

744.18 PRODUCTS LIABILITY - STATUTE OF LIMITATIONS.

*NOTE WELL: N.C. Gen. Stat. § 1-46.1 was amended,<sup>1</sup> effective October 1, 2009, and applying to causes of action that accrue on or after that date. Also effective October 1, 2009, N.C. Gen. Stat. § 1-50 (a)(6) was repealed. These amendments increased the statute of limitations and repose in products liability actions from six to twelve years.*

*If the cause of action at trial accrued before October 1, 2009, this instruction should be modified by substituting "six years," the limitation previously set by N.C. Gen. Stat. § 1-50 (a)(6), for "twelve years."*

The (*state number*) issue reads:

"Did the plaintiff file this action within twelve years of the date of the initial purchase of the (*state name of product*) for use or consumption?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, the plaintiff's claim may nonetheless be legally barred by what is called the statute of limitations.<sup>2</sup> The law provides that a lawsuit claiming damages for personal injury, death or damage to property based upon or arising out of any alleged defect, or any failure, in relation to a product must be filed within twelve years of the date of the initial purchase of that product for use or consumption.<sup>3</sup> The plaintiff filed the present lawsuit on (*state date of filing of products liability action*).

On this issue, the burden of proof is on the plaintiff.<sup>4</sup> This means that the plaintiff must prove, by the greater weight of the evidence, that the (*state name of product*) at issue in this lawsuit was initially purchased for use or consumption less than twelve years before (*state date of filing of products liability action*).

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 filed this action within twelve years of the date the (*state name of product*) was initially purchased for use or consumption, 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.

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1. As amended, N.C. Gen. Stat. § 1-46.1 (2009) provides:

(a) Within 12 years an action – No action for the recovery of damages for personal injury, death, or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than 12 years after the date of initial purchase for use or consumption.

2. “[A] statute of limitation . . . is . . . the action of the state in determining that, after the lapse of a specified time, a claim shall not be legally enforceable.” *South Dakota v. North Carolina*, 192 U.S. 286, 346 (1904). “Generally, whether a cause of action is barred by the statute of limitations is a mixed question of law and fact.” *Pembee Mfg. Corp. v. Cape Fear Constr. Co.*, 69 N.C. App. 505, 508, 317 S.E.2d 41, 43 (1984).

3. See *supra* note 1.

4. “[Although] the plea of the statute of limitations is a positive defense and must be pleaded, . . . when it has been properly pleaded, the burden of proof is then upon the party against whom the statute is pleaded to show that his claim is not barred, and is not upon the party pleading the statute to show that it is barred.”

*Hudson v. Game World, Inc.*, 126 N.C. App. 139, 145, 484 S.E.2d 435, 439 (1997) (quoting *Solon Lodge v. Ionic Lodge*, 247 N.C. 310, 316, 101 S.E.2d 8, 13 (1957)); see also *White v. Consolidated Planning, Inc.*, 166 N.C. App. 283, 305, 603 S.E.2d 147, 162 (2004) (burden rests on plaintiff to prove claims were timely filed when defendant asserts statute of limitations as an affirmative defense).