WARRANTIES IN SALES OF GOODS--JUSTIFIABLE REVOCATION OF
ACCEPTANCE--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 justifi-
ably revoking acceptance of 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.
This means that the plaintiff must prove, by the greater weight of
the evidence, the amount of damages sustained, if any, as a result

\(^1\)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
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
§2301 et seq.
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of the breach of warranty following the justifiable revocation of
acceptance of the (name good).

The law provides that where a buyer justifiably revokes
acceptance 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
by the plaintiff in the inspection, receipt, transportation and
care and custody of the (name good) and any other reasonable
expense incident to the breach.)

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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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 defend-
ant 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
weight of the evidence the amount of damages sustained by the
plaintiff for breach of warranty after justifiably revoking


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acceptance of 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.