



What is the Difference between Consequential Damages & Liquidated Damages?

It wouldn't make sense that a contractor agrees to a contract for \$600,000 and ends up paying over \$14 million in lost profits for a delay on a project, correct? Do the math, it's not right. However, it really happened (Perini Corporation v. Grete Bay Hotel & Casino). When there isn't a consequential damages waiver, the door is wide open for litigation. When signing a contract, it is likely that it will contain a consequential and liquidated damages clause. What is the difference between both? Let's say this, one you can manage and the other you can't! First let's understand the definition of both and then we can determine which one you can manage.

A client asked about a contract he was asked to sign, in which consequential damages were not being waived. **Consequential damages are those things that cost money which arise indirectly out of a failure of a party on a construction project.** They can include: loss of use, loss of rent, loss of profit, loss of bonding capacity, extended overhead, extended equipment rental fees, increased material costs and interest. Note that this is not an exhaustive list and other consequential damages may be applicable depending on the project. So you think the client signed the contract, not a chance!

An example of a consequential damage: Contractor has to have project completed by February 2014. Project is not completed until July 2014. Owner is now seeking lost profits as a result of the delay.

Liquidated damages are predetermined when forming a contract. Liquidated damages are not a penalty, but rather serve as protection for both parties involved in the contract. Liquidated damages have to be a reasonable estimate to the actual damage that may result from the breach.

An example of a liquidated damage: Contractor A agrees to subcontract work to Contractor B. Contractor B breaches contract by not starting work at the agreed time. Contractor A can collect liquidated damages for late performance.

Given the information, we can determine that liquidated damages can be managed. In regards to consequential damages, try not to sign any contracts that do not have a consequential damages waiver. RUN from them while you still have a chance!!! If you have any concerns on a current or impending contract, you can always contact Will or Shawn for help.