103.10 AGENCY ISSUE—BURDEN OF PROOF—WHEN PRINCIPAL IS LIABLE.

This issue reads:

"Was (*state name of agent*) the agent of the defendant (*state name of defendant*) at the time of the collision?"[1]

> *NOTE WELL: If the testimony presented at trial is in terms of employment rather than agency, the Court may choose to replace references to "principal" with "employer" and references to "agent" with "employee."*

You will answer this issue only if you have answered Issue (*state number of issue addressing agent's negligence*) "Yes" in favor of the plaintiff.

Agency is the relationship which results when one person, called the principal, authorizes another person, called the agent, to act for the principal. This relationship may be created by word of mouth, or by writing, or may be implied from conduct amounting to consent or acquiescence. A principal is liable to third persons for the [acts] [negligence] of [his] [her] [its] agent in the transaction of the principal's business if the agent [himself] [herself] is liable.[2]

On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the following three things:

First, that there was a principal-agent relationship between *(state name of principal*) and (*state name of agent*) at the time of the collision.

Second, that (*state name of agent*) was engaged in the work, and was about the business of (*state name of principal*) at the time of the collision.

Third, that the business in which (*state name of agent*) was engaged at the time was within the course and scope of [his] [her] authority or

employment. It would be within the course and scope of (*state name of agent*)'s authority or employment if it was done in furtherance of the business of (*state name of principal*), or was incident to the performance of duties entrusted to (*state name of agent*), or was done in carrying out a direction or order of (*state name of principal*)[3], and was intended to accomplish the purposes of the agency.

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence that there was a principal-agent relationship between (*state name of principal*) and (*state name of agent*) at the time of the collision, that (*state name of agent*) was engaged in the work, and was about the business of (*state name of principal*) at the time of the collision, and that the business in which (*state name of agent*) was engaged at the time was within the course and scope of [his] [her] authority or employment, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

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 defendant.

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1. "Unless there is but one inference that can be drawn from the facts, whether an agency relationship exists is a question of fact for the jury. If only one inference can be drawn from the facts then it is a question of law for the trial court." *Hylton v. Koontz*, 138 N.C. App. 629, 635-36, 532 S.E.2d 252, 257 (2000) (citation omitted), *disc. review denied and dismissed*, 353 N.C. 373, 546 S.E.2d 603-04 (2001).

2. *See Egen v. Excalibur Resort Professional & Travelers Insurance Co.,* 191 N.C. App. 724, 729, 663 S.E.2d 914, 918 (2008) (noting that "[t]he general agency doctrine holds the principal responsible for the acts of his agent"); *see also Keller v. Deerfield Episcopal Ret. Cmty., Inc.*, 271 N.C. App. 618, 629, 845 S.E.2d 156, 164 (2020) ("Where the agent has no liability, there is nothing from which to derive the principa's liability.").

3. *Hendrix v. Town of West Jefferson*, 273 N.C. App. 27, 33, 847 S.E.2d. 903, 908 (2020) ("To be within the scope of employment, an employee, at the time of the incident, must be acting in furtherance of the principal's business and for the purpose of accomplishing the duties of his employment. If an employee departs from that purpose to accomplish a purpose of his own, the principal is not [vicariously] liable.") (quoting *Troxler v. Charter Mandala Center*, 89 N.C. App. 268, 271, 365 S.E.2d 665, 668 (1988)).