

# PUBLICATION

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## NY Court Allows Tort Suit, Lets Jury Limit Alien's Lost Wages

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**A trial court in the State of New York has ruled to allow a tort suit by an undocumented alien but to allow the jury to be told about the alien's lack of immigration status in order to consider that in calculating lost wages resulting from the injury. This is another example of the U.S. Supreme Court's Hoffman Plastics case trickling down through the American judicial system.**

In *Cano v. Mallor Management*, the New York Supreme Court (which in fact is not the highest court in New York's court system and is not even an appellate court) rejected the defendant's effort to throw out the entire lawsuit on the basis of the plaintiff's undocumented alien status. The court found that the undocumented status is irrelevant to anything except the calculation of lost wages. A contrary ruling would establish worrisome public policy allowing people to harm undocumented aliens without having to compensate them.

Following the U.S. Supreme Court's decision in the Hoffman Plastics case (which we have discussed in a previous alert, and in subsequent alerts), the New York court held that the jury can be told about the undocumented status so that it can be taken into account in calculating the damages from wages the plaintiff lost as a result of the harm caused by the defendants. Ostensibly, the trial court is to instruct the jury about the Hoffman case's holding that an alien who is unauthorized to work cannot recover for wages not actually earned through work, since the alien is not eligible to complete such work legally. This fosters the competing public policy of not rewarding violations of immigration laws.

The *Cano* case is another example of the many different scenarios in which courts are wrestling with the extent to which undocumented aliens can receive damages in various types of lawsuits and proceedings.

### How We Can Help

The Immigration Team of Baker Donelson advises clients in relation to immigration-related workplace laws on the federal level, and in relation to state law issues involving states in which attorneys in our firm are licensed to practice law. We represent employers in defending charges of immigration related employment practices. Our Labor & Employment Law Group represents employers in a wide range of workplace issues.