

108.10 ISSUE OF PLAINTIFF'S NEGLIGENCE (COUNTERCLAIM) - BURDEN OF PROOF; DEFINITION; CONTENTIONS OF NEGLIGENCE.¹

The (*state number*) issue reads:

"Was the defendant [injured] [damaged] by the negligence of the plaintiff?"

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, that the plaintiff was negligent and that such negligence was a proximate cause of the defendant's [injury] [damage].

As I have already instructed you, negligence refers to a person's failure to follow a duty of conduct imposed by law. The test of what is negligence, as it has been defined for you, is the same for the plaintiff as for the defendant.

The defendant not only has the burden of proving that the plaintiff was negligent, but also that such negligence was a proximate cause of the defendant's [injury] [damage].

You will remember the definition of proximate cause, which is also applicable here.

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:

(Read all contentions of negligence supported by the evidence. Such contentions must be identical to those stated in the contributory negligence issue above.)

The defendant further contends, and the plaintiff denies, that the plaintiff's negligence was a proximate cause of defendant's [injury]

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[damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

(Give law as to each contention of negligence included above.)

1. This instruction cannot be used if there has been a directed verdict against the plaintiff. In such case full instructions must be given as if the defendant were the plaintiff.