102.68 NEGLIGENCE OF OWNER ENTRUSTING MOTOR VEHICLE TO INCOMPETENT, CARELESS OR RECKLESS PERSON.

The (*state number*) issue reads:

Was the plaintiff [injured] [damaged] by the negligence of the defendant in giving possession of *his* motor vehicle to (*name driver*).[1]

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, five things:

First, that the defendant [owned] [leased] [was responsible for] the motor vehicle operated by (*name driver*).

Second, that the defendant voluntarily gave possession of *his* motor vehicle to (*name driver*).

Third, that (*name driver*) was [an incompetent] [an habitually careless] [a reckless] driver and likely to cause injury to others in operating a motor vehicle.

Fourth, that the defendant was negligent in giving possession of *his* motor vehicle to (*name driver*). "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.

The law imposes a duty on every person who [owns] [leases] [is responsible for] a motor vehicle to exercise ordinary care in giving

possession of *his* vehicle to another. Thus, a person would be negligent if, at the time *he* gave possession of *his* motor vehicle to another, *he* knew or, in the exercise of ordinary care *he* should have known, that the other person was [an incompetent] [an habitually careless] [a reckless] driver and likely to cause injuries to others in operating the motor vehicle.[2]

Fifth, that (*name driver's*) [incompetent] [habitually careless] [reckless] driving was a proximate cause of the plaintiff's [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 would 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 (*name driver's*) [incompetent] [habitually careless] [reckless] driving was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the (*name driver's*) [incompetence] [habitual carelessness] [recklessness] was a proximate cause.

I instruct you that [incompetence] [habitual carelessness] [recklessness] is not to be presumed from the mere fact of [injury] [damage].

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 giving possession of *his* motor vehicle to (*name driver*) and that (*name driver's*) [incompetence] [habitual carelessness] [recklessness] 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.

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1. Note that a borrowing driver can bring an action against the owner for negligent entrustment, although the owner can invoke the defense of contributory negligence. *Meachum v. Faw*, 112 N.C. App. 489, 494, 436 S.E.2d 141, 144 (1993). This instruction must be modified where the plaintiff is also the borrowing driver.

2. *Dwyer*, 128 N.C. App. at 127, 493 S.E.2d at 765 ("[N]egligent entrustment has occurred when the owner of an automobile entrusts its operation to a person whom he knows, or by the exercise of due care should have known, to be an incompetent or reckless driver who is likely to cause injury to others in its use. As a result of his own negligence, the owner is liable for any resulting injury or damage proximately caused by the borrower's negligence."); *Haynie v. Cobb*, 207 N.C. App. 143, 149, 698 S.E.2d 194, 198-99 (2010). Knowledge that the borrowing driver had been involved in several accidents and had been convicted of driving without his license has been held sufficient to create a jury question of negligent entrustment. *Dinkins*, 252 N.C. at 735-36, 114 S.E.2d at 675. A son's six separate speeding violations and three safe movement violations in the span of six years, notwithstanding the fact that only one of the speeding convictions was for speeding over sixty miles per hour, were sufficient to submit the question of contributory negligence based on negligent entrustment to the jury. *Swicegood*, 341 N.C. at 181, 114 S.E.2d at 207-08.

However, evidence that the borrowing driver's only moving violation occurred more than two years prior to the collision at issue and that the borrowing driver was found to have no-fault involvement in three accidents one to two years prior to the collision at issue did "not, as a matter of law, support a conclusion that [driver] was so likely to cause harm to others that entrusting a motor vehicle to him amounted to negligent entrustment," and summary judgment was proper. *Tart v. Martin*, 353 N.C. 252, 255, 540 S.E.2d 332, 334 (2000).

Failure to ascertain whether the borrowing driver is properly licensed creates evidence of negligent entrustment. *Thompson*, 122 N.C. App. at 346-47, 469 S.E.2d at 587. However, failure to have a North Carolina license or a license from another state is not sufficient evidence of negligence as long as the borrowing driver has a license from his native country and an international driver's license. *Dwyer*, 128 N.C. App. at 128, 493 S.E.2d at 766. Negligent entrustment may also occur where the owner knows or should have known that the borrowing driver was intoxicated or was likely to become so because of his drinking habits. *Hutchens v. Hankins*, 63 N.C. App. 1, 23, 303 S.E.2d 584, 597 (1983).