



Vote NO on House Bill 2233

The Illinois Association of Defense Trial Counsel, an organization whose members are committed to protecting and improving civil justice in Illinois, opposes HB 2233 which would eliminate special interrogatories by repealing 735 ILCS 5/2-1108.

The issue instruction of the Illinois Pattern Jury Instructions asks the jury to determine a general verdict based upon the evidence presented and provides the jury with options for which verdict form to use based upon their determination. The pattern issue instruction does not ask the jury to answer affirmatively to each element of the cause of action or affirmative defense. A special interrogatory tests a particular element of a cause of action or affirmative defense to determine if the jury understood and unanimously agreed to each of the elements necessary to enter the judgment that is indicated on the general verdict. Jury instructions are not easy to draft and often difficult to understand. Special interrogatories ask a straightforward question that tests whether the jury understood the instructions they were given.

As a result, special interrogatories are fundamental to Illinois civil practice. Their elimination would substantially harm the civil justice system. A special interrogatory serves “as guardian of the integrity of a general verdict in a civil jury trial.” *Blue v. Environmental Engineering Co., Inc.* 215 Ill. 2d 78, 112 (2005).

The reason underlying the rule that the answer to a special interrogatory controls where it is inconsistent with the general verdict is that “a jury more clearly understands a particularized special interrogatory than a composite of all of the questions in a case, and therefore a special finding upon which a jury presumably has more intensively focused its attention should prevail.” *Borries v. Z Frank, Inc.*, 37 Ill. 2d 263, 266 (1967).

Special interrogatories have a long history in the civil justice system in Illinois and their codification in the Code of Civil Procedure supports their continued use. The antecedents to Section 2-1108 predate the Illinois Civil Practice Act of 1933 and can be traced as far back as 1922. Special interrogatories have served the civil justice system of Illinois well by instilling confidence in jury verdicts by giving insight into the jury’s reasoning based upon its review of the evidence. Special interrogatories break down often confusing legal and factual issues into their essential parts and allow counsel for both sides to explain to the jury how the evidence presented should yield the answer favorable to one side or the other.

If the wisdom of longstanding practice is not strong enough to support the continued use of special interrogatories, the practical effect of eliminating them should be. Under current law, in situations in which a plaintiff presents multiple theories of relief, in order to explain the verdict and to allow a defendant to preserve and protect its rights, a defendant **must** offer special interrogatories. In fact, in *Foley v. Fletcher*, 361 Ill. App. 3d 39, 50 (1st Dist. 2005) the court stated:

A defendant cannot expect recourse where a plaintiff presents more than one theory of her case, the defendant does not request special interrogatories and the jury returns a general verdict. Nor can it be presumed that reversal is warranted because the jury was misled by the court’s instruction unless there is some indication that the jury was improperly influenced. (citations omitted).

Likewise, in *Arient v. Alhaj-Hussein*, 2017 IL App (1st) 162369, ¶¶ 44-46, the Court held that in the absence of special interrogatories the court could not determine which acts of negligence against the defendant were the basis of the jury’s verdict.

In short, special interrogatories are essential under Illinois law for courts to ascertain the propriety of a jury’s verdict and indeed for the jury itself to ensure that it is coming to the correct conclusion. Testing the elements of a cause of action, and in particular negligence and causation, as well as the fundamentals of an affirmative defense, is necessary to safeguard the integrity of the jury’s general verdict. In a great many cases, unless a jury is asked about specific controlling issues in special interrogatories, the court and public cannot have assurance of the verdict.

For all of these reasons, the civil justice system would be ill served by the elimination of special interrogatories and HB 2233 should be defeated.