

1 **13-843. Contracts; measure of damages; general instruction.**

2 If you should decide in favor of _____ (*name of party asserting breach*)
3 on [any of] [~~his~~ ~~her~~ ~~its~~]their claim[s] of breach of contract, then you must fix the amount of
4 money which will reasonably and fairly compensate _____ (*name of party*
5 *asserting breach*) for damages that resulted from _____[']s (*name of opposing*
6 *party*) breach.

7 1. _____ (*name of party asserting breach*) seeks direct damages
8 for the following:

9 (NOTE: Here insert the proper elements of direct damages.)

10 Direct damages are damages that arise naturally and necessarily as the result of the breach.
11 The direct damages you award for breach of contract must be the amount of money that will place
12 _____ (*name of party asserting breach*) in the position [~~he~~ ~~she~~ ~~it~~]they would
13 have been in if the contract had been performed.

14 [2. In addition to direct damages, _____ (*name of party asserting breach*)
15 also seeks to recover damages for the following:

16 (NOTE: Here insert the proper elements of other categories of damages which may be
17 sought, such as consequential or incidental damages.)]

18 Whether any of these elements of damages has been proved by the evidence is for you to
19 determine. Your verdict must be based upon proof, and not upon speculation, guess, or conjecture.

20 Further, sympathy for a person, or prejudice against any party, should not affect your
21 verdict and is not a proper basis for determining damages.

22 USE NOTES

1 This instruction provides the basic framework for all compensatory damages instructions
2 in contracts cases. As drafted, this instruction is intended for use in common-law contracts cases.

3 The elements of damages should be customized to fit the facts and claims involved in the
4 case. Part 1 of this instruction is intended to address direct contract damages (also called general
5 damages). Part 2 of this instruction is intended to be used only if some of the damages being sought
6 constitute consequential or incidental damages.

7 In Part 1 of the instruction, depending on the facts of the case, parties may need to draft the
8 appropriate element(s) to be inserted. Elements of direct damages for cases involving construction
9 contracts and personal employment contracts appear in this chapter. *See* UJI 13-850 NMRA
10 (Damages to owner; contracts for construction); UJI 13-851 NMRA (Damages; personal
11 employment).

12 In Part 2, if the court determines as a matter of law that any of the damages being sought
13 constitute consequential damages, then UJI 13-843A NMRA should be inserted. Likewise, any
14 appropriate elements of incidental damages should be inserted into Part 2.

15 If multiple parties are asserting claims, counterclaims, or cross-claims for breach of
16 contract, then separate versions of UJI 13-843 NMRA should be given in connection with each
17 party's claim.

18 If the party asserting breach is seeking punitive or nominal damages, then separate
19 instructions for those damages should be given. An instruction for punitive damages in contract
20 cases appears in this chapter. *See* UJI 13-861 NMRA.

21 [Adopted, effective November 1, 1991; as amended by Supreme Court Order No.15-8300-005,
22 effective for all cases filed or pending on or after December 31, 2015; as amended by Supreme
23 Court Order No. 18-8300-013, effective for all cases pending or filed on or after December 31,

1 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases
2 pending or filed on or after December 31, 2025.]

3 **Committee commentary.** — The purpose of allowing damages for breach of contract is to restore
4 to the injured party what was lost by the breach and what [~~he or she~~they] reasonably could have
5 expected to gain had there been no breach. *Allen v. Allen Title Co.*, 1967-NMSC-113, ¶ 10, 77
6 N.M. 796, 427 P.2d 673; *Brown v. Newton*, 1955-NMSC-029, ¶ 17, 59 N.M. 274, 282 P.2d 1113.
7 Damages based on a [“]“rough estimate[”]” by a witness are insufficient to support a judgment.
8 Rather damages must be of a kind and character susceptible of proof, and the amount of damages
9 allowed must be subject to reasonable ascertainment and not based on speculation or guesswork.
10 *Louis Lyster, Gen. Contractor, Inc. v. Town of Las Vegas*, 1965-NMSC-097, ¶ 8, 75 N.M. 427,
11 405 P.2d 665. Proof does not have to be to a mathematical certainty, however. *Eccher v. Small*
12 *Bus. Admin.*, 643 F.2d 1388, 1392 (10th Cir. 1981). The elements of damages must be the natural
13 and foreseeable consequences of the breach, as contemplated by the parties at the time of making
14 the contract. *State Farm Gen. Ins. Co. v. Clifton*, 1974-NMSC-081, ¶ 5, 86 N.M. 757, 527 P.2d
15 798; *Mitchell v. Intermountain Cas. Co.*, 1961-NMSC-138, ¶ 6, 69 N.M. 150, 364 P.2d 856;
16 *Camino Real Mobile Home Park P’ship v. Wolfe*, 1995-NMSC-013, ¶ 32, 119 N.M. 436, 891 P.2d
17 1190 ([“]“Even though the amount of damages need not be proven with mathematical certainty,
18 neither can it be based on surmise, conjecture, or speculation. [”]”), *overruled in part on other*
19 *grounds, Sunnyland Farms v. Cent. N.M. Elec. Coop., Inc.*, 2013-NMSC-017, 301 P.3d 387.
20 There are different categories of damages that may be available to compensate the injured party
21 for breach of contract. [“]“Damages ‘that arise naturally and necessarily as the result of the
22 breach[’]’ are [“]‘general damages, [’]’ which give the plaintiff whatever value [~~he or she~~they]
23 would have obtained from the breached contract.[”]” *Sunnyland Farms*, 2013-NMSC-017, ¶ 11

1 (quoting *Camino Real Mobile Home Park P’ship*, 1995-NMSC-013, ¶ 20). General damages are
2 also called [“]“direct damages.[”]” See, e.g., Richard A. Lord, *Williston on Contracts* § 64:1 (4th
3 ed. 2009).
4 [“]“In some circumstances, the plaintiff can also recover for [“]‘consequential damages[’]” or
5 [“]‘special damages,[’]” which are not based on the capital or present value of the promised
6 performance but upon benefits it can produce or losses that may be caused by its absence.[”]”
7 *Sunnyland Farms*, 2013-NMSC-017, ¶ 11 (citations and internal quotation marks omitted).
8 Further, a plaintiff may be able to recover incidental damages, which [“]“include costs incurred in
9 a reasonable effort, whether successful or not, to avoid loss, as where a party pays brokerage fees
10 in arranging or attempting to arrange a substitute transaction.[”]” Restatement (Second) of
11 Contracts § 347 cmt. c (1981). As to damages for breach of contract generally, see Restatement
12 (Second) of Contracts §§ 346-356.
13 [As amended by Supreme Court Order No. 15-8300-005, effective December 31, 2015; as
14 amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on or
15 after December 31, 2018; as amended by Supreme Court Order No. S-1-RCR-2025-00126.]