N.C.P.I.-Motor Vehicle 102.90
NEGLIGENCE ISSUE-JOINT CONDUCT-MULTIPLE TORTFEASORS.
MOTOR VEHICLE VOLUME
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102.90 NEGLIGENCE ISSUE - JOINT CONDUCT - MULTIPLE TORTFEASORS.[1]

This issue reads:

"Was the plaintiff [injured] [damaged] by the joint negligence of the defendants?"

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 defendants were jointly negligent, and that such joint negligence was a proximate cause of the plaintiff's [injury] [damage].

"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.

Two or more persons may be jointly negligent in causing [injury] [damage] to another even though [one of them did not directly cause the [injury] [damage]] [the identity of the one who directly caused the [injury] [damage] cannot be determined]. Two or more person(s) are jointly negligent if one of them

[substantially assists or encourages the other(s) to engage in conduct that *he* knows or should know is a breach of a duty of ordinary care owed to the person claiming the [injury] [damage]][2]

[substantially assists the other(s) in breaching a duty of ordinary care owed to the person claiming the [injury] [damage] while engaging in

such conduct *himself*][3]

[acts together with the other(s) and shares a common intent with the other person(s) to engage in the conduct which breaches a duty of ordinary care owed to the person claiming the [injury] [damage]].[4]

The plaintiff has the burden of proving not only joint negligence, but also that such joint negligence was a 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 one 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 the defendants' joint negligence was the sole proximate cause of the [injury] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defendants' joint negligence was a proximate cause.

In this case, the plaintiff contends, and the defendants deny, that the defendants were jointly negligent in one or more of the following ways:

Read all contentions of joint negligence supported by the evidence.

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

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

Give law as to each contention of negligence included above.

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 defendants were jointly negligent (in any one or more of the ways contended by the plaintiff) and that such joint 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 defendants.

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1. *See generally McMillan v. Mahoney*, 99 N.C. App. 448, 393 S.E.2d 298 (1990). Where the acts of negligence are separate and not part of a coordinated or concerted course of conduct, *see* N.C.P.I.-Civil 102.27 ("Concurring Negligence").

This instruction is intended for use where the issue is joint negligence of two or more defendants. There may be separate liability issues which arise upon the evidence, however, and separate issues addressing individual liability questions may be submitted to the jury. For example, one defendant may have acted willfully and wantonly (*i.e.*, "gross negligence"). That may be a separate issue. The defendant who encouraged or assisted him may not have been willful or wanton, but he may have been jointly negligent.

2. *McMillan*, 99 N.C. App. at 451, 393 S.E.2d at 300; *Restatement (Second) of Torts* § 876(b) (1977).

3. *McMillan*, 99 N.C. App. at 451, 393 S.E.2d at 300; *Restatement (Second) of Torts* § 876(c) (1977).

4. *McMillan*, 99 N.C. App. at 452, 393 S.E.2d at 300-01.