

N.C.P.I.-Civil. 744.16
PRODUCTS LIABILITY-MANUFACTURER'S DEFENSE OF INHERENT
CHARACTERISTIC.
GENERAL CIVIL VOLUME
MAY 1999
N.C. Gen. Stat. § 99B-6(c)

744.16 PRODUCTS LIABILITY¹ - MANUFACTURER'S² DEFENSE OF
INHERENT CHARACTERISTIC.

*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] caused by a generally
recognized, substantially necessary inherent characteristic of the (*name
product*)?"

You will answer this issue only if you have answered the (*state
number*) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant. This means
that the defendant must prove, by the greater weight of the evidence,
two things:³

First, that the plaintiff's [injury] [death] [damage] was caused by
an inherent characteristic of the (*name product*) that cannot be
eliminated without substantially compromising its usefulness or
desirability.

Second, that such inherent characteristic of the (*name product*) is
recognized by the ordinary person with the ordinary knowledge common
to the community.

Finally, as to this issue on which the defendant has the burden of
proof, if you find by the greater weight of the evidence that the plaintiff's
[injury] [death] [damage] was caused by a generally recognized,
substantially necessary inherent characteristic of the (*name product*),
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.

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).

2. "Manufacturer" means a "person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part." N.C. Gen. Stat. § 99B-1(2).

3. N.C. Gen. Stat. § 99B-6(c).