

## Verdicts and Awards

Stating the obvious, the jury determines liability and awards damages. Yet New York Articles 50A and 50B provide little guidance on Awards except for the treatment of Medical Malpractice Wrongful Death Awards, the application of taxes in Med/Mal wrongful death actions, the periods associated with future Pain and Suffering, and the treatment of Collateral Source offsets as after verdict adjustments. Some guidance is provided in case decisions, but that seems to be limited to general guidance on how the jury should arrive at different elements of an Award and that the application of any 4% statutory inflation is separate from inflation incorporated in the Award.

In setting an Award, the jury must determine, by element,

- The total Award amount,
- The period or occasions over which the amount is to be paid,
- The allocation between past and future damages, and
- The point at which payments are to begin.

In Amended 50A, the jury can specify whether the loss is 'permanent', and any future date on which payments for a loss element are to begin.

With the general guidance on how the jury should arrive at different elements of an Award, the jury may well be left with the task of applying or changing compound inflation and/or COLA rates to the base cost before determining an overall Award or accepting the Award amount presented. That would be an event fraught with risk and grave uncertainty.

The solutions would seem to be computer generated and calculated verdict worksheets. Depending upon the evidence offered and the information permitted, the jury could use

- Worksheets that list the elements of loss without further details.
- Worksheets that list the elements of loss, the initial first payment dates, initial payment amounts, inflation rates applicable to adjust the amounts to produce first payment amounts, ongoing inflation/COLA applicable after the first payment year, and the occasions or periods over which payments are to be made.
- Worksheets that include the detail together with Award amounts and the allocation between past and future damages.
- Periodic Detail. Listings of monthly and annual amounts by element from the first payment date, reflecting the impact of any inflation prior to first payment, and any inflation/COLA after the first payment year.
- In the event that extended lost or impaired earnings were calculated, and different increase rates were employed for different employment decades,

a detailed listing reflecting that complexity, incorporating additional compensation and adjustments, and taxes in Medical Malpractice wrongful death actions. [A single COLA percentage could be calculated and employed to closely approximate the total overall Lost Earnings]

- Discrete Detail. These are payments that are often referred to as lump sums, and can either be single events or sequences of events separated by consistent periods of years (e.g. a sequence of corrective surgical procedures with each event scheduled every few years). The cost would reflect the compounded impact of any inflation prior to first payment, and any inflation/COLA after the first payment. [These elements of loss are converted to periodic payments for purposes of valuation, but that does not restrict use of discrete events in an Award.]

## **Verdict Worksheet**

Award Development is the basic building block for the verdict and the valuation. It has now been adapted to generate verdict files,

- Incorporating case information,
- Award detail, excluding taxes associated with Lost or Impaired Earnings except in Med/Mal Wrongful Death actions, and
- Excluding any reference to Collateral Source offsets.

The Verdict program will generate worksheets with varying levels of information.

- Worksheets with basic element information
- Worksheets with basic element information and loss element detail
- Worksheets with basic element information, loss element detail, and extended Awards with or without allocation to past damages
- Periodic Detail
  - For extended Lost or Impaired Earnings, a listing of monthly and annual earnings by year, together with other elements of compensation and adjustments, and a Summary that lists the basis for the calculations.
  - For Lost or Impaired Earnings, a listing of monthly and annual net compensation by year with any taxes applicable to Lost Earnings associated with Med/Mal wrongful death actions. (The extended Lost or impaired Earnings can be reduced to this format by use of a single COLA/Inflation which will produce a very close approximation of total payments. that percentage is listed on the extended Summary and as part of the element of loss on the worksheets.
  - For other periodic payments, a listing of monthly and annual payments.

- Discrete Detail. A listing by event of the projected date and the amount, adjusted for compounded inflation/COLA.

Both the periodic and discrete detail reflect the element total and, with the exception of Extended Lost or Impaired detail, the allocation to past damages and the net.

Past damages incident to the loss are included as a single entry. Lost and impaired earnings are incorporated in an extended and a simpler format.

The verdict worksheets facilitate Award data entry, alteration and updating, so that the jury can be provided with updated and/or altered worksheets and detail.

## **Award Development**

Award Development is the basic building block for the verdict and the valuation.

- It is used to record and compile case information and Award data by element of loss. The latter includes first payment dates, duration of damage payments, first payment amounts, cost Inflation to the first payment dates, if more than a year in the future, and separate (Cost of Living) percentages for years beyond the first payment years.

Lost or impaired earnings can be a simple projection, as with other periodic elements or an extended projection incorporating different increase percentages for different decades of employment, a complex of bonuses and commissions, a deduction for personal expenses, and treatment of any applicable income taxes as a separate deduction.

Discrete items of loss (lump sum payments) can be incorporated either as individual events or as a sequence of discrete events separated by annual periods in excess of a year. (Discrete items are automatically converted to periodic (monthly) events for valuation.)

- It is used to calculate and apply taxes to Lost or Impaired Earnings. Taxes can either be total last taxes paid, separate local, state and Federal taxes paid in the past 1 to 3 years, or separate local, state and Federal tax rates applied to different percentages of income on either a simple or pooled basis (lower level taxes paid reduce income against which tax is applied at the next level).
- It is used to calculate Collateral Source offsets to be incorporated into the Award. including first payment dates, amounts and COLA/inflation, and the shorter of the period associated with the offset or the loss element with which it is associated. Continuing maintenance is applied against the offset payments and maintenance expenses for the two years prior to loss are applied against past offset.

- It is used to update and allocate the elements of loss, taxes (if used) and Collateral Source offsets to between past and future damages. The user may choose to allocate by months since first payment date or by a specific amount, and either maintain or reduce future damages by the amount allocated to past damages. The system will calculate a new future first payment amount based on remaining amounts and the remaining period of loss.

After the individual Award elements are added, and updated, they can be summarized and totaled to reflect the impact of any taxes and Collateral Source offsets on both past and future damages. The results can then be carried forward to the various valuation systems.

In New York 50A Wrongful Death actions, the Award will be valued directly without any discounting or other adjustments. In these circumstances, the summarization process incorporates expenses and fees and applies the results against each Award element. The results can then be carried forward to the Reports sections.

As with other sections, the results can be saved in a valuation file that can be reopened and updated or used in the associated 'Reports' section.

To save a verdict file, either execute save before summarizing or select 'Choice' to access a workable Award listing and then 'Save' and select options as they appear to record a verdict file.