### IDJI 6.22.2 - Waiver by estoppel

INSTRUCTION NO. \_\_\_\_

 The defendant has raised the defense of waiver by estoppel. This is a legal term which means that a party is deemed to have waived a claimed breach of contract by reason of the party's own conduct. To establish the defense of waiver by estoppel, the defendant has the burden of proof on each of the following propositions:

 1. The plaintiff represented to the defendant [by words or conduct] [or] [by silence when a duty to speak and protest the action of the defendant existed] that plaintiff was waiving, excusing or forgiving the defendant's breach of contract; and

 2. The defendant relied upon this representation and materially changed position in reliance thereon; and

 3. The reliance was reasonable in light of all of the circumstances; and

 4. The change of position was to the defendant's detriment.

 If you find that each of these propositions has been proved, you should find that the defendant is not liable to the plaintiff for the claimed breach of contract. If the defendant fails to prove all of the propositions, the defendant has not established the affirmative defense of estoppel.

Comments:

Note: This instruction is to be distinguished from "quasi estoppel", "promissory estoppel" or "equitable estoppel."