

# MARKS & WEINBERG, P.C.

## **Richfield Capital Corporation v. Federal Sign Division of Federal Signal Corporation**

476 S.E.2d 26 (Ga. App. 8/29/96)

DAMAGES - A TALE OF TWO TRIALS. In the first trial, the judge held that the liquidated damages provision in the lease was unenforceable and the lessor was only entitled to "actual damages suffered." Apparently, the lease stated that, upon default, the lessee would be charged 75% of all remaining rents. The court of appeals agreed with the lessee that the lessor could not then go back and attempt to recover 100% of the future rentals, but only an amount it could prove were "actual damages suffered."

However, at the time of the second trial, the lessor contended that it should receive 100% of the unpaid rent at the time of the trial as actual damages. Ironically, this amount was actually greater than the liquidated damages provisions in the lease would have permitted at the time of the first trial.

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