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Sufficient Relevant Data and the Collapse of an Expert's Opinion

Case Synopsis: Plaintiffs, who owned a private adoption agency, sued former customers for defamation. Plaintiffs' alleged that the defendants purportedly posted negative comments, via the Internet, on adoption-related websites, which irreparably harmed the business, its ability to obtain income and, eventually, led to the adoption agency's demise. The plaintiffs' economist calculated a loss of profits based on: 1) average number of lost adoptions per year via a document produced by the adoption agency 2) average gross revenue per adoption via research the economist conducted on the Internet 3) gross profit margin per the adoption agency's federal tax returns. These figures were used to calculate an annual loss of profits, which were then extrapolated to 3, 5 and 10 years to calculate the Plaintiffs' economic damages.

Analysis: Defense experts noted that the plaintiffs' economist's assumptions did not reconcile to the plaintiffs' tax returns. Average gross revenue (on a per adoption basis) reported on the adoption agency's federal tax returns was far less than the average gross revenue per adoption, researched via the Internet, and relied upon by the plaintiffs' economist. Multiple bank and credit card statements were analyzed, which showed an excess of \$1 million dollars passing through the adoption agency's accounts in the year prior to the alleged defamation.

Correspondence was produced in the tax preparer's work-papers between himself and one of the plaintiffs. In this correspondence, the plaintiff confides to the tax preparer that a subcontractor embezzled almost \$500,000 from the company, and that the ensuing tax year will be more difficult, financially. This letter made no mention of the alleged defamation, which had purportedly been occurring prior to, and during, the time of this letter. This information led to the preparation of detailed questions and exhibits, which defense counsel used at the deposition of the plaintiffs' tax preparer.

Result: After the tax preparer testified in his deposition that the tax returns did not accurately reflect the operations of the adoption agency the plaintiffs' economist prepared an amended report, which did not rely on the adoption agencies tax returns for a gross profit margin. Consequently, the plaintiff economist's calculation of economic damages relied predominately on Internet research.

After many months of analysis and thousands of documents, the plaintiff economist's final calculation of economic damages, going into the trial, relied solely on one piece of paper prepared by the adoption agency, which listed the average number of adoptions performed annually by the agency. Verdict for the defense.

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