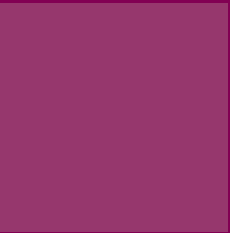


Services and Capabilities



The Economics of Complex Business Disputes

Complex business disputes
often raise equally



Valuation by economic methods yields the most accurate estimate of an asset's worth.

complex economic issues.

The Sarbanes-Oxley Corporate Fraud and Accountability Act has caused many companies to re-evaluate their choice of professional service firms for their financial, legal and consulting needs. NERA consultants understand that our “product” is our opinion or conclusion which, in order to be both reliable and persuasive, must be arrived at with detached objectivity.

The puzzling aspects of commercial litigation can take shape when the accounting, economic and financial components come together. Complex business disputes often raise equally complex economic issues. Resolving these disputes requires objectivity, access to resources, information and experience, and a rigorous and unbiased scientific approach. NERA professionals provide dispute resolution insight through research, analysis and valuation.

“An injured party must do more than show it suffered some loss of profit. The amount of loss must be shown by competent evidence with reasonable certainty.

What constitutes reasonably certain evidence of lost profits is a fact-intensive determination. At a minimum, opinions or estimates of lost profits must be based on objective facts, figures or data from which the amount of lost profits may be ascertained.” —*Szczepanik v. First Southern Trust Co.*, 883 SW2d 648, 649 (Tex 1994).

The Economics of Complex Business Disputes

Determining the financial impact of a particular set of circumstances (breach, tort, fraud, etc.) on an organization means separating the proverbial wheat from the chaff. Economic impact related to the issue in question must be distinguished from the extraneous and the irrelevant. Analysis of accounting books and records provides a transactional foundation. Then, in order to provide a compelling and appropriate context within which operating results can be understood, any company analysis must be supplemented with industry and market insight.

Benefit-of-the-bargain and forecasting the “but-for” world are often the key issues in contract breach and damage claims arising from various torts. At NERA, our analyses begin with the accounting issues of cost and profit ratios, appropriateness of standards and financial statement presentation.

Complex business disputes also require analysis to forecast expected market response and product support in light of unexpected—and perhaps unfair—market conditions. These forecasts can be based upon track record information or extrapolation of historic data, adjusting for expectations and trends. Forecasts can also be based upon relationships to independent indicia—a yardstick by which the subject company can be measured. Each method requires significant analysis to pare down the assumptions that can possibly be made to construct the most probable models. The sciences of economics, finance, accounting and statistics provide a foundation of methodology and standards. Fluency in these disciplines is essential to propriety and objectivity. Here NERA experts excel.



areas of expertise

- ▶ **Business and economic forecasting**
- ▶ **Statistical analysis**
- ▶ **Economics and econometrics**
- ▶ **Finance models**
- ▶ **Financial statement analysis**
- ▶ **Generally accepted accounting principles**
- ▶ **Generally accepted audit standards**
- ▶ **Business valuation and uniform standards of professional appraisal practice**
- ▶ **Options valuation and risk management**
- ▶ **Intangible/intellectual property valuation**
- ▶ **Intellectual property asset management**
- ▶ **Product liability and mass torts**
- ▶ **Employment and compensation**

What Expertise Do You Need?

These scenarios illustrate a range of real-world cases that require a blend of accounting acumen, business valuation experience and economic market analysis. Issues often include: analyzing historic information, activity and profitability; recognizing trends; assessing expectations; measuring market activity, reaction and value; identifying alternates, substitutes, or proxies for comparison; isolating economic forces that have a causal effect on activity being measured; and presenting clear and concise valuation methodologies and results.

A gasoline retailer is alleged to have breached an agreement with various quick service restaurants to co-brand food at service stations.

Manufacturers of one natural gas filtration system take issue with claims and comments of a competitor, claiming the assertions are false.

The general contractor of a large hotel/casino finished the project several months later than initial projections. Disputes arise with the owner as well as with sub-contractors.

A local electric motor renovation and repair company expands rapidly due to its ability to rewind motors to OEM specifications. The manufacturer alleges the local company had developed this competitive edge by stealing trade secrets.

A small research and development company claims that a large household cleaning products manufacturer has infringed on a patent protecting the rights to earnings from a now popular cleaning product.

Several of the rainmakers of an insurance brokerage leave to establish a competing organization. They are accused of breaching covenants not to compete and tortiously interfering with an existing business.

“The distinguishing feature between... cases permitting and denying recovery for lost profits is reliance upon routinely kept business records produced in court

to show an evaluation of the business’ decreased profitability based upon objective facts, figures and data, and not upon the subjective opinions of interested parties.” —*Holland v. Hayden*, 901 SW2d 763, 766.

Our Approach

NERA professionals combine economic principles, recognized finance and valuation models, accounting principles and statistical techniques with vast industry experience to address issues arising from general civil disputes, strategic business decision-making, public policy, competition and regulation. We are as recognized for our rigorous application of accepted scientific theory and mathematical models as we are for our ability to communicate concepts, opinions and conclusions in a clear, understandable and persuasive manner.

Advisory Services

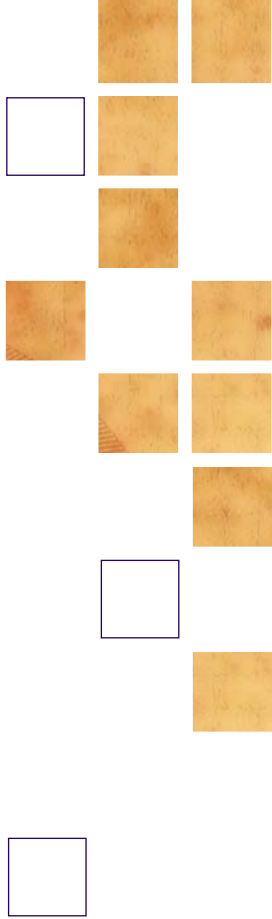
that help shape business strategies

- Analysis and impact of competition, regulation and management decisions on market and firm performance
- Analysis of cost, pricing and product strategies
- Liability valuation and management of risk
- Business valuation, intangible property valuation and options valuation

Law & Economics Services

that help shape litigation strategies

- Risk analysis and dispute avoidance
- Early dispute resolution
- Analysis of economic issues in understanding the merits of a case
- Discovery insight and objective analysis of economic impact
- Reporting and testimony



About NERA

NERA Economic Consulting is an international firm of economists who understand how markets work. Our clients include corporations, governments, law firms, regulatory agencies, trade associations and international agencies. Our global team of 500 professionals operates in 16 offices across North and South America, Europe, Asia and Australia.

NERA economists devise practical solutions to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance and litigation. Founded in 1961 as National Economic Research Associates, our more than 40 years of practical experience creating strategies, studies, reports, expert testimony and policy recommendations reflects our specialization in industrial and financial economics.

Because of our commitment to deliver unbiased findings, we are widely recognized for our independence. Our clients come to us expecting integrity; they understand this sometimes calls for their willingness to listen to unexpected or even unwelcome news.

NERA Economic Consulting (www.nera.com) is a Marsh & McLennan company (MMC). MMC is a global professional services firm with annual revenues exceeding \$10 billion. It is the parent company of Marsh Inc., the world's leading risk and insurance services firm; Putnam Investments, one of the largest investment management companies in the United States; and Mercer Inc., a major global provider of consulting services. Approximately 60,000 employees provide analysis, advice and transactional capabilities to clients in over 100 countries.

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