

### 34.02 Damages Arising in the Future--Discount to Present Cash Value

In computing the damages arising in the future [because of future (medical) (caretaking) expenses] [or] [because of the loss of (future earnings) (benefits) (or) (services)] you must determine their present cash value. “Present cash value” means the sum of money needed now, which, when added to what that sum may reasonably be expected to earn in the future, will equal the amount of the [expenses] [and] [earnings] [benefits] at the time in the future when [the expenses must be paid] [or] [the earnings (benefits) would have been received]. Damages for [pain and suffering] [disability] [loss of a normal life] [and] [disfigurement] [loss of (society) (companionship) (and) (sexual relations)] are not reduced to present cash value.

#### Notes on Use

This instruction may be used with IPI 34.01. If mortality tables are in evidence, also use IPI 34.04.

On the issue of the use of “value” or “expense” for medical care, treatment and services, see 30.06 Notes on Use.

#### Comment

This instruction has been modified from earlier versions. Prior 34.02 included the phrase “... you must not [simply multiply the (expenses) (earnings) (benefits) (by the length of time you have found they will continue) (or) (by the number of years you have found that the plaintiff is likely to live)].”

Inclusion of this phrase requires the court to favor one method of determining present cash value over another. There is a sound economic basis (though certainly not the only one) that permits present cash value to be determined in exactly the manner prohibited by the former instruction. This is known as the “total offset method.” See *Beaubien v. Elliot*, 434 P.2d 665 (Alaska 1967) and *Kaczkowski v. Bolubasz*, 461 Pa. 561, 421 A.2d 1027 (1980), wherein two state supreme courts have judicially adopted this method. Also see 104 Dick. L. Rev. 679 (Summer 2000). The Illinois Supreme Court in *Richardson v. Chapman*, 175 Ill.2d 98, 676 N.E.2d 621, 221 Ill.Dec. 818 (1997) approved of this method of determining present cash value in the “upper bound” figures used by plaintiff’s expert. However, the Court did not adopt this method or indicate it was preferred over other methods. Therefore, the committee makes no recommendation as to which of several methods may be used to determine present cash value.

Future damages except for pain and suffering, disfigurement, disability, loss of normal life, and loss of society and consortium are to be reduced to present cash value. *Allendorf v. Elgin, J. & E. Ry. Co.*, 8 Ill.2d 164, 133 N.E.2d 288 (1956), *cert. denied*, 352 U.S. 833, 77 S.Ct. 49, 1 L.Ed.2d 53 (1956); *Avance v. Thompson*, 387 Ill. 77, 55 N.E.2d 57 (1944), *cert. denied*, 323 U.S. 753, 65 S.Ct. 82, 89 L.Ed. 603 (1944); *Howard v. Gulf, M. & O.R.Co.*, 13 Ill.App.2d 482, 142 N.E.2d 825 (4th Dist.1957). *Cf. Lorenz v. Air Illinois, Inc.*, 168 Ill.App.3d 1060, 522 N.E.2d 1352, 119 Ill.Dec. 493 (1st Dist.1988), and *Exchange Nat’l Bank v. Air Illinois, Inc.*, 167 Ill.App.3d 1081, 522 N.E.2d 146, 118 Ill.Dec. 691 (1st Dist.1988) and *Drews v. Globel Freight Lines, Inc.*, 144

Ill.2d 84, 161 Ill.Dec. 324, 578 N.E.2d 970 (1991) (damages for loss of consortium and society not reduced to present cash value in a wrongful death case).

There is no requirement that actuarial or statistical evidence be present to guide the jury in its determination of present cash value when this instruction is given. *Robinson v. Greeley & Hansen*, 114 Ill.App.3d 720, 449 N.E.2d 250, 253; 70 Ill.Dec. 376, 379 (2d Dist.1983); *Crabtree v. St. L.-S.F. Ry. Co.*, 89 Ill.App.3d 35, 411 N.E.2d 19, 44 Ill.Dec. 113 (5th Dist.1980); *Kirk v. Walter E. Deuchler Associates, Inc.*, 79 Ill.App.3d 416, 426-427; 398 N.E.2d 603, 610; 34 Ill.Dec. 780, 787 (2d Dist.1979).

*See also Schaffner v. Chicago & North Western. Transportation Company*, 129 Ill.2d 1, 541 N.E.2d 643, 133 Ill.Dec. 432 (1989) (improper for defendant to argue that any sum awarded Plaintiff could be invested to produce a “stream of income”); *Lorenz v. Air Illinois, Inc.*, 168 Ill.App.3d 1060, 522 N.E.2d 1352, 1356; 119 Ill.Dec. 493, 497 (1st Dist.1988) (expert testimony as to cost of annuity properly excluded on issue of present cash value); *Singh v. Air Illinois, Inc.*, 165 Ill.App.3d 923, 520 N.E.2d 852, 856-857; 117 Ill.Dec. 501, 505-506 (1st Dist.1988) (same); *Exchange Nat'l Bank v. Air Illinois, Inc.*, 167 Ill.App.3d 1081, 522 N.E.2d 146, 150-151; 118 Ill.Dec. 691, 695-696 (1st Dist.1988) (same; reference to “inflation” in closing argument not prejudicial error)

