

745.11 NEW MOTOR VEHICLES WARRANTIES ACT ("LEMON LAW") -
DAMAGES WHEN PLAINTIFF IS A LESSOR.

(This document has an attachment: Formula for Damages Form. Directions for accessing the attachment appear at the end of this document, immediately above the endnotes.)

NOTE WELL: The Appendix contains a worksheet that the Court may want to provide to the jury, but it is not mandatory to do so.

The *(state number)* issue reads:

"What amount of damages is the plaintiff entitled to recover from the defendant?"¹

You will answer this issue only if you have answered the *(state number)* issue "Yes" in favor of the plaintiff² and the *(state number)* issue "Yes" in favor of the plaintiff³ [and the *(state number)* issue "No" in favor of the plaintiff⁴].

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 damages which the law permits the plaintiff to recover.⁵ The law provides that the plaintiff⁶ may recover an amount equal to one hundred five percent (105%) of the actual purchase cost of the vehicle to the plaintiff less eighty-five percent (85%) of the amount actually paid by the consumer to the plaintiff pursuant to the lease.⁷

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of the evidence the amount of damages the plaintiff is entitled to recover from the defendant, then it would be your duty to write that amount in the blank space provided.

Appendix found in attached PDF.

(To access a print-only version of the appendix, do the following: i) open the instruction from the electronic Table of Contents; ii) click on the Instruction References Tab at the top of the right border; iii) after the Instruction References menu opens to the left of the tab, double-click on the Calculating Damages attachment; iv) print the attachment by clicking on the printer icon.)

(In order to access a version of the attachment that can be edited, do the following: i) locate the instruction title number in the electronic Table of Contents; ii) double-click on the form that appears below the instruction title number; iii) save as an .rtf document by clicking on the save icon; iv) edit the .rtf document as required by the circumstances of your case; and v) save your changes before exiting the document.)

1 See N.C. Gen. Stat. § 20-351.3(b).

2 See N.C.P.I.-Civil 745.01.

3 See N.C.P.I.-Civil 745.03.

4 See N.C.P.I.-Civil 745.05.

5 A prerequisite to the plaintiff-lessor bringing an action for damages under this section is that the consumer-lessee return the vehicle to the defendant. In an action under N.C. Gen. Stat. § 20-351.3, this remedy would not be applicable at all if the consumer-lessee elects to have the vehicle replaced "with a comparable new motor vehicle." *Id.*

6 This remedy also is available to a plaintiff bringing an action under N.C. Gen. Stat. § 20-351.2 by virtue of the language of N.C. Gen. Stat. § 20-351.8(2). See *Buford v. General Motors Corp.*, 339 N.C. 396, 408, 451 S.E.2d 293, 299-300 (1994).

7 N.C. Gen. Stat. § 20-351.3(b)(2).