

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--OWNER'S MEASURE OF RECOVERY FOR A CONTRACTOR'S FAILURE TO PERFORM ANY WORK UNDER A CONSTRUCTION, REPAIR OR SERVICES CONTRACT.

Direct damages are the economic losses that usually or customarily result<sup>1</sup> from a breach of contract. In this case, you will determine direct damages, if any, as follows: First, you will determine the fair market price of the (*describe construction, repair or other services*) that the defendant was to have performed under the contract on [the date that (*describe events constituting breach*)] [(*specify date*)]. A fair market price is an amount which would be agreed upon as a fair price by a person in the position of the defendant who wishes to provide (*specify type of services*), but is not compelled to do so, and a person in the position of the plaintiff who wishes to obtain (*specify type of services*), but is not compelled to do so.<sup>2</sup> Second, after determining the fair market

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<sup>1</sup> "In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury." *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (quoting the RESTATEMENT OF THE LAW OF CONTRACT, § 330, p. 509). The foreseeability limitation on recovery was first enunciated in *Hadley v. Baxendale*, 156 Eng. Rep. 145 (1854).

<sup>2</sup> *Huff v. Thornton*, 287 N.C. 1, 12, 213 S.E.2d 198, 206 (1975).

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(Continued).

price, you will subtract from that amount the price agreed upon by the parties in the contract<sup>3</sup> (then add any previous payment by the plaintiff to the defendant under the contract).

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<sup>3</sup>When measuring damages for defects or omissions in the performance of a construction contract, the fundamental underlying principle is that a party is entitled to have what he contracted for or its equivalent. *Robbins v. C. W. Myers Trading Post, Inc.*, 251 N.C. 663, 666, 111 S.E.2d 884, 887 (1960). Determining what constitutes an equivalent is dependent upon the circumstances of the case. *Id.*