N.C.P.I.-Civil. 745.05
NEW MOTOR VEHICLES WARRANTIES ACT ("LEMON LAW") - MANUFACTURER'S AFFIRMATIVE DEFENSE OF ABUSE, NEGLECT, ODOMETER TAMPERING OR UNAUTHORIZED MODIFICATIONS OR ALTERATIONS.
GENERAL CIVIL VOLUME
JUNE 2013
N.C. Gen. Stat. § 20-351.4
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# 745.05 NEW MOTOR VEHICLES WARRANTIES ACT ("LEMON LAW") - MANUFACTURER'S AFFIRMATIVE DEFENSE OF ABUSE, NEGLECT, ODOMETER TAMPERING[1] OR UNAUTHORIZED MODIFICATIONS OR ALTERATIONS.

The (*state number*) issue reads:

"Did the [nonconformity] [series of nonconformities] alleged by the plaintiff result from [abuse] [neglect] [odometer tampering by the plaintiff][2] [unauthorized modifications or alterations] to the (*name vehicle*)?"

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 the [nonconformity] [series of nonconformities] complained of by the plaintiff resulted from [abuse] [neglect] [odometer tampering by the plaintiff][3] [unauthorized modifications or alterations] to the (*name vehicle*).[4]

Finally, as to this issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the [nonconformity] [series of nonconformities] complained of by the plaintiff resulted from [abuse] [neglect] [odometer tampering by the plaintiff] [unauthorized modifications or alterations] to the (*name vehicle*), 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.

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1. The plaintiff has the burden of showing that the vehicle was within the warranty period. However, N.C. Gen. Stat. § 20-351.4 also allows the defendant an affirmative defense that odometer tampering has occurred to show that the vehicle was not within the warranty period at the time of the non-conformity. Therefore, under the statutory scheme, the defendant may choose to rebut the plaintiff's proof that the vehicle was within the warranty period because of odometer tampering, or the defendant may choose to present odometer tampering as an affirmative defense. However, if the jury answers "Yes" to the issues presented in N.C.P.I.-Civil 745.01 or N.C.P.I.-Civil 745.03, they will have found that the plaintiff has proven that the vehicle was within the warranty period. This creates the possibility of inconsistent verdicts. However, if the defense insists upon using odometer tampering as an affirmative defense, as opposed to simply rebutting the plaintiff's burden of proof, a separate issue should be presented.

2. *See* note 1.

3. *See* note 1.

4. N.C. Gen. Stat. § 20-351.4.