PRODUCTS LIABILITY[1]--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:

"Did the defendant act unreasonably in [designing] [formulating] the (*name product*), proximately causing the plaintiff's [injury] [death] [damage]?"

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]

Second, that at the time of its manufacture, the defendant

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[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.

[2]N.C.G.S. § 99B-11.

[3]N.C.G.S. § 99B-6(a).

[4]N.C.G.S. § 99B-1(2).

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acted unreasonably in [designing] [formulating] the (*name product*).[5] In determining whether the defendant acted unreasonably, you shall consider the following:[6]

1. The nature and magnitude of the risks of harm associated with the [design] [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] [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] [formulation];
5. The technical, economic and practical feasibility of using an alternative [design] [formulation] at the time of manufacture.
6. The nature and magnitude of any foreseeable risks associated with the alternative [design] [formulation].

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[5]N.C.G.S. § 99B-6(a).

[6]N.C.G.S. § 99B-6(b)(1)-(7).

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(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 cause[7] 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]. The plaintiff must prove, by the greater weight of the evidence, only that such unreasonable acts were a proximate cause.

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

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[the defendant unreasonably failed to adopt a practical, feasible, and otherwise reasonable alternative [design] [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] [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] [formulation].][9]

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 defendant acted unreasonably in [designing] [formulating] the (*name product*) and that this action was a proximate cause of the plaintiff's [injury] [death] [damage], 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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[7]N.C.G.S. § 99B-6(a).
[8]N.C.G.S. § 99B-6(a)(1).
[9]N.C.G.S. § 99B-6(a)(2).