* 1. **BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING**

Now I will instruct you on the implied promise of good faith and fair dealing.

In every contract, there is an implied promise of good faith and fair dealing. This means that each party promises not to do anything to destroy or injure the right of the other party to receive the benefits of the contract. The implied promise of good faith and fair dealing does not modify the express terms of the contract by adding terms to the contract or prohibiting what the contract explicitly permits.

The defendant violated the implied promise of good faith and fair dealing if you find that it is more likely true than not true that the defendant deprived the plaintiff of a benefit of the contract:

1. intentionally; or

2. by acting in a manner that a reasonable person would regard as unfair.

Directions For Use

This instruction should be given whenever the plaintiff has stated a cause of action for breach of the covenant of good faith and fair dealing.

Comment

The supreme court first held that the covenant of good faith and fair dealing is implied in all contracts in *Guin v. Ha*, 591 P.2d 1281, 1291 (Alaska 1979):

In every contract, including policies of insurance, there is an implied covenant of good faith and fair dealing that neither party will do anything which will injure the right of the other party to receive the benefits of the agreement.

(Footnote omitted.) The covenant effects the reasonable expectations of the parties to the contract; it does not alter them:

The covenant of good faith and fair dealing is implied in every contract in order to effectuate the reasonable expectations of the parties to the agreement, not to alter those expectations.

*Ramsey v. City of Sand Point*, 936 P.2d 126, 133 (Alaska 1997). The material in the second paragraph regarding modification of the contract terms was taken from *Casey v. Semco Energy, Inc.*, 92 P.3d 379 (Alaska 2004). The two-part analysis in the third paragraph reflects the holding that the duty has both a subjective and an objective element:

A party must act in subjective good faith, meaning that it cannot act to deprive the other party of the explicit benefits of the contract, and in objective good faith, which consists of acting in a manner that a reasonable person would regard as fair.

*Id.* at 384. The supreme court has cited disparate employee treatment, terminations on unconstitutional grounds, and firings that violate public policy as examples of actions that may violate the objective aspect of the covenant. *Pitka v. Interior Regional Housing Author.*, 54 P.3d 785, 789 (Alaska 2002).