

New York Award and Valuation Processes

Award Development and Valuation under New York law are arcane processes of interconnected pieces designed to yield an amount of

- Cash for lump sums and past damages net of allowed, allocated expenses and contingent attorney fees. (Med/Mal wrongful death future Awards are treated as lump sums.)
- Element Future Damages net of any lump sum amounts divided by the period over which future payments are to be made. These initial payments are then reduced by pro-rata allocated expenses and fees. If statutory inflation is applicable to an element, the payments are factored by a statutory inflation rate of 4% for each year after the first. (Applicable to all elements under original 50A and 50B, and Pain and Suffering under amended 50A)

This relatively simple process becomes really complicated when items of adjustment are applied after the verdict. They are

The application of discount rates.

Originally, discount rates were determined through negotiation. Now they are determined by formulas indexing discount rates to the 10-year Treasury rate in effect on the date of the verdict. The formulas are the rate in effect for future periods of 20 years or less, and the average of the rate in effect for the first 20 years and 2 percentage points above the rate in effect for the periods beyond 20 years.

The application of any taxes associated with Lost or Impaired Earnings.

The statutes make reference to the application of taxes only in Med/Mal cases. Taxes apply to both past and future lost or impaired earnings.

The application of any Collateral Source Offsets.

These are contractual or insurance obligations that provide funds to supplement earnings or to cover custodial care, as long as the payments are conditioned solely on the payment of any continuing maintenance costs. Future payments may be factored for inflation and will be discounted at the rate applicable to the loss element.

The Interplay of Adjustments.

The calculation of the Net Valuation per statutory provisions yields values that will agree with the compilation and discounting of annual payments by element. This is true if Collateral Source offsets do not affect any Award elements.

Collateral Source offsets should be adjusted for any inflation associated with the item, and, for the sake of convenience, any continuing maintenance costs. (Any maintenance costs in the two years prior to loss can be added to past damages.)

If the element is Lost or Impaired Earnings to which taxes are applicable, the discounted value of the projected Collateral Source offset should be deducted from the element value before taxes are determined. The same should be true of past Lost or Impaired Earnings.

In addition, net Collateral Source payments should be applied against related element payments after adjustment for over-allocation of expenses and fees against the loss element. The discounted net element accumulation will closely agree with the element Net Value.

These adjustments may be relatively minor in comparison to the Award, but they will result in net Award adjustments of several thousand dollars.

Interest is applicable to Awards for the periods from verdict to judgment and judgment to payment. Pre-verdict interest is applied in bifurcated cases. Bifurcated cases are those where liability attaches at a date prior to any award verdict. Before interest can be applied, any inflation incorporated in the Award must first be removed. In personal injury cases, that is achieved by discounting the total Award to the liability date.

In wrongful death, the liability date is the date of death. Interest is applied

- After discounting future damages back to the date of death
- Conscious Pain and Suffering ends with death, and the Award amount is not discounted if pre-verdict interest is applied to Pain and Suffering.
- Other past damages are discounted back to the individual payment dates or to a weighted average payment date.

Interest is applied at a rate of 9% per annum. There is no reference to simple or compound interest. But, provision is made that interest to judgment be applied to both the total Award prior to discounting and any pre-verdict interest, and pre-payment interest be applied to the components of a judgment that include both pre-verdict and pre-judgment interest.

Element first payments for future damage are due on the date of the verdict, unless a different future date is specified in the returned verdict (Amended 50A only). Under ordinary circumstances, periodic payment devices are not in place for payments on the date of the verdict. This gives rise to the handling of amounts due during the period before the actual beginning of periodic payments or cash release. In order to bring periodic payments up to date, these interim payments should be paid in cash.

This creates a new level of complexity in dealing with interest and discounting.

- If the period between verdict and judgment or verdict and payment exceeds a year, and statutory inflation applies to the future Award element, interim payments beyond a year must be adjusted for the 4% inflation per year.
- Following the rationale for dealing with past damages in wrongful death, interim payments should be discounted back to a weighted average payment date before applying interest to them.
- Each element's interim payments must also be discounted back to the first payment date and deducted from the element net future value before pre-judgment and pre-payment interest is applied.

If You did not get lost in all this, you have mastered just about what you need to know about Award valuation. What remains are the questions that need to be asked of and answered by those who provide valuations. They include

For Valuations

Is there an overall valuation summary that incorporates

- The valuation for each future element
- Application and adjustment to taxes on Lost or Impaired Earnings, as appropriate
- Incorporation of past damages and adjustments for taxes and Collateral Sources
- The calculation or allocation of Lump Sums
- Inclusion of element discount rates
- Application of Collateral Source discounted values
- Allocation of allowed expenses and contingent fees across past and future damages
- Listing of net awards and first monthly payments adjusted for expenses and fees
- Summary of interest components and the basis of application.

Does the process include monthly, annual and annual discounted payments including offsets, and do the net discounted payments prove to the summary net award by element?

When needed, does the system offer a detailed reconciliation of future Awards by element?

Post Verdict

Is there Interim Payment detail for the periods between verdict and Judgment and/or payment?

Does the system produce Judgment/payment worksheets?

For Awards

Is there an Overall Award Summary that incorporates

- Calculation of both periodic and discrete Award elements
- Application of different interest rates for the periods prior to and after first payments
- Detailed calculation of Lost Earnings with increases by decade and inclusion of other income
- Allocation between past and future damages
- Application of taxes and Collateral Source offsets to expedite early resolution

For Verdicts

Are there Verdict worksheets devoid of taxes and Collateral Source offsets but incorporating

- Summaries of Award components showing past and future damages and related periods
- Listings of periodic and discrete future payments by element with up-to-date allocations
- Detailed Lost or Impaired Earnings by period including taxes for Med/Mal Wrongful Death