



Ohio Revised Code

Section 2323.55 Future damages in medical malpractice actions.

Effective: April 11, 2003

Legislation: Senate Bill 281 - 124th General Assembly

(A) As used in this section:

(1) "Economic loss" means any of the following types of pecuniary harm:

(a) All wages, salaries, or other compensation lost as a result of an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim;

(b) All expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim;

(c) Any other expenditures incurred as a result of an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim, other than attorney's fees incurred in connection with that action.

(2) "Future damages" means any damages that result from an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim and that will accrue after the verdict or determination of liability is rendered in that action by the trier of fact. "Future damages" includes both economic and noneconomic loss.

(3) "Medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in section 2305.113 of the Revised Code.

(4) "Noneconomic loss" means nonpecuniary harm that results from an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim, including, but not limited to, pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, disfigurement, mental anguish, and any other intangible loss.



(5) "Past damages" means any damages that result from an injury, death, or loss to person or property that is a subject of a civil action upon a medical, dental, optometric, or chiropractic claim and that have accrued by the time that the verdict or determination of liability is rendered in that action by the trier of fact. "Past damages" include both economic loss and noneconomic loss.

(6) "Trier of fact" means the jury or, in a nonjury action, the court.

(B) In any civil action upon a medical, dental, optometric, or chiropractic claim in which a plaintiff makes a good faith claim against the defendant for future damages that exceed fifty thousand dollars, upon motion of that plaintiff or the defendant, the trier of fact shall return a general verdict and, if that verdict is in favor of that plaintiff, answers to interrogatories or findings of fact that specify both of the following:

(1) The past damages recoverable by that plaintiff;

(2) The future damages recoverable by that plaintiff.

(C) If answers to interrogatories are returned or findings of fact are made pursuant to division (B) of this section and if the future damages recoverable by that plaintiff exceeds fifty thousand dollars, the plaintiff or defendant may file a motion with the court that seeks a determination under division (D) of this section. The plaintiff or defendant shall file the motion at any time after the verdict or determination in favor of the plaintiff is rendered by the trier of fact but prior to the entry of judgment in accordance with Civil Rule 58.

(D)(1) Upon the filing of a motion pursuant to division (C) of this section and prior to the entry of judgment in accordance with Civil Rule 58, the court shall do all of the following:

(a) Set a date for a hearing to address whether all or any part of the future damages recoverable by the plaintiff shall be received by the plaintiff in a series of periodic payments rather than in a lump sum;

(b) Give notice of the date of the hearing described in division (D)(1)(a) of this section to the parties



involved and their counsel of record;

(c) Conduct the hearing described in division (D)(1)(a) of this section, allow the parties involved to present any relevant evidence at the hearing, consider the factors described in division (D)(2) of this section in making its determination, and make its determination in accordance with division (D)(3) of this section.

(2) In determining whether all or any part of the future damages recoverable by the plaintiff shall be received by the plaintiff in a series of periodic payments rather than in a lump sum, the court shall consider all of the following factors:

(a) The purposes for which those portions of the future damages were awarded to that plaintiff;

(b) The business or occupational experience of that plaintiff;

(c) The age of that plaintiff;

(d) The physical and mental condition of that plaintiff;

(e) Whether that plaintiff or the parent, guardian, or custodian of that plaintiff is able to competently manage the future damages;

(f) Any other circumstance that relates to whether the injury sustained by that plaintiff would be better compensated by the payment of the future damages in a lump sum or by their receipt in a series of periodic payments.

(3) After the hearing described in division (D)(1) of this section and prior to the entry of judgment in accordance with Civil Rule 58, the court shall determine, in its discretion, whether all or any part of the future damages recoverable by the plaintiff shall be received by the plaintiff in a series of periodic payments rather than in a lump sum. If the court determines that a plaintiff shall receive the future damages recoverable by the plaintiff in a series of periodic payments, it may order the payments only as to the amount of the future damages recoverable by the plaintiff that exceeds fifty thousand dollars. If the court determines that the plaintiff shall receive the future damages



recoverable by the plaintiff in a lump sum, the future damages shall be paid in a lump sum.

(E) If the court determines pursuant to division (D) of this section that a plaintiff shall receive the future damages recoverable by the plaintiff in a series of periodic payments, both of the following apply:

(1) Within twenty days after the court makes that determination, the plaintiff shall submit a periodic payments plan to the court. The plan may include, but is not limited to, a provision for a trust or an annuity and may be submitted by that plaintiff alone or by that plaintiff and the defendant.

(2) Within twenty days after the court makes that determination, the defendant may submit to the court, alone or jointly with the plaintiff, a periodic payments plan. If the defendant submits a periodic payments plan, the plan may include, but is not limited to, a provision for a trust or an annuity.

(F)(1) If the defendant and plaintiff do not jointly submit a periodic payments plan and if the defendant does not separately submit a periodic payments plan, then, within ten days after that plaintiff submits a plan, the defendant may submit to the court written comments relative to the periodic payments plan of the plaintiff.

(2) If the defendant and plaintiff do not jointly submit a periodic payments plan and if the defendant separately submits a periodic payments plan, then, within ten days after the defendant submits the plan, the plaintiff may submit to the court written comments relative to the periodic payments plan of the defendant.

(G)(1) The court, in its discretion, may modify, approve, or reject any submitted periodic payments plan. In approving any periodic payments plan, the court shall require interest on the judgment in question in accordance with section 1343.03 of the Revised Code. Additionally, in approving any periodic payments plan, the court is not required to ensure that payments under the periodic payments plan are equal in amount or that the total amount paid each year under the periodic payments plan is equal in amount to the total amount paid in other years under the plan; rather, a periodic payments plan may provide for payments to be made in irregular or varied amounts, or to be graduated upward or downward in amount over the duration of the periodic payments plan.



(2) The court shall include in any approved periodic payments plan adequate security to insure that the plaintiff will receive all of the periodic payments under that plan. If the approved periodic payments plan includes a provision for an annuity as the adequate security or otherwise, the defendant shall purchase the annuity from either of the following types of insurance companies:

(a) An insurance company that the A.M. Best Company, in its most recently published rating guide of life insurance companies, has rated A or better and has rated XII or higher as to financial size or strength;

(b) An insurance company that the superintendent of insurance, under rules adopted pursuant to Chapter 119. of the Revised Code for purposes of implementing this division, determines is licensed to do business in this state and, considering the factors described in this division, is a stable insurance company that issues annuities that are safe and desirable. In making determinations as described in this division, the superintendent shall be guided by the principle that annuities should be safe and desirable for plaintiffs who are awarded damages. In making those determinations, the superintendent shall consider the financial condition, general standing, operating results, profitability, leverage, liquidity, amount and soundness of reinsurance, adequacy of reserves, and the management of any insurance company in question and also may consider ratings, grades, and classifications of any nationally recognized rating services of insurance companies and any other factors relevant to the making of such determinations.

(3) If a periodic payments plan provides for periodic payments over a period of five years or more to the plaintiff, the court, in its discretion, may include in the approved periodic payments plan a provision in which it reserves to itself continuing jurisdiction over that plan, including jurisdiction to review and modify that plan.

(4) The court shall specify in the entry of judgment in the tort action the determination made pursuant to division (D) of this section and, if applicable, the terms of any approved periodic payments plan.

(H) After a periodic payments plan is approved, the future damages that are to be received in periodic payments shall be paid in accordance with the plan, including, if applicable, payment over to a trust or annuity provided for in the plan.



(I) If a court orders a series of periodic payments of future damages in accordance with this section and the plaintiff dies prior to the receipt of all of the future damages, the liability for the unpaid portion of those damages that is not yet due at the time of the death of that plaintiff shall continue, but the payments shall be paid to the heirs of that plaintiff as scheduled in and otherwise in accordance with the approved periodic payments plan or, if the plan does not contain a relevant provision, as the court shall order.

(J)(1) Nothing in this section precludes a plaintiff and a defendant from mutually agreeing to a settlement of the action.

(2) Except as otherwise provided in this section, nothing in this section increases the time for filing any motion or notice of appeal or taking any other action relative to a civil action upon a medical, dental, optometric, or chiropractic claim, alters the amount of any verdict or determination of damages by the trier of fact in a civil action upon a medical, dental, optometric, or chiropractic claim, or alters the liability of any party to pay or satisfy the verdict or determination.

(K) This section does not apply to tort actions that are brought against political subdivisions of this state and that are commenced under or are subject to Chapter 2744. of the Revised Code or to tort actions brought against the state in the court of claims.