

102.95 ARCHITECT - PROJECT EXPEDITER - NEGLIGENCE IN SCHEDULING.

This (*state number*) issue reads:

“Was the plaintiff damaged by the negligence of the defendant?”

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 defendant was negligent and that such negligence was a proximate cause of the plaintiff's 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 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 damage. A person's failure to use ordinary care is negligence.

The plaintiff not only has the burden of proving negligence, but also that such negligence was a proximate cause of the damage.

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 some similar injurious result.

There may be more than one proximate cause of damage. Therefore, the plaintiff need not prove that the defendant's negligence was the sole proximate cause of the damage. The plaintiff must prove, by the greater weight of the evidence, only that the defendant's negligence was a proximate cause.

In this case, the [architect] [project expediter] [(*name other appropriate term*)] entered into a contract with (*name owner*), the owner of the (*name project*), to provide services including the scheduling of work on the project by contractors and subcontractors. An [architect] [project expediter] [(*name other appropriate term*)] is required to exercise that degree of ability, skill and care customarily used by [architects] [project expediters] [(*name other appropriate term*)] upon such projects under the same or similar circumstances. A failure to exercise such ability, skill and care is negligence.¹

The plaintiff contends, and the defendant denies, that the defendant was negligent in one or more of the following ways:²

(Read all contentions of negligence supported by the evidence.)

[The defendant failed to properly schedule the work.]

[The defendant failed to maintain a reasonable and workable project schedule.]

[The defendant failed to give adequate and reasonable notice to subcontractors regarding the work schedule to ensure efficient coordination of all phases of the work.]

[The defendant failed to properly incorporate the subcontractors' input regarding the work schedule.]

[(State other contentions supported by the evidence.)]

The plaintiff further contends, and the defendant denies, that the defendant's negligence was a proximate cause of the plaintiff's damage.

I instruct you that negligence is not to be presumed from the mere fact of 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 any one or more of the ways contended by the plaintiff and that such negligence was a proximate cause of the plaintiff's 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.

1. A plaintiff may sue a defendant for the economic loss resulting from defendant's alleged breach of a common law duty of care flowing from the parties' working relationship, despite the fact that no privity of contract exists between the plaintiff and the defendant. See *Pompano Masonry Corp. v. HDR Architecture, Inc.*, 165 N.C. App. 401, 408 598 S.E.2d 608, 612 (2004) (determining the defendant could be held liable for negligent performance of its duties as a project expeditor); *Davidson & Jones, Inc. v. County of New Hanover*, 41 N.C. App. 661, 667, 255 S.E.2d 580, 584, *disc. review denied*, 298 N.C. 295, 259 S.E.2d 911 (1979) (finding that in the absence of privity of contract, an architect may be held liable to a general contractor and his subcontractors for economic loss resulting from breach of a common law duty of care).

2. See *Pompano*, 165 N.C. App. at 409, 598 S.E.2d at 613.