

## Tortious Contractual Interference in New Jersey

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In a free-market economy, competitors can generally pursue prospective clients in any fashion as long as the pursuit does not run afoul of the law. At times, however, this pursuit could give rise to a claim of tortious interference with a prospective economic advantage should certain factors be present. Under New Jersey law, a claim for tortious interference with a prospective economic advantage may exist if the aggrieved party demonstrates four elements:

- a protectable interest in the economic relationship,
- malice (which is the offending party's intentional interference without justification),
- a reasonable likelihood that the interference has caused the loss of a prospective economic advantage to the aggrieved company, and
- resulting damages which are demonstrable.

In order to prove a claim for tortious interference with a prospective economic advantage, the aggrieved party must show that it had a reasonable expectation of economic benefit that was lost as a direct result of the offending company's malicious interference, and further, that it suffered an ascertainable monetary loss. The malice recited by the relevant law requires the intentional infliction of harm without justification or excuse. In this case-by-case analysis, it must be demonstrated that the offending party's conduct was both injurious and transgressive of generally accepted standards of common morality or law to be considered unlawful. Mere aggressive competition for a potential client would not suffice, but instead, evidence must be presented of an unlawful action whereby the only intent was to harm its competitor in an attempt to obtain an advantage.

The prosecution of a claim for tortious interference with a prospective economic advantage is often complex. Thus, these claims should be carefully vetted with counsel before filing suit. Moreover, even if the conduct was unlawful or inappropriate, a plaintiff must present proof of the economic loss, which may be difficult to establish. Should all factors be present, however, these claims may be a powerful tool to punish competitors whose conduct runs afoul of generally accepted standards and morality in the marketplace.

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