

## Shakespeare on the Recovery of Pain and Suffering

In the opening scene of a recent decision issued by the U.S. Court of Federal Claims, the court quotes from *Othello*:

Who steals my purse steals trash; 'tis something, nothing;  
'Twas mine, 'this his, and has been salve to thousands;  
But he that filches from me my good name,  
Robs me of that which not enriches him,  
And makes me poor indeed.

If there was ever a case that warranted a quote from a Shakespearian tragedy to set the scene, this case seems to be it. The case involved a contract dispute brought by Jay Dobyns, an agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). He alleged that the ATF officials breached an agreement that he had with the agency settling a prior dispute. He contended that ATF's conduct also breached the covenant of good faith and fair dealing implied in that agreement. He sought damages resulting from those breaches. The Government counterclaimed, asserting that Dobyns had breached his employment agreement with the agency by publishing a book based on his experiences with ATF and by contracting his story to create a motion picture. (Note to self: check to see when movie is coming out).

The Court held that there was no express breach of the settlement agreement, but that was not enough to get the Government off the hook. For the Court held that the Government's conduct had breached the covenant of good faith and fair dealing associated with that agreement. The Court thus awarded Dobyns damages for mental distress, as well as for pain and suffering. Rejecting the Government's argument that pain-and-suffering damages were both beyond the court's jurisdiction and not proper in breach-of-contract cases, the court stated:

[T]he breach of the covenant here was "of such a kind that serious emotional distress was a particularly likely result." After all, the breach of the covenant related to a contract in which the underlying subject matter involved, in part, the resolution of claims involving emotional distress, as well as pain and suffering. And the breach of that covenant – and the conduct that effectuated that breach – plainly engendered its own emotional distress, as well as pain and suffering. To conclude that the Restatement rule would not apply to such an instance would be to suggest that there should be no recovery for the breach of a covenant of good faith and fair dealing associated with a contract resolving claims for emotional distress, and pain and suffering. That makes no sense.

The Court closed its decision by quoting the words carved into the office rotunda of the Attorney General, which states: "The United States wins its point whenever justice is done its citizens in the courts." The Court added: "Presumably, what holds true for the citizenry in general ought to hold true for Federal agents who

risk their lives in law enforcement. But if that is so, how does one explain this case?”

The opinion can be found [here](#).