

PRODUCTS LIABILITY¹--MANUFACTURER'S² DEFENSE OF INHERENT
CHARACTERISTIC. N.C.G.S. § 99B-6(c).

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

The (state number) issue reads:

"Was the plaintiff's [injury] [death] [damage] caused by a
generally recognized, substantially necessary inherent
characteristic of the (name product)?"

You will answer this issue only if you have answered the
(state number) issue "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, two things:³

First, that the plaintiff's [injury] [death] [damage] was
caused by an inherent characteristic of the (name product) that
cannot be eliminated without substantially compromising its
usefulness or desirability.

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).

²"Manufacturer" means a "person or entity who designs, assembles,
fabricates, produces, constructs or otherwise prepares a product or component
part of a product prior to its sale to a user or consumer, including a seller
owned in whole or significant part by the manufacturer or a seller owning the
manufacturer in whole or significant part." N.C.G.S. § 99B-1(2).

³N.C.G.S. § 99B-6(c).

PRODUCTS LIABILITY--EXCEPTION TO SELLER'S DEFENSE OF SEALED CONTAINER OR LACK OF OPPORTUNITY TO INSPECT PRODUCT. N.C.G.S. § 99B-2(a). (Continued.)

Second, that such inherent characteristic of the (*name product*) is recognized by the ordinary person with the ordinary knowledge common to the community.

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's [injury] [death] [damage] was caused by a generally recognized, substantially necessary inherent characteristic of the (*name product*), 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.