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Commercial leases involving tenant and landlord

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The SJC has held that after a breach of a commercial lease by the tenant and termination of the lease by the landlord, an indemnification clause in the lease, in the absence of specific language so providing, does not allow the landlord to recover before the termination of the lease the present value of lost future rent once the landlord relets the property to another tenant for the duration of the lease.

The court's decision surprised many attorneys in Massachusetts. Many believed that, in the absence of a clause in the lease specifically so providing, our common law did allow a landlord to recover contract damages for the present value of lost future rent after termination of the lease.

It seems very unfair to make the landlord wait until the end of the term to collect from the tenant. The tenant may have no assets by the end of the term.

The case is *275 Washington Street Corp. v. Hudson River International, LLC*. Landlords in Massachusetts need to review the remedies sections of their leases because of this case. The lease in the *275 Washington Street Corp.* case did not allow the landlord liquidated damages or other remedies in the event of loss of rent after termination.

The matter can, of course, be resolved by the lease providing that the landlord can recover as liquidated damages, the benefit of his bargain, the difference between the contract rent under the lease for the balance of the term less the fair market value of the leased premises. This shows how important it is to have a well drafted commercial lease that carefully covers all of the significant issues that may occur.

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