

800.06 CONSTRUCTIVE FRAUD—REBUTTAL BY PROOF OF OPENNESS,  
FAIRNESS AND HONESTY.

The (*state number*) issue reads:

“Did the defendant act openly, fairly and honestly in bringing about  
(identify transaction)?”<sup>1</sup>

(You are to 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, that, with  
regard to (*identify transaction*), the defendant made a full, open disclosure  
of material facts, that the defendant dealt with the plaintiff fairly, without  
oppression, imposition or fraud, and that the defendant acted honestly.<sup>2</sup>

Finally, as to the (*state number*) issue on which the defendant has the  
burden of proof, if you find by the greater weight of the evidence that the  
defendant acted openly, fairly and honestly in bringing about (*identify  
transaction*), 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.

*NOTE WELL: If the jury answers yes to this issue, then it may be  
appropriate to submit the issue of N.C.P.I.—Civil 800.00  
("Fraud") if the pleadings and evidence support submission of  
such issue to the jury.*<sup>3</sup>

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1. The presumption of constructive fraud may be rebutted by the fiduciary’s  
“showing, for example, that the confidence reposed in him was not abused.” *Forbis v. Neal*,  
361 N.C. 519, 529, 649 S.E.2d 382, 388 (2007) (citation and internal quotation marks  
omitted); see *Wachovia Bank & Trust Co. v. Johnston*, 269 N.C. 701, 711, 153 S.E.2d 449,  
457 (1967); *McNeill v. McNeill*, 223 N.C. 178, 25 S.E.2d 615 (1943); *In re Will of Sechrest*,  
140 N.C. App. 464, 471, 537 S.E.2d 511, 517 (2000), *disc. rev. denied*, 353 N.C. 375, 547  
S.E.2d 16 (2001); *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 820, 487  
S.E.2d 166, 168 (1997).

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2. *Underwood v. Stafford*, 270 N.C. 700, 702, 155 S.E.2d 211, 212-13 (1967); *Poore v. Swan Quarter Farms, Inc.*, 95 N.C. App. 449, 450, 382 S.E.2d 835, 836 (1989) (observing that it is the fiduciary's burden to establish fairness, openness, and absence of imposition, undue advantage, actual or constructive fraud); *Mountain Top Youth Camp, Inc. v. Lyon*, 20 N.C. App. 694, 697, 202 S.E.2d 498, 500 (1974) (fiduciary must make affirmative showing of full disclosure and fair dealing).

3. *Watts v. Cumberland Cnty. Hosp. Sys., Inc.*, 317 N.C. 110, 116, 343 S.E.2d 879, 884 (1986) (“[O]nce rebutted, the presumption of fraud ‘evaporates, and the accusing party must shoulder the burden of producing actual evidence of fraud.’”). See also, PJI 101.62 (“Presumptions”) subsection IV. See *Chisum v. Campagna*, 376 N.C. 680, 709, 855 S.E.2d 173, 193 (2021) (stating that the former language in this pattern jury instruction did not “include the burden-shifting language that is found in [N.C. Supreme Court] decisions with respect to this issue.”).