

# NOTICE TO THE BAR

## MODEL CIVIL JURY CHARGES UPDATE

The Supreme Court Committee on Model Civil Jury Charges has approved the following revised Model Civil Jury Charges for use by the bar and trial courts. All approved Model Civil Jury Charges, including the following charges, are available for downloading at [Model Civil Jury Charges System | NJ Courts](#).

### **4.45 Motor Vehicle Lemon Law** (Approved 05/2003; Revised 11/2023)

A footnote referencing Singer v. Toyota Motor Sales, U.S.A., Inc., 476 N.J. Super. 121 (App. Div. 2023), is added to the nonconformity element of the charge. In Singer, the Appellate Division held that a recall notice alone is not sufficient to establish the nonconformity element required to recover under the Lemon Law.

### **5.11 Assumption of Risk – in the Primary Sense** (Approved 04/2001; Revised 11/2023)

Reference to Dennehy v. Windsor Regional Bd. of Ed., 252 N.J. 201 (2022), is added in the Note to Judge. In Dennehy, a coach allowed a high school field hockey team to practice in an area adjacent to an ongoing soccer practice. A member of the field hockey team allegedly sustained injuries when she was struck at the base of the skull by an errant soccer ball. The Court considered the standard of care that should apply to the coach's decision on where to practice. The Court determined that the coach's acts and omissions were governed by a simple negligence standard rather than the heightened standard of recklessness the Court applied when one participant injures another during a recreational activity.

### **5.40C Failure to Warn/Instruct** (Approved 03/2000; Revised 11/2023)

Footnote 2 of the charge is updated to direct the reader to Fowler v. Akzo Nobel Chems., Inc., 251 N.J. 300 (2022), for guidance on the duty to warn in asbestos cases. In Fowler, the Court held that an asbestos manufacturer or supplier that places inadequate warnings on asbestos bags used in the workplace has breached its duty to warn the workers

using those products, regardless of whether it provides the employer with correct information that is reasonably intended for transmission to the workers.

**5.40I Proximate Cause** (Approved 02/1989; Revised 11/2023)

This charge is revised in response to the Court's referral in Fowler v. Akzo Nobel Chems., Inc., 251 N.J. 300 (2022), to the Model Civil Jury Charges Committee to consider whether there is a need to modify the Model Charge on proximate cause and substantial factor in the toxic tort setting. Footnote 1 is updated with a citation to Fowler and describes how, and under what circumstances, it may be appropriate for a trial court to instruct the jury with respect to causation in toxic tort (i.e., asbestos exposure) cases.

**5.77 Violations of Nursing Home Statutes or Regulations – Negligence and Violations of Nursing Home Residents' Rights Claims** (Approved 11/2022; Revised 11/2023)

The Committee has significantly revised this charge following a review requested by members of the bar. References to federal statutes and regulations are removed and the jury interrogatories are amended to provide clarity with regard to the apportionment of damages.

**6.12 Proximate Cause – Where There is Claim that Concurrent Causes of Harm were Present** (Approved 05/1989; Revised 11/2023)

This charge is also revised in response to the Court's referral in Fowler v. Akzo Nobel Chems., Inc., 251 N.J. 300 (2022), to the Model Civil Jury Charges Committee to consider whether there is a need to modify the Model Charge on proximate cause and substantial factor in the toxic tort setting. Footnote 1 is updated with a citation to Fowler and describes how, and under what circumstances, it may be appropriate for a trial court to instruct the jury with respect to causation in toxic tort (i.e., asbestos exposure) cases.

**7.31 Comparative Negligence/Fault: Ultimate Outcome** (Approved 03/2000; Revised 11/2023)

Reference to Liberty Ins. Corp. v. Techdan, LLC, 253 N.J. 87 (2023), is added to Footnote 1 of the charge. Liberty Ins. Corp. involved a “lengthy trial in which the jury was compelled to consider multiple statutory and common-law claims against a limited liability company, a corporation, and three individual defendants.” The Court found no plain error in the trial court’s decision not to give an ultimate outcome charge to the jury in that complex matter.

**8.11D Damages Charges – General – Loss of Profits** (Approved pre-1983; Revised 11/2023)

Citations to Passaic Valley Sewerage Comm’rs v. St. Paul Fire & Marine Ins. Co., 206 N.J. 596 (2011), and Schwartz v. Means, 251 N.J. 556 (2022), are added to the “Cases” section of this charge. The cases address anticipated profits and a new business’s claims for lost profits damages.

**8.70 Tort Claims Act Threshold for Recovery of Damages for Pain and Suffering** (Approved 03/2010; Revised 11/2023)

Reference to C.W. v. Roselle Bd. of Educ., 474 N.J. Super. 644 (2023), is added to Footnote 1 of the charge. In C.W., the Appellate Division considered whether plaintiff, an alleged victim of sexual abuse by a teacher, was barred from seeking pain and suffering damages under the Tort Claims Act (TCA), N.J.S.A. 59:1-1 et seq., because plaintiff had not incurred the requisite amount of medical expenses. The Appellate Division concluded that despite the Legislature's recent amendments to the TCA regarding child sexual abuse claims, it did not eliminate the statutory threshold regarding medical expenses.

Questions regarding this and other Model Civil Jury Charges may be directed to Kristi Jasberg Robinson, Esq., Chief, Civil Practice Liaison, Administrative Office of the Courts, Hughes Justice Complex, P.O. Box 981, Trenton, New Jersey 08625-0981; phone (609) 815-2900 ext. 54900; e-mail [Kristi.Robinson@njcourts.gov](mailto:Kristi.Robinson@njcourts.gov).



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