System Operations - New York 50A Personal Injury (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.

- The system will allocate loss elements, any taxes and Collateral Source offsets between past and future damages, and update the allocation when appropriate.

The Award section produces a series of Award reports that allocate losses and adjustments between past and future damages.

Valuation. [Data can be carried over from the Award worksheet.]

Data input, selection of rates and application of variables are performed in different Valuation worksheet sections depending on whether the valuation is under the provisions of Original or Amended 50A and, if under original 50, whether discount rates are individually entered or are indexed to 10-Year Treasuries. If indexed to 10-Year Treasuries, the overall index rate is selected. 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 future loss, entry of the periods over which they are to be paid, the total amount to be paid, and the discount rate to be applied. The worksheet provides for entry of

- Taxes on Lost or Impaired Earnings. 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)).

  The Tax rate is applied to reduce the Lost or impaired Earnings Award, both future and past. If lost or impaired earnings are impacted by a Collateral Source offset, an option exists to reduce Lost or impaired Earnings by the Collateral Source payments before applying the taxes which are then deducted from the original lost or impaired earnings.

- Collateral Source offsets are calculated using the initial monthly payment and a specified COLA (inflation) percent, as appropriate. The amounts are reduced by any continuing maintenance cost. The period of payment 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.

Future Loss of Services and Loss of Consortium are treated as lump sums. Other lump sums are

Automatically allocated ($250,000 across the future Award elements in line with their relative size),

or

Automatically calculated in line with the provisions of Amended 50A. (The first $500,000 or 35% of Future Pain and Suffering whichever is larger is applied to lump sums, and the element's future Award is then reduced., and 35% of each remaining element of future loss is assigned to lump sums, reduces the future Award amount, and is discounted by the element's rate to arrive at a lump sum amount.)

The Award elements are then discounted by individually selected rates or by rates indexed to the 10-Year Treasury. The 10-Year Treasury rate/yield selected can be an individual yield that may match the yield or expected yield on the date of the verdict, any of an array of regular quarterly auction rates/yields or any monthly yield listed. (Average rates/yields can be selected in the Reports Sections).

Indexing is automatic once the rate or yield is selected. If the element's future payment period is 20 years or less, the rate is applied directly. If more than 20 Years, it is the weighted average of the index rate for the first 20Years and two percentage points above the index rate for the years and partial years beyond 20.

The discount rate is applied to the element Award net of lump sum allocations and assignments. The net is then reduced by the discounted value of any Collateral Source offset, and a pro-rata expense rate before applying the scaled fee rate to arrive at a net Award by element.

The expense rate is automatically calculated by the system using the total of past damages, lump sums and discounted future damages prior to expense as the denominator and the expense amount as the numerator.

The Attorney fee rate is automatically calculated by using the sliding scale of

30% on the first $250,000
25% on the next $250,000
20% on the next $500,000
15% on the next $250,000
10% on everything over $1,250,000.

and applying the scale to the total of past damages, lump sums and discounted future damages less allowable expenses.

The statute does not make any reference to Collateral Source offsets in applying expense and fee rates. If expense is calculated prior to deduction of Collateral Source offsets, and expenses and fees are applied prior to deduction of Collateral Source, the net total of annual discounted values for the elements to which Collateral Sources relate will closely approximate net values on the summary. An option exists to achieve the effect by automatically calculating the expense rate prior to application of Collateral Source offsets, and reducing the discounted value of Collateral Source offsets by the expense and fee rate. (The net total of annual discounted values for other elements will agree with the net values on the summary.)

Reports
The reports section serves five functions,

- Reporting the Valuation including footnotes on rate application, first payment point, and Collateral Source offsets.
    - Monthly payment schedules by element by year.

- Annual Payment schedules by element by year, and totaled.
- Annual Discounted Payment schedules by element by year, and totaled.

- Documenting the detailed adjustments to total Awards, reconciliation from the total undiscounted Award to the Net Discounted Award, and the components of expected Cash outlay and, if the Award worksheet is employed, the detail of past damages, taxes and offsets.

  [The element totals from the Annual Discounted Payment Schedule will agree with the Net Award by element on the Summary, the element's Net Award on the reconciliation. If there is a Collateral Source offset related to an element of loss, exercise of the option to reduce the discounted value of Collateral Source offsets will yield a Net Award that closely agrees with total net Annual discounted payment.]

- Adjustment of certain key variables that affect the valuation. The selection of any one or more of the options can be fed through the valuation to yield a new summary report. They can then be added to a report that compares the Net results from various adjustments to the basic valuation.

  - Selection of different discount or 10-Year Treasury indexed rates. A single discount rate can be applied to the Award, a different index rate can be selected, as can different regular auction rates/yields, monthly yields or different selected rates/yields. In addition, average, weighted average and updated weighted average auction rates/yields can be calculated, reported and selected for valuation.

  - Application of different first payment dates. The first payment date is set by the statute as the date of the verdict, and all valuations are accordingly set to -0- days. The parties, in settlement, can agree to a different first payment date, and that has an impact on valuation.

  - Removal of Collateral Sources or adjustment to remove any tax impact associated with a Collateral Source offset.

  - Adjustment of taxes applicable to Lost or Impaired Earnings. A spread of 10 percentage points above and below the rate employed in the initial valuation is set out 1/4 of 1% increments. Selection will produce changes in both future and past lost or impaired earnings.

  - Application or removal of the adjustment reducing the discounted value of Collateral Source offsets by the expense and fee rate. (The net total of annual discounted values for other elements will agree with the net values on the summary.)

    [If the Award worksheet is employed, any of the adjustments that impact past damages will be carried over to and will adjust past damages.]

- Application of Interest. The details discounting and interest are listed on and adjust the Valuation Summary.

  - If the case is bifurcated (determination of liability predates the Award verdict), the total Award must first be discounted back to the determination of liability before determining pre-verdict interest. Otherwise, pre-verdict interest is not applied.
  - Pre-Judgment interest is applied to the total Award plus any pre-verdict interest
  - Pre-Payment interest is applied to the total Award plus pre-verdict and pre-judgment interest.

- Updating future Award payments to entry of Judgment and date of payment. As the first payment is due on the date of the verdict, certain payments are scheduled to occur in the period between verdict and judgment, and verdict and payment. The system will update the element Awards for the monthly payments to be made during the interim periods. The total of those payments will treated as cash due at Judgment or payment. The total payments by element together with any applicable statutory inflation are discounted back to an average payment date before interest to judgment and interest to payment is applied. Total Payments are also discounted back to the Verdict date and deducted from the element's net Award before interest to judgment and interest to payment are applied.