

WILLFUL OR WANTON CONDUCT ISSUE ("GROSS NEGLIGENCE")--DEFENSE OF CONTRIBUTORY WILLFUL OR WANTON CONDUCT BY PLAINTIFF.

The (*state number*) issue reads:

"Did the plaintiff contribute to his own [injury] [damage] by willful or wanton conduct?"¹

You will answer this issue only if you have answered the issue as to the defendant's willful or wanton conduct "yes" in favor of the plaintiff in the (*state number*) issue. Ordinarily a finding that the defendant's conduct was willful or wanton would entitle the plaintiff to recover. However, the plaintiff cannot recover when *his* own conduct goes beyond ordinary negligence and is willful or wanton.

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 engaged in willful or wanton conduct and that such conduct was a proximate cause of the plaintiff's own [injury] [damage].

The test for willful or wanton conduct and proximate cause which I defined and explained to you previously is the same which you will apply in considering this issue.

In this case, the defendant contends, and the plaintiff denies, that the plaintiff engaged in willful or wanton conduct in one or more of the following respects:

Read all contentions of willful or wanton conduct supported by the evidence.

¹Harrington v. Collins, 298 N.C. 535, 259 S.E.2d 275 (1979).

WILLFUL OR WANTON CONDUCT ISSUE ("GROSS NEGLIGENCE")--DEFENSE OF CONTRIBUTORY WILLFUL OR WANTON CONDUCT BY PLAINTIFF.
(Continued.)

You must determine whether such conduct occurred and, if it did occur, whether such conduct was willful or wanton.

The defendant further contends, and the plaintiff denies, that the plaintiff's willful or wanton conduct was a proximate cause of the plaintiff's own [injury] [damage]. If you determine that the plaintiff's conduct was willful or wanton, you must further find that such willful or wanton conduct was a proximate cause of the plaintiff's own [injury] [damage] in order to find for the defendant on this issue.

I instruct you that willful or wanton conduct is not to be presumed from the mere fact of negligence or injury, and proximate cause is not to be presumed from the mere existence of willful or wanton conduct.

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff's conduct was willful or wanton, and that such conduct was a proximate cause of the plaintiff's own [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.