

## **Time Value and the Expert Witness: Guidance from the Tobacco Litigation**

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We examine the issues involved in applying present value and seeking interest as damages in the context of a major case study in which huge amounts of money hinged on the willingness of the courts to allow present value calculations. While the use of present value is not routinely accepted in legal settings, adjustments for time value are often essential to provide the injured party with just compensation. The expert witness must therefore be prepared to defend the use of present value techniques and to apply them correctly. The arguments and logic developed here will be helpful to the expert involved in any case in which damages occur over an extended period.

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### **INTRODUCTION**

The concept of present value is a standard and uncontroversial method of valuation. While there may be some legitimate disagreement over the choice of interest rate and various other assumptions made in any application, the idea of present value is not seriously in debate. It may come as a surprise, therefore, to learn that the use of present value calculations in legal settings is not routinely accepted. The accountant asked to provide expert testimony in court may thus find himself not only performing and supporting the appropriate calculations, but also being asked to justify the use of present value per se.

We examine the issues involved in applying present value techniques and seeking interest as damages in the context of a major case study in which huge amounts of money hinged on the willingness of the courts to allow present value. This case is the calculation of damages in the lawsuits brought by state attorneys general against tobacco companies. As expert witnesses in this litigation, we were asked by counsel to develop logical arguments to support the use of present value and to recommend procedures to ensure its proper application. We continue to apply these methods in ongoing litigation.<sup>1</sup>

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<sup>1</sup> We served as damages experts retained by the plaintiffs in many of the individual state attorneys general actions, and we continue to serve as plaintiff damages experts in litigation brought by various private insurance companies and HMOs.