

**Proposed amendments to Standard Jury Instruction in Civil Cases on Read-Back of Testimony and new instructions on Uninsured or Underinsured Motorists and Inconsistent or Erroneous Verdict**

The Supreme Court Committee on Standard Jury Instructions in Civil Cases proposes amendments to standard jury instruction 801.2 Read-Back of Testimony, and new standard jury instructions 401.25 Uninsured or Underinsured Motorist and 801.5 Inconsistent or Erroneous Verdict.

The committee invites all interested persons to comment on the proposals, reproduced in full below and at [www.floridabar.org/news/news-journal](http://www.floridabar.org/news/news-journal) under the Notices tab. Interested parties have until September 29, 2023, to submit comments electronically to Daniel B. Rogers, Chair of the Committee, and Heather Savage Telfer, The Florida Bar Attorney Liaison for the Committee, at [rules@floridabar.org](mailto:rules@floridabar.org).

**801.2 ~~READ-BACK~~READBACK OR PLAYBACK OF TESTIMONY**

a. ~~Read-back~~Readback or playback granted as requested:

**Members of the jury, you have asked that the following testimony be [read] [or] [played] back to you:** ~~(describe testimony)~~(describe testimony).

~~The court reporter will now read t~~The testimony, which that you have requested will now be [read] [or] [played].

OR

b. ~~Read-back~~Readback or playback deferred when more time is needed to prepare the transcript or recording:

**Members of the jury, I have discussed with the attorneys your request to have certain testimony [read] [or] [played] back to you. It will take approximately (amount of time) to ~~have the~~**

**court reporter prepare and [read] [or] [play] back the requested testimony.**

**I now direct you to return to the jury room and discuss your request further. If you are not able to resolve your question about the requested testimony by relying on your collective memory, then you should write down a more specific description of the part of the witness(es)' testimony which you want to hear again. Make your request for [reading] [or] [playing] back testimony as specific as possible.**

c. Response to general request for transcripts to be sent to jury room:

**Members of the jury, you have made a general request for transcripts that does not identify any particular witness's testimony that you wish to review. I am not able to send transcripts back to the jury room. If you would like to request a readback, you must specify the particular trial testimony you wish to have read back. I now direct you to return to the jury room and discuss your request further.**

d. Read-back~~Readback~~ or playback denied:

**Members of the jury, you have asked that the following testimony be [read] [or] [played] back to you: ~~(describe testimony)~~(describe testimony).**

**I am not able to grant your request because (give reason(s) for denying request).**

#### NOTES ON USE FOR 801.2

1. Any juror may request that testimony be read back or played back. Fla. R. Civ. P. 1.453.

2. In civil cases, the decision to allow ~~read-back~~readback or playback of testimony lies within the sound discretion of the trial court. *Broward County Sch. Bd. v. Ruiz*, 493 So. 2d 474, 479-480 (Fla. 4th DCA 1986). However, the trial court must not tell

jurors that they are prohibited from requesting a ~~read-back~~readback or playback of testimony. *Johnson v. State*, 53 So. 3d 1003 (Fla. 2010).

23. Any ~~read-back~~readback or playback of testimony must take place in open court, in the presence of all parties after notice to counsel for the parties. Transcripts or tapes of testimony must not be sent back to the jury room. The court may respond in writing to a request for readback or playback of testimony without having the jury brought before the court, provided that the parties have received the opportunity to place objections on the record and both the request and response are made part of the record. *Fla. R. Civ. P. 1.453(a).*

#### **401.25 UNINSURED OR UNDERINSURED MOTORIST**

(The insurer) **provided [uninsured] [underinsured] [uninsured or underinsured] motorist coverage to (claimant) that applies to the accident between (claimant) and (adverse driver).**

(The insurer) **is responsible for any negligence of (adverse driver) that was a legal cause of [loss] [injury] [or] [damage] to (claimant).** (The insurer) **has the right to assert any defenses that would be available to the (adverse driver).**

#### **NOTES ON USE FOR 401.25**

1. See *F.S. 627.727* regarding uninsured and underinsured vehicle coverage.

2. See also *Lamz v. GEICO*, 803 So. 2d 593 (Fla. 2001); *Medina v. Peralta*, 724 So. 2d 1188 (Fla. 1999); *GEICO v. Krawzak*, 675 So. 2d 115 (Fla. 1996); *Armstrong v. Wal-Mart Stores, Inc.*, 870 So. 2d 232 (Fla. 4th DCA 2014).

## **801.5 INCONSISTENT OR ERRONEOUS VERDICT**

**I cannot accept your verdict[s] as written because:** (insert a brief description why the verdict(s) [is] [are] inconsistent, incomplete, or otherwise erroneous).

**[A [new] [second] verdict form is provided for your use [if needed].] Please complete the verdict form based on all of the jury instructions that were read to you.**

**[Do not destroy or further mark the first verdict form.]**

### **NOTES ON USE FOR 801.5**

1. In *Coba v. Tricam Indus., Inc.*, 164 So. 3d 637, 643 (Fla. 2015), the Supreme Court of Florida stated, “[a]n inconsistent verdict is defined as when two definite findings of fact material to the judgment are mutually exclusive.” For discussion of the distinctions between inconsistent and inadequate verdicts. See *Id.* at 643–44 (“A verdict is not necessarily inconsistent simply because it fails to award enough money or even no money at all.”) See also *Eulen Am. v. Lopez*, 2023 WL 2589788 (Fla. 3d DCA Mar. 22, 2023).

2. For examples of inconsistent verdicts see *Coba* 164 So. 3d 637; *Alvarez v. Rendon*, 953 So. 2d 702 (Fla. 5th DCA 2007).

3. The trial court has the right and duty before discharging the jurors to call their attention to a defective verdict and give them an opportunity to return a proper verdict. *Stevens Markets, Inc. v. Markantonatos*, 189 So. 2d 624, 626 (Fla. 1966) (citing *Tobin v. Garry*, 127 So. 2d 698, 700 (Fla. 2d DCA 1961) (internal citations and quotations omitted)). When a defective verdict is returned and the defect discovered before the jury is discharged, resubmission by the trial court is a legal duty, not simply a discretionary call. *Morton Roofing, Inc. v. Prather*, 864 So. 2d 64, 67 (Fla. 5th DCA 2003). However, the committee takes no position on whether a new verdict form should be provided to the jury.

4. When a defective verdict is resubmitted by the trial court before the jury is discharged, the jury is still in control of the verdict

— at liberty to review the case and to bring in an entirely new verdict. *Stevens Markets* 189 So. 2d at 626. The jurors, on reconsideration of their verdict on a second retirement, may amend it in substance, if they so agree, or they may submit an entirely different verdict. *Id.* In such an event, the entire cause remains in the hands of the jury and the jurors are not bound by their former action as a verdict which has not become final is subject to reconsideration in its entirety by the jury. *Morton Roofing* 864 So. 2d at 67–68; *Tobin* 127 So. 2d at 700 (“When they [jurors] are sent back to further or reconsider the matter, the case is still in their hands. They are not bound by their former action. They are at liberty to review the case and to bring in an entirely new verdict.”). It is within the sound discretion of the trial court whether to resubmit to the jury: the first verdict form in its entirety; a copy of the first verdict form, marked for identification purposes; a new verdict form; or a new verdict form, together with a copy of the first verdict form, marked for identification purposes.

5. A clerical error in the verdict form which becomes apparent before the jury is polled or discharged may be resubmitted to the jury for clarification or correction. *Esskuchen v. State*, 756 So. 2d 156, 158 (Fla. 5th DCA 2000). This jury instruction may be used for facially improper or irregular verdict forms that are returned by a jury. See *Cory v. Greyhound Lines, Inc.*, 257 So. 2d 36 (Fla. 1971) (transposed damage amounts); *McElhaney v. Uebrich*, 699 So. 2d 1033 (Fla. 4th DCA 1997) (mathematical error in verdict); *Central Taxi Service, Inc. v. Greenberg*, 418 So. 2d 333 (Fla. 3d DCA 1982) (incomplete verdict form).