



Administrative Office of the Courts

Chief Justice Matthew B. Durrant
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

Richard H. Schwermer
State Court Administrator
Raymond H. Wahl
Deputy Court Administrator

To: Civil Jury Instructions Committee
From: Nancy Sylvester *Nancy D. Sylvester*
Date: December 11, 2017
Re: Economic Interference and Nominal Damages

I received the following from Ryan Frazier about the subcommittee's discussion on nominal damages and intentional interference.

Here is the general sense from the subcommittee on the issue of nominal damages:

We have not seen any Utah case law regarding nominal damages being appropriate in intentional interference claims. We haven't found any. Some on the subcommittee even suggested that they are not available since they are awarded to vindicate a plaintiff "when there is no substantial loss or injury to be compensated." Black's Law Dictionary (7th ed. 1999). They are awarded as a sort of moral victory. Further, they are awarded in some contexts so that attorney fees can be awarded, but there are not any attorney fees available for intentional interference. Finally, the instruction of the elements of the claim (CV1401) says that the defendant must have caused harm to the plaintiff for the plaintiff to have a claim for intentional interference. Thus, those members of the section that advocate that nominal damages are not available argue that there must be some loss or injury to be compensated in every case, no matter how small.

Even if nominal damages are appropriate in intentional interference cases, we don't think that a nominal damage instruction should be included in the intentional interference instructions. Nominal damages are certainly not unique to intentional interference (and might not even be available in such cases), and there are not nominal damage instructions in any of the other instructions except for a reference to nominal damages as "presumed damages" in the defamation instructions (CV1614).

The mission of the Utah judiciary is to provide the people an open, fair, efficient, and independent system for the advancement of justice under the law.

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If anything, we believe that at most a nominal damage instruction should be included in the general tort damage instructions that a judge and attorneys could decide to use in this context if they believed that it were appropriate to have such an instruction. The parties would then be able to argue for and against the instruction being included in a given case, whatever the nature of the claims.