

# New England Legal Foundation

## Advance Sheet

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**Disagreeing with NELF, the Massachusetts Supreme Judicial Court holds that, in a case where the employer had breached its contractual obligation to a research professional resulting in the loss of the laboratory that the professional herself had established using federal grants and other institutional sources, the professional is entitled to recover the cost of replacing the lost lab.**

*Lynn Hlatky, Ph.D. v. Steward Health Care System, LLC* (Massachusetts Judicial Supreme Court)

This case was before the Massachusetts Supreme Judicial Court (SJC) on direct appellate review, and the Court requested amicus briefing on an important damages question under Massachusetts contract law: what is the proper measure of damages when an employer has breached the employment contract of a research professional, by withdrawing its promised support of the laboratory that she had established (with no money or property of her own) to conduct her scientific research, resulting in the loss of the lab? Is such an employee entitled to a multi-million-dollar damages award equal to the replacement cost of the lost lab, as the trial court concluded here? Or is the employee limited instead to compensation for her *expected use* of the lost lab to conduct her research, including any demonstrable economic harm to her professional career, such as the loss of identifiable future earnings. In its decision of April 29, 2020, the SJC unanimously held that such an employee is entitled to a damages award in an amount sufficient to recreate the lost lab, which, the Court opined, represented the life work of the plaintiff, Dr. Lynn Hlatky, a radiobiologist.

Dr. Hlatky had established a laboratory to conduct her cancer research when she was employed at Harvard University, several years prior to her employment with the defendant, Steward Health Care System LLC. Hlatky conceded that she had no ownership interest in the lab, which she had established with federal grant money and with institutional support from her prior employers. Consistent with the accepted industry practice, Hlatky had brought the lab's equipment, staff, and grant money with her when she became an employee of Steward. Hlatky entered into a written three-year employment contract with Steward (renewable by mutual agreement), in which Steward promised to "continue to provide support and suitable office space" for the lab. The contract also stated that it was Steward's "vision" that under Hlatky's leadership, the Center would "evolve into an internationally competitive program." However, Steward soon withdrew its support, reallocating funding to clinical trial research. As a result, the lab became mismanaged and was ultimately dissolved in a federal bankruptcy proceeding. Hlatky was no longer able to pursue her research, and she lost all of the cell samples that her lab had developed. Steward did not renew her employment contract.

Hlatky sued Steward for breach of contract and sought damages for the cost of replacing the lost lab. The jury found for Hlatky and awarded her nearly \$23,000,000, representing the cost of reconstituting the lab and running it for six more years--the length of time that Hlatky had expected

to continue her research before retiring. On remittitur, the trial court reduced the award to \$10.2 million (based on Hlatky's testimony of the cost of reestablishing the lab, and her proven out-of-pocket mitigation costs) and excluded the future costs of running the lab.

Steward appealed the damages award--but not the finding of liability--arguing that Hlatky was only entitled to damages for her personal financial losses (such as her \$200,000 mitigation costs), but not for the lost lab itself. Accordingly, Steward asked the SJC to vacate the \$10 million damages award and either (1) reduce the award to Hlatky's \$200,000 out-of-pocket mitigation expenses or (2) remand the case to the trial court to determine whether Hlatky had submitted sufficient evidence of her future lost earnings.

In its amicus brief in support of Steward, NELF argued that Hlatky was only entitled to recover for her *expected use* of the lost lab, not for the lost lab itself. NELF pointed out that it is black letter contract law that Hlatky should only recover "the value of the *bargained-for benefit* of which [she] ha[d] been deprived." *Salvas v. Wal-Mart Stores, Inc.*, 452 Mass. 337, 374 (2008) (emphasis added). Hlatky bargained for Steward's support of the lab, so that she could continue with her cancer research there. That alone was her compensable expectation interest under the agreement. She did not bargain for ownership of the lab. She only bargained for her uninterrupted *access* to the lab. Accordingly, NELF argued, Hlatky should only recover for that lost access to the lab. NELF acknowledged that the trial court might have been correct when it stated that Hlatky "had an expectation interest in the continuation of the research program that she created." But, NELF argued, this only meant that, since her lab research was the mainstay of her career, Hlatky's damages could entail any demonstrable and foreseeable economic harm to her career, such as the lost growth in her earning capacity, or the loss of identifiable future earnings. In other words, NELF argued, the trial court had erred when it concluded that Hlatky's expectation interest in the continuation of the lab warranted damages for the cost of replacing the lab itself, as if Hlatky's creation of the lab were tantamount to outright ownership of the lab.

In its decision, the SJC recognized that it was difficult to apply traditional contract principles to this unique set of facts. Nonetheless, the Court concluded that, under those traditional principles, Hlatky had a compensable expectation interest that Steward would properly support the lab throughout her term of employment and that, at the end of her employment with Steward, she would still have a fully functioning lab and cell samples to take with her to her next place of employment. The Court also concluded that, while Hlatky did not own the lab, she "personally suffered harm from the foreseeable destruction of her life's work." As the Court explained:

If Steward had fulfilled its obligation to provide support to the Center, Hlatky reasonably would have expected, at minimum, to have at the end of the three-year contract access to a functioning, turnkey laboratory with the capacity to continue the cancer research that had become her life's work. Because of Steward's breach, Hlatky lost her laboratory, equipment and, most importantly, the cell samples--the culmination of twenty-five years of work.

Accordingly, the Court unanimously affirmed the \$10 million damages award, which represented Hlatky's estimate for the cost of reconstituting the lab.

However, the Court's opinion did not stop there. In an unanticipated twist, the Court was evenly divided (among the six members of the Court who participated in the decision) on the unprecedented issue of whether it should impose conditions on the damages award, to ensure that Hlatky use the \$10 million for its intended purpose--the recreation of the lab--and not for an unrelated purpose, such as personal use. Justice Gants, joined by two other Justices, opined that the Court should impose such conditions, to avoid unjustly enriching Hlatky, while Justice Lenk, joined by the two remaining Justices, disagreed and opined that damages should be awarded with no strings attached, as per usual. Since the Court was equally divided on the question, the Court affirmed the Superior Court's unconditional damage award. In NELF's view, the Justices' dispute on this issue underscores the doctrinal tension inherent in awarding (substantial) contract damages for the cost of replacing something that was never the plaintiff's personal property to lose. Only time will tell what precedential power the Court's opinion will have. As Justice Lenk aptly observed, "[t]hat similar situations could well arise again in our research-rich environment is hardly unthinkable," in light of the Commonwealth's numerous teaching hospitals, acute care hospitals and educational institutions.