

DEFENDANT'S PROPERTY DAMAGES (COUNTERCLAIM)--NO MARKET VALUE--
COST OF REPLACEMENT OR REPAIR.

NOTE WELL: Use this instruction where there is no market by which the degree of damage to the property can be measured.¹ Where repair or replacement does not provide a realistic measure of the defendant's loss (such as where the property cannot be repaired or replaced, or where it has primarily or exclusively intrinsic value), use N.C.P.I.--Civil 109.66.

The defendant's actual property damages are equal to the amount reasonably needed to [repair the damage to the property]² [replace the property damaged]³, less [the salvage value of the [property] [parts replaced]] [the accumulated depreciation⁴ on the property replaced].⁵

¹When the property cannot be valued by reference to a market, the measure of damages may properly be gauged by the cost of repair. See discussion in *In re Appeal of Amp., Inc.*, 287 N.C. 547, 570-574, 215 S.E.2d 752 (1975). Defendant's recovery for repair should be limited by the value of the property damaged. *Carolina Power and Light Co.*, 261 N.C. at 712, 136 S.E.2d at 105.

²If the property replaced needed repairs at the time it was destroyed, the measure of damages would be replacement cost less the reasonable cost of repairs. *Beaufort & Morehead R. Co. v. The Danyank*, 122 F.Supp. 82 (E.D.N.C. 1954) (railroad bridge over river damage by ship).

³If manufacturing materials with no market value are destroyed, the measure of damages should include the replacement cost of the raw materials. *In re Appeal of AMP, Inc.*, 287 N.C. 547, 570-74, 215 S.E.2d 752, 765-768 (1975).

⁴No deduction for depreciation should be made unless the evidence would justify a finding that the defendant will eventually recapture the worth of the depreciation. *Carolina Power and Light Co. v. Paul*, 261 N.C. 710 (1964); *In re Appeal of Amp, Inc.*, 287 N.C. 547, 570-574, 215 S.E.2d 752 (1975).

⁵*State v. Maynard*, 79 N.C. App. 451, 339 S.E.2d 666 (1986).

