

3755 DAMAGES: BREACH OF CONTRACT BY SELLER

The questions that you will be requested to answer inquire as to the money damages sustained by the plaintiff-buyer because of the defendant-seller's refusal to carry out his or her part of the contract. Answer these questions with only the accompanying explanation to each individual question in mind. The court will determine from your answers the amount of damages due the plaintiff.

(Cover not effected.)

Question 1: What is the difference between the market price at the point in time when the buyer of the goods learned that the seller would not deliver or perform his or her part of the contract and the contract price?

"Market value" is the prevailing price or the price at which goods of the same quantity and quality could have been purchased by the buyer from a different seller.

Before you may determine the difference between the contract price and the market price, you must first be satisfied that (at the time and place of delivery) (at the time of the refusal to deliver) the plaintiff had access to an available market where goods of the same quantity and quality could there have been purchased by the plaintiff. If there was no available market at the place of delivery and (at the time of delivery) (at the time of refusal to deliver), but such a market existed a reasonable distance therefrom, you may then, in computing damages, use the market price of the goods at such distant market, adding thereto the cost of transporting the goods from such distant market to the place where the goods were to have been delivered by the defendant.

Question 2: What incidental damages, if any, did the plaintiff-buyer suffer because of the defendant-seller's breach?

Incidental damages include all reasonable expenses incurred due to a delay or breach of a contract. (If the goods were rightfully rejected, these damages include expenses reasonably incurred in inspection, receipt, transportation, and care and custody of these goods.)

Question 3: What consequential damages, if any, did the plaintiff-buyer suffer because of the defendant-seller's breach?

"Consequential damages" are damages that are awarded for those consequences of the breach which were reasonably foreseeable at the time the contract was entered into as probable if the contract were broken. Any knowledge on the part of the seller of the buyer's particular need for the goods, or of the generally recognized need for buyers of such goods, is evidence of the foreseeable consequences the breach would have on the part of the buyer. The buyer is entitled to consequential damages only if he or she could not reasonably prevent the damages resulting from the breach. Consequential damages include any injury proximately resulting from the seller's breach to the person or property of the buyer.

Question 4: What expenses, if any, did the plaintiff-seller save because the contract was not fulfilled by the defendant-buyer?

(If cover was effected.)

If you find that the plaintiff made a reasonable purchase or contract to purchase goods in substitution for those due from the seller and that this purchase or contract was made in good faith and without reasonable delay, then answer the following questions:

Question 1: What is the difference between the cost of the substitution purchase and the contract price?

Question 2: What reasonable expenses, charges, or commissions did the plaintiff-buyer have to pay because the buyer was forced to purchase goods from a different seller to replace the goods contracted for?

COMMENT

This instruction and comment were originally published in their present form in 1977. Editorial changes were made in 1994 to address gender references in the instruction. No substantive changes were made to the instruction.

Wis. Stat. §§ 402.711(1)(b), 402.713, 402.723(2), 402.712.

This instruction breaks down the question of damages from the appropriate statutory sections so that the jury will not become confused with the arithmetic functions that need to be computed. The court can readily calculate the total damages due the plaintiff. The measure of damages is:

(If no cover effected.) The difference between the market price and contract price plus incidental damages plus consequential damages minus expenses saved the plaintiff.

(If cover effected.) The difference between the price of the goods purchased to cover and the contract price plus incidental damages.