**24.10 AVOIDABLE CONSEQUENCES**

In this case, defendant claims that, with reasonable efforts and without undue risk, expense, hardship or embarrassment, plaintiff could have avoided some losses in whole or in part, even though the losses originally resulted from defendant's failure to keep (his) (her) (its) promise.

If you decide that it is more likely true than not true that plaintiff could have avoided some losses in whole or in part with reasonable efforts and without undue risk, expense, hardship or embarrassment, you may not require the defendant to pay the amount that plaintiff reasonably could have avoided [and you must subtract any such amount from the amount of damages you have found.]

However, if you find that it is more likely true than not true that plaintiff incurred costs in making a reasonable effort to avoid such losses, you must make an award to the plaintiff for such costs.

Use Note

This instruction should be given in conjunction with the instructions on general and special damages if the defendant claims a failure to mitigate. The bracketed language should only be used if a special verdict form is not used to determine items of loss. Plaintiff is entitled to recover any costs incurred in making a reasonable effort to avoid or reduce losses caused by defendant's failure to perform.