

102.16 NEGLIGENCE ISSUE—SUDDEN EMERGENCY EXCEPTION TO  
NEGLIGENCE *PER SE*.<sup>1</sup>

If, in a moment of such sudden emergency, an operator uses that degree of care which a reasonable and prudent person would use under the same or similar circumstances, the operator would not be negligent even if violating a standard of conduct established by a safety statute.<sup>2</sup> In other words, an operator's conduct which might otherwise be negligent, in and of itself, would not be negligent if it results from a sudden emergency<sup>3</sup> that is not of the operator's own making.

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1. Use this instruction only after N.C.P.I.-Civil 102.15 ("Negligence Issue – Doctrine of Sudden Emergency") and 102.12 ("Negligence Issue – Definition of Negligence in and of Itself (Negligence *Per Se*)) have been read to the jury. This instruction should be used whenever necessary to explain an apparent conflict between the doctrines of sudden emergency and negligence *per se*.

2. *Ingram v. Smoky Mountain Stages, Inc.*, 225 N.C. 444, 450, 35 S.E.2d 337, 341 (1945).

3. Consistently wet road conditions are insufficient for the sudden emergency exception to apply for a car accident. *Allen v. Eford*, 123 N.C. App. 701, 704, 474 S.E.2d 141, 143 (1996) ("The mere fact that defendant lost control under static conditions does not merit a sudden emergency instruction.").

