

MATERIALITY OF MISREPRESENTATION IN APPLICATION FOR INSURANCE.

If you have answered Issue \_\_\_\_ (*issue of falsity of representation*), "Yes", you will consider the \_\_\_\_\_ issue.

The (*state number*) issue reads:

Was the false representation material?"<sup>1</sup>

On this issue the burden of proof is on the [plaintiff] [defendant]<sup>2</sup> insurance company. This means that the insurance company must prove, by the greater weight of the evidence, that the representation was material.

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<sup>1</sup>This issue assumes that a separate issue has been submitted as to whether a false representation had been made. Generally, whether a statement is material is also a question of fact for the jury. See *Tharrington v. Sturdivant Life Ins. Co.*, 115 N.C. App. 123, 127, 443 S.E.2d 797, 800 (1994); *Michael v. St. Paul Fire Ins. Co.*, 65 N.C. App. 50, 308 S.E.2d 727 (1983). North Carolina law provides, however, that written questions and answers relating to health in an application for a life insurance policy are "deemed material as a matter of law." *Tharrington*, 115 N.C. App. at 127, 443 S.E.2d at 800; see *Rhinehardt v. North Carolina Mut. Life Ins. Co.*, 254 N.C. 671, 119 S.E.2d 614 (1961); *Jones v. Home Sec. Life Ins. Co.*, 254 N.C. 407, 119 S.E.2d 215 (1961); *Thomas-Yelverton Co. v. State Capital Life Ins. Co.*, 238 N.C. 278, 77 S.E.2d 692 (1953); *Tolbert v. Mutual Ben. Life Ins. Co.*, 236 N.C. 416, 419, 72 S.E.2d 915, 917 (1952); *Equitable Life Assurance Soc. v. Ashby*, 215 N.C. 280, 1 S.E.2d 830 (1939); *Inman v. Sovereign Camp, Woodmen of the World*, 211 N.C. 179, 189 S.E. 496 (1937); *Gardner v. North State Mut. Life Ins. Co.*, 163 N.C. 367, 79 S.E. 806 (1913); see also 22-444 Appleman on Insurance § 12855 (explaining that truth or falsity of representations and their materiality are generally questions for the jury, unless materiality is shown by uncontradicted evidence, like a written statement). But see David M. McLelland, Notes & Comments, *Insurance - Fraud & Materiality of Representations, Statutory Construction*, 26 N.C.L. Rev. 78, 81 n.12 (1947) (citation omitted) (arguing such an approach seems to defeat the purpose of N.C.G.S. § 58-3-10).

<sup>2</sup>The misrepresentation issue may come up as a defense by an insurance company to an action brought on the policy or as a basis on which to support an affirmative action brought by the company to rescind the policy. In either case, the misrepresentation issue must be raised before any applicable incontestable period has elapsed. Also, in either case, the burden of proof is on the insurance company.

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The law<sup>3</sup> provides that a false representation in an application for a policy of insurance will not [prevent a recovery on the policy] [entitle the insurance company to rescind the policy] unless that false representation is also material. A representation in an application for an insurance policy is material if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the insurance company either in making the insurance contract, in estimating the degree and character of the risk, or in establishing the premium.<sup>4</sup>

Finally, as to this (*state number*) issue, on which the [plaintiff] [defendant] has the burden of proof, if you find, by the greater weight of the evidence, that the false representation was material, then it would be your duty to

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<sup>3</sup>See N.C.G.S. § 58-3-10.

<sup>4</sup>See *Carroll v. Carolina Cas. Ins. Co.*, 227 N.C. 456, 458, 42 S.E.2d 607, 608 (1947); *Wells v. Jefferson Standard Life Ins. Co.*, 211 N.C. 427, 429, 190 S.E. 744, 745 (1937); *Fishblate v. Fidelity & Casualty Co.*, 140 N.C. 589, 593, 53 S.E. 354, 356, (1906); *Goodwin v. Investors Life Ins., North America*, 332 N.C. 326, 331, 419 S.E.2d 766, 769 (1992) (quoting *Tolbert v. Mutual Ben. Life Ins. Co.*, 236 N.C. 416, 418, 72 S.E.2d 915, 917 (1952)); *Cockerham v. Pilot Life Ins. Co.*, 92 N.C. App. 218, 221, 374 S.E.2d 174, 177 (1988). It is notable that this definition of materiality does not clearly resolve the question as to whether the test is an objective or a subjective test, but that point does not appear to have caused any difficulties in the decided cases, and no attempt has been made to clarify the matter in this instruction. See the discussion in 26 N.C.L. Rev. 78.

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answer this issue "Yes" in favor of the [plaintiff] [defendant]  
insurance company.

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] [defendant].

