

CV2021 Present cash value.

If you decide that [name of plaintiff] is entitled to damages for future economic losses, then the amount of those damages must be ~~reduced~~-adjusted to present cash value. This is because any damages awarded would be paid now, even though the plaintiff would not suffer the economic losses until some time in the future. Money received today would be invested and earn a return or yield.

To ~~reduce~~-adjust an award for future damages to present cash value, you must determine the amount of money needed today that, when reasonably and safely invested, will provide [name of plaintiff] with the amount of money needed to compensate [name of plaintiff] for future economic losses. In making your determination, you should consider the earnings from a reasonably safe investment.

References

Florez v Schindler Elevator, 2010 UT App 254 (Absence of life expectancy evidence does not preclude award of future medical costs as damages.)

Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc., 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005).

Bennett v. Denver & Rio Grande Western R. Co., 213 P.2d 325 (Utah 1950).

Committee Notes

Utah law is silent on whether inflation should be taken into account in discounting an award for future damages to present value. The United States Supreme Court, however, has ruled that inflation should be taken into account when discounting to present value. See *Jones & Laughlin Steel Corp. v. Pfeifer*, 462 U.S. 523 (1983).

Utah law is silent on whether plaintiff or defendant bears the burden of proving present cash value. Other jurisdictions are split. Some courts treat reduction to present value as part of the plaintiff's case in chief. See, e.g., *Abdulghani v. Virgin Islands Seaplane Shuttle, Inc.*, 746 F. Supp. 583 (D. V.I. 1990); *Steppi v. Stromwasser*, 297 A.2d 26 (Del. Super. Ct. 1972). Other courts treat reduction to present value as a reduction of the plaintiff's damages akin to failure to mitigate, on which the defendant bears the burden of proof. See, e.g., *Energy Capital Corp. v. United States*, 47 Fed. Cl. 382 (Fed. Cl. 2000), *aff'd in part, rev'd in part on other grounds*, 302 F.3d 1314 (Fed. Cir. 2002); *CSX Transp., Inc. v. Casale*, 441 S.E.2d 212 (Va.1994). There is a good discussion of the issue in *Lewin Realty III, Inc. v. Brooks*, 771 A.2d 446 (Md. Ct. Spec. App. 2001), *aff'd*, 835 A.2d 616 (Md. 2003), holding the burden to be on the defendant. It cites *Miller v. Union P.R. Co.*, 900F.2d 223, 226 (10th Cir. 1990), as support.

There are several Utah cases holding that the burden is on the defendant to show that a damage award should be reduced, but they deal with failure to mitigate, not reduction to present value. See *Covey v. Covey*, 2003 UT App 380, 29, 80 P.3d 553; *John Call Eng'g, Inc. v. Manti City Corp.*, 795 P.2d 678, 680 (Utah Ct. App. 1990).

The Utah Court of Appeals has noted in dicta that, while having an expert testify as to the present value calculation of future economic damages is usually preferred, such expert testimony is not required. *Brinkerhoff v. Fleming*, 2023 UT App 92, para. 19 n.4.

Expert testimony on annuities as relevant to present value of future damages is permitted. *Gallegos ex rel. Rynes v. Dick Simon Trucking, Inc.*, 2004 UT App 322, 110 P.3d 710, cert. denied (Utah 2005). Annuity tables and their related data also are permitted without expert testimony. See *Schlatter v. McCarthy*, 113 Utah 543, 196 P.2d 968 (1948).