

3725 DAMAGES: FUTURE PROFITS

The loss of (prospective) (future) profits is a proper basis for awarding damages resulting from a breach of contract when the circumstances are such that the future damages may be computed with some reasonable certainty. The law places the burden of proof of establishing loss of future profit upon (plaintiff). If you find the evidence in this case to be so uncertain that you cannot do more than merely guess, speculate, or conjecture as to whether (plaintiff) is entitled to recover certain damages due to the loss of future profits, then you cannot award damages for future profits.

The law allows only such damages as have been proved by the greater weight of the credible evidence, to a reasonable certainty. The burden to prove damages is not satisfied by evidence which merely shows that something might or might not exist or might or might not occur in the future. Mere possibilities leave the resolution of the issue of damages for future profits in the field of speculation and conjecture to such an extent as to afford no basis for an inference; and, in the absence of at least such inference, there is no sufficient basis for awarding damages for the loss of future profits.

Although damages may not be based on speculation, it is not necessary that you should arrive at a conclusion of loss of future profits with mathematical certainty. In the very nature of things, such profits cannot be definitely determined. If the wrong itself is of such a nature as to preclude the determination of the amount of damages with certainty, it will be enough if the evidence shows the extent of the damages as a matter of just and reasonable estimation, although the result may only be approximate.

With these general principles in mind, you are instructed that evidence of prior profits in the same business may be used by you as a basis for a computation of loss of future profits as well as any other evidence in the case bearing upon the issue.

Loss of future profits is to be determined by you as of the date of the breach of contract.

Damages may be awarded for loss of profits only if you determine that the wrongful act of the defendant caused the loss.

You may award damages for loss of profits only if you first determine that the defendant at the time the contract was made had reason to foresee the loss of profits as a probable result of a breach.

COMMENT

This instruction and comment were originally published in their present form in 1975. Editorial changes were made in 1994. This instruction was revised in 2002 to conform the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205. A typographical error was corrected in 2008.

Restatement of Contracts §§ 330, 331 (1933); White v. Benkowske, 37 Wis.2d 285, 155 N.W.2d 74 (1967); Krueger v. Steffen, 30 Wis.2d 445, 141 N.W.2d 200 (1966); Baker v. Northwestern Nat'l Cas. Co., 26 Wis.2d 306, 132 N.W.2d 493 (1965); Buxbaum v. G. H. P. Cigar Co., 188 Wis. 389, 206 N.W. 59 (1925); American Steam Laundry Co. v. Riverside Printing Co., 171 Wis. 644, 177 N.W. 852 (1920); Dickson v. Pritchard, 111 Wis. 310, 87 N.W. 292 (1901); 22 Am. Jur.2d, Contracts, § 174; Corbin on Contracts, § 1007.