

DEFENDANT'S PERSONAL INJURY DAMAGES (COUNTERCLAIM)--ISSUE AND  
BURDEN OF PROOF.

The (*state number*) issue reads:

"What amount is the defendant entitled to recover for  
personal injury?"

If you have answered the (*state number*) issue "Yes" (and the  
(*state number*) issue "No") in favor of the defendant, the  
defendant is entitled to recover nominal damages even without  
proof of actual damages. Nominal damages consist of some  
trivial amount such as one dollar in recognition of a technical  
injury to the defendant.

The defendant may also be entitled to recover actual  
damages. 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, the amount of actual damages proximately caused  
by the negligence of the plaintiff.

NOTE WELL: *If fault is admitted, stipulated or  
determined by summary judgment, the jury will still need to  
be instructed on proximate cause. Give N.C.P.I.--Civil  
102.19 ("Proximate Cause-Definition-Multiple Causes") and,  
as appropriate, such other causation instructions as are  
supported by the evidence (e.g., N.C.P.I.--Civil 102.20 to  
102.28).*

