**408.11 TORTIOUS INTERFERENCE DAMAGES**

**If you find for** (defendant)**, you will not consider the matter of damages. But, if you find for** (claimant)**, you should award** (claimant) **an amount of money that the greater weight of the evidence shows will fairly and adequately compensate** (claimant) **for such [loss] [or] [damage] as the greater weight of the evidence shows was caused by the** (defendant’s) **interference with the [contractual relationship] [business relation].**

**If you find for** (claimant)**, you shall consider the following elements of damage:**

*Proceed to Section 500 of these instructions and the Contract and Business Jury Instructions for applicable elements of damage, other appropriate damage instructions, and instructions on punitive damages, if applicable.*

NOTE ON USE FOR 408.11

1. The Supreme Court of Florida stated that the claimant in *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812 (Fla. 1984), was entitled to the damages “reasonably flowing” from the defendant’s interference with the claimant’s existing business relationships. *Id.* at 815. Florida caselaw, however, does not delineate the types of damages that are recoverable for tortious interference claims.

2. The committee takes no position on the types of recoverable damages for tortious interference claims. One view is expressed by the Restatement (2d) of Torts § 774A. It provides for recovery of:

(a) the pecuniary loss of the benefits of the contract or the prospective relation;

(b) consequential losses for which the interference is a legal cause; and

(c) actual harm to reputation, if it is reasonably to be expected to result from the interference.

Moreover, subsection 774A(d) explains that the action for interference with contract is one in tort and damages are not based on contract rules, *i.e.*, it is not required that the loss incurred be one within the contemplation of the parties to the contract itself at the time it was made. The claimant can also recover for consequential harms, provided they were legally caused by the defendant’s interference.

3. A problem with damages in the context of intentional interference claims is whether they can be proved with a reasonable degree of certainty. See general discussion in Restatement (2d) of Torts § 912, especially comments *d* and *f*. Florida has significant case law on the claimant’s burden of proof on damages. See, *e.g*., *Ethan Allen*, 647 So. 2d at 812; *Insurance Field Services, Inc. v. White and White Inspections and Audit Services, Inc*., 384 So. 2d 303 (Fla. 5th DCA 1980); *Ferguson Transportation, Inc. v. North American Van Lines, Inc.*, 687 So. 2d 821 (Fla. 1996).

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