



# Insurance Bulletin

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*“The discount rate is arguably the most important variable in the calculation of the cost of future losses.”*

## DON'T ADJOURN THIS FALL'S LARGE TRIALS: IT COULD COST YOU SEVERAL HUNDRED THOUSAND DOLLARS

Stephen R. Moore

You have been waiting six years for a case involving a catastrophically injured 50 year old man to go to trial. It is finally going to trial at the end of this October. It is a 1% case and your insured has good liability defences. However, you have been realistic and have concluded that your insured has less than a 50% chance of avoiding liability. You have posted a significant reserve for the case based on awards of \$8 million for future care and \$750,000 for future loss of income. Your counsel calls you today and advises you that the plaintiff's counsel is requesting an adjournment because she has another trial scheduled to go the same week. Your counsel also indicates that there is an opening in the trial schedule in March of next year so that a short adjournment should not cause any real problems. However, due to the recently announced upcoming reduction to the discount rate, that adjournment could cost your company hundreds of thousands of dollars.

At the end of September of each year, the Province determines what the discount rate is going to be for the following year. The discount rate is a calculation of the difference between inflation and investment return. In practical effect, the lower the discount rate, the higher will be the damage award. In fact, the discount rate is arguably the most important variable in the calculation of the cost of future losses. For trials commencing in 2010, the discount rates are 1.25% for the first 15 years and 2.5% after 15 years (the latter never changes).

Last week, the government announced the new discount rates for trials commencing in 2011. The discount rate after 15 years remains at 2.5%, but the discount rate for the first 15 years drops to 0.5%.

With this reduction in the discount rate, if your catastrophically injured plaintiff had a 25 year life expectancy, the cost of future care would rise by about 8%. That would add about \$640,000 to the cost of future care. The effect on the future loss of income award would be smaller because his working life expectancy is less than life expectancy, but



Stephen has authored a number of papers dealing with a variety of insurance and personal injury issues. Over the last twelve years he has lectured and written extensively on Bills 59 and 198 (Ontario's automobile tort reform legislation) including authoring chapter 5A in the Oatley-McLeish Guide to Motor Vehicle Litigation. Over the past two years he has been one of the province's leading commentators on Bill 18 which re-wrote the vicarious liability rules for the owners of leased and rented vehicles.

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would still be significant. For younger plaintiffs, the impact could be even greater.

Given the impact of the new discount rate, it would be prudent to consider attempting to settle any case with significant future loss of income or future care claims which are scheduled to be tried next year. If that is not going to be possible, then you should make sure that you factor this change to the discount rate into your reserves. Of course, you should resist any attempt to adjourn a trial scheduled to begin this fall to next year. If it is the plaintiff requesting the adjournment, you may wish to insist that your consent is conditional on the plaintiff agreeing to use the 2010 discount rates or rates which are intermediate to the 2010 and 2011 rates. ■

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