

### **101.05 Function of the Jury**

Members of the jury, all the evidence has been presented. It is now your duty to decide the facts from the evidence. You must then apply to those facts the law which I am about to give you. It is absolutely necessary that you understand and apply the law as I give it to you, and not as you thought it was or as you might like it to be.

As you know, we are trying a case in which the plaintiff seeks to recover money damages resulting from an automobile accident.

### **101.10 Burden of Proof and Greater Weight of the Evidence**

In this case, you will be called upon to answer as many as three questions, also called issues. As I discuss each issue I will tell you which party has the burden of proof. The party having that burden is required to prove, by the greater weight of the evidence, the existence of those facts which entitle that party to a favorable answer to the issue.

The greater weight of the evidence does not refer to the quantity of the evidence, but rather to the quality and convincing force of the evidence. It means that you must be persuaded, considering all of the evidence, that the necessary facts are more likely than not to exist.

If you are so persuaded, it would be your duty to answer the issue in favor of the party with the burden of proof. If you are not so persuaded, it would be your duty to answer the issue against the party with the burden of proof.

### **101.15 Credibility of Witness**

You are the sole judges of the credibility of each witness.

You must decide for yourselves whether to believe the testimony of any witness. You may believe all, or any part, or none of that testimony.

In determining whether to believe any witness you should use the same tests of truthfulness which you apply in your everyday lives. These tests may include: the opportunity of the witness to see, hear, know, or remember the facts or occurrences about which the witness testified; the manner and appearance of the witness; any interest, bias, or partiality the witness may have; the apparent understanding and fairness of the witness; whether the testimony of the witness is sensible and reasonable; and whether the testimony of the witness is consistent with other believable evidence in the case.

### **101.20 Weight of the Evidence**

You are also the sole judges of the weight to be given to any evidence. By this I mean, if you decide that certain evidence is believable, you must then determine the importance of that evidence in the light of all other believable evidence in the case.

### **101.30 Testimony of Interested Witness**

You may find that a witness is interested in the outcome of this trial. In deciding whether or not to believe such a witness, you may take the interest of the witness into account. If, after doing so, you believe the testimony of the witness, in whole or in part, you will treat what you believe the same as any other believable evidence.

### **101.25 Testimony of Expert Witness**

In this case, you have heard evidence from [a witness], who [has] testified as (an) expert witness(es). An expert witness is permitted to testify in the form of an opinion in a field where he purports to have specialized skill or knowledge.

As I have instructed you, you are the sole judges of the credibility of each witness and the weight to be given to the testimony of each witness. In making this determination as to the testimony of an expert witness, you should consider, in addition to the other tests of credibility and weight about which I have already instructed you, the evidence with respect to the witness's training, qualifications, and experience or the lack thereof; the reasons, if any, given for the opinion; whether or not the opinion is supported by facts that you find from the evidence; whether or not the opinion is reasonable; and whether or not it is consistent with the other believable evidence in the case.

You should consider the opinion of an expert witness, but you are not bound by it. In other words, you are not required to accept an expert witness's opinion to the exclusion of the facts and circumstances disclosed by other testimony.

### **101.40 Photograph, Videotape, Motion Pictures, X-Ray, Other Pictorial Representations, Maps, Models, Charts—illustrative and substantive**

*Note Well: Use this instruction only if an exhibit was introduced for illustrative purposes. If all exhibits were received as substantive evidence, then no instruction is necessary.*

*(Specify illustrative exhibit)* was received in evidence in this case for the purpose of illustrating and explaining the testimony of the witnesses. These [photographs] [map] [model] [chart] is not substantive or direct evidence, that is, it has not been received into evidence to prove any fact in this case. You may consider this [photograph] [map] [model] [chart] only for the purpose of illustrating and explaining the testimony of the witness, to the extent, if any, that you find that it does so illustrate and explain the testimony of the witness. You may not consider it for any other purpose in connection with the trial of this case.

### **101.45 Circumstantial Evidence**

*Note Well: In S. v. Adcock, 310 N.C. 1, (1984), the North Carolina Supreme Court recommended an instruction in any criminal case based in part, or entirely on circumstantial evidence. This instruction attempts to adapt it to civil cases.*

There are two types of evidence from which you may find the truth as to the facts of a case-- direct and circumstantial evidence. Direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness; circumstantial evidence is proof of a chain or group of facts and circumstances pointing to the existence or non-existence of certain facts. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. Nor is a greater degree of certainty required of circumstantial evidence than of direct evidence. The law simply requires the party having the burden of proof on a particular issue to satisfy the jury as to that issue by the greater weight of all the evidence in the case.

### **101.50 Duty to Recall the Evidence**

It is your duty to recall and consider all of the evidence introduced during the trial. If your recollection of the evidence differs from that which the attorneys argued to you, you should be guided by your own recollection in your deliberations.

### **101.60 Issues**

As I have already indicated, your verdict will take the form of answers to certain questions or issues.

These issues are as follows: *(Read all issues.)*

1. Was plaintiff injured by the negligence of the defendant?

If you answer this question no, then you proceed no further; if you answer this question yes, then you proceed to the second issue:

2. Did the plaintiff, by her own negligence contribute to his injury?

If you answer this question yes, then you proceed no further; if you answer this question no, then you proceed to the third issue:

3. What amount is the plaintiff entitled to recover for personal injury?

I will discuss the issues one at a time and explain the law which you should consider as you deliberate upon your verdict.

### **102.10 Negligence Issue - Burden of Proof**

This *(state number)* issue reads:

“Was the plaintiff [injured] [damaged] by the negligence of the defendant?”

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, that the defendant was negligent and that such negligence was a proximate cause of the plaintiff’s [injury] [damage].

### **102.11 Negligence Issue—Definition of Common Law Negligence**

Negligence refers to a person’s failure to follow a duty of conduct imposed by law. Every person is under a duty to use ordinary care to protect himself and others from [injury] [damage]. Ordinary care means that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself and others from [injury] [damage]. A person’s failure to use ordinary care is negligence.

### **102.19 Proximate Cause – Definition; Multiple Causes**

The plaintiff not only has the burden of proving negligence, but also that such negligence was the proximate cause of the [injury] [damage].

Proximate cause is a cause which in a natural and continuous sequence produces a person’s [injury] [damage], and is a cause which a reasonable and prudent person could have foreseen while probably produce such [injury] [damage] or some similar injurious result.

There may be more than one proximate cause of [an injury] [damage]. Therefore, the plaintiff need not prove that the defendant’s negligence was the sole proximate cause of the [injury] [damage].

The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

### **102.14 Negligence Issue – No Duty to Anticipate Negligence of Others**

Ordinarily a person has no duty to anticipate negligence on the part of others. In the absence of anything which gives or should give notice to the contrary, he has the right to assume and to act on the assumption that others will use ordinary care and follow standards of conduct enacted as laws for the safety of the public.

However, the right to rely on this assumption is not absolute, and if the circumstances existing at the time are such as reasonably to put a person on notice that he cannot rely on the assumption, he is under a duty to use that degree of care which a reasonable and prudent person would use under the same or similar circumstances to protect himself and others from [injury] [damage].

### **102.35 Contentions of Negligence**

In this case, the plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following ways:

*(Read all contentions of negligence supported by the evidence shown by example below:)*

**201.30 Defendant failed to keep and maintain proper control of Defendant's vehicle**

**201.20 Defendant failed to keep and maintain a proper lookout**

**201.20A Defendant failed to Reduce Speed to Avoid an Accident**

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's [injury] [damage].

I instruct you that negligence is not to be presumed from the mere fact of [injury] [damage].

*(Give law as to each contention of negligence included above.)*

#### **201.30 Proper Control**

With respect to the plaintiff's first contention, the operator of a motor vehicle on a street has a duty to keep the vehicle under proper control. This means that the operator is at all times under a duty to operate the vehicle at a speed and in a manner which allows him to maintain that degree of control over the vehicle which a reasonably careful and prudent person would have maintained under the same or similar circumstances.

A violation of this duty is negligence.

#### **201.20 Reasonable Lookout**

With respect to the plaintiff's second contention, the operator of a motor vehicle on a street has a duty to keep a reasonable lookout. This means that the operator is charged with the duty at all times to keep the same lookout that a reasonably careful and prudent person would keep under all the circumstances then existing. The duty is not only to look, but to see what ought to be seen. The operator must be reasonably vigilant and anticipate the use of the highway by others.

A violation of this duty is negligence.

### **202.20A Speed Restrictions – Failure to Reduce Speed**

With respect to plaintiff's third contention, the motor vehicle law provides that the fact that a person is driving his vehicle at a speed lower than the posted speed limit does not relieve him of the duty to decrease his speed as may be necessary to avoid colliding with any [person] [vehicle] on (or entering) the highway, and to avoid injury to any [person] [property].

Thus, even though the speed of (driver)'s vehicle was lower than the posted limit set by law, if he failed to decrease speed when, under the existing circumstance, a reasonably careful and prudent person would have decreased speed to avoid colliding with any [person] [vehicle] on (or entering) the highway, and to avoid injury to any [person] [property], such failure would be negligence.

*(Add any other contentions that are supported by the evidence)*

### **102.50 Final Mandate - Negligence Issue**

Finally, as to this *(state number)* issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence, that the defendant was negligent in any one or more of the ways contended by the plaintiff and that such negligence was a proximate cause of the plaintiff's [injury] [damage], 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.

### **104.10 Contributory Negligence Issue - Burden of Proof - Definition**

This *(state number)* issue reads:

"Did the plaintiff, by his own negligence, contribute his [injury] [damage]?"

You will answer this issue only if you have answered the *(state number)* issue as to the defendant's negligence, "Yes" in favor of the plaintiff.

On this *(state number)* 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 was negligent and that such negligence was a proximate cause of the plaintiff's own damage.

The test of what is negligence, as I have already defined and explained it, is the same for the plaintiff as for the defendant. If the plaintiff's negligence joins with the negligence of the defendant in proximately causing the plaintiff's own [injury] [damage], it is called contributory negligence, and the plaintiff cannot recover.

### **102.11 Negligence Issue—Definition of Common Law Negligence**

As I have earlier instructed you, negligence refers to a person's failure to follow a duty of conduct imposed by law. The Plaintiff as well as the defendant is under a duty to use ordinary care to protect himself and others from [injury] [damage]. Ordinary care means that degree of care which a

reasonable and prudent person would use under the same or similar circumstances to protect himself and others from [injury] [damage]. A person's failure to use ordinary care is negligence.

#### **104.35 Contentions of Contributory Negligence**

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:

*(Read all contentions of contributory negligence supported by the evidence shown by example below:)*

#### **201.30 Plaintiff failed to keep and maintain proper control of Defendant's vehicle**

#### **201.20 Plaintiff failed to keep and maintain a proper lookout**

#### **201.20A Plaintiff failed to Reduce Speed to Avoid an Accident**

The defendant further contends, and the plaintiff denies, that plaintiff's negligence was a proximate cause of and contributed to the plaintiff's [injury] [damage].

I instruct you that contributory negligence is not to be presumed from the mere fact of [injury] [damage].

*(Give law as to each contention of contributory negligence included above.)*

#### **201.30 Proper Control**

With respect to the defendant's first contention and as I have earlier instructed you, the operator of a motor vehicle on a street has a duty to keep the vehicle under proper control and to operate the vehicle at a speed and in a manner which allows him to maintain that degree of control over the vehicle which a reasonably careful and prudent person would have maintained under the same or similar circumstances. This duty applies equally to Plaintiff as it does to Defendant.

A violation of this duty is negligence.

#### **201.20 Reasonable Lookout**

With respect to the defendant's second contention, the operator of a motor vehicle on a highway has a duty to keep a reasonable lookout. This means that the operator is charged with the duty at all times to keep the same lookout that a reasonably careful and prudent person would keep under all the circumstances then existing. The duty is not only to look, but to see what ought to be seen. The operator must be reasonably vigilant and anticipate the use of the highway by others

A violation of this duty is negligence.

#### **202.20A Speed Restrictions – Failure to Reduce Speed**

With respect to defendant's third contention, the motor vehicle law provides that the fact that a person is driving his vehicle at a speed lower than the posted speed limit does not relieve him of the duty to decrease his speed as may be necessary to avoid colliding with any [person] [vehicle] on (or entering) the highway, and to avoid injury to any [person] [property].

Thus, even though the speed of (driver)'s vehicle was lower than the posted limit set by law, if he failed to decrease speed when, under the existing circumstance, a reasonably careful and prudent person would have decreased speed to avoid colliding with any [person] [vehicle] on (or entering) the highway, and to avoid injury to any [person] [property], such failure would be negligence.

**104.50 Final Mandate - Contributory Negligence Issue**

Finally as to this (*state number*) issue of contributory negligence, on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff was negligent and that such negligence was a proximate cause of the plaintiff's [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.

**150.10 Jury Should Consider All Contentions**

Now, members of the jury, you have heard the evidence and the arguments of the attorneys. It is your duty to consider all of the evidence, all contentions arising from that evidence and the arguments and positions of the attorneys. You must weight all of these in light of your common sense and determine the truth of this matter. You are to perform this duty fairly and objectively, and without bias, sympathy, or partiality toward any party.

**150.12 Jury Should Render Verdict Based On Facts, Not Consequences.**

You should not be swayed by pity, sympathy, partiality or public opinion. You must not consider the effect of a verdict on the plaintiff or defendant (or on any other party), or concern yourself as to whether it pleases the Court. Both the plaintiff and the defendant (as well as the other parties) (as well as the public) expect that you will carefully and fairly consider all the evidence in the case, follow the law as given to you by the Court and reach a just verdict, regardless of the consequences.

**150.20 The Court has no Opinion**

The law requires the presiding judge to be impartial and express no opinions as to the facts. You are not to draw any inference from any ruling that I have made. You must not let any inflection in my voice, expression on my face, (or any question I have asked a witness), or anything else that I have done during this trial influence your findings. It is your duty to find the facts of this case from the evidence as presented.

**150.30 Verdict Must be Unanimous**

I instruct you that a verdict is not a verdict until all twelve jurors agree unanimously as to what your decision shall be. You may NOT render a verdict by majority vote.

**150.40 Selection of Foreperson**

Your first act when you retire to the jury room should be to select one of your members to serve as your foreperson to lead you in your deliberations.

**150.45 Concluding Instructions – When to Begin Deliberations, Charge Conference.**

*Note Well: The judge must excuse the alternate juror(s).*

Members of the jury, in just a moment I will send you to the jury room. You are to proceed only with the matter of the selection of your foreperson. Do not begin your deliberations in this case until such time as the bailiff delivers the verdict sheet to you. When the verdict sheet is delivered, you may then begin your deliberations. When you have reached a unanimous verdict and are ready to pronounce it, please have your foreperson properly mark or write your answers on the verdict sheet, date and sign the verdict sheet and notify the bailiff by knocking on the door to the jury room. You will then be returned to the courtroom to pronounce your verdict.

You may now go to the jury room and select your foreperson.

*Note Well: The procedures set forth in Rule 21 of the General Rules of Practice for the Superior and District Courts must be followed. One procedure that can be used is as follows:*

Counsel, before sending the verdict sheet to the jury and allowing them to begin their deliberations, are there any specific objections to any portion of the charge, or to the omission therefrom?

*Note Well: Consider all specific requests and, if appropriate, bring the jury back and correct or add to the charge. If requests for corrections or additions are rejected, attorneys must be allowed to make specific objections on the record.*

*After all specific requests have been submitted and considered and the proper record notation(s) made, give the verdict sheet to the bailiff and ask him to hand it to the jury without comment, unless further instructions are necessary.*

*If it is necessary to return the jury to the courtroom for corrections or additions to the charge, the judge should address the jury, in the courtroom, as follows:*

Members of the jury, some additional instructions are necessary to [correct] [further explain] the previous instructions I gave you.

I charge you that (here state additional instructions).

You may now return to the jury room and begin your deliberations as soon as you receive the verdict sheet.

*Note Well: Repeat the question to the lawyers regarding corrections or additions to the charge. If there are further specific requests repeat the same procedure as before; if not, hand the verdict sheet to the bailiff to give to the jury.*