

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DIRECT DAMAGES--OWNER'S MEASURE OF RECOVERY FOR REAL ESTATE OR PERSONAL PROPERTY IDLED BY BREACH OF A CONTRACT WHERE PROOF OF LOST PROFITS OR RENTAL VALUE IS SPECULATIVE.

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 amount of [money] [capital] invested in the (*describe asset*) by the plaintiff.<sup>2</sup> Second, you will [determine the applicable prevailing rate of interest<sup>3</sup> as shown by evidence and use it] [use the legal rate of interest of eight percent<sup>4</sup>] to

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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>If the damages cannot be accurately determined in a given situation (e.g., a start up enterprise with a speculative future or a not-for-profit owner), then the law will allow the legal rate of interest upon the capital invested in the property kept idle as a result of defendant's breach. *D.A. Tompkins Co. v. Dallas Cotton Mills*, 130 N.C. 347, 351-52, 41 S.E. 938, 939 (1902) (where mill idled by breach of contract and neither lost profits nor fair rental value can be determined accurately, the law allows the legal rate of interest upon the capital invested to be the measure).

<sup>3</sup>Unfortunately, some cases refer to "interest" where others refer to "legal interest." See cases in footnotes 2 and 4. Thus, the case law is ambiguous when it comes to computing damages on the plaintiff's actual cost of capital, the legal rate of interest established by N.C.G.S. 24-1, or the prevailing rate of interest for like borrowings. The Civil Subcommittee has decided that an injured party may elect between the legal rate and the prevailing rate of interest for like borrowings. This protects the injured party from the circumstance where the prevailing rate over the relevant period exceeds the legal rate.

<sup>4</sup>N.C.G.S. §24-1.

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compute the interest for the period of time (if any) that the (describe asset) was idled as a result of the breach (and add to it the costs incurred with respect to idled employees and other personnel over the same period).<sup>5</sup>

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<sup>5</sup>*Champion Fiber Co. v. Hardin*, 172 N.C. 767, 90 S.E. 919, 922 (1916) (where timber operation was idled by breach of contract and other damage measures were uncertain, measure of damages is interest on capital invested plus the expense of idled employees); *Harper Furniture Co. v. Southern Express Co.*, 148 N.C. 87, 62 S.E. 145, 146 (1908) (where mill idled by breach of contract to deliver repair part and other damage measures were uncertain, measure of damages is interest on the capital invested and unproductive for the time); *Sharpe v. Southern Ry. Co.*, 130 N.C. 613, 41 S.E. 799, 800 (1902) (where railroad breached contract to deliver machinery and other damage measures were uncertain, measure of damages would be legal rate of interest on capital invested plus the expense of idled employees); *Rocky Mount Mills v. Wilmington & W.R. Co.*, 119 N.C. 693, 25 S.E. 854, 856 (1896) (where railroad breached contract to deliver machinery to mill, measure of damages would be interest on unemployed capital and wages paid to idled workmen) and *Foard v. Atlantic & N.C.R. Co.*, 53 N.C. 235 (1860) (where mill was idled by negligent detention of repair part and other damage measures were uncertain, measure of damages was legal interest on capital invested plus the expense of idled employees).