

How Do I Know How Much This Case is Worth? **Theresa Lynn Sidebotham, Esq.**

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Plaintiffs and defendants both need to have an idea how much a case is worth. If you are thinking about filing a case as a plaintiff, you need to know if it will be worth going through the hassle, emotional stress, and costs. You need to know whether you should settle, and for how much, or if you should take the case to trial. If you are a defendant, you need to know what kind of financial impact the case could have. You must know what you are up against, when a settlement offer is reasonable, and when it is too much to pay.

Here are some general principles. Valuing a legal case starts with the plaintiff's damages. This could be the damages in lost profit from a breach of contract, financial damages from a wrongful termination of employment, or lost future wages from a personal injury. There are many kinds of damages, including pain and suffering (in some types of cases), or even punitive damages intended to punish the wrongdoer, and your attorney can help you figure out what the case is worth in damages. Your attorney may use an expert witness to help with this.

Damages aren't particularly tied to motives or to how bad the behavior was. A situation where people behaved outrageously, but there wasn't much in the way of damages, may not make a good legal case. Just be glad the damage was minimal, and move on. In another case, an unfortunate accident, where things just went wrong, could result in a huge amount of damage. Still, the jury may be more sympathetic to the injured person when the injuring behavior was horribly careless or evil, such as in a DUI or sexual abuse case.

Also, both sides have to keep in mind the cost of the trial itself, which could easily be \$100,000 or more. Usually, that is money that cannot be recovered from the other side (except under some statutes or contract provisions.)

Beyond that, you will need to evaluate the claims in a case. Some attorneys use a form of decision tree to analyze litigation.¹ This method looks at the probability of different events happening in the litigation to evaluate the case. For instance, suppose that you are the plaintiff, and you have damages that would be worth \$4.0 million, if a jury gave you the full value of your damages. The defendant files a motion to dismiss the claims. Also, some of your proposed damages may be barred by the trial court, and if they are not allowed, your case is only worth \$2.0 million. You think there is about a 70% chance that you will win the motion to dismiss, and that your case will be allowed to go forward,

¹ Such as Litigation Risk Analysis™, developed by Marc B. Victor, discussed in *Successful Partnering Between Inside and Outside Counsel* (Robert L. Haig Ed.) (Association of Corporate Counsel & West 2000).

but a 30% chance you will lose that motion. If it does go forward, there is about a 50% chance that the trial court will allow all the damages, but a 50% chance that your damages theory will be worth only \$2.0 million.

You have a 30% chance of getting nothing because you lose the motion. Then you multiply your 70% chance of going forward by 50% either way. This gives you a 35% chance of getting \$4 million and a 35% chance of getting \$2 million. You add your chances together. $(.35 \times \$4,000,000) + (.35 \times \$2,000,000) + (.30 \times 0) = \$2,100,000$. That is the approximate value of your case. If you get a settlement offer for around \$2,000,000, you will be doing well for the value of your case. Even though you might have gotten \$4,000,000, you might also have gotten nothing.

These calculations are complicated, especially as you add in more claims and factors. Also, the value of the case changes constantly depending on where you are in the process. For instance, the case will have a different value after the trial court denies the motion to dismiss. You may only be able to get a ballpark idea, but the changing value of a case is something that both sides need to think about as the case progresses.