

910.90 INSURANCE - DAMAGES FOR REAL PROPERTY - ACTUAL CASH VALUE.

This issue reads:

"What amount, if any, is (*name plaintiff*) entitled to recover of the defendant, (*name defendant*), for [damage to] [destruction of] real property?"

On this issue, the plaintiff (*name plaintiff*) has the burden of proof. This means that the plaintiff must prove first that *he* suffered damage to real property, that is to *his* (*specify real property; e.g., "building in Concord, N.C."*) and second the amount or value of that damage.

The contract between the plaintiff and the defendant provides that, in the event of loss, the plaintiff shall recover the actual cash value of *his* loss, ¹ that is, the difference between the actual cash value of the plaintiff's (*describe building*) just before the fire, ² and its actual cash value, if any, immediately after the fire. Thus, if you reach this issue, you will not base your answer solely on what it costs to repair or replace the property. Rather, you will award the plaintiff the actual cash value of *his* loss, if you award *him* anything.

The actual cash value of (*specify type of real property, such as "house" or "warehouse"*) is the real value of the property in money. In determining actual cash value you may consider (the original cost of the building) (the cost of replacement or repair) (its actual cost to the plaintiff) (the cost and value of the portion remaining) (depreciation, meaning the wearing out or obsolescence of the property, if you find that the useful life of the property may be estimated with reasonable certainty) ³ (the opinions as to value of any qualified witnesses) (gainful uses to which the property has been put) and any other factor in evidence which you find has a logical tendency toward correct estimation

of value.⁴ You should award such amount, if anything, as will fairly compensate the plaintiff for whatever loss *he* has suffered by reason of the burning of *his* (*specify property*).

(Briefly summarize the evidence. See N.C.P.I.-Civil 101.00.)

So, members of the jury, I instruct you that if you reach this issue you will award the plaintiff such amount, if any, as you find by the greater weight of the evidence fairly represents the plaintiff's loss as measured by the difference between the actual cash value of the (*describe building*) immediately before the fire and its actual cash value, if any, immediately after the fire. Thus, the figure, in dollars and cents, which you arrive at, will be your answer to this issue.

1. The instruction will have to be modified if there is some issue as to whether the actual cash value of the loss exceeds the cost of repair or replacement under the conditions set out in the form policy contained in N.C. Gen. Stat. § 58-43-10.

2. If the loss was caused by a risk other than fire, substitute "loss" or other appropriate language throughout this instruction.

3. *Fowler Barnham Ford v. Insurance Co.*, 45 N.C. App. 625 (1980), Rp. 242-247 (judge's charge to the jury).

4. This is the "broad evidence rule." 44 Am. Jur. 2d, *INSURANCE* § 1507 (1982). See also 45 C.J.S., *INSURANCE* § 915; 31 N.Y. Jur. 1386.