Andrews Myers

When Your Damages Expert is Better Left in the Bullpen

Earlier this summer, the Texas Supreme Court issued an opinion in a complex trade secret case holding that "none of the Plaintiffs' evidence was legally sufficient to support the damages awarded" by the jury and it reversed and rendered a take nothing judgment in favor of the defendants.

Andrews Myers served as the trial attorneys for the defendants in that case, *Pike v. Texas EMC Management*, 63 Tex. Sup. Ct. J. 1384, 2020 WL 3405812 (Tex. June 19, 2020) (Rehearing denied, October 2, 2020). The Plaintiffs claimed between $7mm and $20mm in damages. After the plaintiffs presented one of their owners as an expert on business valuation, we were faced with some tough questions to evaluate and answer:

(1) Had we demonstrated through objections and cross-examination that the plaintiffs' damage testimony was legally insufficient to support any award of damages?
(2) Do we call our own damages expert to explain why the plaintiffs' damages theories should fail?
(3) Do we need to call our damages expert to provide an alternative damage model?

Our damages expert was prepared to testify that the Plaintiffs' damage model did not comply with applicable accounting and valuation standards, was based on faulty data and faulty assumptions, and that even if the assumptions the Plaintiffs were making were true, the result would be many times less than what plaintiffs were seeking. However, we also knew there could always be a danger that cross examination could provide something useful that the Plaintiffs failed to present in their case.

Our team ultimately decided not to call our damages expert. Unfortunately, at the time, the jury sided with the plaintiffs. Six years later, and with some tremendous appellate work led by attorneys from Haynes & Boone, our judgment at the time that the plaintiffs' evidence was in fact "no evidence" was correct and we made the right choice.

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