**24.00B BREACH OF CONTRACT: INTRODUCTORY**

**INSTRUCTION WITH OPTIONS FOR ADDITIONAL ELEMENTS AND AFFIRMATIVE DEFENSES**

[Plaintiff] claims that [he she it] had a contract with [defendant], and that [defendant] breached the contract. [Plaintiff] is seeking an award of damages for [defendant’s] breach of the contract.

In order to find in favor of [plaintiff] on this claim, you must decide that it is more likely true than not true that:

(1) There was a contract between [plaintiff] and [defendant];

[(2) [[Plaintiff] performed [his her its] obligations under the contract.] [[Plaintiff] substantially performed [his her its] obligations under the contract.] [Plaintiff was excused from performing [his her its] obligations under the contract.]

[(3) [Describe condition precedent to defendant’s performance] occurred.]

(4) [Defendant] breached the contract.

**Option One--when no affirmative defenses:**

If you decide that each element of this claim is more likely true than not true, your verdict on this claim must be in favor of [plaintiff] and you must determine the amount of the damages to be awarded to [plaintiff]. Otherwise, your verdict on this claim must be in favor of [defendant].

**Option Two--When there are affirmative defenses:**

If you do not decide that each element of this claim is more likely true than not true, your verdict on this claim must be in favor of [defendant].

If you decide that each element of this claim is more likely true than not true, you must then consider [defendant]’s defense[s]. I will instruct you concerning the legal requirements for [this defense] [these defenses]. If you decide that all of the requirements for [this defense] [any of these defenses] are met, then your verdict must be in favor of [defendant]. If you decide that the requirements for [this defense] [these defenses] have not been met, your verdict must be in favor of [plaintiff] and you must determine the amount of the damages to be awarded to [plaintiff].

**Option Three—When there are affirmative defenses relating solely to defendant’s nonperformance of the contract**

If you do not decide that each element of this claim is more likely true than not true, your verdict on this claim must be in favor of [defendant].

If you decide that each element of this claim is more likely true than not true, you must decide whether the law excused [defendant] from performing its obligations under the contract. If you decide that the law excused [defendant] from performing its obligations under the contract, your verdict will be for [defendant]. If you decide that the law did not excuse [defendant] from performing its obligations under the contract, your verdict must be in favor of [plaintiff] and you must determine the amount of the damages, if any, to be awarded to [plaintiff]. In a moment, I will instruct you further concerning this issue.

**Use Note**

Instruction 20.00A should be used in a simple contract case that does not involve questions regarding the plaintiff’s performance of its contractual obligations, or affirmative defenses. In more complex contract cases, use this Instruction, 24.00B, instead of Instruction 24.00A.

The bracketed language in paragraph 2 should be used when the plaintiff has the burden of proving that plaintiff performed its own obligations under the contract. The variations can be used if plaintiff has this burden, but claims that it substantially performed, or that its failure to perform was excused.

The bracketed language in paragraph 3 should be used if there was a condition precedent to defendant’s obligation, and if plaintiff has the burden of proving that the condition was satisfied.

For the conclusion of the instruction, use Option One if there are no affirmative defenses. Use Option Two if there are affirmative defenses. In a case where the affirmative defenses relate solely to breach (as opposed to contract formation), the final bracketed paragraph (Option 3) may be used.

This instruction should be followed by instructions on contract formation (24.01A), breach (24.03) and damages (24.09A, etc.) In addition, the jury should be instructed on the concepts that are addressed in any of the bracketed elements, and on relevant affirmative defenses. For instructions on affirmative defenses, see Instructions 24.08B - 24.08G.

**Comment**

Affirmative defenses are identified in Alaska Rule of Civil Procedure 8(c) and in case law. Potential affirmative defenses to a breach of contract claim generally fall in two categories: defenses to contract formation (such as duress or misrepresentation) and defenses excusing the defendant’s breach/non-performance (such as frustration of purpose, impossibility, or waiver). Option Two is generic and accommodates both categories. Option Three is specific to defenses that excuse the defendant’s failure to perform.