

FRAUD: DAMAGES

The (state number) issue reads:

"What amount is the plaintiff entitled to recover from the defendant as damages for fraud?"

If you have answered the (*state number*) issue "Yes" in favor of the plaintiff, then 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 a technical injury to the plaintiff.

The plaintiff may also be entitled to recover actual damages. 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 actual damages caused¹ by the fraud of the defendant.

Damages recoverable for fraud consist of the amount of money that, in so far as possible, will put the plaintiff in the same position or condition as if the fraud had not occurred.² That amount may include the difference between the value of what was received and the value of what was promised.³ Thus, a person acquiring property by virtue of a commercial transaction, who has been defrauded by [a] false

¹NOTE WELL: Fraud includes the elements of "false representation" and "intent to deceive," see N.C.P.I. Civil--800.00, not included in a claim of negligent misrepresentation, see N.C.P.I.--Civil 800.10. Hence an instruction on proximate cause is inappropriate here, but is included in N.C.P.I.--Civil 800.11, "Negligent Misrepresentation: Damages." Cf. N.C.P.I.--Civil 810.00, "Personal Injury Damages," NOTE WELL and Fn1 (Negligence cases require an instruction on *proximate* cause. Intentional tort cases generally do not require proximate cause and an instruction solely on *cause* should be given.)

²*Godfrey v. Res-Care, Inc.*, 165 N.C. App. 68, 79, 598 S.E.2d 396, 404 (2004) (citations omitted) (approving instruction that "[d]amages are compensation in money, in an amount so far as possible, to restore a respective plaintiff, to his or her original condition or position . . ."); see also Charles F. Daye and Mark W. Morris, *North Carolina Law of Torts*, 2d Ed., § 27.36, 580 ("When fraud is proved, the courts are astute to give plaintiff a complete remedy and are careful to avoid situations in which the defendant may benefit from his fraud.")

³*River Burch Assoc. v. Raleigh*, 326 N.C. 100, 130, 388 S.E.2d 538, 556 (1988) ("The measure of damages for fraud in the inducement of a contract is the difference between the value of what was received and the value of what was promised").

FRAUD: DAMAGES (Continued)

representation[s], may recover as damages the difference between the actual value of the property at the time of the transaction and the value it would have had if the representation[s] had been true.⁴ [That amount may also include financial or monetary loss suffered otherwise by the plaintiff as a result of the fraud.⁵]

The plaintiff's damages are to be reasonably determined from the evidence presented. Your award must be fair and just. You may not award any damages based upon speculation or conjecture.⁶

Finally, as to the (*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 actual damages caused by the fraud of the defendant, then it would be your duty to write that number 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 sum such as one dollar in the blank space provided.

⁴*Kennedy v. Trust Co.* 213 N.C. 620, 623, 197 S.E. 130, 131 (1938) ("The general rule . . . is as follows: 'The measure of damages sustained by the purchaser, when a purchase has been induced by fraud is . . . the difference between the real value of the property and the value it would have had if it had been as represented.'").

⁵*See* Daye and Morris, *North Carolina Law of Torts*, 2nd Ed., § 27.36 ("In appropriate cases upon appropriate proof, benefit of bargain" (defined as "the difference between value as represented and value received") "and consequential damages" (defined as "expense, time, trouble, or delay as a result of the misrepresentation") "should be allowed.")

⁶*See Godfrey*, 165 N.C. App. at 79, 598 S.E.2d at 404; *State Properties v. Ray*, 155 N.C. App. 65, 76-77, 574 S.E.2d 180, 188 (2002).