

109.67 DEFENDANT'S PROPERTY DAMAGES - LOSS OF USE OF VEHICLE.¹

The (*state number*) issue reads:

"What amount is the defendant entitled to recover for loss of use of *his (describe vehicle)?*"

The defendant's actual property damages may also include compensation for the loss of use of *his* vehicle. (*Here give the applicable alternative statement (give only one)*):

[Repairs possible at reasonable cost in reasonable time. When a vehicle, damaged by the negligence of another, can be repaired at a reasonable cost and within a reasonable time, the owner may recover for the loss of its use. The measure of such damages is the cost of renting a similar vehicle during a reasonable period for repairs (whether or not the owner actually rented such a similar vehicle).

[Total destruction or repairs improvident. When a vehicle, by the negligence of another, is totally destroyed as a conveyance (or if for some reason repairs would be so long delayed as to be improvident), the owner may recover for loss of use only if a substitute vehicle is not immediately obtainable. If a substitute is not immediately obtainable, the owner may recover for loss of use during the period reasonably necessary to acquire a substitute. The measure of such damages is the cost of renting a similar vehicle during such period (whether or not the owner actually rented such a similar vehicle)].

[Owner elects to replace repairable vehicle. When a vehicle, damaged by the negligence of another, can be repaired at a reasonable cost and within a reasonable time, but the owner elects to replace it by acquiring a substitute vehicle, the owner may recover for loss of use

during the time reasonably required to make repairs or to acquire the substitute, whichever is shorter. The measure of such damages is the cost of renting a similar vehicle during such period].

(Do not use the following paragraph unless the evidence justifies.)

(In such a situation, if the owner proves that *he* made a reasonable effort to obtain a substitute vehicle but was unable to do so within the area reasonably related to *his* business, and further proves with reasonable certainty the profits *he* lost through inability to use the vehicle, *he* may recover, in place of the cost of rental, such profits lost during a reasonable period within which to [make repairs] [obtain a substitute not immediately obtainable].)

1. This instruction is based upon *Roberts v. Pilot Freight Carriers, Inc.*, 273 N.C. 600, 160 S.E.2d 712 (1968), which should be studied before determining which parts of the instruction should be given. See also *Amerson v. Willis*, 109 N.C. App. 297, 298-299, 426 S.E.2d 428, 429 (1993).

If there is a question as to whether any period mentioned in this instruction is reasonable, it is, of course, for the jury to determine what is reasonable, and a special addition to this instruction may be required. See *Ling v. Bell*, 23 N.C. App. 10, 13, 207 S.E.2d 789, 791 (1974). The phrasing of such an addition will depend upon the facts in evidence- particularly since (1) a period which appears initially to be reasonable may become unreasonably extended; (2) a decision to purchase a substitute may depend upon a number of diverse and changing factors. In any event, the two cases cited should be carefully reviewed in preparation for giving that part of the instruction which relates the law to the evidence.