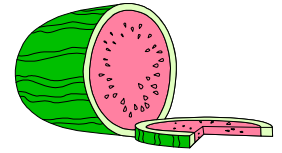




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“Tip of the Month”

Damages

In civil or commercial litigation, there are usually two main areas of proof: liability and damages. Assuming a Plaintiff can establish the Defendant’s liability for some wrong, the Plaintiff must also prove the amount the Defendant should pay, the damages.

For breach of contract, damages are usually limited to either the Plaintiff’s out-of-pocket loss, or what Plaintiff lost under the benefit-of-the-bargain rule, that is, what Plaintiff would have gained from the deal but for Defendant’s breach. Outside of those limits, incidental and consequential damages are usually not allowed unless the bad consequence was reasonably foreseeable at the time the contract was made.

Tort damages are different. Torts are injuries that a Plaintiff might inflict by negligence, like a car crash, or intentionally, as in cases of, for example, theft, assault, defamation, or fraud. Torts are often characterized as breaches of duty, such as the duty to drive carefully, or the duty not to make false statements.

Tort damages are not as strictly limited as contract damages. For example, a victim of negligent driving might have quantifiable damages, often called special damages. These might include medical bills or lost wages that can be added up on a tally sheet. In addition, that Plaintiff might have pain and suffering, which is hard to quantify. The jury can still award the Plaintiff compensation for pain and suffering, above and beyond Plaintiff’s special damages.

Losses from the bad consequences of wrongful conduct do not necessarily have to be foreseeable. In a commercial case, tort damages for fraud or theft can include, for example, losses for injury to business reputation or for future lost profits. These damages might be awarded without regard to whether an ordinary person would have suspected the incidental or consequential losses would directly result from the misconduct. Usually, proof of such losses requires the testimony of an economic expert.

Punitive damages are not allowed in New Hampshire, except under some statutes, but enhanced compensatory damages are allowed in rare cases. Thus, a jury or judge can award extra compensation when the Plaintiff shows that a Defendant’s bad conduct was malicious or outrageous.

If you would like more information about damages or court procedure, please feel free to give us a call at 603-669-1971 or by email at Meslaw@aol.com.

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