
2025 PIABA Mid-Year Meeting

DAMAGES – LET’S GET DAMAGES YOU’RE NOT GETTING NOW.

Robert Van De Veire
Adam Weinstein, Jeffrey Erez

Let’s Get Damages You’re Not Getting Now.....2-11

Public Investors Advocate Bar Association
1300 McGee Dr., Ste. 112
Norman, Oklahoma 73072
Office: 405.360.8776
E-Mail: piaba@piaba.org

2025 © PIABA

The information provided in this publication is for the convenience of the members of PIABA and is designed to provide practical and useful information on the subject matter being discussed. Although this information has been obtained from sources which we believe to be reliable, it does not constitute the rendering of legal advice and should not be used and/or otherwise relied on without independent verification. The information and opinions expressed herein do not necessarily reflect the views, policies and/or opinions of PIABA and/or its Board of Directors.

LET'S GET DAMAGES YOU'RE NOT GETTING NOW

Speakers: Adam Weinstein, Esq. (Gana Weinstein, LLP)
Jeffrey Erez, Esq. (Erez Law)

Moderator: Robert Van De Veire, Esq. (Kurta Law)

Public Investors Advocate Bar Association
Mid-Year Meeting (March 10, 2025)
Washington, D.C.

Overview of Non-Traditional Damages

- **Key Types of Non-Traditional Damages:**
 - Emotional distress damages
 - Well-managed (market-adjusted) damages
 - Punitive damages
 - Attorneys' fees
 - Treble damages (statutory claims)
- **Importance:**
 - Increases client recovery and achieves a sense of justice.
 - Addresses egregious conduct and additional harm.

Emotional Distress Damages

- **Challenges:**

- Proving emotional harm without medical documentation.
- Overcoming potential arbitrator skepticism.

- **Strategies:**

- Use client testimony to humanize the harm.
- Leverage expert witnesses (e.g., psychologists).

Well-Managed (Market-Adjusted) Damages

- **Definition:**
 - Calculating damages based on how a portfolio would have performed if properly managed.
- **Expert Testimony:**
 - Use of financial experts to present alternative scenarios.

Punitive Damages

- **Purpose:**

- To punish egregious misconduct and deter future violations.

- **Challenges:**

- High burden of proof (e.g., fraud, malice).
- Arbitrators' reluctance to penalize harshly.
- Demonstrate to a Panel that punitive damages will have a deterrence effect.

Attorneys' Fees and Treble Damages

- **Attorneys' Fees:**

- Statutory basis (e.g., state or federal laws).
- Arguments for fee-shifting.

- **Treble Damages:**

- Available under specific statutes (e.g., RICO, elder abuse).

- **Challenges:**

- Satisfying the elements of the statute(s).

What Factors Do You Consider When Deciding To Pursue Non-Traditional Damages In A Case?

Once You've Made the Decision to Pursue Non-Traditional Damages: Building the Legal and Strategic Framework

- **Legal Basis:**

- Emotional distress: State laws, arbitration flexibility.
- Punitive damages: Fraud, malice, or reckless conduct.
- Treble damages: Statutory claims (e.g., RICO, securities fraud).

- **Strategic Considerations:**

- Balancing client expectations with arbitrator realities.
- Types of documents sought/produced in Discovery
- Pleading considerations

Overcoming Potential Arbitrator Reluctance Or Lack of Familiarity With These Types of Damages

- **Challenges:**

- Arbitrators may prefer to “split the baby.”
- Resistance to granting large awards.
- Arbitrators may not be familiar with these types of damages.

- **Strategies:**

- Educate arbitrators through pre-hearing briefs.
- Cite relevant case law or arbitration award trends.
- Use of Expert Witnesses

Closing and Q&A

- **Key Takeaways:**

- Be creative and strategic when pursuing non-traditional damages.
- Use compelling narratives, expert testimony, and legal precedent.
- Prepare to address arbitrator concerns and skepticism.