

805.20 LITTERING—CIVIL ACTION FOR DAMAGES FOR FELONIOUS LITTERING.

NOTE WELL: N.C. Gen. Stat. § 14-399(h) creates a cause of action for a person who sustains damage due to felonious littering.¹ This instruction should be used in conjunction with N.C.P.I.-Civil 805.21 "Littering-Civil Action for Damages for Felonious Littering-Damages Issue".

This (*state number*) issue reads:

"Was the plaintiff damaged as a result of the defendant's littering?"

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 the defendant [intentionally or recklessly threw, scattered, spilled, or placed litter] [intentionally or recklessly caused litter to be blown, scattered, spilled, thrown, or placed] [otherwise disposed of litter] upon the plaintiff's private property.² A person does not litter by placing litter in an appropriate containment vessel, in a manner that will prevent it from being blown or carried away.³

The operator of a [vehicle] [watercraft] is presumed to have littered if litter is blown, scattered, spilled, thrown or placed from the [vehicle] [watercraft].⁴ If you find that the litter on the plaintiff's private property had been blown, scattered, spilled, thrown or placed from a [vehicle] [watercraft], then you must also find that the operator of that [vehicle] [watercraft] littered. On the other hand, if you fail to find that the litter on the plaintiff's private property had been blown, scattered, spilled, thrown or placed from a [vehicle]

[watercraft], then there would be no presumption that the operator of a [vehicle] [watercraft] littered.

Second, that the litter was [in an amount that exceeded 500 pounds] [discarded in any quantity for commercial purposes] [hazardous waste⁵].⁶

And Third, that the defendant's littering proximately caused damage to the plaintiff.⁷ Proximate cause is a cause which in a natural and continuous sequence produces a person's damage, and is a cause which a reasonable and prudent person could have foreseen would probably produce such damage or a similar injurious result. There may be more than one proximate cause of damage. Therefore, the plaintiff need not prove that the defendant's violation was the sole proximate cause of the plaintiff's damages. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's violation was a proximate cause.

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 the defendant intentionally or recklessly littered, that the litter was [in an amount that exceeded 500 pounds] [discarded in any quantity for commercial purposes] [hazardous waste], and that plaintiff was damaged as a result of defendant's littering, 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.

1. *ABC Servs., LLC v. Wheatly Boys, LLC*, ___ N.C. App. ___ (2018), 817 S.E.2d 397 (2018).

2. N.C. Gen. Stat. § 14-399(a).

3. N.C. Gen. Stat. § 14-399(a); *see also ABC Servs.*, 817 S.E.2d at 402 (holding that the General Assembly intended for the term “litter receptacle” to encompass a “broad range of containment vessels”).

4 . N.C. Gen. Stat. § 14-399(b). The presumption does not apply to a vehicle transporting nontoxic and biodegradable agricultural or garden products or supplies. *Id.*

5. N.C. Gen. Stat. § 14-399(e) (adopting the definition of hazardous waste found in N.C. Gen. Stat. § 130A-290).

6. N.C. Gen. Stat. § 14-399(e).

7. N.C. Gen. Stat. § 14-399(h).

