

106.00 PERSONAL INJURY DAMAGES - ISSUE AND BURDEN OF PROOF.

The (*state number*) issue reads:

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

If you have answered the (*state number*) issue "Yes" (and the (*state number*) issue "No") in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of a technical injury to the plaintiff.¹

The plaintiff may also be entitled to recover actual damages. 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 amount of actual damages proximately caused by the negligence of the defendant.

(NOTE WELL: If fault is admitted, stipulated or determined by summary judgment, the jury will still need to be instructed on proximate cause.

Give N.C.P.I.-Civil 102.19 ("Proximate Cause-Definition-Multiple Causes") and, as appropriate, such other causation instructions as are supported by the evidence (e.g., N.C.P.I.-Civil 102.20 to 102.28).

1. *Smith v. Hamrick*, 159 N.C. App. 696, 583 S.E.2d 676 (2003), approves this nominal damages instruction.