



ECONOMIC DAMAGES

Area of Expertise:

Breach of Contract
Commercial Litigation
Donning & Doffing
Failure to Accommodate a Disability
Failure to Hire
Failure to Promote
Meal and Rest Break Violations
Medical Malpractice / Personal Injury
Misclassification
Off-the-Clock Work
Record Keeping Violations
Regular Rate Calculations
Time Clock Rounding
Time Shaving
Unpaid Overtime
Wrongful Death
Wrongful Termination

HOW CAN WE HELP YOU?

Whether you are putting forward allegations or defending against them, litigation requires the assignment of dollar values to claims. The calculation of economic damages is not a simple formula—multiple factors can impact the analysis and economic loss claims can extend many years into the past or the future.

In a **single plaintiff** or **small group** claim, we conduct individualized analyses to identify the economic impact an employment decision or an injury had on a plaintiff's earnings capacity—and what employment alternatives exist to mitigate that loss. In a **class action** matter, damages may be evaluated for hundreds or thousands of potential claimants. We work with our clients to identify the relevant factors and data necessary to quantify **economic loss**.



ABOUT WELCH CONSULTING

At Welch Consulting, we have the know-how to generate economic damage estimates in single plaintiff, multi-plaintiff and class action matters. We have over 30 years of experience working with clients to fully understand the unique aspects of each case. We combine that experience with analytical skill to provide accurate and reliable damage or exposure estimates.

We frequently provide services such as:

- Compilation and analysis of data from multiple sources to quantify potential damages
- Computation of economic losses under alternative scenarios
- Preparation of expert reports
- Support for settlement / mediation proceedings
- Preparation of compelling graphics and visual data representation
- Trial preparation
- Expert Testimony
- Replication and critique of opposing expert damage calculations

Selected Industry Experience:

Advertising
Aerospace
Airlines
Agriculture
Asbestos
Banking & Financial Services
Correctional Facilities
Construction
Cruise Lines
Education
Energy
Federal, State & Local Government
Food Processing
Gaming
Grocery Stores
Healthcare
High Tech
Hotel & Hospitality
Housing
Insurance
Information Providers
Manufacturing
Media
Medical Laboratories
Mortgage Lending
Newspapers
Petroleum
Pharmaceuticals
Professional & Scientific Services
Professional Sports
Radio & Television
Research & Development
Retail
Software
Tax Preparation
Telecommunications
Tobacco
Trucking & Delivery
Waste Management



Individualized Damages

For every litigant there is a story. Whether a damage claim stems from an injury, layoff, denial of a promotion, or another type of employment setback, it is not enough to simply apply broad-brush assumptions in evaluating economic loss. Correctly projecting an individual's potential earnings and benefits requires understanding how the employee's skills and abilities fit with the employer's staffing needs and compensation practices, both in the current economic environment and into the future. When mitigation of economic loss is at issue, it is critical to assess how a plaintiff's actions and opportunities in the external labor market can affect his or her earnings recovery. Welch Consulting offers a full range of economic and labor market analysis services, which consider all relevant factors that affect damages, including:

Small changes
can make a
BIG difference.

A missed leveraged buyout opportunity cost a fund manager five years of carried interest.

Changing the rate of return on capital, as well as the discount rate, by only **0.5%** increased the estimated damages by **\$1.5 million.**

Understanding compensation and benefit plans, including incentive pay, profit-sharing, stock options and other deferred pay, defined benefit retirement plans and executive compensation. Welch works with corporate human resources and benefits personnel to develop analyses that reflect realistic compensation levels in today's unpredictable economic climate.

Identifying factors that impact compensation and prospects for continued employment apart from an alleged wrongful incident. Voluntary and involuntary employee turnover, organizational restructuring and changes to compensation plans are facts of life in the workplace and must be considered in calculating lost earnings.

Researching labor market opportunities that show a Plaintiff's potential to partially or fully mitigate economic losses. We conduct job availability studies to identify the economic trends and job opportunities that demonstrate the potential for economic recovery.

Conducting occupational and industry research to identify similar and related occupations and industries and their pay levels. We review occupational metrics to match a Plaintiff's abilities and qualifications with alternatives in the labor market. We regularly consult with human resources personnel, vocational experts, recruiters and industry experts to understand hiring, recruiting and pay trends in the relevant occupation or industry.

Assessing mitigation efforts. Insufficient effort or counter-productive job search activities can prolong unemployment and, consequently, falsely increase alleged damages.

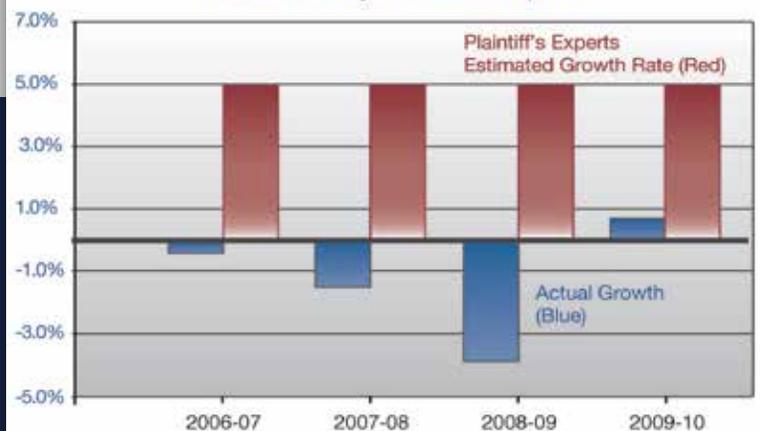
CASE STUDIES:

Lost Earnings Calculations

The opposing expert calculated an insurance agent's commissions based on his historical earnings in the years prior to his termination. However, those years were 2000-2006, a period of unparalleled growth in the insurance industry. In 2007, the industry experienced a nationwide slowdown which manifested in 5%-8.5% drops in written insurance premiums over the following 3 years, according to the Insurance Information Institute. Over this same period, the insurance company revised their sales compensation plans, which also negatively affected agent commissions. Accounting for these events dropped \$1 million from the damage estimates prepared by the Plaintiff's expert.



Year-to-Year Change in Insurance Premiums Written in Property/Casualty Sector Compared with Projected Change in Plaintiff's Revenue Estimated by Plaintiff's Expert



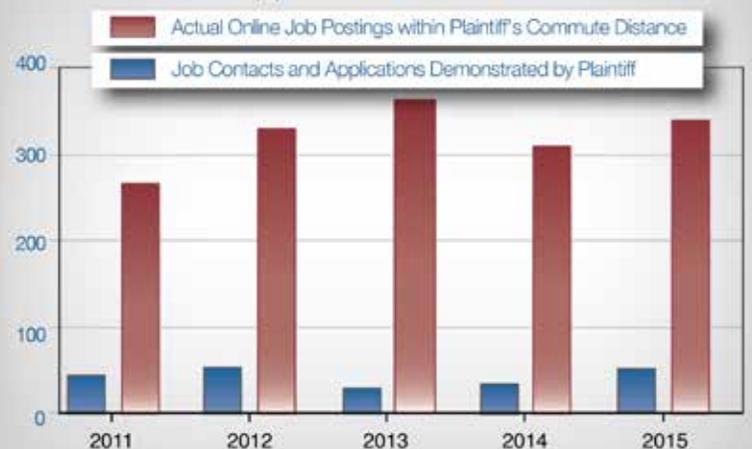
Job Availability Analysis

A terminated real estate asset manager claimed she was unable to find full-time employment for nearly five years. While she produced a list of more than 450 employers she said she contacted, only a minority of those jobs were in the real estate industry. When only real-estate jobs were counted, her job search showed far fewer applications - the equivalent of 3 job contacts per month of unemployment.

Using a database of historic online job postings, we identified over 1,500 asset manager and related jobs within her prior commuting distance from Riverside, California. We combined this job posting data with other industry research that showed how double-digit growth in investment in single-family and multi-family housing has been driving demand for experienced real estate professionals in the region.

Our analysis demonstrated that a focused job search in this strong and robust job market could have resulted in a new position and significantly curtailed the plaintiff's damage period.

Plaintiff Job Applications vs. Available Positions





Class Action Damages

Class actions occur in a wide range of settings including discrimination, wage & hour, and commercial litigation. Such matters typically require the combination and analysis of large datasets and development of a methodology that incorporates as much information as possible from available data along with outside data and assumptions to generate reasonable estimates of class-wide damages. Welch Economists assist clients with all aspects of class-wide damage analyses, including:

Economic Damages in a Wage & Hour “Missed Meal” Case

In a recent case, we showed that shifts with unrecorded meal breaks were predominantly occurring when employees were paid for meals during overnight work. This negated the need for the employee to clock out and back in for meals, but appeared to show a “missed meal” for each overnight shift. Damages for non-recorded meals were consequently shown to be substantially lower than initial estimates suggested.

- **Developing methodologies** that make use of all available data while recognizing and adjusting for missing, incomplete, or inaccurate data. We work with the client to understand the business processes that generate the data, the intended purpose of data collection, and shortcomings that may arise in using the information for damage calculations.
- **Combining data** from multiple sources and, where applicable, multiple systems in use during the relevant period to create a complete picture of firm and employee behavior as complete as possible.
- **Providing damage estimates** under a variety of alternative assumptions. Oftentimes data does not exist to perfectly identify or measure violations, so we use the available information to provide a range of feasible violation rates and then provide damage estimates under those scenarios.
- **Including relevant penalties** (such as PAGA, waiting time and inaccurate wage statement) to provide a complete picture of total exposure.
- **Creating clear and complete reports** displaying all components of total damage that allow for quick and easy identification of total damages under multiple assumptions and the interaction of those assumptions.
- **Replicating and critiquing** opposing expert damage analysis, enabling counsel to understand the underlying assumptions made by the other side and the primary drivers of differences between the two parties’ estimates.

CASE STUDIES:

Time Clock Rounding

A small group of named plaintiffs sought to represent a class of employees alleging lost earnings due to time clock rounding. Welch Consulting was able to combine information from paper time records and electronic human resource and payroll system information to determine whether employees benefited, were harmed, or were unaffected by the time clock rounding system. We were able to show that the impact of the rounding system varied by location, individual, occupation and over time. Additionally, Welch Consulting quantified for the client the potential exposure under various alternate scenarios. In this case, we showed that the named plaintiffs benefited from the time clock rounding system.



Interactive Estimates in Donning and Doffing Matters

In a donning and doffing case where there was no measure of the amount of time spent on the disputed activity, pre- and post-shift, both sides presented their own estimates of the amount of time required. We used the electronic time records and payroll data to examine employee activity and provide ranges of reasonable estimates of time spent donning and doffing safety equipment. Additionally, we created an interactive report that allowed attorneys to enter an assumed number of minutes per shift and immediately see the total damages, including applicable penalties and interest, generated by that assumption. That report was a valuable tool in the mediation as it enabled the attorneys to immediately see the monetary impact of all proposed assumptions.

In a class-wide pay analysis, an employee's work status of "full-time" or "part-time" was not included in an opposing expert's regression model. Including an employee's work status in the analysis lowered the gender coefficient for women—and therefore estimated damages—substantially. It is important to account for all relevant factors in discrimination models; damage estimates can be dramatically altered by omitting information.



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