

N.C.P.I.-Civil. 741.33

WARRANTIES IN SALES OF GOODS - ISSUE OF SELLER'S DEFENSE OF
BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS - IMPLIED
WARRANTY CREATED BY COURSE OF DEALING OR BY USAGE OF TRADE.
GENERAL CIVIL VOLUME
MAY 1999

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OF BUYER'S ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF DEFECTS -
IMPLIED WARRANTY CREATED BY COURSE OF DEALING OR BY USAGE OF
TRADE.

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?"¹

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,

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then it would be your duty to answer this issue "Yes" in favor of the 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.

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