GENERAL RISK LIFE INSURANCE POLICY[1]--SUICIDE AS A DEFENSE.[2]

The (*state number*) issue reads:

"Did (*name insured*) commit suicide?"

The law presumes that a person's death is not caused by

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[1]The presumption of accidental means and the presumption against suicide apply to various types of insurance policies as follows:

General risk policy: A prima facie case of recovery under the policy is made out when the plaintiff shows that the insured died while the policy was in effect. The insurance company has the burden of proving that the death was of a nature (e.g., suicide) that the insurance policy excludes. *See Flintall v. Charlotte Liberty Mut. Ins. Co.*, 259 N.C. 666, 670, 131 S.E.2d 312, 314-15 (1963). Although the allocation of the burden is based on a presumption against suicide, the presumption need not be invoked in a legalistic sense. *See* Brandis and Broun on North Carolina Evidence § 53 (6th ed. 2004).

This instruction should be used for general risk policies.

Accidental death policy: The plaintiff must prove that death resulted from accidental means. However, once plaintiff establishes that death resulted from violent external means, he is aided by a presumption of accident. *See Moore v. Union Fid. Life Ins. Co.*, 297 N.C. 375, 381, 255 S.E.2d 160, 164 (1979). The presumption is a true or mandatory presumption. *See Pickrell v. Motor Convoy, Inc.*, 322 N.C. 363, 370-371, 368 S.E.2d 582, 586 (1988) (citing Moore, 297 N.C. at 381-2, 255 S.E.2d at 163-64 (1979)); Brandis and Broun on North Carolina Evidence, § 53 (6th ed. 2004). Use N.C.P.I.--Civil 101.62, PRESUMPTIONS, for accidental death policies.

Double indemnity: These policies combine general risk and accidental death. In theory, a situation might arise where the plaintiff fails to establish accident and the insurance company fails to satisfy the jury as to suicide. A verdict in favor of plaintiff for the general risk coverage, but not including the accidental death benefit, would result. *See* Brandis and Broun on North Carolina Evidence, § 53 (6th ed. 2004).

[2]Although North Carolina does not directly address the issue, the general law appears to be that where a policy of insurance is payable to the estate of the insured suicide may provide a defense, even when suicide is not specifically excluded by the policy. *See* 43 Am. Jur. 2d *Insurance* § 535 (2004). Also, no recovery may be had where the insured contemplated suicide at the time he purchased the policy. *See* 43 Am. Jur. 2d *Insurance* § 537. However, in all other cases, the policy must specifically exclude suicide in order that the insurance company should have a defense. *See* Am. Jur. 2d, *Insurance* § 535 (discussing the presumption against suicide).

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suicide.[3] Thus, on this issue the burden of proof is on the defendant, (*name company*). This means that the defendant must prove, by the greater weight of the evidence, that (*name insured*)'s death was the result of suicide. Suicide occurs when a person (in possession of *his* mental faculties)[4] deliberately terminates *his* life by committing some fatal act with the intent[5] to cause *his* own death.

Finally, as to this (*state number*) issue on which the defendant has the burden of proof, if you find, by the greater weight of the evidence, that (*name insured*) committed suicide, 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.

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[3]14A Am. Jur. Pl. & Pr. Forms (Rev.), *Insurance*, Form 580 (1983). While this presumption may be the reason for the allocation of the burden of persuasion, "there is no need to invoke a presumption in the legalistic sense." Brandis and Broun on North Carolina Evidence, § 53 (6th ed. 2004). The presumption is stated here for the purpose of explaining to the jury that the insurance company has the burden of proof.

[4]The parenthetical phrase should not be used if the policy excludes coverage for suicide, "sane or insane." In the absence of "sane or insane" language, however, self-destruction by one who is insane is not generally considered suicide. Though no North Carolina cases were found, a person would generally be considered mentally incapable of suicide if he was unable to understand the moral character and general nature of his act (even if he understood that it would result in his death and intended such result), or if he was compelled by an insane and irresistible impulse. *See* Am. Jur. 2d, *Insurance* §§ 538-39, 542, 544.

[5]For an instruction on intent, see N.C.P.I.--Civil 101.46.