

PROXIMATE CAUSE--DEFENSE OF SUDDEN INCAPACITATION.¹

In deciding whether the defendant's alleged negligence was a cause which in a natural and continuous sequence produced the plaintiff's [injury] [damage], you may consider the defendant's contention that *his* sudden incapacitation, rather than *his* alleged negligence, was the cause of the plaintiff's [injury] [damage]. If you so find, the defendant would not be liable to the plaintiff under this (*state number*) issue.

On the matter of the defendant's sudden incapacitation, the burden of proof is on the defendant. This means the defendant must prove, by the greater weight of the evidence, four things:

First, that the defendant was stricken by a sudden incapacitation.

Second, that this sudden incapacitation was unforeseeable to the defendant.

Third, that, as a result of this sudden incapacitation, the defendant was unable to control the (*state the equipment or other instrumentality operated by the defendant*) he was operating.

¹*Word v. Jones*, 350 N.C. 557, 516 S.E.2d 144 (1999); *Mobley v. Estate of Johnson*, 111 N.C. App. 422, 425, 432 S.E.2d 425, 427 (1993).

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Fourth, that this sudden incapacitation caused the accident which, in turn, caused the plaintiff's [injury] [damage].

Thus, as to the matter of the defendant's sudden incapacitation on which the defendant has the burden of proof, if you find by the greater weight of the evidence the four things I have explained to you, then it would be your duty to find that the defendant's alleged negligence was not a proximate cause of the plaintiff's [injury] [damage] and answer the (*state number*) issue "No" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to continue your deliberations on whether the plaintiff's [injury] [damage] was proximately caused by the alleged negligence of the defendant.