

A well-established paper mill and a logging company signed a written contract in which the mill agreed to buy from the company all the logs the mill would need for one year. The company was unable to keep up with the mill's needs, and its log deliveries fell short by 10% to 15% in each of the four quarters of the year. The mill paid the company on time for all delivered logs.

The mill paid an attorney \$2,000 for advice concerning its options in enforcing the contract. It paid a broker a reasonable fee of \$5,000 to find additional logs to make up for the company's shortfall. The mill also incurred reasonable costs of \$25,000 to transport the additional logs to its facility. Despite the mill's efforts to mitigate damages, it sustained an additional \$200,000 in losses because of the company's failure to timely deliver enough logs.

The mill has sued the company for breach of contract.

If the court finds for the mill, how much should it award in damages?

- A. \$205,000.
- B. \$225,000.
- C. \$230,000.
- D. \$232,000.

Explanation:

UCC damages for seller's breach when buyer covers

Cost of cover	Difference between contract price & cost of purchasing substitute goods*
Incidental damages	Reasonable expenses incurred in inspection, receipt, transportation & care of goods rightfully rejected Commercially reasonable charges, expenses, or commissions incurred in connection with effecting cover Other reasonable expenses incident to delay/breach
Consequential damages	Losses resulting from buyer's particular circumstances that: seller had reason to know at time of contracting <i>and</i> could not reasonably be prevented Injury to person/property proximately resulting from breach of warranty

UCC = Uniform Commercial Code.

*The substitute goods must have been purchased promptly & in good faith.

Under the **UCC**, the buyer can recover damages if the **seller breaches** the contract **by failing to deliver** some or all of the goods. If the **buyer chooses to cover** (ie, purchase substitute goods), then the buyer **can recover** the following:

Cost of cover – the difference between the contract price and the cost of purchasing substitute goods

Incidental damages – includes commercially reasonable charges, expenses, or commissions incurred in effecting cover (eg, transportation costs, broker commission)

Consequential damages – includes losses resulting from the buyer's particular circumstances that (1) the seller had reason to know of at the time of contracting and (2) could not reasonably be prevented by cover or otherwise (eg, business losses)

No UCC provision provides for recovery of **attorney's fees**, however, so they are **not recoverable** in the absence of a contract provision allowing them. In addition, although a party has no duty to mitigate its losses, its recovery will be reduced by the amount that could have been reasonably avoided or minimized.

Here, the paper mill will necessarily recover the \$200,000 in losses it sustained because of the logging company's failure to deliver enough logs. These are presumably consequential damages. The mill can also recover incidental damages of \$25,000 for transporting the additional logs and \$5,000 for the broker's commission—\$30,000 in total. However, the

\$2,000 in attorney's fees are not recoverable **(Choice D)**. Therefore, the court should award \$230,000 in damages if it finds for the mill **(Choices A & B)**.

Educational objective:

When a seller breaches a contract by failing to deliver some or all of the goods, the buyer's recoverable damages include the cost of cover, incidental damages, and consequential damages—but not attorney's fees.

UCC = Uniform Commercial Code

References

U.C.C. § 2-711 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's remedies in general).

U.C.C. § 2-712 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's procurement of substitute goods).

U.C.C. § 2-715 (Am. Law Inst. & Unif. Law Comm'n 2020) (buyer's incidental & consequential damages).

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