13-827. Course of dealing.

A course of dealing is a manner of dealing between the parties in previous transactions which it is reasonable to regard as establishing [a] the parties' common understanding [with respect to] of the meaning of the term[s] in dispute.

USE NOTES

This instruction should be given in conjunction with UJI 13-825 NMRA[, when a question of interpretation exists as to a term or terms in a contract and there is evidence submitted concerning course of dealing] when there is a dispute as to the meaning of an ambiguous term or terms in a contract and there has been a sufficient evidentiary showing of a prior course of dealing between the parties to submit the evidence to the jury to consider in resolving the dispute.

[Adopted, effective November 1, 1991; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]

Committee commentary. — [Evidence of how the parties have dealt with each other in other similar transactions may be relevant to the proper construction of the contract at issue. This type of evidence is referred to as “course of dealing.” The evidence of course of dealing may assist in construing ambiguous terms in a contract or it may also serve to supplement or amplify explicit terms in a contract. J.A. Farnsworth, Contracts § 7.13.

In order for there to be a “course of dealing,” it is necessary that the prior conduct not be an isolated instance but rather reflect a sufficient sequence of events to support the conclusion that it reliably evinces the understanding of the parties. Restatement (Second) of Contracts, §223(2); RCR No. 483]
The concept of “course of dealing” should not be confused with the concept of “course of performance,” which deals with the parties’ performance of the contract at issue. See UJI 13-828 NMRA. Similarly, the concept of “course of dealing” must be distinguished from prior negotiations of the contract at issue.

Evidence of a prior course of dealing between the parties is admissible for the factfinder to consider in determining the meaning of an ambiguous term in a contract. See Allsup’s Convenience Stores, Inc. v. N. River Ins. Co., 1999-NMSC-006, ¶ 31, 127 N.M. 1, 976 P.2d 1. For a course of dealing to be shown, the parties must have previously dealt with one another in similar transactions in a manner that supports the conclusion that the dealings evince the parties’ understanding of the contractual term(s) in question. See 2 Zachary Wolfe, Farnsworth on Contracts § 7.16 (4th ed. 2019). A course of dealing, which involves conduct prior to the contract in question, should not be confused with a course of performance, which involves the parties’ performance of the contract at issue. Id.

[Amended by Supreme Court Order No. 18-8300-013, effective for all cases pending or filed on or after December 31, 2018; as amended by Supreme Court Order No. 20-8300-006, effective for all cases pending or filed on or after December 31, 2020.]