

N.C.P.I.-Civil. 741.72

PRODUCTS LIABILITY - FIREARMS OR AMMUNITION - CLAIM AGAINST
MANUFACTURER OR SELLER FOR DEFECTIVE DESIGN.

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N.C. Gen. Stat. § 99B-6(a) and § 99B-11

741.72 PRODUCTS LIABILITY¹ - FIREARMS OR AMMUNITION - CLAIM
AGAINST MANUFACTURER OR SELLER FOR DEFECTIVE DESIGN.

*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] proximately caused
by an actual defective design of the [firearm] [ammunition]?"

On this issue the burden of proof is on the plaintiff. This means
that the plaintiff must prove, by the greater weight of the evidence,
[four] [five] things:²

First, that the defendant was the [manufacturer] [seller] of the
[firearm] [ammunition]. [A "manufacturer" is a person or entity who
designs, assembles, fabricates, produces, constructs or otherwise
prepares a product or a component part of a product prior to its sale to a
user or consumer.] [A "seller" is a retailer, wholesaler or distributor,³
including an importer. ("Seller" also includes any individual or entity
engaged in the business of selling a product, whether such sale is for
resale or for use or for consumption.)⁴ ("Seller" also includes a lessor
engaged in the business of leasing.)⁵ ("Seller" also includes a bailor
engaged in the business of loaning products to others for pay.)⁶]

Second, that the actual design of the [firearm] [ammunition] was
defective.

Third, that such defective design caused the [firearm] [ammunition]
not to function in a manner reasonably expected by an ordinary consumer
of the [firearm] [ammunition].

Fourth, that the defective design was a proximate cause of the plaintiff's [injury] [death] [damage]. Proximate cause is a cause which in a natural and continuous sequence produces a person's [injury] [death] [damage], and is a cause which a reasonable and prudent person could have foreseen would probably produce such [injury] [death] [damage] or some similar injurious result. There may be more than one proximate cause of [an injury] [a death] [damage]. Therefore, the plaintiff need not prove that the defective design of the [firearm] [ammunition] was the sole proximate cause of the [injury] [death] [damage]. The plaintiff must prove, by the greater weight of the evidence, only that the defective design of the [firearm] [ammunition] was a proximate cause.

(Where the claim is asserted against a "manufacturer," the Court should give this additional element:

Fifth, that at the time of its manufacture, the defendant acted unreasonably in designing or formulating the (*name product*).⁷ In determining whether the defendant acted unreasonably, you shall consider, in addition to any other factors supported by the evidence bearing on the reasonableness of the defendant's conduct, the following:⁸

1. The nature and magnitude of the risks of harm associated with the design or formulation in light of the intended and reasonably foreseeable uses, modifications or alterations of the [firearm] [ammunition].
2. The likely awareness of users of the [firearm] [ammunition], whether based on warnings, general knowledge, or otherwise, of those risks of harm.
3. The extent to which the design or formulation conformed to

any applicable government standard that was in effect when the
[firearm] [ammunition] left the control of the defendant.

4. The utility of the [firearm] [ammunition], including the
performance, safety and other advantages associated with that
design or formulation.

5. The technical, economic and practical feasibility of using an
alternative design or formulation at the time of manufacture.

6. The nature and magnitude of any foreseeable risks associated
with the alternative design or formulation.

*(7. State any other factor supported by the evidence which the
Court determines is relevant to whether the defendant acted
unreasonably.))*

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's
[injury] [death] [damage] was proximately caused by an actual defective
design of the [firearm] [ammunition], 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.

1. "Products 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. Gen. Stat. § 99B-1(3)(1994). Thus, this
definition applies to all product liability actions, whether they sound in contract or in tort.

2. N.C. Gen. Stat. § 99B-6(a) and § 99B-11.

3. While consignment is not specifically mentioned in N.C. Gen. Stat. § 99B-1(4), it is believed that the term "distributor" is broad enough to encompass consignment as well as other non-sale forms of distribution such as "sale or return," N.C. Gen. Stat. § 25-2-326(1)(b), and "sale on approval," N.C. Gen. Stat. § 25-2-326(1)(a). If these terms are used, they should be explained to the jury.

4. N.C. Gen. Stat. § 99B-1(4).

5. *Id.*

6. N.C. Gen. Stat. § 99B-1(4) specifically includes bailors "engaged in the business" of bailment. It is believed that the intent of this statute was to cover commercial bailments, not casual, non-commercial ones. Furthermore, since jurors are presumed to be unfamiliar with the bailment concept, references to bailment in this instruction are explained as "loaning products to others for pay."

7. N.C. Gen. Stat. § 99B-6(a).

8. N.C. Gen. Stat. § 99B-6(b)(1)-(7).