

Sale of Future Benefits under New York Article 50

While we in no way recommend the sale of future benefits to a factor, there are occasions when sale is necessary, and sale to a factor is the only alternative. For that reason and to provide the plaintiff with a tool to help negotiate a better result, we have incorporated a sale option into our valuation package.

Plaintiffs' attorneys have fought to get the best for their clients, and the statutes in New York have provided that the defense must offer and guarantee the purchase and payment of an annuity contract to make annual payments of future Award elements in monthly installments. By doing so, they have sought to take advantage of certain tax provisions that treat the periodic as nothing more than the payment of the Award over time and tax exempt.

The cost of the annuity contracts can be stated in terms of discount rates, or the manner similar to, but not the same as, the discount rate used to value the future damages award. Both are used to ensure payment of the full Award net of lump sums, litigation expenses and contingent fees, but including any statutory inflation.

The discount rates used to value Awards are tied to the 10-Year Treasury rates or yields. They are in recent time sold at auction in a range of 3 to 5%, and trade on a daily basis with yields from slightly over 2% to under 5%. The discount rates by factors vary from the mid to high teens to low 20's percent. In addition, factors apply a number of 'costs' to further reduce the net sale price.

The result is that the money paid to the plaintiff is very expensive. The alternative might be an unsecured loan from a bank where the plaintiff instructs the annuity provider to deposit the periodic payment to that bank and agrees to a monthly charge against the account until the amount is paid. These arrangements would be easier if the bank were the depository from the outset, and if any trusts were placed with that bank.

Direction to User of Award/Valuation Systems

If our systems were employed to develop the Award and/or value it, we would have a data file from which the elements of future loss could be extracted and sale could be evaluated. We use the case identifier and access the case file, if the user has the file, he/she can employ 'Clear' then 'Input' and use the case identifier, and then Choose the Award scenario then 'Sale of Payments'. A list of elements of future loss will appear. Selection from the list will fill out the element detail. Upon selecting the element, selection/entry of proposed sale or sales, and the addition of expense items to produce a net to plaintiff.

Direction to New User

Otherwise, a user can contact us for an Identifier that will permit the opening of the sale of payments section. Then the user can Click on 'Clear', Click on 'Input' enter the Identifier and Click 'Input' Again. The result will be the appearance of a 'Sale of Payments' which,

when clicked will produce a frame that has room for entry of future Award element data, selection/entry of proposed sale or sales, and the addition of expense items to produce a net to plaintiff.

[Amended 50A Sale Evaluation](#)

[Original 50A Sale Evaluation](#)

[50B Sale Evaluation](#)