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Litigation

How a Downturn Could Impact Civil Jury Awards

By Daniel Brobst and Benjamin Wilkoff

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It's likely that current economic conditions will impact how juries determine damage awards in civil cases, say Cozen O'Connor attorneys Daniel Brobst and Benjamin Wilkoff. They explain how inflation, recession, and previous downturns could influence a juror with regard to a case.

To succeed in the courtroom, a commercial litigator must be able to accurately assess the financial implications of a case. In civil practice, plaintiffs and defendants are constantly at odds not just over the law, but also the valuation of the suit. Before a complaint is filed, and throughout the life of a suit, financial factors will influence jurisdictional decisions, settlement strategy, expert retention, viability of mediation, and the willingness to put a matter before a jury.

To that end, understanding the impact of economic trends and other external financial factors will help litigators better advise clients and provide the most accurate case valuation.

To make such a judgment in this economic climate, it's important to understand and recognize the effects of inflation, the threat of a potential recession, and how this will play into jury verdicts in civil trials—particularly because past volatile economic conditions have created significant swings in jury awards.

Current Climate

On Sept. 21, the Federal Reserve made an unprecedented move, raising its benchmark interest rate by 75 basis points for a third straight time. This latest rate hike followed back-to-back 75 basis point increases in June and July. After the July increase, commentators noted that consecutive hikes of this magnitude have not occurred since the 1980s.

Investors and consumers should expect additional rate hikes in the coming months, and rapidly increasing rates have understandably sparked fears of a new recession.

Meanwhile, consumers are grappling with the effects of inflation on their daily lives. The rising costs of necessities like groceries, as well as volatile gas prices, have stretched paychecks to the limit and beyond.

Recent surveys have shown that roughly a third of Americans earning more than \$100,000 are living paycheck to paycheck. The same fraction of Americans making \$50,000 to \$100,000 are also struggling.

Additionally, many experts predict that the supply chain issues that have plagued the US for the past few years will continue.

How Will Juries React?

Given the current economic climate, it is worth assessing jury trends during past financial downturns to prepare for and predict the impact current financial trends could have on civil juries. As a baseline, it is important to note that jury verdicts have increased at an astronomical rate over the past decade.

Citing a study by the National Law Journal, the Travelers Institute noted that from 2015 to 2019, the "average verdict more than tripled from \$64 million to \$214 million." Although some of this increase can be attributed to lucrative verdicts in tobacco and pharmaceutical litigations, there has been a general trend toward greater jury awards throughout the nation.

Historically, this effect is exacerbated in times of financial hardship. Financial downturns often hit the general public the hardest, while larger corporations and businesses often continue to flourish.

An April 2022 report from the Guardian found that an analysis of 100 US corporations revealed net profits increased by a median of 49%, when comparing the first fiscal quarter of 2022 with the same quarter, pre-pandemic.

Jurors are also likely to read reports of skyrocketing CEO compensation and bonuses juxtaposed with stories of simultaneous employee furloughs and layoffs.

Further, jury pools drastically shrink during economic downturns, as the meager per diem provided to sitting jurors does little to assuage their fears of taking time off of work. Thus, the faceless defendant inevitably suffers from the begrudgingly present juror who possesses prevalent anti-corporate sentiments. As a result, during financial downturns, plaintiffs' verdicts often skyrocket.

This stark reality was ever present during the height of the 2008 recession and its aftermath. In 2009, the "top five product-defect verdicts rose 52 percent in total value" to "\$620 million as juror attitudes on companies soured amid the recession and rising unemployment."

While the US is not presently in a recession, many economists predict it's just around the corner. If that occurs, especially following a national pandemic, one should expect a similar trend of rapidly increasing civil jury verdicts, in line with historical precedent.

For example, potentially signaling what is to come, a Philadelphia jury recently handed down an award of \$19.7 million for a doctor's failure to diagnose a patient's spinal lesion, in the largest state medical malpractice verdict in Pennsylvania in 2022.

Accordingly, a savvy litigator must always be mindful of the correlation between the economic climate and civil jury awards, so they can counsel their clients on these inevitable implications.

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