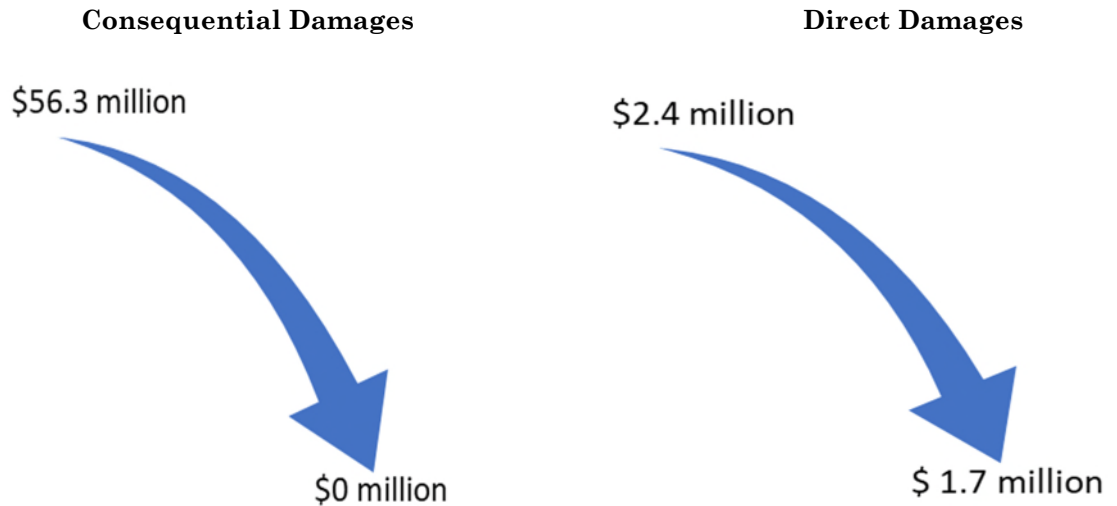


## LITIGATION

By: Keith Langley



“Follow the money” can show a damages award go from \$56.3 million in consequential damages plus direct damages of \$2.4 million to \$0 in consequential damages and a reduction of the direct damages by \$622,560.61.

Damages in a lawsuit in Texas raises a plethora of issues. The Texas Supreme Court has written on the issue of damages many times and here in a 30 page opinion with 14 footnotes once again writes on the issues of damages.

The Court finds the evidence legally insufficient to support an award of consequential damages.

Here was a case where the owner Jeffry Ogden claims that he lost his company (or its value) - Signature Industrial Services LLC - allegedly due to International Paper not paying an invoice of \$2.4 million which was disputed by the parties. What then occurred was much litigation, discovery, a jury trial, an appeal to the Court of Appeals, and an appeal to the Texas Supreme Court.

The Court stated that damages for breach of contract may include both direct and consequential damages, direct often restoring the “benefit of the bargain” and consequential giving the plaintiff foreseeable losses caused by the breach but which were not a necessary consequence of it.



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To "Go Green", our firm uses recyclable paper or ceramic cups and no longer uses Styrofoam cups. In addition, we have adopted a less-paper office environment.

We hope that these changes make big differences in the future.

*Well done is better than well said.*

- Benjamin Franklin



Here the Texas Supreme Court gleefully cited Hadley v. Baxendale, the esteemed English case from practically yesterday - 1854. The proposition being that consequential damages are not recoverable unless the parties contemplated at the time they made the contract that such damages would be a probable result of the breach. This requirement is "foreseeability", and along with foreseeability consequential damages must be proved with reasonable certainty. The proof does not have to be exact but cannot be speculative. Parties must prove damages so that courts and juries can discern the extent of the losses actually caused by the breach, rather than caused by other factors. The proper measure of damages is a question of law.

The plaintiff company and the plaintiff owner of the company introduced evidence of a lost sale (\$42 million) of the company. The loss was attributed (by the plaintiffs) to the nonpayment by International Paper. There was then also evidence of lost "book value" (\$12.4 million) of the company. The trial court awarded both. The Court of appeals took away the lost sale damage but awarded the lost book value. The Texas Supreme Court took away both. The direct damages were reduced by the Texas Supreme Court as "precluded by the contract". The moral, Read the Full Contract, and Let's be Careful out There!

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