7.16 NEGLIGENCE — WHERE A PARTY'S ACTS OR MISCONDUCT ARE WILLFUL, WANTON OR MALICIOUS OR IN RECKLESS DISREGARD OF ONE'S SAFETY OR ARE INTENTIONAL ACTS (Approved 10/91)

In this case, (*one party*) alleges that the acts of misconduct of (*other party*) were willful, wanton or malicious, or intentional. If you find that the act, or failure to act, by that party was willful, wanton or malicious, or intentional conduct and that her/his action, or inaction substantially contributed to the harm, then you are to apportion the fault of all parties. In other words, you are to apportion the total responsibility to each party depending on the degree of fault you assess to each party, including the fault attributable to a willful, wanton or malicious tortfeasor or a tortfeasor who acts in reckless disregard of one's safety, or a tortfeasor who acts intentionally.

NOTE TO JUDGE

If the above is charged, jury should also be given definitions of willful, wanton and malicious or of intentional acts as well as proximate cause.

The law expressed in *Draney v. Bachman*, 138 *N.J. Super.* 503 (Law Div. 1976) was found to have been "eroded by subsequent developments in the law of comparative fault". *See McCann v. Lester*, 239 *N.J. Super.* 601 (App. Div. 1990) at page 609, holding that overall fault of all parties is to be measured (compared).

In *Blazovic v. Andrich*, 124 *N.J.* 90 (1990), *McCann* is cited with approval. *Blazovic* then holds that intentional acts are likewise to be compared.