

Rule 55-II. Ex Parte Proof by Motion of Pecuniary Losses; Deficiency Judgment

(a) EX PARTE PROOF OF PECUNIARY LOSSES.

(1) *Procedural Requirements; Motion and Affidavit.* In any action in which a default has been entered and the only remaining claims are for property damage or other pecuniary losses, judgment may be entered if, within 60 days of the default, a motion for judgment is filed along with an affidavit meeting the requirements of Rule 56(c)(4) and setting forth:

- (A) the specific pecuniary loss sustained;
- (B) its causal relationship to the factual situation set forth in the complaint; and
- (C) that a copy of the motion was sent to the defendant at the defendant's last known address notifying the defendant that any objections to the motion must be received by the clerk within 21 days.

(2) *Supporting Papers.* The affidavit provided with the motion must be accompanied by:

- (A) a paid bill for the work done or an estimate of value from a person, firm or company regularly engaged in the business of doing such work or in the event of total loss, regularly engaged in the estimation of such losses;
- (B) a sworn statement from plaintiff's employer setting forth plaintiff's rate of compensation and the days and hours plaintiff was unable to work on account of the matters alleged in the complaint; or
- (C) a statement of account from a health care provider or facility setting forth the reasonable and necessary charges incurred by plaintiff for treatment of injuries received as a result of the occurrence alleged in the complaint.

(3) *Compliance with Servicemembers Civil Relief Act.* Where applicable, the filing party must attach a Civil Action Form 114 that complies with the Servicemembers Civil Relief Act (50 U.S.C. §§ 3901-4043).

(4) *Judicial Action.* The judge or magistrate judge may enter judgment for the amount alleged in the affidavit or for such lesser sum as may be warranted by all materials of record, including defendant's objection, if any, or may schedule the matter for an ex parte proof hearing, as appropriate. If Civil Action Form 114 indicates that the defendant is in the military or that his or her military status is unknown, the court must follow the procedures set forth in Section 201 of the Servicemembers Civil Relief Act (50 U.S.C. § 3931).

(b) **DEFICIENCY JUDGMENT.** A deficiency judgment after repossession of personal property may be granted as provided in Rule 55-II(a). However, the motion, affidavit, and supporting documents, or the proof presented at an ex parte proof hearing, must set forth a basis on which the court can reasonably conclude that the plaintiff complied with applicable law and that the property was resold for a fair and reasonable price.

COMMENT TO 2017 AMENDMENTS

Stylistic changes were made to this rule to conform with the 2007 amendments to the Federal Rules of Civil Procedure.

COMMENT

Rule 55-II provides an optional method for proving the amount of pecuniary losses in cases of defaults governed by Rule 55(b)(2). In cases to which Rule 55-II is applicable, plaintiff may elect to proceed under that Rule or may await the scheduling of an ex parte proof hearing in the normal course. Since the reach of Rule 55-II has been expanded to cover not only property damage claims but also claims involving other types of pecuniary losses (e.g. wage losses, medical bills, deficiency judgments, repair costs incurred to make good work improperly performed by a home repairman or contractor), the time for defendant to object to plaintiff's affidavit of loss has been enlarged from 10 to 20 days. This amendment also makes Rule 55-II consistent with amended Rule 55(b) which effectively affords defendants 20 days to object to any newly filed affidavit concerning the sum to be entered in a default judgment pursuant to that Rule.