24.09G DAMAGES FOR BREACH OF COVENANT NOT TO COMPETE

[Plaintiff] claims a loss caused by [defendant's] breach of an agreement that [defendant] would not compete with [plaintiff]. If you find in favor of [plaintiff], you may award [plaintiff] the amount of profit that [plaintiff] lost because [defendant] breached [his her its] agreement not to compete with [plaintiff]. In a moment, I will instruct you regarding the law that governs an award of damages.

**Use Note**

This instruction should be used when the plaintiff claims damages for breach of a covenant not to compete.

Following this instruction, the jury should be instructed on the law that governs damage awards. *See* Instruction 24.09A.

# **Comment**

"The measure [of damages] for breach of a covenant not to compete is generally not the profits earned by the breaching party, but rather thelost profits of the party asserting the breach." *National Bank of Alaska v. J.B.L. & K. of Alaska, Inc.*, 546 P.2d 579, 590 (Alaska 1976); *see also Wirum & Cash Architects v. Cash*, 837 P.2d 692, 711 (Alaska 1992). Although damages are measured by the loss of profit to the plaintiff, in determining this amount, the court may consider evidence of the profits earned by the defendant through breach of the covenant not to compete. *Id*.