TESTIMONY

OF

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PENNSYLVANIA
AMERICAN FEDERATION OF LABOR AND
CONGRESS OF INDUSTRIAL ORGANIZATIONS (AFL-CIO)

ON

JOINT AND SEVERAL LIABILITY

BEFORE

HONORABLE THOMAS P. GANNON, CHAIRMAN
HOUSE JUDICIARY COMMITTEE

Harrisburg, PA

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JOINT AND SEVERAL LIABILITY

Chairman Greenleaf, Minority Chair Costa, Members of the Committee and Committee Staff, my name is David Wilderman and I am Legislative Director for the Pennsylvania AFL-CIO.

On behalf of our almost one million affiliate members of working men and women, I appreciate the opportunity to testify today regarding the elimination of the doctrine of Joint and Several Liability.

Elimination of Joint and Several Liability is the extreme approach to the legal principle of Joint and Several Liability by simply voiding the 300-year-old doctrine. Since fairness (in any context), seems to be the main argument of proponents of limiting joint and several, repeal of Joint and Several Liability does not try to strike some balance, but is extreme. "Fairness" is a mercurial concept, but elimination of a basic legal doctrine adopted over three hundred years ago is a step we would strongly urge the General Assembly to reject.

This is a big subject and of enormous significance to our membership. I will try to focus my comments on areas of particular concern with the hope that I can continue this dialogue.

I would first like to suggest a framework for analyzing this broad area. For the past so many years, business groups have been proposing various restrictions on individual rights. Often promoted under the name "Tort Reform", these restrictions, in one way or

another would limit the rights of individuals to sue or to fully recover the amount of damages won in a lawsuit, in this case eliminating Joint and Several Liability.

It seems to me that we must first examine the factual basis for the claims of the various proponents. I urge you to resist being stampeded into unsupported positions. Further, I implore you to resist the convenience of political expediency, which calls for developing compromise solutions satisfactory to none and unjustifiable in fact or principle. The presumption must rest on the side of individual rights and the burden of justification must rest with those who seek to restrict tort law remedies such as Joint and Several Liability.

At stake in this cloud of laws governing our basic relationships are the fundamental issues of safety and the related standards of care which governs our daily life and the quality of life for injured and disabled victims as well as health and welfare funds and pension funds. Retreat from the standard of care for employers of financial and legal advisors is only justified to satisfy other even more compelling interests. As I will discuss, insurance and business industry "feel good" legislation fails to meet this test.

The history of the Labor Movement is a never-ending fight to expand the rights of individuals. I strongly urge you not to recommend that we cede hard won ground to slick public relations words where blood was let to achieve rights of basic fairness.

Perhaps you feel that I am being overly dramatic, but let me put these comments in some perspective for you. For a moment, I would like to focus on product liability.

In our view, the subject of product liability in the workplace can only be sensibly considered as part of the broader subject of safety in the workplace. Product liability rules, after all, are at bottom a means of promoting safety and compensating the victims of unsafe products. Moreover, our views on the product liability system, as it

applies to the workplace, are largely shaped by the failure of other parts of the legal system to deal adequately with the problem of workplace safety.

Proponents of eliminating or narrowing Joint and Several Liability argue that because of the Workers' Compensation employer immunity, guarantees that employers can never be sued for safety violations, even where there is intentional harm such as willfully removing guards from machinery to speed production (see Poyser v. Neuman PA Supreme Court). The sad truth is, that under Pennsylvania law, an employer can commit murder one and their liability is limited to the Workers' Compensation death benefits, if any, to a spouse or children at about 50% the workers lost wages up to the statutory cap.

In a perverse way, the Workers' Compensation law encourages employers to create unsafe workplaces because increased productivity that results from reduced safety is only reduced by the cost of Workers' Compensation and not the threat of lawsuits.

The vast majority of Pennsylvania employers do not engage in such activity and the remedy for these criminals is, as Justice Nix, in writing for the Majority in Poyser called on the General Assembly to narrow employer immunity where willful and wanton employer conduct is directly like to cause bodily harm or death.

Manufacturers of equipment that can be tampered with to remove guards or other safety devices are subject to suit. Ultimately they have the technical engineering capability of foreclosing the opportunity of employer purchasers from disengaging safety devices, such as removing guards, and protecting the workers.

This is the state of the current law and as long as workers can't sue their employers for pre-meditated, willful or wanton conduct that is virtually certain to cause death or serious bodily harm. In this case, the machine manufacturer would be found only partially liable and the employer would be immune despite pre-mediated homicide or

serious bodily injury. Where the General Assembly would eliminate Joint and Several Liability, workers would receive a partial recovery for these kinds of injuries.

This fails any standard of "fairness" that proponents could argue. As long as Poyser is the law, the principle of Joint and Several Liability cannot be dropped. Our strong interest in the Product Liability Law, Joint and Several Liability, strict liability and negligence is rooted in the strong financial incentives they place on safe products and workplaces. There should be no retreat in these laws given the failure of OSHA and Workers' Compensation to incent safety in the workplace.

The threat of a lawsuit is the single most important factor in assuring safety products and safe workplaces and due diligence by our professional advisors such as accountants and lawyers. Over two-thirds of the product liability lawsuits arise from workplace injuries. These laws must remain in tact, unless other changes were made, such as the ability to sue for pre-meditated workplace homicide.

Nationally, each year, over 3,400,000 workers are injured or killed while at work. The number of lost time injuries as reported in Pennsylvania and the nation dropped dramatically according to the Bureau of Workers' Compensation, yet the number of Workers' Compensation claims remains steady. In Pennsylvania, over 90,000 workers are injured or killed while at work. In addition, it is estimated that each year, at least 100,000 workers, nationally die as the result of diseases contracted through occupational exposure to toxic substances such as asbestos. In Pennsylvania, close to 5,000 workers die from exposure to toxic substances each year. And hundreds of thousands, if not millions, of additional workers are at serious risk by reason of the exposure to such substances each year in the course of their employment.

In 1970, Congress enacted the Occupational Safety and Health Act to deal with this situation. The theory of that Act is that, through regulations promulgated and enforced by the Secretary of Labor, employers would be required to eliminate unsafe conditions

and practices and employees would thereby be "assured so far as possible...safe and healthy working conditions."

The theory has never been put into practice. Especially during the past twenty years, the Department of Labor has done precious little to require employers to meet the goals of the Occupational Safety and Health Act, and the Department has done even less to enforce those rules that have been promulgated. Drastic cuts that have been made in the budget for the Occupational Safety and Health Administration which make it difficult to foresee the day in which the Department will have the capacity to adequately create and enforce the safety and health laws. Last years action by the President and the Congress to negate the ergonomic standard is one such example of the impotence of OSHA. This was a regulation started by Secretary Elizabeth Dole, was ten years in the making and was universally applauded by the scientific and health and safety community.

Enforcement of the Occupational Safety and Health Act has been scaled back to the point of almost complete agency paralysis. OSHA has become more of a roadblock than a gateway to protection for the nation's working men and women. In addition, Pennsylvania is one of twenty-five states which does not yet provide health and safety protection for our public workers.

The short of it is that Congress' attempt to prevent occupational injuries, diseases and deaths through a regulatory system which would outlaw unsafe practices and regulate machine safety has essentially failed.

Just as a regulatory scheme to monitor safety has failed, the very nature of our standard of care is impacted by proposed restrictions on product liability law. Without a regulatory scheme in a free enterprise economy, the duty of care is established by the "potential for being sued". The calculation of risk prescribes the nature of care. Narrowly restricted rights by nature lessen the standard of care.

Unfortunately, corporate managers regularly complete cost benefit analysis on various production and product improvements designed for safety. In fact, this form of cost/safety analysis was institutionalized during the past 7 years in Washington by Justice Ginsburg when of the D.C. Court of Appeals, urged against asbestos controls because of the cost of the long gestation period.

Either in making the cost of unsafe conditions more easily calculable, or by reducing the cost, you alter the standard of care. In essence, you legalize the Pinto design, the Dalkon shield, Drano cleaner, Enron and Arthur Anderson and similar management decisions. These landmark situations will serve as deterrents to unsafe management decisions. They serve as a tool for responsible managers to argue in the boardroom to test, protect and warn. Lessening the chance of being sued; making it more easily to calculate the cost or insulating the product from liability undermines the ability of responsible corporate leadership to advocate for safety.

As I have said, barring other mechanisms to insure safety, such as regulation or criminal prosecution, the threat of being sued is the single most important contributor to safety in our society. Actions which alter the calculation of cost can be directly translated into harm for users and innocent victims.

The legal system, putting Tort Law to one side for the moment, has been no more successful in its attempt to provide compensation for workers who are the victims of occupational injuries or diseases. In theory, Workers' Compensation laws were enacted to assure that injured workers (and the survivors of deceased workers) would receive adequate recompense. But the reality is that the benefit levels under these laws have failed to keep pace with the cost of living. These benefit levels are today grossly inadequate to support an injured worker and his or her family. Similarly, the coverage provisions of many Worker's Compensation laws have not been updated in light of current knowledge about the relationship between occupational exposures to toxic

substances and diseases with long latency periods. For example, the Workers' Compensation law requires occupational disease victims to not only establish their own illness, but the special prevalence of this occupational disease within the industry. This industry test is impossible to establish given the limited amount of testing and knowledge. As a result, many workers suffering from occupational diseases are not even eligible for any Workers' Compensation benefits at all.

It is against this background that we approach the subject of product liability and the Joint and Several principle and the workplace. Because, as just explained, the legal system has failed to assure workplace safety or to provide adequate compensation to injured workers, it has become necessary for employees to turn to the product liability system as a means of promoting safety and securing adequate compensation for workplace injures. Through so-called "third party" suits, many workers have sued the manufacturers of machines, toxic chemicals, or other products that cause occupational injuries and diseases. Indeed, according to a study by the Insurance Services Office, 60% of the compensation paid in product liability actions goes to workers who have brought such "third-party" actions. Through these suits, workers have found a means of securing a fairer measure of compensation for their injuries and of providing a financial incentive to encourage the manufacture of safer products.

This increase reliance, or more precisely dependence, of workers on the Product Liability system is eloquent testimony to the failure of the regulatory, Workers' Compensation and criminal law systems. Workers have turned to Tort Law as a means of protection in spite of the fact that tort litigation is slow, costly and unpredictable in terms of results. The fact of the matter is, however, that there is not presently any workable alternative to the Tort System for assuring workplace safety and for providing adequate compensation to the injured workers.

So long as that is true, any legislation that would restrict the ability of injured persons to recover damages for injuries caused by the unsafe products is indefensible.

Elimination of Joint and Several Liability fails for essentially the same reasons; safety, standard of care and adequacy of compensation.

The Pennsylvania AFL-CIO has demonstrated a flexibility where compelling interests dictated. We approach each challenge with an overriding commitment to make change where the facts justified action, even if that has meant compromise on important issues.

Working men and women are keenly aware that the workplace of the 21st Century is a constantly changing and increasingly competitive world economy. After all, we have more at stake than anyone does and our responsiveness through our unions is a direct reflection of this awareness.

Despite the fact that today's discussion directly impacts safety and the standard of care, as well as the adequate provision to injured people, we would be willing to consider modification from individual rights if the facts so warrant and are balanced with some of the concerns workers have with issues such as Workers' Compensation.

We have carefully studied the claims over the past ten years. We have researched the matter and discussed the issue with State and National experts.

Frankly, this is one of the most unusual situations we have ever encountered in the legislative process.

The supposed justification for retreat is the high cost and limited availability of liability insurance resulting from the proliferation of lawsuits and the increase in jury verdicts.

From everything we can learn, from "Business Week" to the National Association of Attorney Generals, to the Corporate Conference Board and the "Wall Street Journal", from Insurance Industry Executives to High Government Officials, from Court Administrators to University Professors, there are two common messages.

The first message is that the so-called cost and availability issues are (a) a phenomenon of the mid nineteen eighties and recently as the economy or more accurate the stock market has slumped, and (b) correlated with the insurance industry investment cycle and are most directly related to interest rates and investment earnings.

The second message is that the number of lawsuits has not increased significantly and nor have the amounts of jury awards. Even more to the point, limitations on individual rights is not significantly correlated with lower cost or increased availability.

To put it a little more plainly, proponents of claims for Tort Reform and elimination of "Joint and Several" have failed to make the case of changes in the "real" world that would justify this "business feel good" legislation. This program was devised by industry and insurance leaders who seek to cover-up bad insurance practices and market phenomena by blaming the victim.

Insurance companies who collaborate to exploit, legislate exemption from anti-trust, pay no taxes, operate without surveillance and reap untold billions in annual profits, have amassed unparalleled political capital to carry on this fight. We struggle tirelessly to deal with the phantom of "Tort Reform"; even the economic rationale has evaporated with passage of the insurance industry cycle.

I started by saying the presumption must be in favor of retaining individual rights and the burden for justifying limits rests with those seeking limits.

The irony of the business "feel good" proposal is that the "costs" to business for insurance will not be lowered one penny by changing the State's Joint and Several Liability Law. Insurance costs are based on where manufacturer's sell the products. In fact, there is no insurance product for just Pennsylvania manufacturers. There are only nationally rated liability insurance policies. The risk is based on where the product is sold. True, many states restrict Joint and Several Liability in various ways, but this is all bound up with other aspects of the law. If the proponents are really after cost savings, the only remedy is federal legislation.

The second part of the irony is that, in the name of saving money for Pennsylvania manufacturers, the only ones to be impacted are Pennsylvania's workers and citizens.

II.

Impact of Joint and Several Liability on Pensions Health and Welfare and Taft-Hartley Fund – I have emphasized in my testimony the area of products liability. There are other critical areas that would impact on workers by repeal of Joint and Several Liability.

Workers and their unions would be directly impacted by the repeal of the Joint and Several Liability if the advisor to employee benefit funds commits negligent, gross negligence or misrepresentation of fact.

Pension funds, as well as health and welfare apprenticeship and Taft-Hartley Funds generally regularly are involved in litigation to protect the funds' integrity should we face and Enron-type disaster. These suits, to be successful, must include negligence or worse on the part of financial and legal advisors to employee benefit plans.

In a case such as this, Enron is bankrupt while the Anderson accounting firm, at this point, is still able to pay damages. If a pension fund such as the State Employees or Teachers Fund sues Enron and Anderson for the $89 million dollars lost in Enron transactions and the jury finds Enron 50% responsible and Anderson 50% responsible then, if repeal Joint and Several Liability were enacted, the pension fund would be limited to only that amount attributed to Anderson. This despite the fact that both companies worked hand in glove as joint tort feasors to cause the harm, Anderson

would more-the-less only have to pay 50%. The portion of the award attributed to Enron would be uncollectable and, if Joint and Several Liability abolition were adopted, our deferred wages would be diminished by 50% despite the joint nature of the actions of the two companies collaborating.

It is important here to remember that Joint and Several Liability is both joint and several. Repeal would leave the injured pensioners and plan participants with recovery only from the financially solvent company.

My point here is that the principle of Joint and Several Liability impacts us all in many ways. Those who we pay and rely on for professional advice regarding employee benefit funds should not be able to walk away from the harm they participated in and which they earned substantial income as, joint tort feasors to cause the harm.

This type of tort litigation is common and it would undermine the financial integrity of employee benefit funds if Joint and Several Liability is repealed.

Again, as with safety with machinery, the law in Joint and Several Liability assures us that our advisors are performing due diligence or they could be sued. Again, as with products, the current law is a safeguard against actionable malfeasance by financial advisors, lawyers, accountants, auditors, actuaries, fund custodians and investment advisors.

To protect the integrity of our pension, health and welfare and Taft-Hartley funds the law on Joint and Several Liability must be maintained.

The real issues that this Legislature should be considering are reversing Poyser (the license for workplace injury and death) addressing the same unjustifiable provisions of Act 57 of 1996 on Workers' Compensation and assuring a greater degree of safety to Pennsylvania's working men and women.

III.

Of course, workers are also consumers and it is our responsibility to protect their rights not only *on* the job, but also in their regular life. Many of the changes that would be brought about by the repeal of Joint and Several Liability are intertwined with both the consumer and the worker. For example, almost a third of the automobile accident deaths occur while someone is driving their automobile and is injured or killed on the job as a driver.

We are concerned about the impact that the repeal of Joint and Several Liability would have on our members as consumers and we support the comments of other organizations with regard to the consumer concerns with repeal of Joint and Several Liability.

The ability to recover fully for damages, particularly for pain and suffering, is most important where there are no economic damages for groups such as children and seniors and the only relief that they can get through our judicial system is for pain and suffering. These awards are some of the most painstaking and difficult problems that people who are injured face.

We hope that we all embrace the extremely broad breath and scope of impact that the repeal of Joint and Several Liability would have on all of our citizens of the Commonwealth.

We are open to discussion of changes where proponents of the change can justify the change in terms of jobs and real economic development. We want to work with the business community, for we share the same fate. Business must prosper for workers to be able to have decent family sustaining jobs.

Thank you the opportunity to testify and for your patience.

I will be glad to answer and questions.

WMG/jav/UFCW-1776

PLAINTIFF	:	IN THE COURT OF COMMON PLEAS OF CUMBERLAND COUNTY, PENNSYLVANIA CIVIL ACTION-LAW
V.	:	
DEFENDANTS	:	CIVIL 19

QUESTION 1:

Do you find that any defendant was negligent?

DEF. 1 YES_____ NO_____

DEF. 2 YES_____ NO_____

If you answer Question 1 "No", plaintiff cannot recover and you should not answer any further questions and should return to the courtroom.

QUESTION 2:

For any defendant that you found was negligent, was that negligence a substantial factor in bringing about plaintiff's harm?

DEF. 1 YES_____ NO_____

DEF. 2 YES_____ NO_____

If you answer Question 2 "No", plaintiff cannot recover and you should not answer any further questions and should return to the courtroom.

QUESTION 3:

Was plaintiff contributorily negligent?

YES_____ NO_____

If you answer Question 3 "No", proceed to Question 5.

If you answer Question 3 "Yes", proceed to Question 4.

QUESTION 4:

Was plaintiff's contributory negligence a substantial factor in bringing about plaintiff's harm?

YES_____ NO_____

Proceed to Question 5.

QUESTION 5:

Taking the combined negligence that was a substantial factor in bringing about the plaintiff's harm as 100 percent, what percentage of that negligence was attributable to any party you have found was causally negligent?

PERCENTAGE OF CAUSAL NEGLIGENCE ATTRIBUTABLE TO DEFENDANT 1 _____%

PERCENTAGE OF CAUSAL NEGLIGENCE ATTRIBUTABLE TO DEFENDANT 2 _____%

PERCENTAGE OF CAUSAL NEGLIGENCE ATTRIBUTABLE TO PLAINTIFF _____%

TOTAL 100%

If you have found plaintiff causally negligent and that causal negligence is greater than 50 percent, plaintiff cannot recover and you should return to the courtroom.

QUESTION 6:

State the total amount of damages, if any, you find plaintiff sustained without reduction for the percentage of causal negligence, if any, that you have attributed to plaintiff.

TOTAL $_____

_____ _____

(Date) Foreman

3.03 (Civ) CONTRIBUTORY NEGLIGENCE

The defendant claims that the plaintiff was contributorily negligent. Contributory negligence is negligence on the part of a plaintiff that is a substantial factor in bringing about the plaintiff's injury. The burden is not on the plaintiff to prove (his) (her) freedom from contributory negligence. The defendant has the burden of proving contributory negligence by a fair preponderance of the credible evidence. You must determine whether the defendant has proven that the plaintiff, under all the circumstances present, failed to exercise reasonable care for (his) (her) own protection.

_____ *[Set forth concisely the defendant's specific grounds of contributory negligence that are supported by evidence. For example: in failing to keep a reasonable lookout; in failing to yield the right of way, etc.]*

[(The defendant claims that the plaintiff had a choice of two ways in which to proceed, one of which was perfectly safe and the other of which was obviously dangerous, and that the plaintiff unreasonably chose the obviously dangerous way.)]

Even if you find that the plaintiff was negligent, you must also determine whether the defendant has proven that the plaintiff's conduct was a substantial factor in bringing about the plaintiff's injury. If the defendant has not sustained that burden of proof, then the defense of contributory negligence has not been made out.

3.03A (Civ) COMPARATIVE NEGLIGENCE AND APPORTIONMENT AMONG JOINT TORTFEASORS

The court has already instructed you about what you may consider in determining whether the defendant(s) (was) (were) negligent, whether the plaintiff was contributorily negligent, and whether such negligence, if any, was a substantial factor in bringing about the plaintiff's harm. If you find, in accordance with these instructions, that the defendant(s) (was) (were) negligent and such negligence was a substantial factor in bringing about the plaintiff's harm, you must then consider whether the plaintiff was contributorily negligent. If you find that the plaintiff was contributorily negligent and such contributory negligence was a substantial factor in bringing about (his) (her) harm, then you must apply the Comparative Negligence Act, which provides in Section 1:

> The fact that a plaintiff (decedent) may have been guilty of contributory negligence shall not bar a recovery by the plaintiff (his legal representative) where such negligence was not greater than that causal negligence of the defendant, or defendants against whom recovery is sought, but any damages sustained by the plaintiff shall be diminished in proportion to the amount of negligence attributed to the plaintiff (decedent).

[(Just as the law provides that a plaintiff's damages should be diminished in proportion to the amount of negligence attributable to the plaintiff, so too it provides that an award should be divided among the defendants in proportion to their relative degrees of causal negligence. If you find that more than one defendant is liable to the plaintiff, you must also apply Section 2 of the Comparative Negligence Act, which provides:

> Where recovery is allowed against more than one defendant, each defendant shall be liable for that proportion of the total dollar amount awarded as damages in the ratio of the amount of his causal negligence to the amount of causal negligence attributed to all defendants against whom recovery is allowed.)]

Under this act, if you find that (the defendant) (any defendant or more than one defendant) was causally negligent and you find that the (plaintiff) (decedent) was also causally negligent, it is your duty to apportion the relative degree of causal negligence between (the defendant) (all of the defendants found negligent) and the plaintiff. In apportioning the causal negligence you should use your common sense and experience to arrive at a result that is fair and reasonable under the facts of this (accident) (occurrence) as you have determined them from the evidence.

If you find that the plaintiff's causal negligence was greater than (the causal negligence of the defendant) (the combined causal negligence of those defendants you find to have

been negligent), then the plaintiff is barred from recovery and you need not consider what damages should be awarded.

If you find that the plaintiff's causal negligence was equal to or less than (the causal negligence of the defendant) (the combined causal negligence of the defendants you find to have been causally negligent), then you must set forth the percentages of causal negligence attributable to the plaintiff and the percentage of causal negligence attributable to (the defendant) (each of the defendants you find to have been causally negligent). The total of these percentages must be 100 percent. You will then determine the total amount of damages to which the plaintiff would be entitled if (he) (she) had not been contributorily negligent; in other words, in finding the amount of damages, you should not consider the degree, if any, of the plaintiff's fault. After you return your verdict, the court will reduce the amount of damages you have found in proportion to the amount of causal negligence you have attributed to the plaintiff.

To further clarify these instructions, the court will now distribute to each of you a verdict form containing specific questions. At the conclusion of your deliberations, one copy of this form should be signed by your foreman and handed to the court clerk; this will constitute your verdict. The verdict form reads as follows:

Question 1:

Do you find that (the defendant) (any of the defendants) (was) (were) negligent?

Defendant A	Yes ____	No ____
Defendant B	Yes ____	No ____
Defendant C	Yes ____	No ____

If you answer Question 1 ("No") ("No" as to all defendants), the plaintiff cannot recover and you should not answer any further questions and should return to the courtroom.

Question 2:

Was (the defendant's negligence) (the negligence of those defendants you have found to be negligent) a substantial factor in bringing about the plaintiff's harm?

Defendant A	Yes ____	No ____
Defendant B	Yes ____	No ____
Defendant C	Yes ____	No ____

If you answer Question 2 ("No") ("No" as to all defendants you have found to be negligent), the plaintiff cannot recover and you should not answer any further questions and should return to the courtroom.

Question 3:

Was the plaintiff contributorily negligent?

Yes ____ No ____

If you answer Question 3 "No," proceed to Question 5.

Question 4:

If you answered Question 3 "Yes," was the plaintiff's contributory negligence a substantial factor in bringing about (his) (her) harm?

Yes ____ No ____

Question 5:

Taking the combined negligence that was a substantial factor in bringing about the plaintiff's harm as 100 percent, what percentage of that causal negligence was attributable to (the defendant) (each of the defendants you have found causally negligent) and what percentage was attributable to the plaintiff?

Percent

Percentage of causal negligence attributable to Defendant B (Answer only if you have answered "Yes" to Questions 1 and 2 for DefendantB). ____%

Percentage of causal negligence attributable to Defendant C (Answer only if you have answered "Yes" to Questions 1 and 2 for Defendant C). ____%

Percentage of causal negligence attributable to the plaintiff (Answer only if you have answered "Yes" to Questions 3 and 4). ____%

Total 100%

If you have found the plaintiff's causal negligence to be greater than 50%, then the plaintiff cannot recover and you should not answer Question 6 and should return to the courtroom.

Question 6:

State the amount of damages, if any, sustained by the plaintiff as a result of the (accident) (occurrence), without regard to and without reduction by the percentage of causal negligence, if any, that you have attributed to the plaintiff.

$____

[The judge continues with the charge as follows:]

After you return your answers to these questions on the verdict form, signed by your foreman, the court will determine the amount to be awarded to the plaintiff, if any, by reducing the amount of damages found by you in proportion to the percentage of the plaintiff's causal contributory negligence, if any. I again caution you that you are not to make this reduction yourselves in reaching the amount of the plaintiff's damages, as set forth by you in answer to Question 6.