

WARRANTIES IN SALES OF GOODS--RIGHTFUL REJECTION--DAMAGES.

The (*state number*) issue reads:

"What amount of money damages is the plaintiff entitled to recover from the defendant for breach of warranty after rightfully rejecting the (*name good*)?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach.

The plaintiff may also be entitled to recover actual damages.¹ On this issue the burden of proof is on the plaintiff.

¹*Note Well:* The statutorily provided remedies for breach of warranty may be modified, limited or even excluded. See N.C.G.S. §§25-2-316(4), 718 and 719 (1995). Thus, where the agreement-in-fact between buyer and seller excludes, limits or substitutes some other remedy, the jury should be instructed on what the parties have adopted. The power of the parties to modify or opt out of the statutory remedies is very broad, but there are some restrictions. For example, limitation of consequential damages for personal injury involving consumer goods is prima facie unconscionable. N.C.G.S. §25-2-719(3) (1995). Likewise, statutory remedies are restored where, under the circumstances, a limited or exclusive remedy fails of its essential purpose. N.C.G.S. §25-2-719(2) (1995). In addition, federal law restricts a warrantor's ability to limit remedies where he gives an express warranty as to certain types of consumer goods. See generally Magnusen-Moss Warranty Act of 1975, 15 U.S.C. §2301 et seq.

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This means that the plaintiff must prove, by the greater weight of the evidence, the amount of damages sustained, if any, as a result of the breach of warranty following the rightful rejection of the (*name good*).

The law provides that where a buyer rightfully rejects the seller's [delivery] [tender] of the (*name good*), he may cancel the contract and, in addition,

First, make any reasonable purchase of a substitute (*name good*) in good faith and without unreasonable delay, and then recover the difference between the cost of the substitute (*name good*) and the contract price.

Second, recover so much of the (unrecovered)² purchase price as has been paid.

Third, recover incidental damages proximately resulting from the seller's breach. (These include expenses reasonably incurred in the inspection, receipt, transportation and care and custody of

²The buyer obtains a security interest in the goods rejected or revoked until his purchase price and expenses of holding and disposition are recovered. N.C.G.S. §25-2-711(3) (1995). Any proceeds from liquidation of the buyer's security interest is a self-help recovery and must be credited to the seller.

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the (*name good*) and any other reasonable expense incident to the breach.)

Fourth, recover consequential damages proximately resulting from the seller's breach.³ (These include any loss resulting from general or particular requirements and needs of which the defendant at the time of contracting had reason to know and which could not reasonably have been prevented by the plaintiff.)

The plaintiff's damages are to be reasonably determined from the evidence presented in the case. The plaintiff is not required to prove with mathematical certainty the extent of the financial injury in order to recover damages. Thus, the plaintiff should not be denied damages simply because they cannot be calculated with exactness or a high degree of mathematical certainty. However, an award of damages must be based on evidence which shows the amount of the plaintiff's damages with reasonable certainty. You may not award any damages based upon mere speculation or conjecture.

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

³N.C.G.S. §25-2-711(1) (1995).

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weight of the evidence the amount of damages sustained by the plaintiff for breach of warranty after rightfully rejecting the (*name good*), then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal amount such as "One Dollar" in the blank space provided.