

## **System Operations - General Liability Personal Injury (General Liability)**

Award element Data and Collateral Source offset are performed in the Award section. The worksheets 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. The system will then allocate award elements between past and future damages, and update the allocation when appropriate.

- 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 statutes do not provide for the application of taxes in New York 50B cases.
- 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 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 discount rates are individually entered or are indexed to 10-Year Treasuries. If indexed to 10-Year Treasuries, the overall index rate is selected. 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. Future Loss of Services and Loss of Consortium are treated in the same manner as other future damages. The worksheets provide for entry of

- Collateral Source offsets that 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.

Lump sums are automatically allocated (\$250,000 across the future Award elements in line with their relative size)

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 daily yield or expected daily yield on the date of the verdict, any of an array of regular quarterly auction rates/yields or any monthly yield listed. (Average auction rates/yields can be calculated and 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 an element's future Award net of lump sum allocations. The net is then reduced by the discounted value of any Collateral Source offset, and a pro-rata expense rate before applying the agreed upon fee rate.

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 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, listing the components of expected Cash outlay, and, if the Award worksheet is employed, the detail of past damages 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 or a different index rate that can be selected from regular auction rates/yields, monthly yields or individual 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.
  - 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.)
  - Removal of Collateral Source offsets.

[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. 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.
- 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 be 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.
- 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, and pre-verdict interest applied to the discounted Award. Otherwise, pre-verdict interest is not applied.

