N.C.P.I.-Civil. 805.68
CITY OR COUNTY NEGLIGENCE - DEFENSE OF CONTRIBUTORY NEGLIGENCE-SUI JURIS PLAINTIFF.
GENERAL CIVIL VOLUME
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805.68 CITY OR COUNTY NEGLIGENCE - DEFENSE OF CONTRIBUTORY NEGLIGENCE - *SUI JURIS* PLAINTIFF.

This issue reads:

"Did the plaintiff by *his* own negligence, contribute to *his* [injury] [damage]?"

You will answer this issue, only if you have answered the issue as to the defendant's negligence "yes" in favor of the plaintiff.

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 was negligent and that such negligence was a proximate cause of the plaintiff's own [injury] [damage].

A person traveling on a [street] [sidewalk] [alley] [bridge] [public way] has a duty to use ordinary care to protect *himself* from [injury] [damage].[1] *He* must use *his* senses to discover and to avoid such dangerous conditions as would be discovered and avoided by a reasonable person exercising ordinary care for *his* own safety under the same or similar circumstances.[2] The failure to exercise such ordinary care would be negligence.[3] When the plaintiff's negligence concurs with the negligence of the defendant in proximately causing the plaintiff's own [injury] [damage] it is called contributory negligence, and the plaintiff cannot recover.

In this case, the defendant contends, and the plaintiff denies, that the plaintiff was negligent in one or more of the following ways:

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

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

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

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 was negligent and that such negligence 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.

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1. "The law imposes upon a person *sui juris* the duty to exercise ordinary care to protect himself from injury, and the degree of such care should be commensurate with the danger to be avoided." *Wallsee v. Water Co.*, 265 N.C. 291, 296 (1965); *Hedrick v. Akers*, 244 N.C. 274, 276 (1956); *Welling v. Charlotte*, 241 N.C. 312, 319 (1955); *Walker v. Wilson*, 222 N.C. 66, 68 (1942); *Watkins v. Raleigh*, 214 N.C. 644, 647 (1939).

2. *Wallsee v. Water Co.*, 265 N.C. 291, 296 (1965); *Welling v. Charlotte*, 241 N.C. 312, 320 (1955); *Walker v. Wilson*, 222 N.C. 66, 68 (1942); *Watkins v. Raleigh*, 214 N.C. 644, 647 (1939).

3. *Id*.