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How to Spot Double Counting in a Damages Claim

A serious problem in claims for damages is double counting. That is, if all of the damages as presented are added up, the total may include some items twice. This is a serious issue for both the defense and the prosecution, and can significantly alter the final amount of any settlement. This article outlines a number of simplified case studies involving double counting, followed by some suggestions on how to spot double counting.

Case Studies

Case Study One An investor purchased a rental apartment building from your client and subsequently claimed that the rent rolls were overstated. The investor claims damages from your client for both: a) the amount by which he claims to have overpaid, and b) the claimed loss of future income.

The Double Counting In this case, the investor has effectively double counted his loss. The amount of the claimed overpayment is a function of the claimed overstatement of the rental income, and the loss of claimed future income is also a function of the same claimed overstatement of the rental income. Your client will be potentially liable for a smaller amount.

Case Study Two Your client's company maintains its business records on a fiscal year basis using a September 30th year end, rather than a calendar year. Her business suffers an extended interruption due to a fire, and she is making a claim against her insurance company for a business interruption loss. She needs to ensure that her claim is accurate before it is submitted.

The Double Counting Where a loss of income calculation is being prepared on a calendar basis, and the business records are on a fiscal year basis, there is the risk that revenues or expenses will be counted twice, or not at all. In this example, the calendar year would contain January to September from one fiscal year, and October to December from the subsequent fiscal year.

Case Study Three The plaintiff is suing your client for loss of income, due to an injury that he claims your client has caused. The plaintiff is self-employed, and he claims damages from your client for both: a) a loss of business income and b) the loss of personal income from the business.

The Double Counting Here, the plaintiff is double counting because his compensation from the business is an expense of the business, as well as income to him.

Case Study Four A charter aircraft service lost the use of one of their aircraft for a month, and chartered another aircraft as a replacement. The cost of the replacement aircraft, including plane, pilot and fuel, was $8,000 per month. The plaintiff's claims totaled $11,500, consisting of: a) loss of gross profit of $3,500, and b) the cost of the replacement aircraft of $8,000.

The Double Counting . The actual gross margin is negative $2,000, taking into account the cost the replacement aircraft. A detailed look at this example's numbers is included in the chart below.

Two ways to Spot Double Counting

One way to identify Double Counting is to consider all the amounts claimed as damages, and the relationships between these amounts. The inter-relationships will suggest which amounts may include double counting.

Another way to identify Double Counting is to recast the amounts claimed in a traditional damages framework. When the claim amounts are slotted into the framework, it is often easy to identify instances of double counting. A traditional damages framework presents: a) the actual financial results (given the breach or wrong), and b) the expected financial results (those that would have been achieved but for the breach or wrong). The difference between the actual results and the expected results identifies the damages.

Using Case Study Four above dealing with the charter aircraft as an example, the actual and expected results are presented in the table below. The expected results show the expected gross margin of $3,500. The actual gross margin is negative $2,000, taking into account the cost the replacement aircraft. The loss of gross margin is $5,500, the difference between the actual and expected gross margin. The loss of gross margin of $5,500 is about half of the plaintiff's claim of $11,500.

(figures are illustrative)	**Expected**	**Actual**	**Difference (loss)**
Revenue	$9,000	$9,000	
Direct Costs: pilot, fuel and lease payments on the damaged aircraft	5,500	2,000	
Cost of Replacement Aircraft	0	8,000	
Cost of Sales	5,500	10,000	
Gross Margin	$3,500	$-2,000	$5,500

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