise ordinary care in the lookout, management, speed, and control of the vehicle, as well as in any other relevant matters.[75]

In the early development of Wisconsin law, "it was necessary in a negligence action to submit separate questions concerning each respect in which it was alleged that a party was negligent provided there was credible evidence to support an affirmative answer."[76] In 1961, however, the supreme court promulgated an amendment to the then existing special verdict rule[77] that authorized the use of the ultimate fact verdict.[78] Thus, authority was delegated to the trial courts to structure the verdict in such a manner that the sole inquiries would be whether a particular defendant was negligent and whether such

72. *See* Howes v. Deere & Co., 71 Wis. 2d 268, 272, 238 N.W.2d 76, 79 (1976).

73. WIS. J.I.—CIVIL No. 3260.

74. *See* Decker & Decker, *supra* note 65, at 278.

75. *Id.* at 245-46.

76. Baierl v. Hinshaw, 32 Wis. 2d 593, 597, 146 N.W.2d 433, 435 (1966). *See* Decker & Decker, *supra* note 65, at 213.

77. WIS. STAT. § 270.27 (1959).

78. Supreme Court Order, 11 Wis. 2d v (effective June 1, 1961).

negligence was causal.[79]

In *Baierl v. Hinshaw,* the supreme court reflected on the use of this streamlined verdict: "Wide use of the ultimate fact type of verdict not only greatly simplified the form of special verdicts submitted in negligence actions but also eliminated the thorny problem of duplicitous findings of negligence which frequently arose to plague both the trial courts and this court."[80] The verdict proposed in the appendix similarly eliminates the potential for inconsistency which arises when separate negligence and negligence per se inquiries are made in the verdict.

Such an approach is explicitly authorized in the present special verdict statute:

> 805.12 **Special Verdicts.** (1) Use. Unless it orders otherwise, the court shall direct the jury to return a special verdict. The verdict shall be prepared by the court in the form of written questions relating only to material issues of ultimate facts and admitting a direct answer. The jury shall answer in writing. *In cases founded upon negligence, the court need not submit separately any particular respect in which the party was allegedly negligent.* The court may also direct the jury to find upon particular questions of fact.[81]

The proposed verdict format will also comport well with established Wisconsin case law.[82] The Wisconsin Supreme Court has long condemned lengthy verdicts which tend to confuse the jury because of the inclusion of too many questions.[83]

The court has also disapproved of individual inquiries which are so long or complex that they are likely to be misunderstood by a jury.[84] In criticizing one such verdict question, the Wisconsin court stated, "it is so long and involved as to be incomprehensible to a jury. It confuses rather than clarifies. A verdict should be as short and simple in form as it is possible to make it."[85]

Admittedly, this admonition could be carried to an unwarranted extreme in products liability litigation by further com-

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79. Baierl v. Hinshaw, 32 Wis. 2d at 598, 146 N.W.2d at 435.

80. *Id.* at 598, 146 N.W.2d at 435-36.

81. WIS. STAT. § 805.12 (1975) (emphasis added).

82. *See* Decker & Decker, *supra* note 65, at 219-20.

83. *Id. See also* Okonski v. Pennsylvania & Ohio Fuel Co., 114 Wis. 448, 457, 90 N.W. 429, 432 (1902); Mauch v. City of Hartford, 112 Wis. 40, 53-67, 87 N.W. 816, 821-25 (1901); Eberhardt v. Sanger, 51 Wis. 72, 8 N.W. 111 (1881).

84. Hoffman v. Regling, 217 Wis. 66, 70-73, 258 N.W. 347, 349-51 (1935).

85. *Id.* at 70, 258 N.W. at 349 (emphasis added).

pressing the already reduced verdict form suggested in this article. This could be done by combining the negligence and causation questions. Although theoretically permissible,[86] it is unlikely that either plaintiff's or defendant's counsel would be willing to risk an appeal in order to determine whether such a formulation is permissible. This is particularly so in light of the fact that little or nothing is gained by combining the negligence and causation questions since they are concepts readily understood and easily dealt with by juries.

The concepts presented in this article are neither radically new nor without support. The Decker article noted that "present forms of special verdict and instructions are easily adaptable to a single-question submission of 402A negligence and ordinary negligence."[87] The Decker article would recommend structuring such a verdict in a slightly different fashion from that here proposed and would modify the instructions given the jury. Although not harmful, such a modification is unnecessary. The present Wisconsin Jury Instruction—Civil Number 3260—states that a manufacturer is "regarded as negligent" if the elements of 402A are established.[88] It will be sufficient to introduce a simple jury instruction modification which makes it clear that two separate standards are being used in the jury verdict and that a finding of negligence under either standard will suffice to make a determination of negligence on the part of a defendant.[89]

It must be conceded that in some instances the answers to the single negligence inquiry verdict proposed in this article

86. In Baierl v. Hinshaw, 32 Wis. 2d at 598, 146 N.W.2d at 436, the Wisconsin court held that WIS. STAT. § 270.27 (1963), on which present WIS. STAT. § 805.12 (1975) is "generally based," did not permit the use of a verdict which combined the negligence and causation questions. However, the court ruled that it was not against public policy for the parties to stipulate to its use. *Id.* at 601, 146 N.W.2d at 437. *See* Judicial Council Committee's Note to WIS. STAT. § 805.12 printed at 67 Wis. 2d 703 (1975).

87. Decker & Decker, *supra* note 65, at 278.

88. WIS. J.I.—CIVIL No. 3260.

89. A single instruction, combining the elements of present Wisconsin Jury Instructions—Civil, Numbers 3240 and 3260 would be sufficient. Essentially, the jury would be instructed that a defendant is considered negligent, for example, if he fails to exercise ordinary care in the design, warnings, instructions, or manufacture of a product or if he sells a defective product which is unreasonably dangerous and which is expected to and does reach the user or consumer without substantial change in the condition in which it is sold—even if he has exercised all possible care in the preparation and sale of the product. The jury would then be told that a finding under either standard would require them to answer the negligence question with respect to the defendant "yes."

may not reveal whether common law negligence or negligence per se was the basis for the jury's decision.[90] This may become a problem as a finding of negligence per se under the 402A standard results in joint liability for all persons in the chain of supply of the product for any damages awarded even though the percentage of negligence ascribed to a particular defendant is lower than that of the plaintiff.[91] Fortunately, the answer to this potential problem has already been analyzed in a concise manner by the Decker article, and it is clear that no insurmountable hurdles are presented.

> The liability to the injured person of a defendant, whether a seller, distributor, manufacturer or component supplier, is arrived at by different routes in negligence and strict liability for torts, with "foreseeability of harm" being the route in the first instance and "sale of a product in substantially the same condition" in the second instance. Whether the liability of persons in the chain of supply is to become joint is dependent on the question whether each defendant is in the business of selling the product and whether it reached the consumer in substantially the same condition. In the ordinary case that will be without dispute and thus there is no reason why the "negligence" of the defendants cannot be determined as a matter of law to be joint. However, if the evidence is in dispute with respect to whether a defendant is in the chain of supply, and that defendant is not found causally negligent, the verdict will not determine whether he is in the chain of supply and jointly liable. In such a case a special inquiry of fact is required.[92]

A determination by the jury of causal negligence on the part of all defendants in the chain of supply could obviate the problem. If there is a dispute as to whether the defendants are jointly liable, it would be a simple matter to make special inquiries of fact and require the jury to specify under which theory of negligence they proceeded.[93] Such an inquiry could be extremely short, to the point, and would not unduly confuse or complicate the verdict.

The proposed verdict also complies with the mandate of

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90. *See* Decker & Decker, *supra* note 65, at 278.

91. City of Franklin v. Badger Ford Truck Sales, 58 Wis. 2d 641, 207 N.W.2d 866 (1973).

92. Decker & Decker, *supra* note 65, at 278-79.

93. *Id.* at 278.

City of Franklin v. Badger Ford Truck Sales that the rights of comparative contribution between defendants be determined by the jury.[94] In *City of Franklin* the trial court submitted a verdict which required the jury only to compare the percentage of causal negligence attributable to the defective product and that of the plaintiff.[95] There was no comparison of the proportionate amount of the product negligence ascribable to the individual defendants in the chain of supply. The supreme court found that the trial court's verdict was inadequate because it failed to provide a basis for determining the rights of contribution between defendants. To correct this deficiency, the court remanded the case for a trial on the limited issue of the comparative negligence of the individual defendants.[96]

There is nothing in *City of Franklin* which requires the framing of a verdict so as to include two separate comparisons of negligence, the first between plaintiff and "product," and the second between the causal negligence of the defendants. Although there is nothing improper about requiring the jury to make two separate comparisons in the verdict form, it is unnecessary and undesirable.

The formulation proposed in this article provides a basis for determining the rights of comparative contribution without requiring an additional comparison question which could only serve to increase the potential for jury confusion and verdict inconsistency.

IV. CONCLUSION

The current products liability revolution has imposed upon juries the burden of dealing with lengthy trials and extremely complicated and technical issues. In past experience, juries

94. 58 Wis. 2d at 651-53, 207 N.W.2d at 871-72.

95. The verdict inquiry into the comparative causal negligence of the plaintiff and the defendants read as follows:

> Fifth Question: If you have answered both Question No. 1 and Question No. 2 "Yes," then such defect in construction constitutes causal negligence. If you have answered "Yes" to Question No. 2 and "Yes" to either or both subdivisions of Question No. 4, then answer this question; otherwise do not answer it:
>
> Taking 100 percent as a total, what percentage of negligence do you attribute to
>
> (a) The defective condition of the wheel?
>
> (b) The plaintiff, The City of Franklin?

Id. at 651, n.10, 207 N.W.2d at 871, n.10.

96. *Id.* at 657, 207 N.W.2d at 874.

have responded to this task with diligence and fairness. In view of the increasing numbers of product liability cases, however, it is incumbent upon the legal profession to develop a simple and straightforward verdict form that complies with the requirements of established substantive law. While technology may serve a public need as it becomes more complicated and obscure, justice does not, and its administration should be clear, concise and understood by all.

APPENDIX

Special Verdict

Question No. 1

Was the defendant, John Jones Manufacturing Company, negligent with respect to the [insert name of product]?

Answer: _____

Question No. 2

If your answer to Question No. 1 is "yes," then answer this question:

Was such negligence a cause of the plaintiff's injuries?

Answer: _____

Question No. 3

Was the defendant, Pete Smith Distributing Company, negligent with respect to the [insert name of product]?

Answer: _____

Question No. 4

If your answer to Question No. 3 is "yes," then answer this question:

Was such negligence a cause of the plaintiff's injuries?

Answer: _____

Question No. 5

Was the defendant, Mary Green Retail Selling Company, negligent with respect to the [insert name of product]?

Answer: _____

Question No. 6

If your answer to Question No. 5 is "yes," then answer this question:

Was such negligence a cause of the plaintiff's injuries?

Answer: _____

Question No. 7

At and immediately prior to his accident, was the plaintiff negligent with respect to his own safety?

Answer: _____

Question No. 8

If your answer to Question No. 7 is "yes," then answer this question:

Was such negligence a cause of his injuries?

Answer: _____

Question No. 9

If you have found any two (or more) parties causally negligent by answering "yes" to two (or more) of the Questions 2,

4, 6 and/or 8, then answer the following questions on comparative negligence:

Assuming the total negligence that caused plaintiff's injuries to be 100%, what percentage thereof do you attribute to:

(a) John Jones Manufacturing Company?
Answer:_____

(b) Pete Smith Distributing Company?
Answer:_____

(c) Mary Green Retail Selling Company?
Answer:_____

(d) Plaintiff?
Answer:_____

Question No. 10

What sum of money will fairly and reasonably compensate the plaintiff for:

(a) Past and future medical expenses?
Answer:_____

(b) Past and future loss of earning capacity?
Answer:_____

(c) Past and future pain, suffering and disability?
Answer:_____

Dissenting Jurors: Question Number:

_____ _____

_____ _____

Dated at Milwaukee, Wisconsin, this _____ day of _____, 19____.

_____
Foreperson