

PRODUCTS LIABILITY¹--CLAIM AGAINST MANUFACTURER FOR INADEQUATE DESIGN OR FORMULATION (EXCEPT FIREARMS OR AMMUNITION).²
N.C.G.S. § 99B-6(a).

NOTE WELL: Use this instruction only with causes of action arising on or after January 1, 1996.

The (state number) issue reads:

"Is the plaintiff entitled to recover from the defendant for the inadequate design or formulation of the (name product)?"

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, four things:³

First, that the defendant was the manufacturer of the (name product). A "manufacturer" is a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product prior to its sale to a user or consumer (including a seller owned in whole or in significant part by the manufacturer or a seller owning the manufacturer in whole or significant part).⁴

¹"Products liability action" includes any action "brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instruction, marketing, selling, advertising, packaging or labeling of any product." N.C.G.S. § 99B-1(3)(1994). Thus, this definition applies to all products liability actions, whether they sound in contract or in tort.

²N.C.G.S. § 99B-11.

³N.C.G.S. § 99B-6(a).

⁴N.C.G.S. § 99B-1(2).

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Second, that at the time of its manufacture, the defendant acted unreasonably in designing or formulating the (*name product*).⁵ In determining whether the defendant acted unreasonably, you shall consider, in addition to any other factors supported by the evidence bearing on the reasonableness of the defendant's conduct, the following:⁶

1. The nature and magnitude of the risks of harm associated with the design or formulation in light of the intended and reasonably foreseeable uses, modifications or alterations of the (*name product*).
2. The likely awareness of users of the (*name product*) of those risks of harm, whether based on warnings, general knowledge, or otherwise.
3. The extent to which the design or formulation conformed to any applicable government standard that was in effect when the (*name product*) left the control of the defendant.
4. The utility of the (*name product*), including the performance, safety and other advantages associated with that design or formulation.
5. The technical, economic and practical feasibility of using an alternative design or formulation at the time

⁵N.C.G.S. § 99B-6(a).

⁶N.C.G.S. § 99B-6(b)(1)-(7).

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of manufacture.

6. The nature and magnitude of any foreseeable risks associated with the alternative design or formulation.
- (7. The extent to which the labeling for a prescription or a non-prescription drug approved by the United States Food and Drug Administration conformed to any applicable government or private standard that was in effect when the (*name product*) left the control of the defendant.)
- (8. *State any other factor supported by the evidence which the court determines is relevant to whether the defendant acted unreasonably.*)

Third, that the defendant's unreasonable acts were a proximate cause⁷ of the plaintiff's [injury] [death] [damage]. Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [death] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [death] [damage] or some similar injurious result. There may be more than one proximate cause of [an injury] [a death] [damage]. Therefore, the plaintiff need not prove that the defendant's unreasonable acts were the sole proximate cause of the [injury] [death] [damage].

⁷N.C.G.S. § 99B-6(a).

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The plaintiff must prove, by the greater weight of the evidence,
only that such unreasonable acts were a proximate cause.

Fourth, that at the time the (*name product*) left the control
of the defendant

[the defendant unreasonably failed to adopt a
practical, feasible, and otherwise reasonable alternative
design or formulation that was safer, that could have been
reasonably adopted and that would have prevented or
substantially reduced the risk of harm without substantially
impairing the usefulness, practicality or desirability of
the (*name product*)]⁸

[the design or formulation of the (*name product*) was so
unreasonable that a reasonable person, aware of the relevant
facts, would not use or consume a (*name product*) of this
design]⁹

Finally, as to this issue on which the plaintiff has the
burden of proof, if you find by the greater weight of the
evidence that the plaintiff is entitled to recover from the
defendant for the inadequate design or formulation of the (*name
product*) in accordance with the law as I have just explained it

⁸N.C.G.S. § 99B-6(a)(1).

⁹N.C.G.S. § 99B-6(a)(2).

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to you, 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.

