

CONTRACTS--ISSUE OF COMMON LAW REMEDY--DAMAGES IN GENERAL.

Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future]¹ economic injury resulting from a breach of contract.

In determining the amount, if any, you award the plaintiff, you will consider the evidence you have heard as to (each of the following types of damages):

[direct damages]

[incidental damages]

[consequential damages]

¹*Wilkinson v. Dunbar*, 149 N.C. 20, 25, 62 S.E. 748, 751 (1908) (recovery for both present and prospective damages is permissible).

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(Continued).

[state any other type of damage supported by the evidence].²

I will now explain the law of damages as it relates to each of these.

²Generally, for a breach of contract, the injured party is entitled as compensation to be placed, insofar as this can be done by money, in the same position he would have occupied if the contract had been performed. *Pleasant Valley Promenade v. Lechmere, Inc.*, 120 N.C. App. 650, 665, 464 S.E.2d 47, 59 (1995); *First Union Nat. Bank v. Naylor*, 102 N.C. App. 719, 725, 404 S.E.2d 161, 164 (1991) (quoting *Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)). See also *Fulcher v. Nelson*, 273 N.C. 221, 226, 159 S.E.2d 519, 523 (1968) (quoting *Perkins v. Langdon*, 237 N.C. 159, 169, 74 S.E.2d 634, 643 (1953)). The interest protected by this general rule is the "expectation interest" of the non-breaching party. *Pleasant Valley* at 665, 464 S.E.2d at 59; *First Union* at 725, 404 S.E.2d at 164 (citing RESTATEMENT (SECOND) OF CONTRACTS § 344(a), comment a (1979)). Based on this expectation interest, an injured party has

a right to damages . . . measured by:

- (a) the loss in the value to him of the other party's performance caused by its failure or deficiency, plus
- (b) any other loss, including incidental or consequential loss, caused by the breach, less
- (c) any cost or other loss that he has avoided by not having to perform.

Pleasant Valley at 665, 464 S.E.2d at 59 (quoting *First Union* at 725, 404 S.E.2d at 164); *Ward v. Zabady*, 85 N.C. App. 130, 135, 354 S.E.2d 369, 372, *disc. rev. denied*, 320 N.C. 177, 358 S.E.2d 71 (1987) (plaintiff may only recover actual losses in breach of contract action). The true measure of damages is the amount of money which will completely indemnify the injured party. *Pleasant Valley* at 665-66, 464 S.E.2d at 59; *Troitino v. Goodman*, 225 N.C. 406, 412, 35 S.E.2d 277, 281 (1945) (quoting *Winston Cigarette Machine Co. v. Wells-Whitehead Tobacco Co.*, 141 N.C. 284, 53 S.E. 885 (1906)).