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Failure to Understand Their Damages Can Cost Plaintiffs Money

If the Plaintiff overestimates their damages they may pursue litigation where the financial payback is not there. Alternatively, if they underestimate their damages they may leave money on the table.

Case One

The Defendant represented to the Plaintiff (a concert promoter) that it had the rights to a very desirable concert venue for the summer season. The Plaintiff estimated that they could make several million dollars running concerts at this venue over the summer season. Several weeks into the deal, the Defendant tells the Plaintiff that in fact they do not have the rights to this venue, and never did. The Plaintiff sues for the several million dollars they could have made.

Comment: The venue was never available. The Plaintiff suffered because the Defendant misrepresented the availability of the venue. Therefore, the Plaintiff's damages are the sum of money required to put them in the position they would have been in, but for the misrepresentation. That is to say: a) the costs they incurred during, and b) the cost of breaking commitments made during, the period of the misrepresentation.

Case Two

The Plaintiff had a contract with the Defendant company which paid him royalties of the sales of particular products. The Defendant was acquired by a much larger company, and broke its contract with the Plaintiff. The Plaintiff claims the loss of income to the end of the contract, based on his historic royalty income.

Comment: Given the larger sales resources of the post-acquisition company, sales of the particular product would likely have increased significantly, and the royalty payments to the Plaintiff would have increased accordingly. Therefore, the Plaintiff should have claimed his loss of future royalty income based on expected sales, not based on extrapolating his historic royalty income.

Case Three

The Plaintiff fails to win a \$10million contract. But for the breach or wrong on the part of the Defendant, the Plaintiff would have won the contract. The Plaintiff normally makes a 25% contribution margin and therefore estimates their damages to be \$2.5million.

Comment: The financial statements of the Plaintiff show \$75 million in revenue in the year of the breach; the same as the year before and the year after. Also, the income of the Plaintiff in the year of the breach was the same as or better than the Plaintiff's income in the year before and the year after. The Plaintiff's damages may well be nominal, as the Plaintiff appears to have mitigated the loss of this contract.

Where Plaintiffs have an accurate understanding of their damages, they can make more informed decisions on how best to proceed.

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