**24.09H BREACH OF CONTRACT/RELIANCE DAMAGES**

If you find in favor of [plaintiff] on [his her its] claim for breach of contract, you must decide how much money, if any, will fairly compensate [plaintiff] for a financial loss caused by [defendant’s] breach of the contract. This compensation is called compensatory damages.

As compensatory damages, [plaintiff] claims the amount that [he she it] spent [preparing to perform] [performing] [his her its] obligations under the contract.

To award these compensatory damages to [plaintiff] for [defendant’s] breach of contract, you must find that it is more likely true than not true that:

1. [Plaintiff] spent money [preparing to perform] [performing] [his her its] obligations under the contract;
2. When [plaintiff] and [defendant] entered into the contract, [defendant] knew or could have reasonably foreseen that [plaintiff] would spend money to perform the contract. Such expenses are reasonably foreseeable if either:
   1. the expense follows in the ordinary course of events from the contract; or
   2. the expense follows from special circumstances that [defendant] had reason to know about when the parties entered into the contract.
3. [Plaintiff] has established the amount of [his her its] expenses with reasonable certainty.

An award of compensatory damages must be based on evidence, and not on speculation, guesswork or conjecture.

[If these requirements for an award of damages are met, you must consider whether it is more likely true than not true that [plaintiff] would have lost money on the contract if both parties had performed as originally promised. If so, you must reduce the amount that you would otherwise award to [plaintiff] for [his her its] expenses by the amount that [plaintiff] would have lost if both parties had performed the contract as originally promised.]

If you decide that these requirements for an award of compensatory damages have not been met, you cannot award compensatory damages to [plaintiff]. Instead, you must award [plaintiff] nominal damages. In a moment, I will instruct you regarding an award of nominal damages.

**Use Note**

Damages for breach of contract are ordinarily measured by the plaintiff’s lost expectations. Alternatively, contract damages may be awarded for amounts expended by plaintiff in reliance on defendant’s anticipated performance. Instruction 24.09H should be given when the plaintiff seeks compensation for expenditures made in reliance on defendant’s anticipated performance. Instruction 24.11 (Nominal Damages) must also be given, unless plaintiff waives nominal damages.

The instruction refers to spending money in reliance on the contract. If plaintiff claims that he or she expended resources other than money (for example, labor or materials) in reliance on the contract, the relevant language in the instruction can be modified to fit the facts.

The bracketed paragraph should be given if defendant claims that plaintiff would have suffered a loss if the contract had been performed as agreed.

**Comment**

In a breach of contract action, reliance damages may be awarded to the plaintiff as an alternative to expectation damages.

The injured party has a right to damages based on his reliance interest, including expenditures made in preparation for performance or in performance, less any loss that the party in breach can prove with reasonable certainty the injured party would have suffered had the contract been performed.

Restatement (Second) of Contracts § 349. *See also id*. § 344.

The general principles applicable to contract damages discussed in the Comment to Instruction 24.09A apply to reliance damages as well as to expectation damages.