

At A Glance NERA's Complex Commercial Litigation Practice

Our Practice

Complex business disputes often raise complex economic, financial, and accounting issues. Resolving these requires objectivity, access to resources, information, and experience, and a rigorous and unbiased scientific approach. NERA professionals contribute to dispute resolution by applying advanced research techniques in research to problems in liability, damage, and valuation.

Our experts combine knowledge of economics, finance, accounting, valuation, and industry experience to address issues in civil litigation, business decision-making, public policy, competition policy, and regulation.

Our capabilities include:

- Contract and tort damage claims in general business litigation
- Business valuation
- Financial asset and options valuation
- Forensic accounting
- Financial statement analysis
- Insolvency, zone-of-insolvency, and deepening insolvency
- Fraudulent conveyance
- Post-acquisition disputes
- Lost profits and business interruption
- Antitrust
- Intellectual property

The Economics of Complex Business Disputes

Determining the financial impact of an alleged offense (such as a breach, tort, or fraud) on a business requires a transactional foundation based on a thorough analysis of accounting books and records. Then, any analysis must be supplemented with industry and market knowledge in order to provide a context within which operating results can be understood.

Finding the benefit-of-the-bargain and forecasting the “but-for” world are typical tasks in deciphering 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. We also forecast the expected product support and market response in light of unexpected—and perhaps adverse—market conditions. These forecasts can be based upon extrapolation from historic data or econometric measurement of explanatory factors. Economics, finance, accounting, and statistics provide the methodological foundations. In these disciplines, NERA's experts excel.

Client Experiences

These examples illustrate real-world cases that require a blend of accounting acumen, business valuation experience, and economic 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.

Hayes-Lemmerz International, Inc.

Following a bankruptcy filing and replacement of top management, Hayes-Lemmerz International, Inc. (HLI), a leading supplier of suspension module components, restated its previously-issued financial statements resulting in a cumulative downward adjustment to net income of \$218 million. A class of bondholders sued former members of HLI's Board of Directors (who had served during the fiscal years in question).

To estimate damages to bondholders as a result of the alleged misstatement, NERA examined the timing of the release of accounting information, and the price behavior of the bonds and common shares at the time of those disclosures. NERA also analyzed the timing of the bond purchases made by plaintiff investors and the benefit to bondholders resulting from leverage throughout the class period. Based on this analysis, NERA concluded that the damages suffered by the class were about a quarter of the amounts claimed by plaintiffs.

NERA also compared the relative riskiness of a debt investment in HLI based on the financials as initially issued versus the financials as appropriately restated. NERA found little, if any, quantifiable increase in risk, therefore contradicting plaintiffs' "but-for" claim. NERA's conclusions about the damage claims and accounting restatements helped prompt a reasonable settlement of the case before trial.

Interline Energy Services, Inc. & Interline Resources Corporation vs. Basin Western, Inc.

While off-loading natural gas liquids at Interline's gas fractionation plant facility, a seal between Basin Western's truck and the facility failed, causing serious damage to the facility. Interline sued Basin Western for the physical damage, loss of earnings, and the loss of the plant's future value. Basin Western claimed that Interline caused the occurrence.

Retained by the defendant, NERA performed statistical analyses on Interline's production records and provided a calculation of the actual loss sustained as a result of the interruption. NERA's review of the historic financial records found that Interline's loss mitigation efforts compensated for much of the occurrence's impact on the plant's revenues, and that Interline had sustained no actual ongoing or future loss of earnings. NERA also testified that the discount rate applied by Interline's financial expert was not based on generally accepted modern portfolio theory or the tenets of financial economics.

Although the jury decided that both parties shared fault equally, it clearly agreed with NERA's claim that plaintiff's valuation was excessive. In fact, the jury decided that there were no further lost earnings damages for which Basin Western was responsible.

About NERA

NERA Economic Consulting is an international firm of economists who understand how markets work. We provide economic analysis and advice to corporations, governments, law firms, regulatory agencies, trade associations, and international agencies. Our global team of more than 600 professionals operates in over 20 offices across North America, Europe, and Asia Pacific.

NERA provides practical economic advice related to highly complex business and legal issues arising from competition, regulation, public policy, strategy, finance, and litigation. Our more than 45 years of 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 and the unvarnished truth.

NERA Economic Consulting (www.nera.com), founded in 1961 as National Economic Research Associates, is a unit of the Oliver Wyman Group, an MMC company.

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