

MISREPRESENTATION IN APPLICATION FOR INSURANCE--FACTUAL DISPUTE.¹

The (*state number*) issue reads:

"Did the [plaintiff] [defendant]² in *his* application for the insurance policy represent (*describe alleged representation, e.g., that he did not take medication for high blood pressure*)?"

On this issue the burden of proof is on the [plaintiff] [defendant] insurance company. This means that the insurance company must prove, by the greater weight of the evidence, that the [plaintiff] [defendant] made the representation. If you find that the [plaintiff] [defendant] did make the

¹This issue should be used only where there is a factual dispute whether the applicant actually made the representation in question. If the dispute involves a controversy over whether the agent incorrectly recorded the answer of the applicant on a written application or the agent himself filled in the written application without asking the questions of the applicant, N.C.P.I. Civil 880.30 should be given instead.

²The 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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representation, then you should answer this issue "Yes" and proceed to consider issue No. _____. If you find that the [plaintiff] [defendant] did not make the representation, then you should answer this issue "No."³

³If the jury finds that the applicant did make the representation in question, issues on whether the representation was false, see N.C.P.I. Civil 880.15, and if false, whether the false representation was material, see N.C.P.I. Civil 880.20, should be given.