

805.66 DUTY OF OWNER TO TRESPASSER - DEFENSE OF CONTRIBUTORY
WILLFUL OR WANTON CONDUCT ("GROSS NEGLIGENCE").

*NOTE WELL: The jury should answer this issue only if
it has answered the issue as to the defendant's willful
or wanton conduct "yes" in favor of the plaintiff.*

The (*state number*) issue reads:

"Did the plaintiff, by *his* own willful or wanton conduct, contribute
to *his* [injury] [damage]?"

You will answer this issue only if you have answered the issue as
to the defendant's willful or wanton conduct "yes" in favor of the plaintiff
in the previous issue. Ordinarily, such an answer would entitle the
plaintiff to recover. However, there is a complete defense to liability,
called contributory willful or wanton conduct, which would prevent the
plaintiff's recovery of damages. Contributory willful or wanton conduct
occurs when the conduct of the plaintiff goes beyond ordinary negligence
and is willful or wanton.

On this issue the burden of proof is on the defendant. This means
that the defendant must prove, by the greater weight of the evidence,
that the plaintiff engaged in willful or wanton conduct and that such
conduct was a proximate cause of the plaintiff's own [injury] [damage].

An act is willful if the plaintiff intentionally¹ fails to carry out some
duty imposed by law or contract which is necessary to protect the safety
of the person or property to which it is owed.²

An act is wanton if the plaintiff acts in conscious or reckless
disregard for the rights and safety of others.³

As to this issue, the defendant contends and the plaintiff denies

that the plaintiff engaged in willful or wanton conduct. Whether or not such conduct occurred is for you to decide.

If the plaintiff's willful or wanton conduct was a proximate cause of and therefore contributed to *his* own [injury] [damage], *he* cannot recover.

Willful or wanton conduct is not to be presumed from the mere fact that [injury] [damage] occurred. Proximate cause is not to be presumed from the mere existence of willful or wanton conduct.

Finally, as to this issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that the plaintiff's conduct was willful or wanton, and that such willful or wanton conduct was a proximate cause of plaintiff's [injury] [damage], then it would be your duty to answer this issue "Yes" in favor of the defendant.

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 plaintiff.

1. For an instruction on intent, see N.C.P.I.-Civil 101.46.

2. *Abernathy v. Consolidated Freightways Corp.*, 321 N.C. 236, 362 S.E.2d 559 (1987).

3. *Bullins v. Schmidt*, 322 N.C. 580, 369 S.E.2d 601 (1988).