

WARRANTIES IN SALES OF GOODS--ISSUE OF SELLER'S DEFENSE OF BUYER'S  
ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS--IMPLIED WARRANTY  
CREATED BY COURSE OF DEALING OR BY USAGE OF TRADE.

The (*state number*) issue reads:

"[Did the plaintiff know] [Should the plaintiff have known]  
of the defects in the (*name good*) before entering into the  
contract of purchase with the defendant?"<sup>1</sup>

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, that before entering into the contract of purchase with  
the defendant, the plaintiff

[examined the [(*name good*)] [sample or model of the (*name  
good*)] as fully as the plaintiff desired and the defect(s) in  
(*name good*) complained of [became known to *him*] [should, under the  
circumstances, have been discovered by *him*]]

[refused to examine the (*name good*) and the defect(s) in the  
(*name good*) complained of [became known to *him*] [would, under the  
circumstances, have been discovered by *him*]].

Finally, as to this (*state number*) issue on which the  
defendant has the burden of proof, if you find by the greater

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<sup>1</sup>N.C.G.S. §25-2-316(3) (b) (1995).

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weight of the evidence that the plaintiff [knew] [should have  
known] of the defect(s) in the (*name good*) before entering into  
the contract of purchase with the defendant, 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.