

A firm contracted with a municipality to repair a drawbridge and began work on February 1. The contract provided that the firm would be paid an additional \$1,000 for each day the repair was completed before the April 1 completion deadline. On March 14, an unusual gear on the bridge broke. On that same day, the firm contracted with a supplier for a March 15 delivery to the bridge site of the only available replacement gear. The supplier did not know the firm's contract contained an incentive-pay provision regarding early completion. The supplier misdirected the delivery of the gear, and the firm did not receive it until March 20. The work on the bridge was completed on March 21. Had it not been for the late delivery of the gear, however, the firm would have completed the bridge repair on March 16.

In an action against the supplier for breach of contract, will the firm be permitted to recover, as part of its damages, the additional \$5,000 early-completion incentive pay it would have received from the municipality but for the supplier's breach?

- A. No, because the supplier did not expressly agree to be responsible for such damages.
- B. No, because the supplier did not know and had no reason to know about the incentive-pay provision regarding early completion.
- C. Yes, because, by the nature of its contract with the firm, the supplier should have known that time was of the essence.
- D. Yes, because the supplier is liable for all damages flowing directly from its breach.

Explanation:

Consequential damages

Damages for losses stemming from nonbreaching party's special circumstances if breaching party:

knew of those special circumstances

OR

could have reasonably foreseen harm caused by breach

After a contract is **breached**, the nonbreaching party may seek **compensatory damages**. Generally, these damages aim to put the nonbreaching party in the same position as if the contract had been performed. As a result, the calculation begins by determining expectation damages—ie, the natural and obvious losses from the breach. And in some cases, **consequential damages**—ie, **losses arising from a party's special circumstances**—are also warranted. Consequential damages are appropriate only if the breaching party:

knew about the nonbreaching party's **special circumstances** *or*

could have **reasonably foreseen** the harm, in light of the nonbreaching party's special circumstances, that would result from a breach.

Here, the firm stood to gain \$1,000 for each day the drawbridge repair was completed before the April 1 completion deadline—\$5,000 in total. Had the supplier known about those special circumstances or otherwise been able to foresee the harm that its breach would cause, consequential damages of \$5,000 would be warranted. But since there is no indication the supplier knew or had reason to know of the pay provision regarding early completion, the firm will not be permitted to recover the \$5,000.

(Choice A) There is no rule requiring that a party *expressly agree* to be responsible for consequential damages stemming from a breach to hold that party responsible.

(Choice C) When a contract calls for a specific completion date, time is considered "of the essence," and a failure to perform by that date is a breach. However, this alone is not sufficient for recovering consequential damages.

(Choice D) A party is not liable for *all* damages flowing directly from its breach—eg, damages related to special circumstances of which the breaching party did not know of and could not reasonably foresee.

Educational objective:

Consequential damages (ie, losses arising from a nonbreaching party's special circumstances) are appropriate if the breaching party (1) knew about the special

circumstances or (2) could have reasonably foreseen the harm, in light of the special circumstances, that would result from a breach.

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