

INSURANCE--DAMAGES FOR PERSONAL PROPERTY--ACTUAL CASH VALUE.

This issue reads:

"What amount, if any, is (*name plaintiff*) entitled to recover of the defendant, (*name insurance company*), for [damage to] [destruction of] personal property?"

On this issue, the plaintiff (*name plaintiff*) has the burden of proof. This means that the plaintiff must prove by the greater weight of the evidence first, that *he* has suffered damage to personal property, that is (*specify personal property; e.g., "furniture, clothing, and other household goods"*) and second, the amount or value of that damage.

The plaintiff's insurance policy provides that, in the event of loss, the plaintiff shall recover the actual cash value of *his* loss.<sup>1</sup> (If you reach this issue, you may consider the evidence of the cost of [repair] [replacement] of the damaged property. However, you will not base your determination solely upon cost of [repair] [replacement], but rather you will consider this evidence only to the extent that it helps you determine the actual cash value of [the plaintiff's loss] [the plaintiff property at the time of the loss]<sup>2</sup>.)

The actual cash value of personal property is the amount of money, in dollars, that the property would bring if sold in the open market.<sup>3</sup> It is the amount that a willing buyer would pay and a willing seller would accept,

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<sup>1</sup>The instruction will have to be modified if there is some issue as to whether the actual cash value of the loss exceeds the cost of repair or replacement under the conditions set out in the form policy contained in G.S. 59-176.

<sup>2</sup>Use the first bracketed expression if plaintiff's property was damaged but not destroyed; use the second where the property was destroyed.

<sup>3</sup>*Grubbs v. Insurance Co.*, 108 N.C. 472 (1891).

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neither being under a need for an immediate sale or purchase.<sup>4</sup>

To arrive at plaintiff's damages for loss of personal property you would first determine the actual cash value of that property immediately before the fire. You would then subtract the actual cash value, if any, of the property immediately after the fire. The difference between these two figures, as determined by you, in dollars and cents, would be your answer to this issue.

*(Briefly summarize the evidence. See N.C.P.I.--Civil 101.00.)*

So, members of the jury, I instruct you that if you reach this issue you will award the plaintiff such amount, if any, as you find by the greater weight of the evidence represents the difference in the actual cash value of plaintiff's personal property immediately before the fire, and the actual cash value, if any, of that same property immediately after the fire. Thus, the figure, in dollars and cents, which you arrive at, will be your answer to this issue.

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<sup>4</sup>If the property consists of personal items such as used clothing or furniture, or if it has no market value, use the measure of damages set out in N.C.P.I.--Civil 810.94 or 810.96.