

102.30 PROXIMATE CAUSE - DEFENSE OF SUDDEN INCAPACITATION.¹

In deciding whether the defendant's alleged negligence was a cause which in a natural and continuous sequence produced the plaintiff's [injury] [damage], you may consider the defendant's contention that *his* sudden incapacitation, rather than *his* alleged negligence, was the cause of the plaintiff's [injury] [damage]. If you so find, the defendant would not be liable to the plaintiff under this (*state number*) issue.

On the matter of the defendant's sudden incapacitation, the burden of proof is on the defendant. This means the defendant must prove, by the greater weight of the evidence, four things:

First, that the defendant was stricken by a sudden incapacitation.

Second, that this sudden incapacitation was unforeseeable to the defendant.

Third, that, as a result of this sudden incapacitation, the defendant was unable to control the (*state the equipment or other instrumentality operated by the defendant*) he was operating.

Fourth, that this sudden incapacitation caused the accident which, in turn, caused the plaintiff's [injury] [damage].

Thus, as to the matter of the defendant's sudden incapacitation on which the defendant has the burden of proof, if you find by the greater weight of the evidence the four things I have explained to you, then it would be your duty to find that the defendant's alleged negligence was not a proximate cause of the plaintiff's [injury] [damage] and answer the (*state number*) issue "No" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty

N.C.P.I.-Civil. 102.30
PROXIMATE CAUSE-DEFENSE OF SUDDEN INCAPACITATION.
GENERAL CIVIL VOLUME
FEBRUARY 2000

to continue your deliberations on whether the plaintiff's [injury] [damage] was proximately caused by the alleged negligence of the defendant.

1. *Word v. Jones*, 350 N.C. 557, 516 S.E.2d 144 (1999); *Mobley v. Estate of Johnson*, 111 N.C. App. 422, 425, 432 S.E.2d 425, 427 (1993).