File #926

The Case of the Lifetime Loss

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"Loose lips sink ships," warns the old adage. In this case, loose lips resulted in a significant claim for lifetime lost income, clarified and quantified with the expertise of forensic accountants.

A law firm asked us to analyze a claim against their client, an employer who was sued by a terminated employee. Terms of the employee's termination agreement with the employer specified that the employer would not discuss details of the termination with anyone.

Unfortunately, the agreement was breached. A subsequent prospective employer withdrew an offer of future employment (offering significantly increased compensation) following a conversation with the previous employer. The unhappy terminated employee filed a lawsuit which led to The Case of the Lifetime Loss.

The plaintiff alleged in the lawsuit that a very lucrative employment offer was withdrawn due to the previous employer's breach of the termination agreement. A claim in the amount of $700,000 was submitted for lifetime lost income.

Cremers, Holtzbauer & Nearmyer noted that the estimate, calculated by two university economists, appeared to be flawed. Further analysis identified key errors in the calculation methods.

First, all the mathematical assumptions were on a lifetime of compensation at the level of the lucrative employment offer, although the facts indicated that the market had never compensated the claimant at that level and the probability of a lifetime of lost benefits was uncertain.

Second, the calculations factored a continuing salary increases at the level the terminated employee received at his eventual employment after his first year. We contended that the first year's percentage increase, since it was given after the initial year of employment, was likely larger than average increases would be in the future.

Third, the economists also factored the value of salary-driven benefits such as unemployment, workers' comp, and the differences in Social Security contributions as lost income. We pointed out that use of these benefits was inappropriate because the overall claim itself was based on income loss given full employment. Additionally, the original claim assumed an income loss based on Social Security contributions made, rather than the differences in Social Security benefits that would ultimately be received.

Our analysis suggested that the more realistic lifetime loss would be around $200,000, substantially less than the $700,000 requested. Although the actual settlement was closed, we were informed by the law firm that both the employer and the insurance company involved were quite satisfied with the outcome of the case.

Summary

Background

Despite a termination agreement with a departing employee to the contrary, a former employer provided information to a prospective employer which resulted in the withdrawal of a lucrative offer for future employment. The terminated employee sued for damages, claiming lifetime loss of income in the amount of $700,000.

Objective

◆Analyze the assumptions and calculations in a claim prepared by two university economists.
◆Calculate a more accurate actual lifetime loss of income.

Our Determinations

◆There was a loss of annual and potential lifetime income.
◆Using the value of lost benefits was inappropriate since the overall claim was based on the assumption of full employment.
◆Lost Social Security income was calculated by reduced future benefits, rather than ongoing contributions.

Results

◆The claim itself as calculated by the economists was inflated due to unrealistic assumptions.
◆Plaintiff's credibility was seriously damaged by the real facts.· Our analysis provided a significantly reduced estimate of damages.

Bottom Line

We would like to be part of your team, too. Please call Dale Cremers, Robert Holtzbauer, or Roger Nearmyer for a free consultation.