**24.09A COMPENSATORY DAMAGES/LOSS OF EXPECTATION**

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. The purpose of an award of compensatory damages is to put [plaintiff] in the same financial position that [he she it] would have been in if [defendant] had fully performed [his her its] obligations under the contract.

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

1. [Defendant’s] breach of the contract caused [plaintiff’s] financial loss; and
2. When [plaintiff] and [defendant] entered into the contract, [defendant] knew or could have reasonably foreseen that this financial loss would be a probable result if [defendant] breached the contract. A financial loss from breach of a contract is reasonably foreseeable if either:
3. the loss follows in the ordinary course of events from the breach; or
4. the loss follows from special circumstances that the party had reason to know about when the parties entered into the contract.

(3) [Plaintiff] has established the amount of [his her its] financial loss with reasonable certainty.

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

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**

This instruction should be given when the plaintiff seeks compensatory damages measured by plaintiff’s lost expectations. Instruction 24.11 (Nominal Damages), must also be given, unless plaintiff waives nominal damages. Instruction 24.09H should be given when plaintiff seeks damages measured by plaintiff’s reliance on defendant’s performance of the contract.

**Comment**

Damages for breach of contract are ordinarily measured by the non-breaching party’s lost expectations. Restatement (Second) of Contracts § 347 comment a, and § 344 comment a; *see also Alaska Const. Equip. Inc. v. Star Trucking, Inc*. 128 P.3d 164, 167 (Alaska 2006). Alternatively, contract damages may be measured by amounts expended by plaintiff in reliance on defendant’s performance, or the amount required to provide restitution to the non-breaching party. *See generally* Restatement (Second) of Contracts § 344 comment a, and §§ 349, 373.

Compensatory damages measured by the loss of expectation should put the plaintiff in the same position as if the defendant had fully performed the contract. *Alyeska Pipeline Service Co. v. HC Price Co*., 694 P.2d 782, 787 (Alaska 1985); *Guard v. P&R Enterprises, Inc*., 631 P.2d 1068, 1071 (Alaska 1981).

Damages awarded for a breach of contract must be caused by the breach. *Fairbanks North Star Borough v. Kandik Constr. Inc*., 795 P.2d 793, 798 (Alaska 1990); *Winn v. Mannhalter*, 708 P.2d 444, 450 (Alaska 1985). *See also* *Galipeau v. Bixby,* 476 P.3d 1129, 1134 (Alaska 2020) (damages must “result[] from the breach”); Restatement (Second) of Contracts § 347 comment e.

Contract damages must be foreseeable at the time when the parties entered into the contract. *Recreational Data Services, Inc. v Trimble Navigation Ltd*., 404 P.3d 120, 136 (Alaska 2017); *Native Alaska Reclamation & Pest Control, Inc. v. United Bank of Alaska*, 685 P.2d 1211, 1219-20 (Alaska 1984) (following the Restatement (Second) of Contracts § 351). Foreseeable damages are damages that follow from the breach in the ordinary course of events, or as a result of special circumstances that the party in breach had reason to know. *Native Alaska Reclamation*, 685 P.2d at 1219-20.

In a claim for damages based on breach of contract, the plaintiff must prove the amount of its damages with reasonable certainty. *Frank Coluccio Construction Co.,* 826 P.2d 316, 328 (Alaska 1992*); State v. Northwestern Construction, Inc.,* 741 P.2d 235, 237 (Alaska 1987*); Native Alaskan Reclamation & Pest Control, Inc. v. United Bank of Alaska,* 685 P.2d 1211, 1223 (Alaska 1981)*. See also* Restatement (Second) of Contracts § 352 (“Damages are not recoverable for loss beyond an amount that the evidence permits to be established with reasonable certainty.”). This principle applies to claims for future lost profits. *See, e.g., Recreational Data Services, Inc. v. Trimble Navigation, Ltd*., 404 P.3d 120, 136 (Alaska 2017); *Sisters of Providence in Washington v. AA Pain Clinic*, 81 P.3d 989, 1006 (Alaska 2003); *Guard v. P&R Enterprises, Inc*., 631 P.2d 1068, 1071 (Alaska 1981).

Damage awards cannot be based on speculation, guess, or conjecture. *Cameron v. Chang-Craft*, 251 P.3d 1008-21 n. 53 (Alaska 2011); *Alexander v. State*, 221 P.3d 321, 325 (Alaska 2009); *Orsini v. Bratten*, 713 P.3d 791, 794 (Alaska 1986).

Regarding awards of nominal damages, see the comments to Instructions 24.00A and 24.11.

With respect to restitution claims by a party breaching a construction contract or a contract for the sale of land, see Instruction 24.12B. With respect to other restitution claims based on breach of contract, the Alaska Supreme Court has referred to the Restatement (2d) of Contracts, §§ 370-77. *See, e.g., Comm’l Recycling Center Ltd. v. Hobbs Industries, Inc*., 228 P.3d 93 (Alaska 2010); *American Computer Institution v. State, Alaska Loan Corp.*, 995 P.2d 647 (Alaska 2000).