

800.06 CONSTRUCTIVE FRAUD—REBUTTAL BY PROOF OF OPENNESS,
FAIRNESS AND HONESTY.

The *(state number)* issue reads:

“Did the defendant act openly, fairly and honestly in bringing about
(identify transaction)?”¹

(You are to 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,
that, with regard to (identify transaction), the defendant made a full,
open disclosure of material facts, that the defendant dealt with the
plaintiff fairly, without oppression, imposition or fraud, and that the
defendant acted honestly.²

Finally, as to the (state number) issue on which the defendant has
the burden of proof, if you find by the greater weight of the evidence that
the defendant acted openly, fairly and honestly in bringing about (identify
transaction), 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.

*NOTE WELL: If the jury answers yes to this issue, then
it may be appropriate to submit the issue of N.C.P.I.—
Civil 800.00 (“Fraud”) if the pleadings and evidence
support submission of such issue to the jury.*³

¹. The presumption of constructive fraud may be rebutted by the fiduciary’s
“showing, for example, that the confidence reposed in him was not abused.” *Forbis v. Neal*,
361 N.C. 519, 529, 649 S.E.2d 382, 388 (2007) (citation and internal quotation marks
omitted); see *Wachovia Bank & Trust Co. v. Johnston*, 269 N.C. 701, 711, 153 S.E.2d 449,
457 (1967); *McNeill v. McNeill*, 223 N.C. 178, 25 S.E.2d 615 (1943); *In re Will of Sechrest*,

140 N.C. App. 464, 471, 537 S.E.2d 511, 517 (2000), *disc. rev. denied*, 353 N.C. 375, 547 S.E.2d 16 (2001); *Honeycutt v. Farmers & Merchants Bank*, 126 N.C. App. 816, 820, 487 S.E.2d 166, 168 (1997).

². *Underwood v. Stafford*, 270 N.C. 700, 702, 155 S.E.2d 211, 212-13 (1967); *Poore v. Swan Quarter Farms, Inc.*, 95 N.C. App. 449, 450, 382 S.E.2d 835, 836 (1989) (observing that it is the fiduciary's burden to establish fairness, openness, and absence of imposition, undue advantage, actual or constructive fraud); *Mountain Top Youth Camp, Inc. v. Lyon*, 20 N.C. App. 694, 697, 202 S.E.2d 498, 500 (1974) (fiduciary must make affirmative showing of full disclosure and fair dealing).

³. *Watts v. Cumberland Cnty. Hosp. Sys., Inc.*, 317 N.C. 110, 116, 343 S.E.2d 879, 884 (1986) ("[O]nce rebutted, the presumption of fraud 'evaporates, and the accusing party must shoulder the burden of producing actual evidence of fraud.'"). See also, PJI 101.62 ("Presumptions") subsection IV. See *Chisum v. Campagna*, 376 N.C. 680, 709, 855 S.E.2d 173, 193 (2021) (stating that the former language in this pattern jury instruction did not "include the burden-shifting language that is found in [N.C. Supreme Court] decisions with respect to this issue.").