

880.01 DISABILITY - CONTINUOUS CONFINEMENT WITHIN DOORS
ISSUE.

NOTE WELL: The issue should be framed to conform with the language in the particular insurance policy involved in the lawsuit. There is considerable variation among policies.¹

The (*state number*) issue reads:

"Is the plaintiff continuously confined within doors?"²

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 *he* is continuously confined within doors.

The provision that the insured be continuously confined within doors by sickness or disease describes the extent of the illness rather than the insured's conduct or activities. Thus, an insured claiming continuous confinement may reasonably deviate from the indoors requirement. For example, an insured would still be continuously confined within doors although *he* took walks ordered by *his* physician or made visits to *his* physician. So long as the insured's activities away from home are not so extensive and regular that they contradict the seriousness of *his* illness or the totality of *his* disability, *he* would be continuously confined.³

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 plaintiff is continuously confined within doors, 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.

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1. Some disability clauses contain various restrictive provisions designed to circumscribe the conditions under which the insured is entitled to benefits. For example, a provision may require that the disability "confine the insured to the house" (sometimes preceded by such words as "necessarily," "continuously" etc.), "within doors" or other variations. See M. O. Regensteiner, Annotation, *When Is One Confined to House Within Meaning of Health or Accident Insurance Policy*, 29 ALR 2d 1408, 1. These clauses sometimes appear in addition to less restrictive provisions calling for lesser benefits. Obviously, the issue must be framed with reference to the specific policy provisions.

2. Although the present tense verb "is" will usually be correct throughout this instruction, a simple past tense (*i.e.* "was") may be necessary if the insured is suing for a period already past.

3. See *Suits v. Old Equity Life Ins. Co.*, 249 N.C. 383, 385-85, 106 S.E.2d 579, 581-82 (1958) (explaining that North Carolina adheres to a liberal interpretation of "continuously confined within doors," allowing reasonable deviation from the indoors requirement). *But see Evans v. Transp. Ins. Co.*, 269 N.C. 271, 152 S.E.2d 82 (1966), in which the court, while noting continuous clauses are to be liberally construed to allow "reasonable deviation," appeared to construe a "within the house" provision, which would have entitled the insured to a higher level of benefits, somewhat more strictly.