**24.05C EXISTENCE AND FAILURE OF CONDITION PRECEDENT**

[Defendant] claims that [plaintiff] and [defendant] agreed that [defendant] did not have to perform [his her its] obligations under their contract unless [insert description of event alleged to constitute a condition precedent], and [defendant] claims that this event never occurred. Therefore, [defendant] claims that [he she it] did not have any obligation to perform under the contract, and did not breach the contract.

On the other hand, [plaintiff] claims that the parties to the contract did not agree that [defendant’s] obligation to perform was conditioned upon the occurrence of this event. Therefore, [plaintiff] claims that [defendant] was required to perform [his her its] obligation under the contract without regard to whether the event occurred. [Plaintiff] also claims that even if the parties agreed that [defendant] was not obligated to perform unless the event occurred, the event did occur. As a result, [defendant] was required to perform its contractual obligations.

To resolve these issues, you must address the following questions.

First, you must decide whether [plaintiff] and [defendant] agreed that [defendant] did not have to perform [his her its] obligations under their contract unless [insert description of condition precedent]. The law requires that any agreement to make a party’s performance of its contractual obligations dependent upon the occurrence of an event must be expressed in plain, unambiguous language, or the agreement must arise by clear implication from the other contract terms and the circumstances of the contract.

If you decide that [plaintiff] and [defendant] did not agree in plain, unambiguous language or by clear implication that [defendant] was not required to perform its obligations under the contract unless [event] occurred,

[you must return a verdict for [[plaintiff] and decide the amount of [his her its] damages]

[OR]

[[defendant] was required to perform [his her its] obligations under the contract, unless [he she it] is excused for a reason that I will explain in a moment].

On the other hand, if you decide that it is more likely true than not true that [plaintiff] and [defendant] agreed, through clear and unambiguous language or by clear implication, that [defendant] was not required to perform [his her its] obligations under the contract unless [event], you must then decide whether [event] occurred.

If you decide that is more likely true than not true that [event] did not occur, you must return a verdict for [defendant]. If you decide it is more likely true than not true that [event] did occur,

[you must return a verdict for [plaintiff] and decide the amount of [plaintiff’s] damages]

[OR]

[[defendant was required to perform [his her its] contractual obligations, unless [defendant] is excused for a reason that I will explain in a moment].

**Use Note**

This instruction should be used when both the existence of a condition precedent and the occurrence of the condition are in dispute.

**Comment**

*See* Comments to Instructions 24.05A and 24.05B.