**24.01B PROMISSORY ESTOPPEL**

[Plaintiff] claims that [defendant] has a legal obligation to pay [plaintiff] because [defendant] made a promise to [plaintiff], and [plaintiff] took action in reliance on [defendant’s] promise.

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

1. [Defendant] made a promise to [plaintiff] using precise language and stating clear and definite terms;
2. [Defendant’s] promise demonstrated a clear intent to be bound by the promise;
3. [Defendant] expected, or reasonably should have expected, that [plaintiff] would act in reliance on the promise;
4. [Plaintiff] substantially changed [his her its] position in reliance on [defendant’s] promise; and
5. Justice requires enforcement of [defendant’s] promise.

If you decide that all five of these elements are more likely true than not true, your verdict must be in favor of [plaintiff], and you must decide the amount that will fairly compensate [plaintiff] for [defendant’s] failure to perform as promised.

If you do not decide that all five of these elements are more likely true than not true, your verdict must be in favor of [defendant].

**Use Note**

This instruction should be given when the plaintiff asserts a claim based on promissory estoppel.

When there are alternative claims for existence of a contract and for promissory estoppel, the jury can be instructed on both theories, using this instruction and instruction 24.01A. This instruction can be modified, adding a transition sentence at the beginning of the instruction indicating that if the parties did not have a contract, plaintiff makes this alternative claim.

Damages under a promissory estoppel theory may include either expectation damages, or reliance damages. 1 *Farnsworth on Contracts* § 2.23 at 2-144-145 (4th ed. 2021); J. Perillo, *Contracts* § 6.4 (7th ed. 2014). Instructions 24.09A and 24.09H may be used as appropriate, with modifications to fit the situation.

**Comment**

The doctrine of promissory estoppel allows the enforcement of contract-like promises despite a technical defect or defense that would otherwise make the promise unenforceable. *Thomas v. Archer*, 384 P.3d 791, 798 (Alaska 2016).

Promissory estoppel has four required elements: 1) the defendant made an actual promise that induced action or forbearance by the plaintiff in reliance on the promise; 2) the plaintiff’s action or forbearance amounts to a substantial change of position; 3) the promisor foresaw the plaintiff’s action or forbearance, or the plaintiff’s action or forbearance was reasonably foreseeable to the defendant and 4) enforcement of the promise is necessary in the interest of justice. *Thomas*, 384 P.3d at 798-99.

If the claim is that the defendant’s promise induced forbearance rather than action, the instruction should be modified accordingly. For example, element 3 could state that “[defendant] expected, or reasonably should have expected, that in reliance on [plaintiff’s] promise, [plaintiff] would [describe what plaintiff failed to do],” and element 4 could state that “in reliance on [defendant’s] promise, [plaintiff] failed to [describe what plaintiff failed to do].”

The plaintiff’s “actual promise” must be definite, very clear, use precise language, and manifest an unequivocal intent to be bound. *Thomas*, 384 P.3d at 800. *See also Sea Hawk Seafoods, Inc. v. City of Valdez*, 282 P.3d 359, 366 (Alaska 2012); *Safar v. Wells Fargo Bank, N.A.*, 254 P.3d 1112 (Alaska 2011).

The fifth element of the claim (whether justice requires enforcement of the defendant’s promise) presents issues of fact. *Thomas*, 384 P.3d at 801.

When promissory estoppel is being asserted to overcome the Statute of Frauds, it may be appropriate to instruct the jury on factors stated in Restatement (Second) of Contracts § 139(2) bearing on whether justice requires enforcement of the promise. *See Alaska Democratic Party v. Rice*, 934 P.2d 1313, 1318 & n. 6 (Alaska 1997) (approving instruction).