

**5.40K**      **SUMMARY** (Approved 2/89)

*[Review while going over jury verdict form].*

If you find that the plaintiff has shown by the preponderance (greater weight) of the credible evidence that (1) the product as designed, manufactured or sold was defective, in that it was not reasonably safe for its intended or reasonably foreseeable uses, (2) the defect existed when the product left the hands and control of the defendant, (3) that at the time of the accident the product was being used for an intended or reasonably foreseeable purpose, that is, that it was not being misused or had not been substantially altered in a way that was not reasonably foreseeable, (4)<sup>1</sup> that the defect caused injury to a direct or reasonably foreseeable user, or to a person who might reasonably be expected to come into contact with the product and (5) that the defect in the product was a proximate cause of the accident, then you must find for the plaintiff. If plaintiff has failed to establish any one of the just mentioned elements, then you must find for defendant.

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<sup>1</sup> Omit if not in dispute.

If defendant has proved compliance with state of the art (statutory only), defendant must win unless plaintiff has proven a case based on failure to provide adequate warnings [*only if charged*].

If plaintiff has established the elements of his/her case and defendant has proved the plaintiff was at fault by voluntarily and unreasonably proceeding to encounter a known danger and that action was a proximate cause of the accident, you will then compare the fault of each party. [***This defense is not applicable to an employee's workplace injury.***]