**03.21C SPECIAL VERDICT FORM – ALLOCATION OF FAULT TO NON-PARTIES**

IN THE \_\_\_\_\_\_\_\_\_\_ COURT FOR THE STATE OF ALASKA

\_\_\_\_\_\_\_\_\_\_ JUDICIAL DISTRICT

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Plaintiff,v.\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Defendant. | Case No.  |

**SPECIAL VERDICT**

 We, the jury in the above-entitled case, **answer the questions submitted to us as follows**:

**(1) Was defendant [name of defendant A] negligent?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 1 was “no,” do not answer Question No. 2. Answer Question No. 3.

 However, if your answer to Question No. 1 was “yes”, answer Question No. 2.

**(2) Was [defendant A's] negligence a substantial factor in causing harm to the plaintiff?**

**Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 2 was “no”, answer Question No. 3.

 If your answers to both Question No. 1 and Question No. 2 were “yes”, write **"**[defendant A's name]**"** in one of the spaces provided in Question No. 13. Now you must answer Question No. 3.

**(3) Was defendant [name of defendant B] negligent?**

**Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 3 was “no,” do not answer Question No. 4. Instead, you must follow the instructions in Question No. 5.

 However, if your answer to Question No. 3 was “yes”, answer Question No. 4.

 **(4) Was defendant [name of defendant B]'s negligence a substantial factor in causing harm to the plaintiff?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answers to both Question No. 3 and Question No. 4 were “yes”, write **"**[name of defendant B]**"** in one of the spaces provided in Question No. 13. Then follow the instructions in Question No. 5.

 **(5) Before you go any further, you must review your answers to the preceding questions.**

 The preceding questions included two questions regarding each defendant. For example, questions 1 and 2 relate to defendant (name), and questions 3 and 4 relate to defendant (name). If you answered “yes” to both questions for any defendant, you should have listed the name of that defendant in one of the spaces provided in Question No. 13. If so, you must now answer Question No. 6.

 If you did not answer “yes” to both questions for any of the defendants, you should not have listed any names in the spaces provided in Question No. 13. If so, you are finished with your deliberations, and you must not answer any of the other questions on this form. Your foreperson must sign and date this verdict form.

 **(6) Was (name of nonparty C) negligent?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 6 was "no," do not answer Question No. 7. Answer Question No. 8.

 However, if your answer to Question No. 6 was "yes," you must now answer Question No. 7.

 **(7) Was (nonparty C's name]'s negligence a substantial factor in causing harm to the plaintiff?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 7 was “no”, answer Question No. 8.

 If your answers to both Question No. 6 and Question No. 7 were “yes”, write "[nonparty C's name]") in one of the spaces provided in Question No. 13. Now answer Question No. 8.

**(8) Was (nonparty D's name) negligent?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 8 was "no," do not answer Question No. 9. Answer Question No. 10.

 However, if your answer to Question No. 8 was "yes," you must now answer Question No. 9.

 **(9) Was (nonparty D's name) a substantial factor in causing harm to the plaintiff?**

**Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 9 was “no”, answer Question No. 10.

 If your answers to both Question No. 8 and Question No. 9 were “yes”, write **"**[nonparty D's name]”in one of the spaces provided in Question No. 13, and answer Question No. 10.

 **(10) Was plaintiff [name] negligent?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 10 was "no," do not answer Question No. 11. Answer Question No. 12.

 However, if your answer to Question No. 10 was "yes," you must now answer Question No. 11

 **(11) Was plaintiff [name]'s negligence a substantial factor in causing his/her harm?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If your answer to Question No. 11 was "no", answer Question No. 12.

 If your answers to both Question No. 10 and Question No. 11 were “yes”, write the plaintiff's name in one of the spaces provided in Question No. 13. Then answer Question No. 12.

 **[12] The instructions to the previous questions on this form told you to enter names in the spaces in Question No. 13 depending on your answers to certain questions. What are the total damages, if any, to the plaintiff that were legally caused by the negligence of all of the persons who you have listed in the spaces provided in Question No. 13?**

 **(a) Past economic loss: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(b) Past non-economic loss: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(c) Future economic loss: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(d) Future non-economic loss: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **TOTAL: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If the total amount entered in response to Question No. 12 is $0, do not answer any further questions. The foreperson should date and sign the verdict. However, if you have stated any sum of money in answer to Question No. 12, then answer Question No. 13.

 **(13) The instructions to the previous questions on this form told you to enter names in the spaces below, depending on your answers to certain questions. For each name that you entered in one of the spaces below, you must determine the percentage of fault for the damages identified in your response to Question No. 12. The total must be equal to 100%. Do not add any additional names, and do not assign percentages of fault to anyone other than the names you entered below in response to the questions on this form.**

**The percentage of fault assigned to the plaintiff should include any negligence and any failure to avoid damages.**

 **In determining the percentage of fault for each name on the list, you must consider the nature of their conduct, and the extent of the causal relationship between the conduct and the damages that you have identified in response to Question No. 12.**

**Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**TOTAL       100%**

 **(14) You must now determine whether the plaintiff is eligible for punitive damages. For each defendant whose name you previously entered in one of the spaces provided in Question 13, you must answer the following question: Is the plaintiff eligible for an award of punitive damages from that defendant? Answer “yes” or “no.”**

**Defendant’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Answer:\_\_\_\_ (Yes or No)**

**Defendant’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Answer:\_\_\_\_ (Yes or No)**

DATED at , Alaska, this \_\_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Foreperson of the Jury

# Directions for Use

This verdict form is intended for use in negligence cases in which there are non-parties to whom fault may be apportioned pursuant to AS 09.17.080. In cases with one defendant and no non-parties for fault apportionment, use Special Verdict Form 3.21A. In cases in which there are multiple defendants/third-party defendants, and no non-parties to whom fault may be apportioned pursuant to AS 09.17.080, use Special Verdict Form 3.21B.

In a case in which there are third party defendants for fault apportionment pursuant to Alaska Rule of Civil Procedure 14(c), the third party defendants should be treated as defendants for purposes of this form.

This form is set up for a situation where there are two defendants/third party defendants (see questions 1-4) and two non-parties to whom fault may be apportioned (see questions 6-9). In a case with a different number of defendants/third party defendants, or a different number of non-parties, the form must be modified to add or remove questions pertaining to defendants/third party defendants or non-parties, so that the form corresponds to the number of defendants/third-party defendants/non-parties in the case. The instructions for use of the form must be modified accordingly.

Questions 6 through 9 are intended to address the fault of non-parties. The names of the non-parties should be entered in the blank spaces.

In a case in which there are no allegations of comparative fault by the plaintiff, this form must be modified to delete Questions Nos. 10 and 11. In addition, the instructions for use of the form must be modified.

In a case in which there are no allegations of punitive damages, Question No. 14 must be deleted.

In accordance with the procedure for determination of punitive damages awards as set forth in AS 09.17.020, this form does not call for the jury to determine the amount of a punitive damages award. The amount of an award will be determined in a later proceeding.

The sections of the form addressing fault of the plaintiff and of the non-parties refer to “negligence.” Pursuant to AS 09.17.900, the verdict may also be reduced or apportioned due to other types of “fault” on the part of the plaintiff or other actors--*i.e*., their “fault” may consist of things other than negligence (e.g., strict liability for a defective product, or the plaintiff's failure to mitigate). In a case in which the facts include allegations of fault other than negligence, the form must be modified to take this into account. If the facts include allegations that the plaintiff failed to mitigate damages, Question Nos. 12 through 14 should be replaced with the following questions:

 **(12) Could the plaintiff have reasonably avoided any part of [his] [her] [its] damages?**

 **Answer "yes" or "no." Answer: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

If your answer to Question No. 12 was "no", answer Question No. 13.

 If your answer to Question No. 12 was “yes”, write the plaintiff's name in one of the spaces provided in Question No. 14, if it doesn’t already appear there. Then answer Question No. 13.

 **(13) The instructions to the previous questions on this form told you to enter names in the spaces in Question No. 14 depending on your answers to certain questions. What are the total damages, if any, to the plaintiff that were legally caused by the negligence of all of the persons who you have listed in the spaces provided in Question No. 14? Include damages that the plaintiff reasonably could have avoided.**

 **(a) Past economic loss : $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(b) Past non-economic loss : $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(c) Future economic loss : $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **(d) Future non-economic loss : $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **TOTAL: $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 If the total amount entered in response to Question No. 13 is $0, do not answer any further questions. The foreperson should date and sign the verdict. However, if you have stated any sum of money in answer to Question No. 13, then answer Question No. 14.

 **(14) The instructions to the previous questions on this form told you to enter names in the spaces below, depending on your answers to certain questions. For each name that you entered in one of the spaces below, you must determine the percentage of fault for the damages identified in your response to Question No. 13. The total must be equal to 100%. Do not add any additional names, and do not assign percentages of fault to anyone other than the names you entered below in response to the questions on this form. The percentage of fault assigned to the plaintiff should include any negligence and any failure to avoid damages.**

 **In determining the percentage of fault for each name on the list, you must consider the nature of their conduct, and the extent of the causal relationship between the conduct and the damages that you have identified in response to Question No. 13.**

**Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**Name\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_%**

**TOTAL       100%**

 **(15) You must now determine whether the plaintiff is entitled to punitive damages. For each defendant whose name you previously entered in one of the spaces provided in Question 14, you must answer the following question: Is the plaintiff entitled to an award of punitive damages from that defendant? Answer “yes” or “no.”**

**Defendant’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Answer:\_\_\_\_ (Yes or No)**

**Defendant’s Name \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Answer:\_\_\_\_ (Yes or No)**

# Comment

Prior to 1997, fault was allocated among parties and settling parties, but fault could not be allocated to non-parties, or to employers immune from liability under the Alaska Workers’ Compensation Act. *Lake v. Construction Machinery*, 787 P.2d 1027 (Alaska 1990); *Benner v. Wichman*, 874 P.2d 949 (Alaska 1994). The 1997 amendments to the fault allocation statutes authorized allocation of fault to certain non-parties, and to employers:

In all actions involving fault of more than one person, . . the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories . . . indicating

(1) the amount of damages each claimant would be entitled to recover if contributory fault is disregarded; and

(2) the percentage of the total fault that is allocated to each claimant, defendant, third-party defendant, person who has been released from liability, or other person responsible for the damages unless the person was identified as a potentially responsible person, the person is not a person protected from a civil action under AS 09.10.055, and the parties had a sufficient opportunity to join that person in the action but chose not to; in this paragraph, “sufficient opportunity to join” means the person is (A) within the jurisdiction of the court; (B) not precluded from being joined by law or court rule; and (C) reasonably locatable.

AS 09.17.080(a) (1997).*See generally Evans v. State*, 56 P.3d 1046 (Alaska 2002).