



THE CENTER FOR FORENSIC ECONOMIC STUDIES

Damages Analysis and Testimony: Personal Injury, Commercial, and Employment Litigation

www.cfes.com

215-546-5600

cfes@cfes.com

Key Issues to Consider When Evaluating Your Economic Damages Case

EMPLOYMENT LITIGATION

Damages are determined by examining the plaintiff's earnings with defendant employer, plaintiff's current earnings, and whether or when subsequent earnings will achieve parity with earnings from the defendant.

Common elements of damages include:

Wages /Salary, Bonuses, Commissions, Health Benefits, Stock Options, Search-for-work Expenses, Retirement Benefits, and Expenses of New Employment.

Common issues, sources of evidence:

Probable tenure with defendant. Would the plaintiff have worked for defendant through retirement age absent the alleged discrimination? Sources can include plaintiff's work history, resume, economic assets, retirement benefits, health, economic factors affecting employer, and average tenure of industry and company cohorts.

Duration of unemployment / earnings parity. Sources can include plaintiff's actual post-termination earnings and government data on employment and earnings patterns.

Mitigation. Sources can include plaintiff's testimony on job search. Economists can proffer testimony on job markets and rates and duration of unemployment by industry and geographic area.

Pension. The value of a discontinued defined-contribution pension fund is the total contributions that might be expected to be made during the back- and front-pay period. Under defined-benefit plans where the front-pay period does not continue through retirement age, benefits are typically a function of years of service and final salary. Sources include the Summary Plan Description for pension benefits.

Health insurance. Usually measured as replacement cost for comparable coverage, less employee's contributions.

COMMERCIAL LITIGATION

Damages are generally expressed as 1) lost profits or 2) lost enterprise value.

The general legal standard is fair market value (price between an informed buyer and seller where neither is compelled to act). The measurement of damages is determined by the facts of the particular case.

OUR TEAM OF EXPERTS



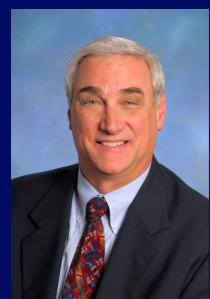
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COMMERCIAL LITIGATION (continued)

Common elements of damages include:

Lost Profits / Profitability Analysis, Cost Analysis, Revenue Projections, and Reduction to Present Value.

Methods of damages measurement include:

Before and After (plaintiff's profits before and after); But-for (plaintiff's lost profits where loss is specific); Yardstick (compare plaintiff's profits to similar firms or to comparable businesses).

Common Issues, sources of evidence:

Causation. Was the loss a direct result of defendant's actions, or can it be explained by external factors such as a declining economy, increased competition or increased cost-of-goods sold?

Avoided Costs. Were any costs such as salaries, rents, and materials saved by lost sales?

Reduction to Present Value. Was risk factored into the projection? Future income estimates must account for the degree of risk involved --the future income stream is discounted by a risk premium reflecting revenue / profit uncertainty.

Sources of Evidence. Income statements, statements of cash flow, balance sheets, invoices, customer revenue history, and sales contracts.

PERSONAL INJURY LITIGATION

Damages are determined by how long and by how much the tort will limit earnings. Past and future costs caused by the injury, and offsets to those costs (if any), must also be considered.

Common elements of damages include:

Earning Capacity, Worklife, Lost Fringe Benefits, Lost Household Services, and Medical Costs.

Common issues, sources of evidence:

Earning Capacity. Expected income taking into consideration age, education, etc. Sources can include actual earnings, vocational or medical testimony and statistical studies.

Worklife. Expected time spent in workforce. Sources can include statistical data, medical records, vocational testimony, employee handbooks, pension plans, and partnership agreements.

Employment patterns. Hours and overtime, e.g. Sources can include union agreements, employment records, and pay stubs.

Earnings growth. Will earnings grow over time due to inflation and increases in personal productivity? Sources can include actual earnings, employment records and macroeconomic data.

Fringe benefits. Includes only items that the plaintiff has actually lost, such as pension and health insurance. Vacation and sick pay generally do not count towards damages. Value is usually measured by replacement cost.

Future medical costs. Sources can include life-care plans detailing future medical and home-care costs, including special housing, education and equipment requirements, through life expectancy for a certain period, often established by medical testimony.

Household services. Sources for the amount of household services rendered and their replacement value can include testimony of family members and government and academic studies. Damages are often measured by replacement cost in the relevant geographic area.