

N.C.P.I.—Civil 503.06

CONTRACTS—ISSUE OF COMMON LAW REMEDY—STATEMENT OF DAMAGES
ISSUE.

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503.06 CONTRACTS—ISSUE OF COMMON LAW REMEDY—STATEMENT OF
DAMAGES ISSUE.

NOTE WELL: This is the first component of the compensatory damages series which runs through N.C.P.I.—Civil 503.79 (Contracts—Issue of Common Law Remedy—Damages Mandate). Select direct, incidental and consequential damages instructions as appropriate.

The (*state number*) issue reads:

“What amount is the plaintiff entitled to recover from the defendant for breach of contract?”

If you have answered the (*state number*) issue “Yes” in favor of the plaintiff, the plaintiff is entitled to recover nominal damages even without proof of actual damages.¹ Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damage resulting from the breach.²

The plaintiff may also be entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages sustained as a result of the breach. Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future]³ economic injury resulting from a breach of contract.

A party damaged by a breach of contract is entitled to be placed, insofar as this can be done by money, in the same position that party would have occupied if there had been no breach of the contract.⁴

In determining the amount, if any, you award the plaintiff, you will consider the evidence you have heard as to (each of the following types of damages):

[Direct damages]

[Incidental damages]

[Consequential damages]

[state any other type of damages supported by the evidence].

The total of all damages are to be awarded in one lump sum.

I will now explain the law of damages as it related to each of these.

[Direct damages are the economic losses that usually or customarily result⁵ from a breach of contract and that might accrue to any person similarly injured.⁶]

NOTE WELL: Definitions for each type of damages are provided elsewhere in these Instructions.

- *As to direct damages, consider substituting or supplementing the above definition with a more specific definition based on one or more of the direct damages instructions at N.C.P.I.—Civil 503.12 (Contracts—Issue of Common Law Remedy—Direct Damages—Buyer’s Measure of Recovery for a Seller’s Breach of Contract to Convey Real Property) through N.C.P.I.—Civil 503.54 (Contracts—Issue of Common Law Remedy—Direct Damages—Employer’s Measure of Recovery for Employee’s Wrongful Termination of an Employment Contract).*
- *As to incidental damages, see N.C.P.I.—Civil 503.70 (Contracts—Issue of Common Law Remedy—Incidental Damages).*
- *As to consequential damages, see N.C.P.I.—Civil 503.73 (Contracts—Issue of Common Law Remedy—Consequential Damages).*

1. *Bowen v. Fidelity Bank*, 209 N.C. 140, 144, 183 S.E. 266, 268 (1936); *Delta Environmental Consultants of North Carolina, Inc. v. Wysong & Miles Co.*, 132 N.C. App. 160, 171-72, 510 S.E.2d 690, 698, *disc. rev. denied*, 350 N.C. 379, 536 S.E.2d 70 (1999); *Cole v. Sorie*, 41 N.C. App. 485, 490, 255 S.E.2d 271, 274, *disc. rev. denied*, 298 N.C. 294, 259 S.E.2d 911 (1979).

2. Nominal damages consist of some trifling amount and are recoverable where some legal right has been invaded but no actual loss or substantial injury has been sustained.

Nominal damages are awarded in recognition of the right and of the technical injury resulting from its violation. *Hairston v. Atlantic Greyhound Corporation*, 220 N.C. 642, 644, 18 S.E.2d 166, 168 (1942) (quoting *Hutton & Bourbonnais v. Cook*, 173 N.C. 496, 92 S.E. 355 (1917)).

3. *Wilkinson v. Dunbar*, 149 N.C. 20, 25, 62 S.E. 748, 751 (1908) (recovery for both present and prospective damages is permissible).

4. *Lee Cycle Center, Inc. v. Wilson Cycle Center, Inc.*, 143 N.C. App. 1, 9, 545 S.E.2d 745, 750 (2001) (quoting *Perfecting Serv. Co. v. Product Dev. & Sales Co.*, 259 N.C. 400, 415, 131 S.E.2d 9, 21 (1963)).

5. *Maynard v. Crook*, 289 N.C. App. 357, 890 S.E.2d 164 (2023) (“[G]eneral damages are such as might accrue to any person similarly injured.” (quoting *Penner v. Elliott*, 225 N.C. 33, 35, 33 S.E.2d 124, 126 (1945))).

6. *Stanback v. Stanback*, 297 N.C. 181, 187, 254 S.E.2d 611, 616 (1979) (“In awarding damages, compensation is given for only those injuries that the defendant had reason to foresee as a probable result of his breach when the contract was made. If the injury is one that follows the breach in the usual course of events, there is sufficient reason for the defendant to foresee it; otherwise, it must be shown specifically that the defendant had reason to know the facts and to foresee the injury.”).