

# CARLTON FIELDS

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ATTORNEYS AT LAW

## APPELLATE PRACTICE POINTER

### Verdict Form Issues When Future Economic Damages May Exceed \$250,000

Pursuant to section 768.78(1)(a)2, Florida Statutes, awards of future economic damages that exceed \$250,000 may be paid either by a lump sum reduced to present value or by periodic payments.

Subsection (b) reads as follows:

- (b) In entering a judgment ordering the payment of such future damages by periodic payments, the court shall make a specific finding of the dollar amount of periodic payments which will compensate the judgment creditor for these future damages after offset for collateral sources. The total dollar amount of the periodic payments shall equal the dollar amount of all such future damages before any reduction to present value, less any attorney's fees payable from future damages in accordance with paragraph (f).

Because the statute requires periodic payments to be determined based on “the dollar amount of all such future damages before any reduction to present value,” it is necessary to know what that amount is. We believe that defendants are entitled to have the jury determine that unreduced future damages amount. In order for that to occur, however, defendants need to request a special verdict form that includes lines for future unreduced economic damages and number of years, as well as the standard present value line. The current model verdict form is not sufficient to preserve this issue.

The Florida Supreme Court’s Committee on Standard Jury Instructions (Civil) has specifically recognized the problem created by the model verdict form in this very situation. In its comment, the Committee has flagged the issue, stating that “it takes no position on how the court might comply with section 768.78 in cases tried by a jury under circumstances in which future economic damages might, under the evidence, exceed \$250,000.00, if a party requested application of the provisions of the statute.”

It remains only to note that there are other issues, such as issues related to whether a defendant wants an open judgment on the books/public records for an extended period of time and issues related to offers of judgment, that should be considered before seeking periodic payments under section 768.78. There are reasons why some clients may not want to opt for periodic payments.

For more information, please contact Joseph H Lang, Jr. at 727.821.7000, or visit [www.carltonfields.com](http://www.carltonfields.com).

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