**8.11J   ALLOCATION OF DAMAGES AGAINST SUCCESSIVE
TORTFEASORS IN CASES WHERE THE INITIAL
TORTFEASOR SETTLES BEFORE TRIAL** (Approved 11/2022)

 A.   Introduction

In this case, the plaintiff has alleged that plaintiff's harm was caused by two or more independent events that occurred at different times and are distinct from one another. [*Name(s) was/were*] originally named as [*a defendant/defendants*] in this case and [*was/were*] alleged to have been responsible for one of the events. [*Before the trial started/During the trial,*] plaintiff and [*named defendant(s)*] resolved their differences. You are not to speculate as to the reasons why the plaintiff and [*named defendant(s)*] settled their dispute. You should not be concerned about the amount, if any, that may have been paid to resolve the claim against [*defendant(s)*]. You must decide the case based on the evidence you find credible, and the law presented at trial.

B.   Order of Deliberation

If you find the plaintiff has established plaintiff's burden of proof as to the negligence, as defined by the court, of the remaining [*defendant(s)*], you must determine the individual amount of damages, if any, that resulted from the separate events, and assign separate values for the damages you determine to have been caused by the respective events. If you find the plaintiff has not established plaintiff's burden of proof as to the negligence, as defined by the court, of

[*any*/*the*] remaining [*defendant(s)*], you do not need to determine the individual amount of damages that resulted from either event.

You must first determine the value of damages, if any, that were the result of the event proximately caused by the settling [*defendant(s)*].[1] When you determine the value of the damages, if any, of the event that was proximately caused by the settling [*defendant(s)*], you are only required to assign a value to the damages that were the result of the event proximately caused by the settling [*defendant(s)*], and you should not make any other determination regarding this event.

After you have assigned a value to the damages that were the result of the event proximately caused by the settling [*defendant(s)*], you must then assign a value to the damages that were the result of the event proximately caused by the non-settling [*defendant(s)*].

You must then compare the negligence of the remaining defendants as it relates to the event that has been proximately caused by the remaining defendants. The total amount of negligence is 100%. The figure that you arrive at should reflect the total percentage of negligence attributed to each defendant with respect to the happening of the event that has been proximately caused by the remaining

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[1] In many instances in cases of this type, the jury charge on proximate causation should be tailored to fit the facts of the case. In addition, a judge may provide specifics as to the respective events in the judge's discretion.

defendants only. A comparison of negligence is made only if the negligence of

more than one defendant proximately caused this event.

Successive Tortfeasor Sample Jury Verdict Form
As to Liability

1.   Was defendant, _____, negligent?

                Yes ___   No ___

        [If the answer to this Question is Yes, proceed to Question 2. Otherwise, proceed to Question 3.]

2.   Was the negligence of defendant, _____, a proximate cause of the [*first/second*] event?

                Yes ___   No ___

3.   Was defendant, _____, negligent?

                Yes ___   No ___

        [If the answer to this Question is Yes, proceed to Question 4.]

4.   Was the negligence of defendant, _____, a proximate cause of the [*first/second*] event?

                Yes ___   No ___

5.   If you find that you have answered all the previous four questions Yes, *i.e.*, you have found that both defendants were negligent and that their respective negligent conduct proximately caused the [*first/second*] event, then you must answer this question – taking the combined negligence of all defendants which proximately contributed to the happening of this event as being 100% – what percentage of such total negligence is attributable to:[2]

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[2] This paragraph is for use only if there is more than one remaining Defendant. Otherwise, it can be deleted.

a.   Defendant _____   Answer   _____%

b.   Defendant _____   Answer   _____%

                                        Total   100%

As to Damages

6.   Plaintiff's total damages resulting from the [*first/second*] event

$_____

7.   Plaintiff's total damages resulting from the [*first/second*] event:

$_____