

# Complex Commercial Disputes Assumptions



Accountants and Advisors

## Quantifying the economic harm is a critical component of a high-stakes legal dispute.

Baker Tilly helps parties address that question—bringing credibility that carries weight with courts, opposing counsel, and third parties alike.

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- > Damage Analysis and Quantification
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- > Settlement Analysis
- > Technology-based Data Reconstruction and Retrieval
- > Trial Strategy Assistance

**In many commercial damage cases, there is a need to create the “but for” world – essentially a model that analyzes the financial implications of what would have happened “but for” an alleged bad act. In situations where experts analyze the “but for” world, they will invariably need to assess and apply assumptions.**

Assumptions that experts typically consider but for the bad act include:

- > The performance of the parties
- > The volume of product that would have been sold
- > The growth, if any, in sales volume and price
- > The plaintiff’s operational and financial capacity to meet the sales volume
- > The incremental expenses applicable to the lost sales
- > The length of the damage period, including whether it might extend through any potential contract renewal period ▶

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When experts consider how to evaluate and apply assumptions like those discussed herein, experts must ultimately follow the rules of evidence and applicable professional standards. For example, the American Institute of Certified Public Accountants (AICPA) provides professional standards applicable to damage analyses, which are consistent with Federal Rules of Evidence regarding testimony by expert witnesses and include:

- > Exercising due professional care by critically analyzing the assumptions made to determine if the assumptions make sense. This may entail evaluating the assumptions in light of historical financial results or industry information.
- > Basing the assumptions on sufficient, relevant and objective data. In other words, is there support for the assumptions that are made?
- > Having a conversation with counsel and the client about what can or cannot be done with respect to the assumptions that underpin the calculation.

The creation of a “but for” damage world requires the application of assumptions to model what would have occurred “but for” an alleged bad act. Assumptions, however, cannot be applied blindly. When an expert provides damage analyses services, the expert has a professional duty to critically evaluate the assumptions that are used, and to ensure that those assumptions are based on sufficient, relevant and objective data, all with an eye toward putting forward objective damage analyses that are the function of reliable principles and methods.

## Contact Us

Let one of our leaders tell you about our tailored solutions.

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## Let's Connect

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## About Baker Tilly

Baker Tilly is a full-service accounting and advisory firm with specialized professionals who connect with you through refreshing candor and clear industry insight. Attorneys and their clients turn to our national **Forensic, Litigation & Valuation Services** group for the financial understanding and expertise necessary to develop effective strategies.

From economic and financial analyses, valuation, and litigation support to expert witness testimony, we deliver at every phase. Our integrated team of highly experienced and credentialed professionals work together seamlessly on multifaceted financial matters. Combining deep industry expertise and sophisticated technical knowledge, we deliver creative solutions that resonate, educate and persuade in the boardroom or the courtroom.