Including credit losses as a special damage can result in a larger award to your client

Today, victims of credit damage can more easily recover the damages to their financial reputation.

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Many of today's compensation laws were in place long before credit reports became such a key personal profile of an individual. Whereas in the past a person would have a personal word-of-mouth reputation among friends, now a credit report is the person's financial reputation in print – a reputation that must be protected to prevent serious financial consequences and loss to quality of life. Credit damage is a special damage consisting of reduced credit capacity, increased out-of-pocket expenses, or loss of credit expectancy because of third-party actions that cause negative information to appear on a client's credit report. When personal injuries or other wrongful acts force people to default on their credit obligations, they suffer financial harm. Injury to one's financial reputation is real, not speculative, and it can be objectively measured to add substantial monetary damages to settlements and jury awards.

Damage to credit is a type of injury

Since damage to credit is not a theory of liability, but rather a type of injury, no separate cause of action is required.

History of credit damage

Since 1970, the most frequent targets of credit damage complaints are the three national credit bureaus: TransUnion, Experian and Equifax. The second most frequent group of credit damage defendants are collection agencies. Lenders that misreport payments are also popular defendants.

Since 1995, allegations of credit damage are increasing. At present, injury to credit can be alleged in more than 14 causes of action, including fraud, breach of contract, breach of fiduciary duty, negligence, personal injury and wrongful termination. Defendants accused of injuring credit can include anyone: individuals, businesses of all sizes, insurance companies, even public entities.

When filing a complaint, you should always review the impact the wrongful act has on your client's credit reputation and creditworthiness so that you can recover the complete amount of compensatory damages your client is entitled to. Not doing so can cause some of your client's damages to be uncompensated, thus leaving money on the table.

The credit report: A person's financial reputation in print

A person's credit score is a computerized indication of that person's creditworthiness, i.e., the perceived likelihood that the person will pay his or her debts fully and on time. The impact of a bad credit rating is much more significant than most people think, because just about every major purchase hinges on one little three-digit credit score that is compiled from numerous sources. Consider what people with poor financial reputations face when they want to lease or buy a vehicle, obtain credit cards or refinance their home. Because a person with bad credit is viewed with suspicion, the lender feels the need to protect against the perceived greater risk of default and charges significantly more for extending credit.

COMPARISON CHART

SEE THE PRICE DIFFERENCE PRE & POST CREDIT DAMAGE

HOME LOAN
Based on $400,000 Loan Amount
30-year fixed rate mortgage

Credit Rating	Loan to Value	Down Payment	Interest Rate	Monthly Payment	7 Year Payout
A-1 pt	up to 95%	$20,000	6.875-7.25%	$2,628	**$220,752**
B-1.5-2.5*	80-85%	$15-20,000	9.25-10.5%	$3,292	**$376,416**
C-3-5*	75-80%	$20-25,000	10.5-11.5%	$3,812	**$320,208**
D-5-10*	65-70%	$25-35,000	12-13%	$4,424	**$371,616**
F-10-20*	55-65%	$35-45,000	15-18%	$7,200	**$604,800**

In California, median mortgage amount is approximately $400,000

By Subtracting the Pre Injury cost to the Borrower, from the higher Post Injury to the Borrower, the increased out of pocket costs are indicated.

*One point equals 1% of the face amount of the loan. Payments do not include fees, points, or interest paid on points if they are added to the loan.

FIGURES ON THIS CHART ARE FOR ILLUSTRATION PURPOSES ONLY

Many people are victims of credit damage through no fault of their own. Wrongful termination, personal injury, identity theft, breach of contract, divorce proceedings, and creditor reporting errors are just a few of the ways someone's credit can be damaged. When this happens, these people helplessly watch as their good credit reputation, something they worked years to build, is destroyed in a matter of days. As a result, their quality of life diminishes. Because credit reporting companies sell credit report information to businesses that use it when evaluating applications for home loans, rental housing, credit cards, automobile

Credit Card Account Activity
Measuring Credit Damage

	Pre-Injury	Post Injury*	Pre Injury Mo $	Post Injury Mo $
Card #1	Bal $3,000 @10%	Bal $7500 @21%	$50-$65	$140-$210
Card #2	Bal $2,500 @12%	Bal $7500 @21%	$50-$65	$140-$210
Card #3	Bal $2,500 @10%	Bal $7500 @21%	$50-$65	$140-$210
Card #4	Bal $2,500 @12%	Bal $7500 @21%	$50-$65	$140-$210
Totals	$10,000	$30,000	$200-$260	$560-$840

***Typically Credit Cards will increase interest charges to approximately 30% with a late or missed payment for as long as six months from the date of late payment(s)**

Looking at the example above:

Increase in debt: $20,000

Increase in Monthly Payment: $4,320 - $6,960 annualized

Increase in Monthly Payment with Penalties: $5,520 - $8,160 annualized

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Late Pay $25 per event per card* @ 6 times per year = $600.

Over-the-Limit Fee $25 per event/month per card* @ 6 times per year = $600.

Late/Over the limit (otl) fees for 7 years* = $8,400.

Out of pocket Increase for 7 yrs: $30,240 - $48,720

Out of pocket Increase 2/ late & otl fees for 7 yrs: $38,640 - $57,120

*Assumes 4 credit cards

loans, insurance and employment, people with negative credit report information soon pay more for many necessities.

Measuring loss of creditworthiness

Much like awards for pain and suffering were viewed in the past, judges and juries once refused to acknowledge that credit damage was an actual injury, claiming it was speculative because of the difficulty of measuring the amount of damage.

The Credit Damage Measurement (CDM) report

However, since 1995, when reliable Credit Damage Measurement (CDM) reports became available, it became much easier for victims of credit damage to be compensated for the damage to their financial reputation.

To explain the significance of this change, it helps to look at how credit has been viewed historically. The credit-reporting industry is a multi-million dollar business that was completely unregulated from 1899 until 1970, and continues to operate in relative secrecy today. Because of this secrecy, and because defense lawyers successfully argued that credit damage is speculative, credit damage rarely appeared as an item of damage. However, as more courts determined ways to award monetary damages for other hard-to-calculate injuries, such as emotional distress, humiliation and loss of consortium, recovering for the injury to financial reputation became more acceptable.

What a Credit Damage Measurement (CDM) report covers

A CDM report measures the actual out-of-pocket dollars reasonably expected from loss of creditworthiness, including having to make higher down payments, pay higher interest rates and pay higher points and costs on loans over a seven-year period.

One of the key points of using a CDM report is to detail how it affects a client. For example, a client's credit may have been nearly perfect before the negative information appeared on the client's credit report. By comparing the client's pre-injury credit with the client's post-injury credit, the CDM report sets forth the damage to the client. For example, a CDM report might measure the cost of a loan at the pre-injury rate compared to the same cost of the loan at the post-injury rate.

Hiring an expert to evaluate damage to credit can increase the value of the client's case. For example, in the 1995 case of *Bauer v. ERA Realty*, an Ontario, California, arbitrator awarded the plaintiff $33,000 for the damage to her credit reputation, as opposed to the defendant's insurance carrier's $6,500 offer. Being able to show the higher cost of refinancing a $140,000 loan with the plaintiff's damaged credit compared to what

the cost of the loan would be had the plaintiff's credit not been damaged was key to achieving the higher award.

How a credit expert can help

Although major financial institutions rely on the accuracy of credit reports, many courts are not always willing to admit credit reports as evidence, because what is contained in the report is considered hearsay. However, if you use an expert witness, you will be able to get your client's credit report in front of the jury. Because the expert witness is using the client's credit report as the basis of his or her expert opinion, your client's credit report will overcome defendant's objections.

Another helpful tip is to select certain segments of the plaintiff's credit report. Sections of the credit report can be enlarged and used as a demonstrative exhibit to reveal the chronology of events, show the details on which the expert's opinion is based and help explain the expert's testimony.

The detriment of credit damage

Nearly a century ago, when credit was much less important than it is now, courts recognized a ruined credit rating as one of the types of consequential damages that can be recovered. In *Siminoff v. Jas. H. Goodman & Co. Bank*, (1912) 18 Cal.App. 5, the court recognized the value of good credit even where the victim had no future plans to take out a loan or use the credit. Other courts have even noted that, along with pain and suffering, harm to reputation, medical expenses and lost earnings, "a ruined credit rating" is one of the "traditional harms associated with personal injury." (*United States v. Burke*, (1992) 504 US 229.)

Credit damage has even been sought in a bankruptcy case. (*See, In re Barnes*, (1995) 177 B.R. 635, [overruled on other grounds.] In *Barnes*, for the purpose of calculating personal injury exemptions, the court classified credit damages as an item of personal damage and awarded the debtor "a personal injury exemption for all claims that were personal in nature, such as humiliation and embarrassment, damage to his credit reputation and mental anguish." [emphasis added.]

In *Pulver v. Avco Financial Services*, (1986) 182 Cal.App.3d 622, 637, the court noted that damage to the plaintiff's credit reputation was an item of special damages that was properly made part of a libel suit. Including permanent damage to her credit rating, the plaintiff sustained economic damage and incurred loss of earnings and earning capacity. It is interesting to note the link the court draws between credit capacity and reputation and earning capacity. (*Id.* at 630.)

California Civil Code section 3333 allows people to be compensated for damage to their credit reputation: "For the breach of an obligation not arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not."

Conclusion

Complete, realistic compensation for measurable credit damage is a more achievable goal than ever before. At the initial client interview, by asking the client a few, simple questions, you can determine whether the client is entitled to damages from an injury to the client's credit reputation. For example, you should ask whether the client's monthly payments have increased significantly or whether the client has had credit canceled or withdrawn. The financial cost of damaged credit can significantly increase the value of the client's case, and should therefore always be included in a demand. Doing this will insure that all of the client's damages will be compensated.


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