

PRODUCTS LIABILITY<sup>1</sup>--PRESCRIPTION DRUGS<sup>2</sup>--MANUFACTURER'S<sup>3</sup> DEFENSE  
OF UNAVOIDABLY UNSAFE ASPECT. N.C.G.S. § 99B-6(d).

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  
some aspect of the (name prescription drug) that was unavoidably  
unsafe and as to which the defendant had given adequate warning  
and instruction to the [physician] [name other legally authorized  
prescriber or dispenser] who [prescribed] [dispensed] it for the  
plaintiff?"

You will answer this issue only if you have answered the  
(state number) issue 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:<sup>4</sup>

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<sup>1</sup>"Product 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.

<sup>2</sup>A "prescription drug" is a drug that can be bought only when prescribed  
by a person authorized by law.

<sup>3</sup>N.C.G.S. §§ 99B-6(a) and 11.

<sup>4</sup>N.C.G.S. § 99B-6(d).

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First, that the plaintiff's [injury] [death] [damage] was caused by some aspect of the (*name prescription drug*) that was unavoidably unsafe. "Unavoidably unsafe" means that, in the state of technical, scientific and medical knowledge generally prevailing at the time the prescription drug left the control of its manufacturer, an aspect of that prescription drug that caused the plaintiff's [injury] [death] [damage] was not reasonably capable of being made safe.

Second, that the defendant provided an adequate warning and instruction for the (*name prescription drug*) to the [physician] [*name other legally authorized prescriber or dispenser*] who [prescribed] [dispensed] it for the plaintiff. (Instructions or warnings are "adequate" if they are sufficient in content to inform foreseeable [prescribers] [dispensers] how to [prescribe] [dispense] the (*name prescription drug*) safely, and if they are communicated so that they are reasonably likely to reach such [prescribers] [dispensers] and be understood by them.

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 some aspect of the (*name prescription drug*) that was unavoidably unsafe and as to which the defendant had given adequate warning and instruction to the [physician] [*name other legally authorized prescriber or dispenser*] who [prescribed]

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[dispensed] it for the plaintiff, 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.

