

N.C.P.I.—Civil 745.09
NEW MOTOR VEHICLES WARRANTIES ACT ("LEMON LAW")—DAMAGES WHEN
PLAINTIFF IS A LESSEE.
REPLACEMENT JUNE 2015
N.C. Gen. Stat. § 20-351.3(b)(1)

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NOTE WELL: Appendices contain worksheets that the Court may want to provide to the jury, but it is not mandatory to do so.

The (*state number*) issue reads:

"What amount of damages is the plaintiff entitled to recover from the defendant?"¹

You will answer this issue only if you have answered the (*state number*) issue "Yes" in favor of the plaintiff² and the (*state number*) issue "Yes" in favor of the plaintiff³ [and the (*state number*) issue "No" in favor of the plaintiff⁴].

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 which the law permits the plaintiff to recover.⁵ The following items may be recovered by the plaintiff:⁶ (1) all sums previously paid by the plaintiff under the terms of the lease; (2) all sums previously paid by the plaintiff in connection with entering into the lease agreement including, but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges; and (3) any incidental and monetary consequential damages.⁷ Incidental damages include any reasonable expenses incurred by the plaintiff incident to the defendant's [failure] [inability] to conform the (*name vehicle*) to the express warranty covering that vehicle.⁸ Monetary consequential damages include monetary losses proximately resulting from the breach of warranty, but do not include non-monetary damages to the plaintiff for such things as embarrassment, emotional distress or pain and suffering.⁹ A monetary loss proximately results from a breach of warranty if it would not have occurred without the breach of warranty and if such loss was reasonably foreseeable to a person in

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the same or similar position as the defendant.

Any award to the plaintiff must be reduced by a reasonable allowance for the plaintiff's use of the (*name vehicle*). A reasonable allowance for use is calculated from the number of miles used by the plaintiff up to the date of the third attempt to repair the same nonconformity which is the subject of the claim, or the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities, whichever occurs first. The number of miles used by the plaintiff is multiplied by the lessor's actual lease price and divided by 120,000.¹⁰ The "lessor's actual lease price" is the actual purchase cost of the vehicle to (*name lessor*).

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of damages the plaintiff is entitled to recover from the defendant, then it would be your duty to write that amount in the blank space provided.

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Formula for Calculating “Reasonable Allowance” for the Plaintiff’s Use of the Vehicle
When the Plaintiff is a Lessee

A “Reasonable Allowance” is determined by:

1. Calculating the number of miles used by the plaintiff-lessee up to: (a) the date of the third attempt to repair the same nonconformity which is the subject of the claim, or (b) the twentieth cumulative business day when the vehicle is out of service by reason of repair of one or more nonconformities; whichever occurs first;
2. Multiplying the number of miles by the lessor’s actual lease price (which means the actual purchase cost of the vehicle to the lessor);
3. Dividing such amount by 120,000.

<p>Number of Miles as of:</p> <p>(a) the date of the 3rd repair attempt of the same nonconformity which is the subject of the claim; <u>or</u></p> <p>(b) the twentieth cumulative business day when the vehicle is out of service for repair of one or more nonconformities;</p> <p>Whichever occurs first.</p>	<p>_____</p>
<p>Multiplied by Lessor’s Actual Lease Price (Which is the Actual Purchase Cost of the Vehicle to the Lessor)</p>	<p>X</p> <p>_____</p>
<p>= Subtotal</p>	<p>=</p> <p>_____</p>
<p>Divided by 120,000:</p>	<p>÷ 120,000</p>
<p>= Reasonable Allowance [Deduct this amount from the plaintiff’s damages award]</p>	<p>=</p> <p>_____</p>

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**Formula for Calculating the Plaintiff's Damages
 When the Plaintiff is a Lessee
 (N.C. Gen. Stat. § 20-351.3(b)(1))**

(1) All Sums Previously Paid by the Plaintiff-Lessee Under the Terms of the Lease	
Plus	+
(2) All sums previously paid by the Plaintiff-Lessee in Connection with Entering into the Lease (including, but not limited to, any capitalized cost reduction, sales tax, license and registration fees, and similar government charges)	
Plus	+
(3) Any Incidental and Monetary Consequential Damages	
= Subtotal of 1 + 2 + 3:	
Minus	-
Reasonable Allowance for the Plaintiff's Use (insert number from Appendix A)	
Equals	=
= Total Damages Awarded to the Plaintiff-Lessee	

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1. See N.C. Gen. Stat. § 20-351.3(b).

2. See N.C.P.I.-Civil 745.01.

3. See N.C.P.I.-Civil 745.03.

4. See N.C.P.I.-Civil 745.05.

5. A prerequisite to the plaintiff bringing an action for damages under the authority of this section is that the vehicle be returned to the defendant. Alternatively, in an action under N.C. Gen. Stat. § 20-351.3, the plaintiff may seek specific performance of the manufacturer's obligation to "replace the vehicle with a comparable new motor vehicle." *Id.*

6. This remedy would appear to be available to a plaintiff bringing an action under N.C. Gen. Stat. § 20-351.2 by virtue of the language of N.C. Gen. Stat. § 20-351.8(2). See *Buford v. General Motors Corp.*, 339 N.C. 396, 408, 451 S.E.2d 293, 299-300 (1994).

7. N.C. Gen. Stat. § 20-351.3(b)(1).

8. N.C.P.I.-Civil 569.30; see also Heather Newton, Note, *When Life Gives You Lemons, Make A Lemon Law: North Carolina Adopts Automobile Warranty Legislation*, 66 N.C.L.Rev. 1080, 1091 n. 108 (1988) ("The lemon law does not define incidental damages although the UCC in its definition includes 'expenses reasonably incurred in inspection, receipt, transportation and care and custody of goods,' expenses of covering, and other reasonable expenses incident to breach." (citing N.C. Gen. Stat. § 25-2-715(1))).

9. N.C.P.I.-Civil 569.40; N.C. Gen. Stat. § 20-351.3(b)(1). See also Newton, *supra* at 1091 n. 109 ("[C]onsequential damages would presumably include out-of-pocket expenses such as towing fees, car rental, and hotel expenses." (citations omitted)). In addition, liquidated and uncontested monetary liabilities of the plaintiff to third parties arising as a consequence of the breach of warranty would qualify as a "monetary loss." An example would be money owed to a hospital or other medical provider. The plaintiff's personal injuries (*e.g.*, loss of a limb, pain and suffering, loss of earning capacity, *etc.*) do not constitute monetary loss. Recovery of damages for these injuries may be sought in conjunction with other claims for relief.

10. N.C. Gen.Stat. § 20-351.3(c).

