

**CASE STUDY:
HOW THOUGHTFUL TESTIMONY FROM AN ECONOMIC EXPERT
WAS KEY IN MULTIPLE MILLION DOLLAR LOST WAGES SUIT**

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Problem

When an employee is terminated, injured, or for some other reason unable to work, what wages has he or she lost? What damages should be awarded? The question is central to thousands of personal injury and wrongful termination claims each year. The answer is by no means straightforward.

Typically, economic experts use historical wages as a baseline to estimate lost wages for the time when it is reasonably expected the employee would be out of work.

However, in some instances such typical, and generally accepted, approach may either create inappropriate expectations for the plaintiff or bring about an unfair disadvantage to defendants.

When significant changes are present in the economic environment, or when a projection into the future is significantly longer than the number of years of pre-incident work history and wages, the use of pre-incident historical wages may not be sufficient for a solid projection of lost wages.

How to argue for a more realistic estimate of lost earning power? The participation of an economic expert through economic damages analysis and testimony can make a decisive difference.

In 2006, a 26 year-old union carpenter was injured in a fall from a scaffold at a New York construction site. He sued the allegedly liable parties on the basis that defendants violated certain sections of New York Labor Law. The case was tried in the Bronx Supreme Court.

The plaintiff claimed that as a result of injuries suffered he was now unable to work. Before the accident, his annual income was \$75,000 – \$80,000. An economic expert retained by plaintiff's counsel estimated that, based on lost work expectancy of 27 years, and an estimated future life span of 45 years, the plaintiff had lost as much as \$12 million in wages, fringe benefits and pension, and incurred future medical costs of approximately \$4 million. To build the projections, the plaintiff's economic expert relied on statistics dating back to 1975, using it to model a 40-year span of earnings and a subsequent 35-year span of pension benefits.

Plaintiff's counsel asked the jury to award damages totaling nearly \$20 million, of which \$9 to \$12 million in past and future lost earnings and benefits.

Defense counsel felt the claims were excessive. How could that argument effectively be made to the jury?

Approach

Josefina V. Tranfa-Abboud, Ph.D., an economist who serves as a Director in the Litigation and Corporate Financial Advisory Services Practice of Marks Paneth & Shron LLP (MP&S), testified as an economic expert retained by the defense. Under direct examination, she highlighted serious conceptual shortcomings in the plaintiff's economic expert's assumptions affecting the plaintiff's economic expert projection of lost wages.

The plaintiff's economic expert had projected a lifetime of future income (composed of wages, fringe benefits, and pension) based on the plaintiff's only five years of work and wages history – years that coincided with an economic boom, particularly for the real estate and construction sectors. Dr. Tranfa-Abboud challenged the validity of both the length of the projection and the number of years of past statistical data that the plaintiff's economic expert relied on for the analysis of alleged earnings loss. Through both direct and cross-examination, she made these key points:

- **The projection of alleged losses was for a period of time that was too long relative to the number of years the plaintiff had worked prior to the accident.** Such a projection was, in Dr. Tranfa-Abboud's opinion, speculative, and rendered the analysis by the plaintiff's economic expert unreliable and inappropriate.
- **The use of wage trends dating back to 1975 to conduct a projection for the subsequent 40 years starting in 2007 was speculative as well.** Dr. Tranfa-Abboud highlighted that the economic environment from the 1970's, 1980's and 1990's was completely different from the economic environment from 2000 to 2006, and that in turn was different from the economic environment from 2006 forward, particularly in construction.
- **The plaintiff had worked only for four years – four years marked by a significant boom in the real estate sector and in the construction industry. The plaintiff's earnings during five short years of work history could not be used as indicative of potential earnings** for a projected 27 future years, Dr. Tranfa-Abboud said.
- **Unemployment rates have been significantly higher over the last three to four years,** particularly in construction. The plaintiff might have faced unemployment just as many others have.

Dr. Tranfa-Abboud highlighted that all analysis, including a projection of the plaintiff's possible earnings in another occupation, is speculative in this case, and could not be supported within a reasonable degree of economic certainty.

Results

After a seven-day trial, the Jury awarded the plaintiff \$1.2 million in total damages, \$600,000 for lost earnings and \$600,000 for pain and suffering.

Dr. Tranfa-Abboud's testimony was a critical element of the defense case. By credibly discussing the shortcomings of the assumptions made by the plaintiff's economic expert, her testimony provided valuable information to the Jury's determination of a fair award, one more consistent with the realities of the economic environment and with the plaintiff's likelihood of having maintained continuous employment and a certain level of earnings.

This clearly illustrates the power of an economic argument, and the value of presenting reasonable economic assumptions via credible, thoughtful economic expert testimony.

CASE STUDY

For more information, or to discuss the value of adding an economic expert to your litigation team, contact:

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BIOGRAPHY

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Josefina V. Tranfa-Abboud Ph.D. is a Director in the Litigation and Corporate Financial Advisory Services Group at Marks Paneth & Shron LLP. Dr. Tranfa-Abboud has extensive experience in economic analysis related to labor and employment disputes, as well as commercial disputes involving claims of breach of contract and business interruption. Dr. Tranfa-Abboud provides research, statistical analysis, damages analysis and expert witness services for both plaintiffs and defendants. She is fluent in English as well as in Spanish and Italian, her native languages.

Before joining Marks Paneth & Shron, she was a senior economist for an economic consulting services firm in New York City and was responsible for consulting services and analysis in the areas of personal injury, wrongful death, mass torts and commercial revenue forecasting. She also served as a research economist for ERS Group, a nationally recognized labor and employment consulting firm, in Washington, DC and Tallahassee, Florida. At ERS Group, Dr. Tranfa-Abboud was responsible for the design and implementation of economic modeling in complex employment discrimination disputes.

Prior to her arrival to the United States, Dr. Tranfa-Abboud was an advisor to the Chief of the Central Budget Office in the Venezuelan government. She provided consulting services to the Commission for the Reduction of Public Expenditure, a committee appointed by the President of Venezuela, and also served as an economic advisor to the Central Planning Office of Venezuela. Dr. Tranfa-Abboud was also a member of that government's privatization committee, which was charged with providing analysis and support for the process of restructuring public enterprises such as aluminum and steel plants, which were later privatized.

Dr. Tranfa-Abboud holds a Ph.D. in economics from Florida State University and a BS in Economics from Universidad Central de Venezuela. Her academic experience includes teaching quantitative methods and econometrics at the doctoral level at Rutgers University. She has also taught at Florida State University and at the Universidad Central de Venezuela.

A member of both the American Economic Association and the National Association of Forensic Economics, Dr. Tranfa-Abboud has been published in the Journal of Forensic Economics. She is based in Marks Paneth & Shron's midtown Manhattan headquarters.

EDUCATION

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