

N.C.P.I.-Civil. 741.18

WARRANTIES IN SALES OF GOODS - ISSUE OF SELLER'S DEFENSE OF  
BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS - IMPLIED  
WARRANTY OF MERCHANTABILITY.

GENERAL CIVIL VOLUME

MAY 1999

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741.18 WARRANTIES IN SALES OF GOODS - ISSUE OF SELLER'S DEFENSE  
OF BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS -  
IMPLIED WARRANTY OF MERCHANTABILITY.

The (*state number*) issue reads:

"[Did the plaintiff know] [Should the plaintiff have known] of the  
defects in the (*name good*) before entering into the contract of purchase  
with the defendant?" <sup>1</sup>

You will answer this issue only if you have answered the (*state  
number*) issue "Yes" in favor of the plaintiff.

On this issue the burden of proof is on the defendant. This means  
that the defendant must prove, by the greater weight of the evidence,  
that before entering into the contract of purchase with the defendant, the  
plaintiff

[examined the [(*name good*)] [sample or model of the (*name  
good*)] as fully as the plaintiff desired and the defect(s) in (*name good*)  
complained of [became known to *him*] [should, under the circumstances,  
have been discovered by *him*]]

[refused to examine the (*name good*) and the defect(s) in the  
(*name good*) complained of [became known to *him*] [would, under the  
circumstances, have been discovered by *him*]].

Finally, as to this (*state number*) issue on which the defendant has  
the burden of proof, if you find by the greater weight of the evidence that  
the plaintiff [knew] [should have known] of the defect(s) in the (*name  
good*) before entering into the contract of purchase with the defendant,  
then it would be your duty to answer this issue "Yes" in favor of the

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defendant.

If, on the other hand, you fail to so find, then it would be your duty  
to answer this issue "No" in favor of the plaintiff.

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1. N.C. Gen. Stat. § 25-2-316(3)(b) (1995).