



Ohio Revised Code

Section 2323.56 Periodic payments of future damages.

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 to person that is a subject of a tort action;

(b) All expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of an injury to person that is a subject of a tort action;

(c) Any other expenditures incurred as a result of an injury to person that is a subject of a tort action.

(2) "Future damages" means any damages that result from an injury to person that is a subject of a tort action and that will accrue after the verdict or determination of liability by the trier of fact is rendered in that tort action.

(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 to person that is a subject of a tort action, including, but not limited to, pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, mental anguish, and any other intangible loss.

(5) "Past damages" means any damages that result from an injury to person that is a subject of a tort action and that have accrued by the time that the verdict or determination of liability by the trier of fact is rendered in that tort action, and any punitive or exemplary damages awarded.



(6) "Tort action" means a civil action for damages for injury to person. "Tort action" includes a product liability claim for damages for injury to person that is subject to sections 2307.71 to 2307.80 of the Revised Code, but does not include a civil action for damages for a breach of contract or another agreement between persons.

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

(B)(1) In any tort action that is tried to a jury and in which a plaintiff makes a good faith claim against the defendant in question for future damages that exceed two hundred thousand dollars, upon motion of that plaintiff or the defendant in question, the court shall instruct the jury to return, and the jury shall return, a general verdict and, if that verdict is in favor of that plaintiff, answers to interrogatories that shall specify all of the following:

(a) The past damages recoverable by that plaintiff;

(b) The future damages recoverable by that plaintiff, and the portions of those future damages that represent each of the following:

(i) Noneconomic loss;

(ii) Economic loss;

(iii) Economic loss as described in division (A)(1)(a) of this section;

(iv) Economic loss as described in division (A)(1)(b) of this section;

(v) Economic loss as described in division (A)(1)(c) of this section.

(2) In any tort action that is tried to a court and in which a plaintiff makes a good faith claim against the defendant in question for future damages that exceed two hundred thousand dollars, upon motion of that plaintiff or the defendant in question, the court shall make its determination in the action and, if that determination is in favor of that plaintiff, make findings of fact that shall specify damages as



provided in division (B)(1) of this section.

(C) If answers to interrogatories are returned or findings of fact are made pursuant to division (B) of this section and if the total of the portions of the future damages described in divisions (B)(1)(b)(i), (iv), and (v) of this section exceeds both two hundred thousand dollars and twenty-five per cent of the total of the damages described in divisions (B)(1)(a) and (b) of this section, the plaintiff or defendant in question may file a motion with the court that seeks a determination under division (D) of this section. Such a motion shall be filed at any time after the verdict or determination in favor of the plaintiff in question 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 total of the portions of the future damages described in divisions (B)(1)(b)(i), (iv), and (v) of this section shall be received by the plaintiff in question 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 total of the portions of the future damages described in divisions (B)(1)(b)(i), (iv), and (v) of this section shall be received by the plaintiff in question 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 those portions of 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 those portions 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 total of the portions of the future damages described in divisions (B)(1)(b)(i), (iv), and (v) of this section shall be received by the plaintiff in question in a series of periodic payments rather than in a lump sum. If the court determines that a series of periodic payments shall be received by that plaintiff, it may order such payments only as to the amount of that total that exceeds both two hundred thousand dollars and twenty-five per cent of the total of the damages described in divisions (B)(1)(a) and (b) of this section.
- (E)(1)(a) If the court determines pursuant to division (D) of this section that a series of periodic payments shall be received by the plaintiff in question, then, within twenty days after the court so determines, that plaintiff shall submit a periodic payments plan to the court. Such a 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 in question.
- (b) If that defendant and that plaintiff do not jointly submit a periodic payments plan, then, within twenty days after the court makes its determination pursuant to division (D) of this section that a series of periodic payments shall be received by that plaintiff, that defendant may submit to the court a periodic payments plan. If that defendant does so, it may include, but is not limited to, a provision for a trust or an annuity.



(c) If that defendant and that plaintiff do not jointly submit a periodic payments plan and if that defendant does not separately submit such a plan pursuant to division (E)(1)(b) of this section, then, within ten days after that plaintiff submits such a plan, that defendant may submit to the court written comments relative to the periodic payments plan of that plaintiff. If that defendant and that plaintiff do not jointly submit a periodic payments plan and if that defendant separately submits such a plan pursuant to division (E)(1)(b) of this section, then, within ten days after that defendant submits such a plan, that plaintiff may submit to the court written comments relative to the periodic payments plan of that defendant.

(d) The court, in its discretion, may modify, approve, or reject any submitted periodic payments plan. In approving any periodic payments plan, the court shall take into consideration 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.

(e) The court shall include in any approved periodic payments plan adequate security to insure that the plaintiff in question 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 in question shall purchase the annuity from either of the following types of insurance companies:

(i) 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;

(ii) 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 such 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.

(f) If a periodic payments plan provides for periodic payments over a period of five years or more to the plaintiff in question, 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.

(g) 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.

(2) If the court determines pursuant to division (D) of this section that a series of periodic payments shall not be received by the plaintiff in question, the future damages described in divisions (B)(1)(b)(i), (iv), and (v) of this section shall be paid in a lump sum.

(3) 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.

(F) If a court orders a series of periodic payments of future damages in accordance with this section, the following rules shall govern those payments if the plaintiff in question dies prior to the receipt of all of them:

(1) The liability for the portion of those payments that represents future economic loss as described in division (B)(1)(b)(iv) of this section and that is not due at the time of the death of that plaintiff



shall cease at that time;

(2) The liability for the portion of those payments that represents future noneconomic loss of that plaintiff as described in division (B)(1)(b)(i) of this section and that is not 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;

(3) The liability for the portion of those payments not described in division (F)(1) or (2) of this section shall continue, but the payments shall be paid as described in division (F)(2) of this section.

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

(2) Except to the extent provided in divisions (A) to (F) of this section, nothing in those divisions increases the time for filing any motion or notice of appeal or taking any other action relative to a tort action, alters the amount of any verdict or determination of damages by the trier of fact in a tort action, or alters the liability of any party to pay or satisfy any such verdict or determination.

(H) This section does not apply to tort actions against political subdivisions of this state that are commenced under or are subject to Chapter 2744. of the Revised Code or to tort actions against the state in the court of claims. This section also does not apply to a tort or other civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim, and instead such an action shall be subject to section 2323.55 of the Revised Code.