

12.04 Concurrent Negligence Other Than Defendant's

More than one person may be to blame for causing an injury. If you decide that a [the] defendant[s] was [were] negligent and that his [their] negligence was a proximate cause of injury to the plaintiff, it is not a defense that some third person who is not a party to the suit may also have been to blame.

[However, if you decide that the sole proximate cause of injury to the plaintiff was the conduct of some person other than the defendant, then your verdict should be for the defendant.]

Notes on Use

This instruction should be used only where negligence of a person who is not a party to the suit may have concurred or contributed to cause the occurrence. This instruction may not be used where the third person was acting as the agent of the defendant or the plaintiff. Where two or more defendants are sued and one or more may be liable and others not liable, use IPI 41.03.

The second paragraph should be used only where there is evidence tending to show that the sole proximate cause of the occurrence was the conduct of a third person.

See also IPI 12.05 (outside agency); IPI 60.01 (statutory violation).

Comment

“Where a person is guilty of the negligence charged against him, it is no defense that some other person, or thing, contributed to bring about the results for which the damages are claimed.” *Romine v. City of Watseka*, 341 Ill.App. 370, 377; 91 N.E.2d 76, 79 (2d Dist.1950); *Manion v. Chicago, R.I. & P. Ry. Co.*, 12 Ill.App.2d 1, 18; 138 N.E.2d 98, 106-107 (2d Dist.1956); *Liby v. Town Club*, 5 Ill.App.2d 559, 565; 126 N.E.2d 153, 156 (1st Dist.1955). This form of instruction was approved in *Dickeson v. Baltimore & O.C.T.R.R. Co.*, 73 Ill.App.2d 5, 34; 220 N.E.2d 43, 56 (1st Dist.1965), *aff'd*, 42 Ill.2d 103, 245 N.E.2d 762 (1969); *Ballweg v. City of Springfield*, 114 Ill.2d 107, 120; 499 N.E.2d 1373, 1379; 102 Ill.Dec. 360, 366 (1986); *Berry v. American Commercial Barge Lines*, 114 Ill.App.3d 354, 373; 450 N.E.2d 436, 449; 71 Ill.Dec. 1, 14 (5th Dist.1983), *cert. denied*, 465 U.S. 1029, 104 S.Ct. 1290, 79 L.Ed.2d 692 (1984).

In *Frank Parmelee Co. v. Wheelock*, 224 Ill. 194, 79 N.E. 652 (1906), and *West Chicago St. R. Co. v. Horne*, 100 Ill.App. 259 (1st Dist.1902), *aff'd*, 197 Ill. 250, 64 N.E. 331 (1902), the courts approved use of the word “blame.”