QUANTIFYING DAMAGES

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III. QUANTIFYING DAMAGES[1]

A. Factors to Consider in Quantifying Damages

1. Age of the Plaintiff

The age of the Plaintiff is an important consideration in many respects. The death of a young child, who is without a history of earnings, and whose earning capacity is speculative, is usually worth considerably less than the death of a working parent, particularly a high wage earner. But a serious injury with lifetime medical needs will usually be valued higher for a young person than for an older person, due to life expectancy and accumulation of healthcare expenses.

§ 8.01-419. Table of life expectancy

Whenever, in any case not otherwise specifically provided for, it is necessary to establish the expectancy of continued *life* of any person from any period of such person's *life*, whether he be living at the time or not, the following *table* shall be received in all courts and by all persons having power to determine litigation as evidence, with other evidence as to the health, constitution and habits of such person, of such expectancy represented by the figures in the following columns:

AGE	BOTH SEXES	MALE	FEMALE
20	58.4	55.8	60.8
21	57.4	54.9	59.8
22	56.5	54	58.9
23	55.5	53	57.9
24	54.6	52.1	56.9
74	12.3	11	13.2
75	11.7	10.5	12.5
76	11.1	9.9	11.9
86	6.2	5.5	6.6
87	5.8	5.2	6.1
88	5.5	4.9	5.7
89	5.1	4.6	5.4
90	4.8	4.3	5

[1] I wish to acknowledge and thank Peder Melberg (vocational rehabilitation expert) for the text in sections A 2, A3, C2, C3 and Thomas Borzilleri (economist) for sections C1 and G.

These tables are admissible in court where the plaintiff has made a claim for permanent injury. Most judges prefer that you mark only the line entry for the age of the plaintiff as the exhibit, as the other data is irrelevant. You can also get a stipulation as to the life expectancy without admitting the writing.

The defendant can attack the life expectancy projection by showing that the plaintiff's health, constitution and habits result in a diminished life expectancy. It is unclear to this author if the defendant needs expert testimony setting forth the number of years to be subtracted from this table, but at a minimum the defendant needs a medical expert to explain why this table is not applicable to the plaintiff.

Once the life expectancy is admitted, the plaintiff may then argue for damages (pain and suffering, loss of earnings) for the appropriate periods. For loss of earnings, you will need to cut off the calculations after the expiration of the plaintiff's "work life" rather than calculate the loss of earnings using the entire life expectancy. Most workers now outlive their work life expectancy by many years as retirement is still very common before the age of 70. This calculation will be on a case by case basis because some workers may never retire.

> **Practice Pointer:** Tradition wisdom had it that the wrongful death of an elderly person (age 70 or beyond) had limited value not to exceed several hundred thousand dollars. In fact, trial lawyers have established that the wrongful death of an active and beloved grandmother/grandfather can be worth multiple seven figures.

2. Education and Professional Training (physical & intellectual requirements)

These are considerations in evaluating vocational capabilities of a client, both pre-injury and post-injury. The individual client's education and professional training, along with their employment history, provides a basis for evaluating their pre-injury worker traits including skills, abilities, aptitudes, and characteristics that are relevant to the work place. The physical and intellectual requirements of the individual's past work can be assessed by creating a worker trait profile utilized for a Transferrable Skills Analysis in the vocational assessment.

3. Potential Vocational Re-Training Costs

If an injured worker is a candidate for a retraining program, the costs associated with the completion of the program, along with lost wages during the duration of the program can be assessed as damages. This would be relevant when a retraining program would mitigate loss of earning capacity. An example from a recent case would be a construction supervisor (hands-on) who entered a CAD drafting program. The construction supervisor was physically limited from performing his prior work, but with completion of a 6 to 12 month CAD program, he would be employable by his employer as a CAD technician. Because his earnings as a construction supervisor had been somewhat variable, but his employment as a CAD drafter was full time, he was able to return to employment as a CAD technician earning as much as he had earned previously as a construction supervisor. Damages would be include the cost of tuition and supplies and 9 months of lost wages.

4. Gender (Disfigurement Cases)

The obvious considerations for disfigurement are follows:

a. the location of the disfigurement
b. the associated humiliation and embarrassment
c. the gender and age of the plaintiff
d. the nature of the plaintiff's employment.

Unlike workers' compensation, there is no formula or limit on disfigurement damages in a circuit court case.

It is important to figure out how you will "publish" your client's disfigurement. If the case is still being negotiated with a claims adjuster, you will use current photographs. If the claim is before a jury, you can use photographs or determine it is best to have the plaintiff come off the witness stand and show the disfigurement to the jurors. The location of the disfigurement and the "comfort level" of asking the plaintiff to come before the jury box will dictate whether this method of publishing is appropriate.

Virginia Model Jury Instruction **9.000**.

General Personal Injury and Property Damage

If you find your verdict for the plaintiff, then in determining the damages to which he is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendant:

(3) any disfigurement or deformity and any associated humiliation or embarrassment.

B. Joint & Several Liability and Apportionment

Virginia is not a comparative negligence state so there is no apportionment in that sense in the Commonwealth. If more than one party is found negligent, each party is liable for the full amount of the damages awarded. This is the meaning of "joint and several liability". Contracts and statutes may play a role in the priority of payment between several insurance policies. Contracts between defendants deemed to be joint tortfeasors will be effective in apportioning payment and subrogation rights so long as the plaintiff is made whole.

Model Jury Instruction No. 4.020 **Definition of Concurring Negligence**

If two or more persons are negligent, and if the negligence of each proximately causes the plaintiff's injury, then each is liable to the plaintiff for his injury. *This is true even if the negligence of one is greater than the negligence of the other(s).*

Model Jury Instruction No. 4.025 **Single, Indivisible Injury**

If separate and independent acts of negligence of two parties are each a proximate cause of a single injury to a third person, and *if it is not possible to determine what portion of the injury was caused by each party, then each is liable for the injury*.

§ 8.01-35.1. Effect of release or covenant not to sue in respect to liability and contribution

A. When a release or a covenant not to sue is given in good faith to one of two or more persons liable for the same injury to a person or property, or the same wrongful death:

1. It shall not discharge any other person from liability for the injury, property damage or wrongful death unless its terms so provide; but any amount recovered against the other person or any one of them shall be reduced by any amount stipulated by the covenant or the release, or in the amount of the consideration paid for it, whichever is the greater. In determining the amount of consideration given for a covenant not to sue or release for a settlement which consists in whole or in part of future payment or payments, the court shall consider expert or other evidence as to the present value of the settlement consisting in whole or in part of future payment or payments. A release or covenant not to sue given pursuant to this section shall not be admitted into

evidence in the trial of the matter but shall be considered by the court in determining the amount for which judgment shall be entered; and

2. *It shall discharge the person to whom it is given from all liability for contribution to any other person liable for the same injury to person or property or the same wrongful death.*

B. *A person who enters into a release or covenant not to sue with a claimant is not entitled to recover by way of contribution from another person whose liability for the injury, property damage or wrongful death is not extinguished by the release or covenant not to sue, nor in respect to any amount paid by the person which is in excess of what was reasonable.*

C. *For the purposes of this section, a covenant not to sue shall include any "high-low" agreement whereby a party seeking damages for injury to a person or property, or for wrongful death, agrees to accept as full satisfaction for any judgment no more than one sum certain and the party or parties from whom the damages are sought agree to pay no less than another sum certain regardless of whether any judgment rendered at trial is higher or lower than the respective sums certain set forth in the agreement and whereby such party provides notice to all of the other parties of the terms of such "high-low" agreement immediately after such agreement is reached.*

D. *A release or covenant not to sue given pursuant to this section shall be subject to the provisions of §§ 8.01-55 and 8.01-424.*

E. *This section shall apply to all such covenants not to sue executed on or after July 1, 1979, and to all releases executed on or after July 1, 1980. This section shall also apply to all oral covenants not to sue and oral releases agreed to on or after July 1, 1989, provided that any cause of action affected thereby accrues on or after July 1, 1989. A release or covenant not to sue need not be in writing where parties to a pending action state in open court that they have agreed to enter into such release or covenant not to sue and have agreed further to subsequently memorialize the same in writing.*

C. Sources of Statistical Data

1. Inflation Adjustment

Inflation is the rise in the prices of the things we buy. If the CPI, a market basket of the things people buy, goes up by 3% we have a three percent inflation rate. If your income goes up by more than inflation, you have a real income increase. If it is goes up just 3% you can still buy that same market basket. If it goes up less than 3% you can't buy that same market basket of goods. The Social Security system provides a benefit increase exactly equal to the rate of inflation, as do some Federal and State pensions.

Future value is today's number escalated at some rate. It could be the rate of general inflation, or wage growth or another measure. The present value takes that growth out to compensate for the interest that can be earned.

See section **G** below for a more detailed discussion of the concept of "discounting" to compute the present value of money to compensate for future losses.

2. Labor Statistics

Labor statistics refer to wages and job numbers. Wage information is available from a variety of sources including the U.S. Bureau of Labor Statistics, and private survey groups including Economic Research Institute and various professional associations among others. Wage information is utilized to determine an approximate range of earning capacity for a worker in a particular geographical area. Job numbers can be utilized to show the existence of jobs in a local labor market. Some vocational experts utilize labor statistics to show "loss of access" when a worker has lost access to a large portion of the labor market as a result of an injury.

3. Dictionary of Occupational Titles

This is a U.S. Department of Labor publication which classifies and defines all occupations found in the U.S. labor market. The U.S. Department of Labor has not updated the D.O.T. since 1991, but it still serves as the best available reference sources for occupations and descriptions. There are proprietary services which have updated the D.O.T. in their own listing eliminating occupations that are no longer found and incorporating occupations that have developed in the economy since 1991. The D.O.T. provides a classification system of jobs with a description of typical job duties and in

supplements to the D.O.T. has a breakdown of physical and intellectual and other demands of each occupation.

D. Using Experts to Quantify Damages

1. Admissibility

In determining the admissibility of evidence, "[t]he criterion of relevancy is whether or not the evidence tends to cast any light upon the subject of the inquiry." *McNeir v. Greer-Hale Chinchilla Ranch,* 194 Va. 623, 629 (1953). The General Assembly has enacted a statute that governs when deciding if the testimony of an expert witness meets that standard of relevancy:

> *In a civil proceeding, if scientific, technical, or other specialized knowledge* ***will assist the trier of fact*** *to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise. Virginia Code § 8.01-401.3(emphasis added).*

"An expert's testimony is admissible not only when scientific knowledge is required, but **when experience and observation . . . give the expert knowledge of a subject beyond that of persons of common intelligence and ordinary experience**. The scope of such evidence extends to any subject in respect of which one may derive special knowledge by experience, when [the witness's] knowledge of the matter in relation to which [the witness's] opinion is asked is such, or is so great, that it will probably aid the trier [of fact] in the search for the truth." *Velazquez v. Commonwealth,* 263 Va. 95, 103 (2002) (*quoting Neblett v. Hunter*, 207 Va. 335, 339-40 (1966).

> **Practice Pointer:** If you are a plaintiff litigating a slip and fall case, you should retain an expert. There are usually complications requiring standard of care testimony. Be prepared for a defense motion to strike your expert on the ground that the expert is unhelpful to the jury as they can figure it out without expert testimony. Argue to the trial court that one of

the reason so many of these cases result in defense verdicts is because the plaintiffs do not retain experts. If you lose and appeal, the Va. Supreme Court may say you needed an expert.

2. Generalized Testimony Based on Averages

One example of potentially inadmissible generalized testimony is when the defense doctor offers testimony that "most patients recover in 6-8 Weeks".

Keesee v. Donigan, 259 Va. 157 (2000) stands for the proposition that "an expert witness cannot use averages as a foundation for opinions specific to an individual." *Keesee* held that a trial court committed error by allowing an expert to testify to a driver's perception and reaction time based on averages "absent foundation evidence that the defendant's physical and mental characteristics relevant to his perception and reaction time placed him within the average range of persons tested."

Practice Pointer: There exists no Va. Supreme Court decision directly supporting a motion to strike a doctor's testimony for generalizing. One may argue successfully that this generalization is prohibited by *Keesee* and one may also argue that if the witness is generalizing, he/she may not have any opinion sufficiently definite about this patient to survive a motion to strike. This argument focuses on speculative testimony. The testimony of a doctor that he was "pretty sure" his nurses would have reported to him a certain condition in his patient was ruled inadmissible as too speculative. *Pettus v Gottfried* 269 Va. 69 (2005).

3. Grief Experts

A review of circuit court decision reflects different rulings from different judges on the issue of admissibility.

The better view in this author's opinion is that a trained counselor or social worker with training and experience in the field of grieving will have knowledge beyond that of lay people. So long as the expert can offer testimony that assists the jurors in understanding the evidence, the court should admit the testimony. The defense may argue that lay people already know about death, but the evidentiary

standard is not whether a lay person knows something about a subject, but whether the testimony of the expert will assist in understanding the injury.

One of the better known local grief experts is Ms. Mila Tecala who has a MS degree in social work. Her testimony was ruled admissible in the following circuit court opinion.

> *[T]he testimony of psychologist, psychiatrists, or other duly qualified professionals is regularly received by courts in the Commonwealth on the issue of the emotional distress or mental anguish sustained by a party entitled to compensation such as the statutory beneficiaries in this case. Upon consideration of the argument of counsel, it is adjudged and ordered that Plaintiff expert, Mila Tecala, who is a licensed clinical social worker in the Commonwealth of Virginia, may testify as to matters within the field of expertise of a licensed clinical social worker in which she is permitted to treat patients in the Commonwealth of Virginia pursuant to her license. The extent to which the expert is permitted to testify will be subject to determination upon her voir dire at trial. Sperry v. Schuyler Enterprises, Inc.,* 31 Va. Cir. 200 (1993) Circuit Court Judge John E. Wetzel (emphasis added).

> **<u>Practice Pointer</u>**: If faced with a motion to strike a grief expert, argue that so long as technical, or other specialized knowledge **assists the trier of fact** to understand the evidence, the grief expert can testify. This is particularly relevant when a child dies with surviving siblings or when a parent dies leaving a minor child. Adults and children behave differently in most instances and the various stages of grief can account for behavior which is relevant to the claimed damages.

E. Past and Future Medical Expenses & Treatment

Past and future medical expense are part of the menu of compensatory damages available to an injured plaintiff. These expense are considered part of the "specials", the other part being the past and future loss of earnings and earning capacity.

Compensatory damages are designed to pay the injured party for his losses and make him whole to the extent money can do so. These damages may include property damage, medical bills, loss of earnings, and bodily injury along with inconvenience, physical pain and mental suffering. The value of your claim will depend upon the seriousness of injury, the length of treatment, the past medical expenses, the past wage loss and any future injury, wage loss, loss or earning capacity or medical expenses.

There is no provision in the law requiring the liability insurer to pay the medical bills as they are incurred. The bills should be totaled in a "demand letter" when the treatment is concluded. It is also critical that the attorney assess the need for future treatment and secure an estimate from the treating physician as to the lifetime costs of the future medical bills. Many physicians will need to be educated about the need to estimate the future medical expenses. You must advise the physician that so long as he can state that the future medical expenses are "more likely than not" or "50.1% probable", the testimony is admissible.

Practice Pointer: Do not expect the defendant's liability insurer to pay for medical bills one by one as they are incurred and submitted. While occasionally a claims adjuster will offer an unrepresented (pro se) party a few thousand dollars for the compensatory damages and agree to pay another few thousand dollars for future medical bills, this is a very bad idea and unless the injuries are very minor, any such offer should be rejected. This presents the problem of what to do if the client does not have health insurance or significant medical expense coverage through his own motor vehicle insurer to pay his medical bills as they are incurred. Try to find a doctor who will accept the case on an "Assignment" which results in the bills being paid from the settlement or verdict. It is becoming more difficult to find physicians willing to take cases without up-front payment. The attorney accepting such cases must be willing to devote the necessary time to find proper treating physicians for the injured client.

The claim for compensatory damages are summarized in Virginia Model Jury Instruction 9.000.

General Personal Injury and Property Damage

If you find your verdict for the plaintiff, then in determining the damages to which he is entitled, you shall consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendant:

(1) any bodily injuries he sustained and their effect on his health according to their degree and probable duration;

(2) any physical pain [and mental anguish] he suffered in the past [and any that he may be reasonably expected to suffer in the future];

(3) any disfigurement or deformity and any associated humiliation or embarrassment;

(4) any inconvenience caused in the past [and any that probably will be caused in the future];

(5) any medical expenses incurred in the past [and any that may be reasonably expected to occur in the future;

(6) any earnings he lost because he was unable to work at his calling;

(7) any loss of earnings and lessening of earning capacity, or either, that he may reasonably be expected to sustain in the future;

(8) any property damage he sustained.

Your verdict shall be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendant's negligence.

Note that the model jury instruction makes provisions for past and future losses, including wages and medical bills.

The topics related to compensatory damages to be discussed today include the following:

1. **<u>Hospital Stay</u>**

Secure the hospital records and itemized bill. If the chart is huge, you can order an "abstract" which gives you the admission, surgery, consulting physician and discharge notes. It may also give you the diagnostic studies. If you are looking for pain and suffering evidence, you will want the nurse's notes. The consulting medical experts, emergency room physician, radiology and lab work bills will need to be requested from each provider as these services are usually provide by

independent contractors and the associated charges will not be included in the hospital bill.

Photographs of the plaintiff in the hospital bed, sometimes surrounded by medical apparatus, make for effective exhibits.

The claims adjusters will have the medical records reviewed by someone with a medical background. The claims adjuster will likely have a detailed memorandum prepared by this medical reviewer. You must be able to discuss the injuries and treatment in detail. In most cases, this should not present a problem, as you can look up medical terms online, and you can seek clarification from your client's physicians.

2. Emergency Medical Services

The ambulance or EMT record and bill can be secured from the County or private company providing the ambulance services. These records are not very detailed and rarely seem to record information of great significance. In most cases the EMT's are not allowed to administer medication and they have limited medical training to diagnose injury. The medics also frequently and gratuitously attempt to quantify the property damage, as minimal.

3. Doctors and Diagnostic Tests

These are obviously records and bills you need to proceed with a case. Read the records carefully as it is common to find many mistakes and typos, which include the date of the accident and the right or left body part, etc. With regard to MRI and CT scans, you may want to secure the actual images and review them with your expert. Not infrequently the treating physician will disagree with the radiology read. You will never know if this is the case without taking the films and radiology report to your expert.

> **Practice Pointer:** Under HIPAA, the patient has the right to demand his/her physician correct an error, or insert the patient's statement of fact into the record. This provision in HIPPA does not pertain to the opinions of the physician. *45 C.F.R. §164.526 et. seq.*

4. Physical Therapy

Physical therapy notes and bills are an important element of any claim. The physical therapy notes can be gold mine of reports from the injured plaintiff documenting problems with activities of daily living. It is unlikely that any other medical provider will record the plaintiff's daily pain and difficulties. On the other hand, the therapists will document missed appointments and anything contradictory that was observed by the therapist.

5. Nursing Services

Nursing services in the home care or nursing home setting most commonly accompany disabling injuries and like nursing notes from a hospital, will usually have very helpful documentation of the nature and extent of the injury and disability. While many times the nurses are reluctant witnesses, it may be worth asking for an interview to assess how the nurse might testify.

6. Appliances

Appliances include back braces, orthopedic aides for walking, raised toilets, crutches, walkers, wheelchairs shower seats, position lift chairs, mechanized stair lifts for stairway access, and lifts, hoists and slings for transfer to and from bed and chairs. Devices frequently ordered by physicians also include TENS units, neurostimulators and pain pumps. Neurostimulators are devices about the size of a stop watch which are surgically implanted in the back, well under the skin so that the device (which includes a battery pack and leads/electrodes) is not visible from the outside. The device is programmed to deliver electrical pulses to the epidural space near the spine to relieve pain. The strength and location of the stimulation can be adjusted with a hand held programmer.

7. Prescription Drugs & Other Medical Expenses

These documents are also very valuable to demonstrate the expenditures incurred and the severity and frequency of pain. If there are many receipts for medication stretching out over months or years, it is worthwhile to consider a timeline exhibit which records each prescription. A program like Lexis Nexis Time Map works well.

Practice Pointer: If the plaintiff pays for the medication with health insurance, ask the client to secure the "cash price" from the pharmacist so that your liability demand includes the full cost of the prescription, not just the insurance pay or deductible. Note that in Virginia the medical expense insurance company is only required to reimburse the amount paid by the health insurer, plus any deductible or copay.

8. Transportation & Temporary Housing Expenses

These are unusual and extraordinary expenses not present in most cases. The expense associated with a few taxi rides is usually not claimed as it is *de minimis*. That assessment will change if the client is disabled for a long period of time as a result of the negligence of the tortfeasor. Temporary housing expenses are unlikely, unless one considers rehabilitation facilities and nursing homes to be temporary housing. Unless there is a documented need to live in a home with special accommodations which cannot be built into the plaintiff's existing home, this seems to be an unlikely expense.

F. Property Damage in an Injury Case

Both parties typically skirmish over the relevance of the property damage. It is common to see one party blow up photographs of one or more of the vehicles when it suits their purposes. Defendants have been very successful in defending injury claims where the property damage appears minimal. If you are the plaintiff, and you have reason to believe the client was truly injured but the property damage appears to be modest, consider hiring a damage appraiser. The appraiser can measure the frame to see if it was bent, inspect for damage behind the bumper covers (which are usually designed to pop back into place even in a significant impact), and look for uneven gaps around the doors and trunk. The appraiser may be able to document structural damage not readily apparent.

The type of head rest, position of the head rest and the orientation of the plaintiff's head at impact (i.e. was the head turned looking for traffic, or was the plaintiff looking straight ahead) are also relevant to the injury and relate to the vehicle.

G. Determining Future Value: Present Value vs. Inflation and Cost of Living Adjustment

Future value is today's number escalated at some rate. It could be the rate of general inflation, or wage growth or another measure. The present value takes that growth out to compensate for the interest that can be earned.

If inflation is 3% and the interest rate is 3% then escalation = discount and the future value is today's number.

The rate of general inflation is running two to three percent. For medicals, 50 years of history shows medical costs escalate 1.5% faster, so if inflation is expected to be 2.5%, medicals are more like 4%. Nobody knows what the Affordable Care Act means for health care costs but it was designed to improve access, not control costs, and the Office of Medicare Services is assuming no change in medical price inflation in their estimates.

Inflation is the rise in the prices of the things we buy. If the CPI, a market basket of the things people buy, goes up by 3% we have a three percent inflation rate. If your income goes up by more than inflation, you have a real income increase. If it is goes up just 3% you can still buy that same market basket. If it goes up less than 3% you can't buy that same market basket of goods. The Social Security system provides a benefit increase exactly equal to the rate of inflation, as do some Federal and State pensions.

The CPI is not a cost of living index although people talk about it that way. The market basket in the CPI is fixed. It assumes that even though beef is more expensive, you would still by the beef instead of shifting to chicken. If the price of chicken fell enough, you could be "better off" even though you couldn't afford beef.

The U.S. Bureau of Labor Statistics does a survey to establish how people spend their money, establish the price of those items in period one, and reprice the same items in period two. Note that is an "all prices" index. It represents what is happening to all prices, and the ups and downs associated with that fixed market basket. It gets complicated when new products roll on the scene and new stores roll on the scene. Walmart is now a huge retailer of food so the sample stores had to be altered. What do you do about all kinds of new goods, GPS replacing paper maps or the iphone replacing everything? Generally think of the CPI as a ballpark estimate of prices, for the "average consumer" whoever that is.

Discounting is a whole lot more simple than most folks make it out to be. In the legal context it's just giving the defense a break for the interest the plaintiff can earn on lump-sum compensation. All we are doing is saying "the plaintiff will probably earn x% on the money."

Chesapeake & Ohio Ry. v. Kelly 241 U.S. 485 (1916) and *Jones & Laughlin Steel v. Pfiefer* 462 U.S. 523 (1983) both make it very clear that the purpose of discounting is to allow for the interest the plaintiff could earn. They also make it clear that the court is talking about low yield very safe investments that do not require investment skills. Most forensic economists use State and Local general obligation bonds or US Government bonds. Many forensic economists have realized the futility of forecasting interest rates and use current bond yields for this purpose rather than trying to forecast where interest rates will go.

Discounting depends on how far away the loss is. Given the current market and negligible interest rates, the yield on bonds represents a reasonable measure of return on investment. A loss occurring 3 years from today is matched with a 3 year bond, 5 years from today, a 5 year bond and so on.

A bond purchased today that matures in 5 years results in a 2.1% return from now to then, 10 years away gives you 3.6% return, 20 years out produces a 3.8% return and 30 years and over gives you a 4% return. Therefore, the discount to be applied to the sum of money needed to compensate the injured plaintiff depends on the number of years the plaintiff is expected to need the money, which is usually the life expectancy for medical bills and work life expectancy for loss of earnings.

At the present time most economists do not discount future medical costs. The lack of discounting on medicals is because it is assumed that medicals costs increase as fast (or faster) than an investment we can make. In fact, depending on the investment markets, the "present value" of medical expenditures can actually be greater than simply adding up the expected outlays.