

System Operations - New York 50A Wrongful Death (Medical Malpractice)

Data input and application of variables are performed in the Award section. Taxes applicable to lost or impaired earnings and Collateral Source offsets can be specified. The worksheets then provide for the selection of individual elements of loss, the date on which loss began, entry of the periods over which they are to be paid, entry of the initial amounts and any COLA or inflation, and the total amounts are calculated.

- **Lost or Impaired Earnings.** The system will calculate lost or impaired earnings in either a simple or complex mode. The former applies a single COLA rate to calculate total payment amounts, the latter allows different COLA rates for different decades, adds commissions, bonuses and other compensation, and deducts incidental expenses related to work. The system will either employ and/or average taxes paid in the appropriate last year or over the last two or three years to arrive at an overall tax rate, or apply formulas of a rate applicable to a percentage of earnings to each level of taxation (local, state and federal), and either accumulate rates or accumulate and adjust to produce a pooled effect (local and state taxes are applied to reduce the upper level rate(s)).
- **Collateral Source offsets** can be calculated using the initial monthly payment and a specified COLA (inflation) percent, as appropriate, offset by any continuing maintenance cost. The period of payments is either the time specified for payment or the period for the element of loss to which it applies, whichever is shorter. The Collateral Source is then discounted using the rate applicable to the element of loss, and maintenance for the 2 years prior to the event of loss is deducted.

[In the alternative, data can be carried over from the Award worksheet.]

As the future wrongful death Award is treated as a lump sum, there is nothing against which to apply a future Collateral Source. Further, Amended 50A provides for the payment of total lump sums without further reference to the statute. An option exists to remove the future component of Collateral Source offsets from the determination of net Award, and include only past Collateral Source offsets.

The total Award of past damages and lump sums is used as the denominator in determining an expense rate to be applied to reduce past damages and lump sums on a pro-rate basis. The sliding fee scale is then applied to the net result to yield a weighted fee rate which is then applied to past damages and lump sums net of expenses to produce a net Award.

The Award section produces a series of Award reports including a Wrongful Death Net Award report.

The Reports section produces a Wrongful Death Net Award by element of loss.

Application of Interest. The details discounting and interest are listed on and adjust the Valuation Summary. To calculate pre-verdict interest, the elements of the Award must first be discounted, as follows;

- Lump Sums are to be discounted back to the date of death
- Past Pain and Suffering is treated separately.
 - While there does not seem to be any basis for treating Past Pain and Suffering as non-pecuniary and applying interest only from the verdict, the system contains an option for excluding pre-verdict interest on Past Pain and Suffering.
 - As the Past Pain and Suffering ends with the death, the primary system option is to not discount Past Pain and Suffering before applying interest. The other offered option is to discount back to the date of death.
- Other past damages are discounted back to a weighted average date based on payment amounts and dates. As the Award section allocates the various elements of loss between past and future damages, it prepares the data for calculating a weighted average date. Past damages incident to the event of loss are assigned the date of death. The system uses the data to calculate a weighted

average date back to which the damages are to be discounted.

Different discount rates can be chosen for each item, or the selection of a Lump Sum rate is automatically applied to other discounted components.

Interest is then applied at 9% as specified by the statute. Different rates can be chosen for the different interest components. The Components of interest are

- Pre-Verdict interest is applied to the Award as discounted per the above description.
- Pre-Judgment interest is applied to the undiscounted Award plus pre-verdict interest
- Pre-Payment interest is applied to the undiscounted Award plus pre-verdict and pre-judgment interest.