

Legal Alert December 2007 **Award of Damages**

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Legal Alert for December, 2007 ? Award of Damages

Damages are the compensation claimed or awarded to an injured party for the breach of a contract or the commission of a tort, e.g. negligence, trespass, etc.

The ability to prove that a contract has been breached or an infraction committed which has in turn resulted in a quantifiable injury and loss is becoming more and more difficult as a result of insufficient gathering and pleading of facts with supporting evidence by the injured party.

In cases where the breach is more glaring and requires minimal proof, the injured party would face the further hurdle of establishing that the breach has actually caused sufficient quantifiable damage that can be compensated for under the Law. This is because the Law tries to ensure harmony by not awarding damages arbitrarily like a benevolent parent or giving a wind fall that would encourage multiple spurious litigation. The Law also does not award damages based on speculative or sentimental claims.

Quantification of Damages

Damages are only awarded as a compensation for a party's pecuniary loss naturally flowing from the breach or proximately associated to the breach - See *HARDLY v. BAXENDALE* (1854).

Damages that are too remote to a breach are never compensated for.

The Law recognises that in some instances, it may be impossible to completely restore the loss suffered by an injured person. The Law tries as much as possible to make some restoration that is as close as possible to the injured person's position before the breach and injury or loss.

Common Law however expects diligence and reasonableness when a breach and an injury occur. An injured party is therefore expected under the law to take all reasonable steps to mitigate his loss. A good example is where an employee's contract is wrongly terminated but the employee is diligent in making his claim for compensation for wrongful termination of contract whilst at the same time seeking and securing, if possible, an alternative employment.

The Law does not however expect an injured person to mitigate his loss to his own peril - See *OKONKWO v. N.N.P.C.*

Conclusion

It is recommended that parties should try and expand their contractual documents such that in

addition to other traditional clauses, new contractual provision(s) are made for instances where a breach would be held to have occurred and the mechanism for computing and qualifying the monetary compensation for each of such breach is agreed to in advance.

The above strategy would save the parties time and expense in addition to the further objective of serving as a disincentive to a breach occurring. Where a breach inevitable does occur, in spite of this provision, settlement can be arrived at in a much quicker way based on the pre-determined mechanism. The work of the Courts is reduced when computing the award where the breach and the injury are established, with the predetermined mechanism in place.

In the event of litigation becoming inevitable, the aggrieved party would do well to exhaustively brief his or her Solicitor on all the facts of the matter, how the breach occurred and the actual loss suffered in as precise as possible a manner with a computation of the actual loss suffered in monetary terms. These are required if any success is to be achieved after a long and hard fought litigation.

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