Illinois Association of Defense Trial Counsel
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IDC Quarterly | Volume 21, Number 3 (21.3.14)

Feature Article

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Strategies for Barring Lost Wage Claims Made By Plaintiffs Who Are Not Legally in the United States

Is a plaintiff who is not legally able to work in the United States entitled to recover lost wages in a civil court tort action? No appellate court in Illinois has addressed this question yet. Given that the United States government suggests there are millions of undocumented workers in the country, it may seem surprising that no Illinois appellate court has ruled on the issue. See U.S. Immigration & Naturalization Serv., U.S. Dep't of Justice, The Triennial Comprehensive Report on Immigration, at 39 (2002), available at http://uscis.gov/graphics/aboutus/repsstudies/tri3.pdf (last visited June 15, 2011). In fact, not many state or federal courts outside of Illinois have considered it either. Though many trial courts have considered the issue as to the discoverability of a plaintiff's citizenship and right-to-work status when a plaintiff is making a lost wage claim (usually finding the information to at least be discoverable), there has been little opportunity for the courts to consider the ultimate admissibility of that information at trial. One reason could be that no plaintiff wants to admit under oath in open court that he is not legally in the United States or has been working here illegally, but prefers to opt to withdraw the lost wage claim. Other possible reasons are discussed below. Whatever the reason, however, defense attorneys should be aware of how to uncover the information and then determine what to do with it when discovered.

The basic legal argument for defendants to make is that a plaintiff who has no authorization to work in the United States should not be allowed to seek damages for wages he claims he could have earned in the United States but for his accident, for the simple reason that the plaintiff has no legal right or ability to earn those wages in this country. As the proponent of a claim for lost wages, a plaintiff has the burden of laying an evidentiary foundation for his entitlement to recover such damages.

Some individuals residing in the United States illegally came here illegally, with no permission at all. Others may have entered with temporary visas (such as the common "B2 Tourist Visa") that they then allowed to lapse. There are many other ways in which individuals come to reside in the United States illegally, but these are two of the most common ways. In neither case is an individual allowed to legally work in the country. Many people who wish to legally enter or remain in the United States find it difficult, or even impossible, to obtain the necessary permission to do so. The following is a brief synopsis of how immigrant visas are issued in the United States. This synopsis is in no way meant to advocate for or against immigration reform and instead, is merely meant to provide the reader the necessary background to understand the extent of current, and likely future, issues with undocumented workers.

Sections 201 through 203 of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1151-1153, allots a certain number of immigrant visas ("green cards") in each category (family-based, employment, etc.) per year, which is then divided throughout all of the countries in the world and then further divided into employment

and family-based. The family-based visas are further divided into sub-categories in order of overall preference, by such groupings as spouses, children and siblings. The sub-category concerning children preference is further divided by married and unmarried, and under and over 21 years old. (Details of this scheme can be found on the U.S. State Department's website.) The strictest limitations are for individuals being sponsored by other green card holders, as opposed to being sponsored by United States citizens. There are no limitations on visas being issued to immediate family members (spouses, parents, and unmarried children under 21) being sponsored by United States citizens.

Further, there is a per country limit of 7% of the total number of visas available. See Section 202 of the INA, 8 U.S.C. § 1152. For certain countries, however, including China, India, Mexico, and the Philippines, the maximum percentage is limited to 2%. As an example, which can be seen in the U.S. State Department Visa Bulletins published each month, the number of green cards available for unmarried children of permanent residents (green card holders) from Mexico is limited each year to 26,266. See U.S. Dep't of State, Visa Bulletin For June 2011, available at http://www.travel.state.gov/visa/bulletin/bulletin_5452.html (last visited June 15, 2011). To put this into perspective, as of publication of this article, the State Department was issuing green cards to individuals in this category who applied in August 1992. Ten years ago, however, green cards were only being issued to individuals in this category who applied in October 1991; meaning that in 10 years, applicants have only moved up on the list by 10 months. Realistically, this slow-moving process means that unless the law changes and more visas are allowed, particularly for those countries with the severe restrictions, many individuals who have applied for a green card will never receive one in their lifetimes. Consequently, undocumented immigrants likely will continue to reside and work in the United States.

This national issue can affect litigation of cases involving wage claims made by individuals who are living and working in Illinois illegally. Take the case of a plaintiff who was an employee of a subcontractor on a construction project and who sued the general contractor after he was injured on the job. At his deposition, the plaintiff testified that he was born in Mexico but had a valid green card. He came to the United States as a teenager. He had a valid social security number and held several prior jobs. There was no reason to believe that he was lying about his status until later, when he disclosed information about employment after his accident. One of the employers performed what is referred to as an "E-Verify" search, through which an employer can check with the Department of Homeland Security, in partnership with the Social Security Administration (SSA), to make sure the potential employee has the right to work in the United States. In this case, the E-Verify search suggested that the SSA could not verify the right to work. This result did not definitively mean the plaintiff did not have the right to work, but rather meant only that he might not have the right to work.

After further investigation by defense counsel, it was determined that the plaintiff had falsely filled out his union application, numerous employment applications, and I-9 (Employment Eligibility Verification) forms as to his immigration status. Written discovery was then propounded upon the plaintiff to obtain information and documentation concerning his right to work in the United States. The plaintiff objected, but the trial court compelled the responses, finding the information discoverable due to the possible impact on lost wages. As had happened in many other cases, however, the motion judge declined at that time to decide whether the citizenship status and right to work would be admissible at trial. Ultimately, it was confirmed that the plaintiff was not in the country legally and never had the legal right to work. There was also a question as to whether he would ever be able to obtain a green card; but if he did become eligible for a green card, it likely would not be for many years.

Although Illinois courts have not had to address directly the issue of whether a plaintiff who is not legally entitled to work in the United States can recover lost wages in a civil tort action, those courts have recognized the issue exists. In *Diaz v. Chicago Transit Authority*, 174 Ill. App. 3d 396, 528 N.E.2d 398 (1st Dist. 1988), the trial court found that a plaintiff's citizenship status was relevant where the plaintiff was seeking lost wages, as it bore directly on his ability to work. The court ruled that the defendants would be allowed to point out to the jury that the plaintiff had no legal right to hold a job if the issue of the plaintiff's future employability were raised. The plaintiff then withdrew his lost wage claim. *Diaz*, 174 Ill. App. 3d at 406.

The issue has arisen in federal courts as well. The United States Supreme Court decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 122 S. Ct. 1275 (2002), is instructive. Although the *Hoffman* decision pertained to a National Labor Relations Board (NLRB) wage claim, numerous federal and state courts have followed *Hoffman* in holding that plaintiffs' lost wage claims in third-party tort actions either are barred entirely or are limited to the wages the plaintiffs could have earned in their countries of origin, rather than under United States wage conditions.

In *Hoffman*, the Supreme Court overturned an award of back pay to an illegal alien who had been unlawfully discharged by his employer in violation of the National Labor Relations Act (NLRA). The Court relied upon the apparent conflict between an award of back pay and the Immigration Reform and Control Act of 1986 (IRCA), 8 U.S.C. § 1324a (2000), which is "a comprehensive scheme prohibiting the employment of illegal aliens in the United States." *Hoffman*, 122 S. Ct. at 1282. The IRCA established "an extensive employment verification system * * * designed *to deny employment* to aliens who (a) are not lawfully present in the United States, or (b) are not lawfully authorized to work in the United States * * *." *Id.* (emphasis added).

The IRCA mandates that employers verify the identity and eligibility of all new hires by examining specified documents before the new hires begin work. If an alien-applicant is unable to present the required documentation, the unauthorized alien cannot be hired. *Id.* at 1283. Similarly, if an employer unknowingly hires an unauthorized alien, or if the alien becomes unauthorized while employed, the employer is compelled to discharge the worker upon discovery of the worker's undocumented status. Employers who violate the IRCA are punished by civil fines and may be subject to criminal prosecution. *Id.* The Supreme Court pointed out:

> Under the IRCA regime, *it is impossible for an undocumented alien to obtain employment in the United States* without some party directly contravening explicit congressional policies. Either the undocumented alien tenders fraudulent identification, which subverts the cornerstone of IRCA's enforcement mechanism, or the employer knowingly hires the undocumented alien in direct contradiction of its IRCA obligations.
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> *Id.* (emphasis added).

The Court in *Hoffman* concluded that "allowing the Board to award backpay to illegal aliens would unduly entrench upon explicit prohibitions critical to federal immigration policy, as expressed in the IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations." *Id.* at 1284. The Court suggested that to hold otherwise would allow the Board to award back pay "for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud." *Id.* at 1283.

The February 14, 2011 decision by the federal district court in *Zuniga v. Morris Material Handling, Inc.*, No. 10 C 696, 2011 WL 663136 (N.D. Ill. Feb. 14, 2011), is also instructive in that it provides an analysis of court decisions from numerous other jurisdictions on the issue. In that case, the plaintiff suffered personal injuries and was making a claim for lost wages. At his deposition, the defendant's attorney asked the plaintiff various questions about his immigration and work status in the United States and the plaintiff refused to answer. The issue was then raised in a motion to compel. *Zuniga*, 2011 WL 663136, at *1.

The defendant argued that the plaintiff's immigration status is discoverable because it may limit or bar his lost wages claim. The *Zuniga* court performed an extensive analysis of the law, including the *Hoffman* case, as well as the Court of Appeals for the Seventh Circuit case of *Del Rey Tortilleria, Inc. v. NLRB*, 976 F.2d 1115 (7th Cir. 1992). In *Del Ray Tortilleria*, the court held unenforceable a NLRB order of backpay (wages that would have been earned but for the employer's actions) to undocumented workers. In that case, the Seventh Circuit found dispositive an earlier Supreme Court decision, *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883 (1984), and held that, when determining backpay, undocumented workers "must be deemed unavailable for work * * * during any period

when they were not lawfully entitled to be present and employed in the United States." *Del Ray Tortilleria*, 976 F.2d at 1118-19 (internal quotations and emphasis omitted). The *Del Ray Tortilleria* court observed that passage of the Immigration Reform and Control Act of 1986 seemingly reinforced the rule that backpay was unavailable to undocumented workers. *Id.* at 1122.

The defendant in *Zuniga* argued the plaintiff's claims for lost earnings and lost earning capacity were similar to the remedies at issue in *Hoffman* and *Del Ray Tortilleria*, in that they represented wages for work never to be performed. *Zuniga*, 2011 WL 663136, at *3. The defendant asserted that the plaintiff's illegal immigration status defeats those elements of his damages as contrary to federal immigration policy, or at least those damages should be subject to a different analysis. *Id.* The plaintiff cited in response an Illinois Workers' Compensation Act proceeding, *Economy Packing Co. v. Illinois Workers' Compensation Commission*, 387 Ill. App. 3d 283, 901 N.E.2d 915, 923 (1st Dist. 2008). *Id.*

The *Zuniga* court observed that the plaintiff's argument that *Economy Packing* made "immigration status irrelevant to a claim of lost wages under Illinois law read too much into that decision." *Id.* Workers' compensation benefits are designed to compensate an employee for injuries arising out of and in the scope of employment, regardless of fault. *Economy Packing*, 901 N.E.2d at 921. Reaching that result is not the purpose of civil litigation, which assigns fault. Moreover, only the employer of the injured worker is subject to the provisions of the Workers' Compensation Act, and one can argue that an employer who fails to adhere to the procedures and prohibitions of the IRCA should not be permitted to escape its obligations under the Workers' Compensation Act by employing undocumented workers but not having to protect them when they are injured on the job.

Although the federal district court in *Zuniga* did not rule on the issue of ultimate admissibility of the plaintiff's citizenship status, the court's analysis of the *Economy Packing* case is very useful to civil-suit defendants, as cases in the workers' compensation area (and the related unemployment compensation area) typically are all plaintiffs have to rely on in trying to argue that an undocumented worker's lost wage claim should not be barred. The *Zuniga* court held that the policy considerations applicable to workers' compensation matters are not implicated in a common law tort case and cited to a number of courts that have held that an undocumented worker's employment status bars or limits the worker's claim for lost wages under common law. See, *e.g.*, *Martinez v. Freeman*, No. 06 C 50199, 2008 U.S. Dist. LEXIS 112290, at *7 (N.D. Ill. Feb. 22, 2008) (barring undocumented plaintiff's claim for loss of future U.S. earnings but allowing claim for lawful future earnings, like earnings in his native Mexico); *Veliz v. Rental Serv. Corp. USA, Inc.*, 313 F. Supp. 2d 1317, 1336-37 (M.D. Fla. 2003) (barring undocumented plaintiff's claim for lost future United States wages); *Hernandez-Cortez v. Hernandez*, No. A 01-1241-JTM, 2003 WL 22519678, at *7 (D. Kan. Nov. 4, 2003) (holding that plaintiff's illegal immigration status precludes recovery for lost income based on projected U.S. earnings); *Rosa v. Partners in Progress, Inc.*, 868 A.2d 994, 1002 (N.H. 2005) (finding worker's immigration status relevant to issue of lost wages).

In *Veliz v. Rental Service Corp. USA, Inc.*, a products liability case, the court barred the lost wage claim of a plaintiff who was not eligible for employment in the United States. Citing *Hoffman*, the court found that it could not condone an award of lost wages, for doing so would "trench" upon the immigration policy of the United States. Moreover, condoning prior violations of immigration laws and awarding lost wages would be tantamount to violating the IRCA. Awarding lost wages would be akin to compensating an employee for work to be performed—a result the court could not sanction. *Veliz*, 313 F. Supp. 2d at 1335-36. The *Veliz* court observed that the back pay in *Hoffman*, and lost wages in *Veliz*, were nearly identical because both constitute an award for work never to be performed. Therefore, permitting an award predicated on wages that could not lawfully have been earned runs contrary to both the letter and the spirit of the IRCA, simultaneously undermining its purpose. *Id*. at 1337.

Likewise, in *Hernandez-Cortez v. Hernandez*, the plaintiff, an undocumented worker, brought a civil suit resulting from a car accident, seeking as part of his damages lost income based on projected earnings in the United States. The court found that the plaintiff's status as an undocumented worker precluded his recovery for lost income. The court noted: "[W]hile many illegal aliens do find employment in the United States, this

argument does not overcome [8 U.S.C.] § 1324a and *Hoffman*." *Hernandez-Cortez*, 2003 WL 22519678, at *6-7. Further, the court also rejected the plaintiff's argument that it was unlikely he would be deported. *Id.* at *7.

In *Martinez v. Freeman*, an Illinois federal district court barred the plaintiff's lost wage claim, even though the claim was based on United States wage rates of a plaintiff in a personal injury claim who was not in the United States legally and had no legal right to work here. The court stated that the rationale of *Hoffman* applied to a state court tort action "with equal force" and was unwilling to allow an award of lost United States wages "to an illegal alien for years of work not performed, for wages that could not lawfully have been earned, and for a job obtained in the first instance by a criminal fraud." *Martinez*, 2008 U.S. Dist. LEXIS 112290 (citing *Hoffman*, 535 U.S. 137, 149 (2002)).

In *Romero v. California Highway Patrol*, No. CO5-03014 MJJ, 2007 WL 518987 (N.D. Cal. Feb. 14, 2007), a California federal district court held that if the plaintiff in a personal injury tort case is not lawfully available for past and future work in the United States because of his immigration status, he is not permitted to recover compensation based on United States wage rates to which he is not legally entitled. *Romero*, 2007 WL 518917, at *1.

In *Cruz v. Bridgestone/Firestone North America Tire, LLC*, No. 06-538 BB/DJS, 2008 WL 5598439, at *5 (D.N.M. 2008), a federal district court, interpreting New Mexico law, held that New Mexico courts would not allow compensation for the value of lost earnings (among other things) to the plaintiffs, who had no legal right to work in the United States, because damages are not "reasonably certain" to occur if they are inherently speculative. *Cruz*, 2008 WL 5598439, at *6 (citing *Mitchell v. Lovato*, 97 N.M. 425, 640 P.2d 925, 927 (1982)). Whether any or all of the plaintiffs would even be employed by an American employer was not "reasonably certain." Moreover, whether each or any of the undocumented workers would work in the United States for any length of time (much less until they were age 65 or 76) was "inherently speculative." *Id.* The court ultimately barred the opinions of the plaintiffs' experts regarding lost wages (among other things), because they only computed lost wages based on U.S. earnings, which were speculative. *Id.* at *7. See also *Garay v. Missouri Pacific Railroad Co.*, 60 F. Supp. 2d 1168, 1173 (D. Kan. 1999), where the court found that an economic expert's failure to consider the decedent's status as an illegal immigrant "render[ed] his opinion as to future lost wages wholly unreliable."

Additionally, one can look to other types of cases in which lost wages are a possible remedy. In employment discrimination cases, for instance, numerous courts have held that undocumented workers are barred from making claims of lost wages. See *Crespo v. Evergo Corp.*, 841 A.2d 471, 366 N.J. Super. 391, 401 (2004) (claim for economic damages arising out of pregnancy discrimination claim precluded in light of *Hoffman*'s strong enforcement of policies served by the IRCA); *Escobar v. Spartan Security Serv*., 281 F. Supp. 2d 895, 896-97 (S.D. Tex. 2003) (employee who sued under Title VII of the Civil Rights Act, 42 U.S.C § 2000e, *et seq*., for sexual harassment and retaliation not entitled to back pay because illegal alien at the time of the events).

In *Renteria v. Italia Foods*, No. 02 C 495, 2003 WL 21995190 (N.D. Ill. 2003), the court considered whether back or front pay, in a retaliatory discharge case for filing a claim under the Fair Labor Standards Act, could be awarded to an employee who was not authorized to work in the United States legally at the time of retaliatory conduct. The court held that such damages could not be awarded and stated:

> The policies that motivated the enactment of the IRCA are certainly subject to debate, but the IRCA is the law of the land, and the Supreme Court [in *Hoffman*] has made it clear that awarding back pay to undocumented aliens contravenes the policies embodied in that law. An award of front pay would be inappropriate for the same reason: front pay essentially assumes that the worker will continue to work for the employer in the future, which is against the law for an undocumented alien.

Renteria, 2003 WL 21995190, at *6.

Thus, many courts have either barred the lost wage claims made by undocumented workers, or have at least barred plaintiffs from making any claim based on United States wage potentials, and instead limited the

claims to that which they can prove they could earn in their countries of origin. In many and possibly most cases, this ruling likely would result in a claim for lost wages being withdrawn. A plaintiff would have to weigh the somewhat limited wage claim of his country of origin with the possible prejudice a jury might have towards an undocumented worker (not to mention the potential far-reaching negative effects of an admission under oath as to his illegal status) to determine whether the possibly nominal lost wage claim is worth the risk of potentially prejudicing the jury. Further, though the courts mainly have been silent on this issue, a further argument a defendant could make if a plaintiff persists in claiming wages based on earning potentials in his native country is that the plaintiff should first be made to show that he has moved back to his native country.

To be clear, not all courts around the country have held as a matter of law that a lost wage claim should be barred entirely or even limited to earning potentials in the plaintiff's country of origin. Some courts have held that the issue is one for the jury to decide. In those cases, the jury is informed that the plaintiff is illegally in the United States and has no legal right to earn wages in the country, but the plaintiff can make arguments such as the following: he is not likely to be deported; he has applied for a green card and is still waiting due to severe limits in the number of green cards available; he has always paid taxes; he has consistently been employed in the United States; or he did not submit false documents to obtain employment. See *Majlinger v. Cassino Contracting Corp.*, 802 N.Y.S.2d 56, 25 A.D.3d 14 (App. Div. 2005); *Madeira v. Affordable Housing Found., Inc.*, 312 F. Supp. 2d 504 (S.D.N.Y. 2004); *Cano v. Mallory Mgmt.*, 760 N.Y.S.2d 816 (Sup. Ct. 2003); *Kalyta v. Versa Products, Inc.*, No. 07-1333 (MLC), 2011 WL 996168 (D.N.J. Mar. 17, 2011); *Melendres v. Soales*, 105 Mich. App. 73, 306 N.W.2d 399 (1981); *Silva v. Wilcox*, 223 P.3d 127 (Colo. Ct. App. 2009); *Hernandez v. M/V Rajaan*, 848 F.2d 498 (5th Cir. 1998); *Celi v. 42nd Street Dev. Project, Inc.*, 5 Misc. 3d 1023(A), 799 N.Y.S.2d 159 (Sup. Ct. 2004).

In addition, at least one court post-*Hoffman* has declined to bar lost wages to an undocumented worker: *Tyson Foods, Inc. v. Guzman*, 116 S.W.3d 233, 244 (Tex. App. 2003), holding that Texas law does not bar a lost wage claim. The *Tyson Foods* case, however, did not consider or mention the issue of whether to compare the plaintiff's claimed lost wages to United States wage potentials.

In *Salas v. Hi-Tech Erectors*, 230 P.3d 583 (Wa. 2010), a Washington state court held that, although evidence of a plaintiff's citizenship status is potentially relevant to reduce a lost wage claim, it is more prejudicial than probative, and therefore, such evidence should be barred. This decision was the only one that could be found with this particular holding. For instance, in the *Melendres* case, cited above, the court recognized that the issue of citizenship can be highly prejudicial and ordered that the trial be bifurcated, with no mention of citizenship status in the liability portion of the trial. But if liability is found and damages are considered, the court found, then a defendant can bring the plaintiff's citizenship status to the jurors' attention.

While several courts that have considered the issue of an undocumented worker's right to recover lost wages in a tort action have decided in favor of letting the jury decide, the better argument to make is for the outright bar, or in the alternative a bar as to allowing recovery based on United States earning potentials. Whether a plaintiff is entitled to seek lost wages should be an issue of law for the judge, not an issue of fact for the jury.

It would appear that the majority of jurisdictions that have not put the issue in the jury's hands have held that a plaintiff can make a wage claim, but only based on the earning potentials in his country of origin. One of the strongest arguments in favor of the holding that the wage claim should be barred (at least as to United States earning potentials) is that in order for a plaintiff who is undocumented to obtain work in the United States, an illegal act has to be committed. Either the plaintiff has to present false paperwork to potential employers, or a United States employer would have to break the law by hiring the plaintiff. Such a result is what *Hoffman* found the courts should not condone. Thus, defendants should argue that the courts must assume that all employers will comply with the law by not illegally hiring undocumented workers in contravention of the IRCA. In other words, a court should not allow a jury to award lost wages or lost earning capacity based on the assumption and speculation that future employers will or would have employed the plaintiff.

As a practical matter, it is important for defense counsel to explore the issue in discovery as soon as possible in the case, through appropriate interrogatories, a production request (for copies of green cards or

other forms of work visas), and at deposition. Presumably, plaintiffs' attorneys who are aware of their clients' illegal status from the beginning will not allow their clients to lie under oath about that status. In most cases, therefore, when a plaintiff's attorney "opens the door" to discovery on the plaintiff's status by making a lost wage claim, the attorney will be learning of the illegal status during discovery, not before. This situation could cause the plaintiff's attorney to be more realistic as to the value of the case at an earlier stage.

On the other hand, what defense counsel does with the information ultimately discovered (and when) is equally as important. The strategy could vary depending on the facts of the case, the judge assigned, and the jurisdiction. Options include filing a motion to bar the lost wage claim long in advance of trial, or waiting until trial. If counsel believes that the judge assigned is inclined to grant the motion, it might make sense to file at the earliest opportunity. Counsel might have an opportunity to assess the judge's leanings on the issue based on what the judge might have said when faced with the issue as a pure discovery matter (if the issue required court intervention). If counsel believes the motion might not be successful, it could make sense to wait until trial, thus preserving the advantage of the "unknown," possibly facilitating a more reasonable approach to the case by the plaintiff's attorney.

As discussed above, the effect of discovering a plaintiff's illegal status often will be that the plaintiff withdraws his lost wage claim. If that occurs, then it is unlikely that evidence of the illegal status will be presented to the jury, which is precisely what the plaintiff will be seeking to accomplish. Should the matter be presented to the court to decide, any ruling short of an outright denial of a motion to bar the lost wage claim (and bar from presenting any evidence of the illegal status, such as in *Salas*) will also most often have the effect of the eventual withdrawal of the lost wage claim. The reasons for this result range from a plaintiff residing and working in the United States "under the radar" not wanting to draw attention to himself by admitting under oath he is illegally in the country, to the potential prejudice against the plaintiff compared to the possible upside of a greatly reduced wage claim. A more cynical reason for the withdrawal of the wage claim could be that most plaintiffs' attorneys do not want to be the "test case" for courts that have not previously had the opportunity to rule on the issue. Whatever the reason, armed with the appropriate arguments, defendants can frequently reduce the value of cases (often by substantial amounts), simply by pursuing the issue of the plaintiff's citizenship and employment status.

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