

FIRE INSURANCE POLICY--WILLFUL MISREPRESENTATION IN APPLICATION.<sup>1</sup>

The (*state number*) issue reads:

"Did the [plaintiff] [defendant] in applying for the insurance policy willfully misrepresent that (*describe alleged misrepresentation*)?"

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] willfully misrepresented (*describe alleged misrepresentation*).

The law provides that a representation made by an applicant in applying for a policy of fire insurance will [prevent a

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<sup>1</sup>This instruction is appropriate in cases involving misrepresentation in applications for fire insurance policies subject to N.C.G.S. § 58-44-15, which sets forth standard policy provisions for all policies and contracts of fire insurance, except contracts of automobile fire, theft, comprehensive and collision, marine and inland marine insurance. See N.C.G.S. § 58-44-15(b). In the context of a fire/homeowners policy, § 58-44-15 is the controlling statute, and any misrepresentation or concealment made in the application process is governed by that statute, not § 58-3-10, which governs misrepresentation cases generally. See *Crawford v. Commercial Union Midwest Ins. Co.*, 147 N.C. App. 455, 459, 556 S.E.2d 30, 33 (2001).

The standard form of a policy on fire insurance as set forth in the statute provides:

This entire policy shall be void if, whether before or after a loss, the insured has willfully concealed or misrepresented any material facts or circumstances concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the insured relating thereto.

Standard Fire Insurance Policy Form, lines 1-6, at N.C.G.S. § 58-44-15.

This instruction is cast in the context of willful misrepresentations made in applying for fire insurance policies. As is evident from the excerpt from N.C.G.S. § 58-44-15 set forth above, the same rule applies also as to statements or representations made after the policy is in force. In such a situation, the instruction should be rewritten to fit the circumstances, by, among other things, excising the references to "applying" and "application."

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recovery on the policy] [entitle the insurance company to rescind the policy] if it is false and material and was made willfully by the applicant.<sup>2</sup>

The law does not require that representations in an application be literally true and accurate in every respect. A representation is not considered under the law to be false if it is substantially true. Thus, if you find that the representation was substantially true, you should answer this issue "No."

If you find that the representation was false, you must then consider whether it was made willfully. A statement is made willfully if it is made deliberately and intentionally<sup>3</sup>, while knowing it to be false.<sup>4</sup> An honest mistake, even if negligently made, does not amount to a willful misrepresentation. False statements made by the insured do not [prevent a recovery on the policy] [entitle the insurance company to rescind the policy] unless they were made willfully.

If you find that the [plaintiff] [defendant] willfully made a false representation, you must separately consider in Issue No. \_\_\_\_\_ whether that false representation was material.<sup>5</sup>

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<sup>2</sup>See *Bryant v. Nationwide Mut. Fire Ins. Co.*, 313 N.C. 362, 370, 329 S.E.2d 333, 338 (1985) (explaining that the insurance company must prove the insured's statements were: (1) false, (2) material, and (3) knowingly and willfully made); *Pittman v. Nationwide Mut. Fire Ins. Co.*, 79 N.C. App. 431, 433, 339 S.E.2d 441, 443 (1986).

<sup>3</sup>For an instruction on intent, see N.C.P.I.--Civil 101.46.

<sup>4</sup>See *Bryant*, 313 N.C. at 374, 329 S.E.2d at 341 (citing 12A-266 Appleman on Insurance § 7300).

<sup>5</sup>Use N.C.P.I.--Civil 880.20.

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Finally, as to this (*state number*) issue on which the [plaintiff] [defendant] insurance company has the burden of proof, if you find, by the greater weight of the evidence, that the [plaintiff] [defendant] willfully misrepresented that (*describe alleged misrepresentation*), then it would be your duty to answer this issue "Yes" in favor of the [plaintiff] [defendant] insurance company and proceed to consider Issue No. \_\_\_\_\_. 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].

