

PRODUCTS LIABILITY¹--FIREARMS OR AMMUNITION--CLAIM AGAINST
MANUFACTURER OR SELLER FOR DEFECTIVE DESIGN. N.C.G.S. §§ 99B-
6(a) and 11.

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] proximately
caused by an actual defective design of the [firearm]
[ammunition]?"

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] [five] things:²

First, that the defendant was the [manufacturer] [seller] of
the [firearm] [ammunition]. [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

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 product liability actions, whether they sound in contract or in tort.

²N.C.G.S. §§ 99B-6(a) and 11.

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prior to its sale to a user or consumer.] [A "seller" is a
retailer, wholesaler or distributor,³ including an importer.
("Seller" also includes any individual or entity engaged in the
business of selling a product, whether such sale is for resale or
for use or for consumption.)⁴ ("Seller" also includes a lessor
engaged in the business of leasing.)⁵ ("Seller" also includes a
bailor engaged in the business of loaning products to others for
pay.)⁶]

Second, that the actual design of the [firearm] [ammunition]
was defective.

Third, that such defective design caused the [firearm]
[ammunition] not to function in a manner reasonably expected by
an ordinary consumer of the [firearm] [ammunition].

³While consignment is not specifically mentioned in N.C.G.S. § 99B-1(4),
it is believed that the term "distributor" is broad enough to encompass
consignment as well as other non-sale forms of distribution such as "sale or
return," N.C.G.S. § 25-2-326(1)(b), and "sale on approval," N.C.G.S. § 25-2-
326(1)(a). If these terms are used, they should be explained to the jury.

⁴N.C.G.S. § 99B-1(4).

⁵*Id.*

⁶N.C.G.S. § 99B-1(4) specifically includes bailors "engaged in the
business" of bailment. It is believed that the intent of this statute was to
cover commercial bailments, not casual, non-commercial ones. Furthermore,
since jurors are presumed to be unfamiliar with the bailment concept,
references to bailment in this instruction are explained as "loaning products
to others for pay."

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Fourth, that the defective design was a proximate cause 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 defective design of the [firearm] [ammunition] was the sole proximate cause of the [injury] [death] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defective design of the [firearm] [ammunition] was a proximate cause.

(Where the claim is asserted against a "manufacturer," the Court should give this additional element:

Fifth, that at the time of its manufacture, the defendant acted unreasonably in designing or formulating the (*name product*).⁷ In determining whether the defendant acted unreasonably, you shall consider, in addition to any other

⁷N.C.G.S. § 99B-6(a).

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factors supported by the evidence bearing on the reasonableness
of the defendant's conduct, the following:⁸

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 [firearm] [ammunition].
2. The likely awareness of users of the [firearm] [ammunition], whether based on warnings, general knowledge, or otherwise, of those risks of harm.
3. The extent to which the design or formulation conformed to any applicable government standard that was in effect when the [firearm] [ammunition] left the control of the defendant.
4. The utility of the [firearm] [ammunition], 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 of manufacture.
6. The nature and magnitude of any foreseeable risks associated with the alternative design or formulation.

⁸N.C.G.S. § 99B-6(b)(1)-(7).

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(7. *State any other factor supported by the evidence which the Court determines is relevant to whether the defendant acted unreasonably.*))

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's [injury] [death] [damage] was proximately caused by an actual defective design of the [firearm] [ammunition], 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.

