

At an IAS Part 16 of the Supreme Court of the State of New York, held in and for the County of Bronx, at the Courthouse located at 851 Grand Concourse, Bronx, NY, on the 28th day of July, 2008.

PRESENT: Hon. Lucy Billings,
Justice.

-----x
CARMEN VALDEZ, individually and as mother and
Natural guardian of CESAR MARTIN and ARIEL
MARTI, infants,

Plaintiffs.

-against-

THE CITY OF NEW YORK AND JOSE TORRES

Defendants.
-----x

JUDGMENT

Index No.: 16507/97

The above entitled action having duly come on for trial before the Hon. Lucy Billings and a jury on the 28th day of March 2006, and the plaintiffs, CARMEN VALDEZ, individually and as mother and natural guardian of CESAR MARTI and ARIEL MARTI, having appeared by their attorneys, SIVIN & MILLER, LLP, and the defendants, CITY OF NEW YORK and JOSE TORRES, having appeared by their attorney MICHAEL A. CARDOZO, ESQ., and the jury, after due deliberation, having returned a verdict on the 28th day of March 2006, in favor of the plaintiffs CARMEN VALDEZ, CESAR MARTI and ARIEL MARTI, and against the defendants CITY OF NEW YORK and JOSE

TORRES, and the jury having awarded damages as follows:

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PAID

NO FEE

Past Damages

Pain and suffering – CAMEN VALDEZ: \$ 3,000,000.00
Pain and suffering – CESAR MARTI: \$ 750,000.00
Pain and suffering – ARIEL MARTI: \$ 750,000.00
Medical expense - CARMEN VALDEZ \$ 40,866.00, *as stipulated by the parties*

Future Damages

Pain and suffering – CAMEN VALDEZ: \$ 5,000,000.00
(over 10 years per
CPLR 5041[e])
Medical expense - CARMEN VALDEZ \$ 80,000.00 over 5 years, *as reduced by the court*

Total Award \$ 9,620,866.00

AND the applicable interest rate to be 9% on the judgment and the discount rate used to determine the present value of the future damages to be 4.79%;

NOW, on motion of SIVIN & MILLER, LLP, attorneys for plaintiffs, it is hereby

ORDERED, ADJUDGED AND DECREED, that plaintiff CARMEN VALDEZ, residing at 2693 Morris Avenue, Bronx, NY 10468, shall recover from the defendants CITY OF NEW YORK and JOSE TORRES, the lump sum of \$2,191,174.23 (representing \$2,024,715.44 for past damages and \$166,458.79 lump sum for future damages), exclusive of attorney's fees and attorney's expenses, and it is further

ORDERED, ADJUDGED AND DECREED, that plaintiff CESAR MARTI, residing at 2693 Morris Avenue, Bronx, NY 10468, shall recover from the defendants CITY OF NEW YORK and JOSE TORRES, the lump sum of \$499,376.36 exclusive of attorney's fees and attorney's expenses and, and it is further

ORDERED, ADJUDGED AND DECREED, that plaintiff ARIEL MARTI, residing at 2693 Morris Avenue, Bronx, NY 10468, shall recover from the defendants CITY OF NEW YORK and JOSE TORRES, the lump sum of \$499,376.36 exclusive of attorney's fees and attorney's expenses and, and it is further

ORDERED, ADJUDGED AND DECREED, that SIVIN & MILLER, LLP, located at 170 Broadway, Suite 600, New York, NY 10038, shall recover of the defendants the CITY OF NEW YORK and JOSE TORRES, the sum of \$3,128,393.57 (representing \$1,511,734.08 for past damages, \$83,229.39 [for the first \$250,000 of future damages paid in cash] and \$1,521,430.10 for the future damages in excess of \$250,000) and \$12,000 for litigation expenses; and it is further

ORDERED, ADJUDGED AND DECREED, that defendants the CITY OF NEW YORK and JOSE TORRES, be and hereby are directed to offer and purchase and warranty payment of an annuity contract by an insurance carrier designated as qualified by the Superintendent, of the following annual payments in equal monthly installments in advance:

- (a) For future pain and suffering – \$316,533.84 per annum for the shorter of ten (10) years or the life of CARMEN VALDEZ, increased annually at four *percent* (4%) compounded annually paid 1/12th monthly or \$26,377.82 and
- (b) For future medical expense – \$10,129.08 per annum for the shorter of five (5) years or the life of CARMEN VALDEZ, increased annually at four *percent* (4%) compounded annually paid 1/12th monthly or \$844.09 and it is further

ORDERED, ADJUDGED and DECREED that all periodic payments are due from the liability date. Any past due future payments will be payable in cash, with the remaining future payments ~~are~~ to be paid periodically; and it is further

ORDERED, ADJUDGED AND DECREED, that judgment be entered on behalf of the plaintiff CARMEN VALDEZ, individually and as mother and natural guardian of CESAR MARTI and ARIEL MARTI, against the defendants CITY OF NEW YORK and JOSE TORRES in the amount of \$9,361,180.71, plus pre-judgment interest of 9% per annum, based on a reduced amount per *Pay v State*, 87 N.Y.2d 1011, of \$8,911,516.19 in the amount of \$1,982,812.34, through entry of the judgment on SEP 18 2008, for a total judgment to be entered in the amount of \$11,343,993.05, and that plaintiff shall have execution therefor.

ORDERED, ADJUDGED AND DECREED, that plaintiff's attorney shall be entitled to costs and disbursements as per the Bill of Costs in the sum of \$ 1,345.00.
For a total judgment of \$ 11,345,338.05.

ENTER

Luigi DiLuigi

J. S. C.

Kay Cemer
acting County Clerk

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Is this a CPLR Article 50-A or <u>50-B</u> (enter as "A" or "B"):	B	
Plaintiff.....	Carman Valdez	
Defendant.....	City of New York	
Liability Percentage:.....	100.00%	
If less than 100% Liability, is other entity.....	--	
another defendant ("Y" or "N")?.....	n/a	
Expenses and Disbursements.....	\$12,000.00	
Setoffs/Credits \$:.....	\$0.00	
Type of Setoff (Custodial Care, etc. [enter exactly as the dan	n/a	
Term of Setoff (Past or Future [enter as "Past" or "Future"]).	n/a	
Increase rate.....	4.00%	
Pre Judgment Interest Rate.....	9.00%	
Post Judgment Interest Rate:.....	9.00%	
Date of Liability Decision:.....	03/28/2006	
Entry of Judgment (number of days for pre-judgment interes	05/01/2008	765
Date of Annuity/Lump Sum Funding (number of days for pc	05/01/2008	0

	Certain or Temporary Certain = 1 Temporary = 2	Discount Rate	Period of Years	Gross 4111 Verdict	4111 Verdict Including 100.00% Liability Percentage	Setoff/Credit of n/a n/a \$0.00 Application*	Allocate First \$250,000.00 of Future Damages*	Allocation of \$12,000.00 Expenses & Disb.*	4111 Verdict Including 100.00% Liability Less \$0.00 Setoffs/ Credits, with Allocation of \$250,000.00 of Future Damages* & allocation of \$12,000.00 of Expenses & Disbursements	Plaintiff's Gross Monthly Payments	Present Value of 4111 Verdict**	Attorney's Fee 33.33% of Present Value of 4111 Verdict	PV of Plaintiff's Remaining Damages 66.67% of Present Value of 4111 Verdict	Plaintiff's Final Monthly Payments 66.67% of Plaintiff's Gross Monthly Payment
Verdict Past Damages:														
Pain & Suffering - Car	n/a	n/a	n/a	\$3,000,000.00	\$3,000,000.00	\$0.00	--	(\$3,741.87)	\$2,996,258.13	--	\$2,996,258.13	\$998,752.71	\$1,997,505.42	--
Pain & Suffering - Mar	n/a	n/a	n/a	\$750,000.00	\$750,000.00	\$0.00	--	(\$935.47)	\$749,064.53	--	\$749,064.53	\$249,688.18	\$499,376.36	--
Medical expense - Car	n/a	n/a	n/a	\$40,866.00	\$40,866.00	\$0.00	--	(\$50.97)	\$40,815.03	--	\$40,815.03	\$13,605.01	\$27,210.02	--
Pain & Suffering - Mar	n/a	n/a	n/a	\$750,000.00	\$750,000.00	\$0.00	--	(\$935.47)	\$749,064.53	--	\$749,064.53	\$249,688.18	\$499,376.36	--
Damage #5	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	--	\$0.00	\$0.00	--	\$0.00	\$0.00	\$0.00	--
Total Past Damages:				\$4,540,866.00	\$4,540,866.00	\$0.00		(\$5,663.77)	\$4,535,202.23		\$4,535,202.23	\$1,511,734.08	\$3,023,468.15	
Verdict Future Damages:														
Pain & Suffering - Car	2	4.79%	10	\$5,000,000.00	\$5,000,000.00	\$0.00	(\$246,062.99)	(\$5,929.53)	\$4,748,007.47	\$39,566.73	4,491,073.84	\$1,497,024.61	\$2,994,049.23	\$26,377.82
Medical expense - Car	2	4.79%	5	\$80,000.00	\$80,000.00	\$0.00	(\$3,937.01)	(\$94.87)	\$75,968.12	\$1,266.14	73,216.46	\$24,405.49	\$48,810.97	\$844.09
Damage #3	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Damage #4	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Damage #5	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Damage #6	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Damage #7	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00		\$0.00	\$0.00	\$0.00	\$0.00
Total Periodic Future Damages				\$5,080,000.00	\$5,080,000.00	\$0.00	(\$250,000.00)	(\$6,024.41)	\$4,823,975.59		\$4,564,290.30	\$1,521,430.10	\$3,042,860.20	\$27,221.91
First \$250,000 of future damages*		4.79%						(\$311.82)	\$249,688.18		\$249,688.18	\$83,229.39	\$166,458.79	
Total Future Damages:				\$5,080,000.00	\$5,080,000.00	\$0.00		(\$6,336.23)	\$5,073,663.77		\$4,813,978.48	\$1,604,659.49	\$3,209,318.99	
Net 4111 Verdict before Attorney's Expenses and Disbursements:				\$9,620,866.00	\$9,620,866.00				\$9,608,666.00		\$9,349,180.71	\$3,116,393.57	\$6,232,787.14	
Attorney's Expenses and Disbursement:									\$12,000.00		\$12,000.00	\$12,000.00		
Net 4111 Verdict after Attorney's Expenses and Disbursements:				\$9,620,866.00	\$9,620,866.00	\$0.00			\$9,620,866.00		\$9,381,180.71	\$3,128,393.57	\$6,232,787.14	

* Amount to be applied multiplied by the liability percentage (if remainder of liability is owed by another defendant)
 ** Present Value is calculated by simultaneously reducing the future damages by the discount rate and increasing the future damages by the 4% increase for the duration of the award
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	PV of 4111 Verdict (for entry of judgment)	PV of 4111 Verdict w/ Future Damages discounted to date of liability decision 03/28/2006 for pre-judgment interest purposes only (Edu. v. State)*	Pre-Judgment Interest Charge Per Day (for entry of judgment)	Pre-Judgment Interest Charge for 765 Days at \$1,462.93 Per Day (for entry of judgment)	PV of 4111 Verdict with Pre-Judgment Interest Charge (for entry of judgment)**	Post-Judgment Interest Charge Per Day	Post-Judgment Interest Charge for 0 Days at \$1,812.81 Per Day	PV of 4111 Verdict including Pre and Post Judgment Interest Charges	Estimated Projected Payout of 4111 Verdict w/Pre and Post Judgment Interest Charges	Payments Surviving Death for 4111 Verdict w/Pre and Post Judgment Interest Charges
PV/Cost of Plaintiff's Remaining Damages										
Verdict Past Damages:										
Pain & Suffering - Carmen	\$1,997,505.42	\$1,997,505.42	\$492.54	\$376,769.72	\$2,374,295.14	\$585.44	\$0.00	\$2,374,295.14	\$2,374,295.14	\$2,374,295.14
Pain & Suffering - Marty Censur	\$489,376.36	\$489,376.36	\$123.13	\$94,197.43	\$593,573.79	\$146.36	\$0.00	\$593,573.79	\$593,573.79	\$593,573.79
Medical expense - Carmen	\$27,210.02	\$27,210.02	\$6.71	\$5,132.63	\$32,342.65	\$7.97	\$0.00	\$32,342.65	\$32,342.65	\$32,342.65
Pain & Suffering - Marty Aziel	\$489,376.36	\$489,376.36	\$123.13	\$94,197.43	\$593,573.79	\$146.36	\$0.00	\$593,573.79	\$593,573.79	\$593,573.79
Damage #5	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Past Damages:	\$3,023,468.15	\$3,023,468.15	\$745.51	\$570,377.21	\$3,593,785.36	\$888.14	\$0.00	\$3,593,785.36	\$3,593,785.36	\$3,593,785.36
First \$250,000 of future damages	\$166,458.79	\$150,910.19	\$37.21	\$28,466.21	\$194,924.99	\$48.09	\$0.00	\$194,924.99	\$194,924.99	\$194,924.99
Plaintiff's Net Cash:	\$3,189,926.94	\$3,174,378.34	\$782.72	\$598,783.42	\$3,788,710.36	\$934.20	\$0.00	\$3,788,710.36	\$3,788,710.36	\$3,788,710.36
Verdict Future Damages:										
Pain & Suffering - Carmen	\$2,994,049.23	\$2,714,380.82	\$669.30	\$512,014.03	\$3,508,063.26	\$864.51	\$0.00	\$3,508,063.26	4,312,354.12	4,120,013.03
Medical expense - Carmen	\$48,810.97	\$44,251.63	\$10.91	\$8,347.19	\$57,158.16	\$14.09	\$0.00	\$57,158.16	61,210.57	4,517.19
Damage #3	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00
Damage #4	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00
Damage #5	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00
Damage #6	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00
Damage #7	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	0.00	0.00
Plaintiff's Future Damages	\$3,042,860.20	\$2,758,632.46	\$680.21	\$520,361.22	\$3,563,221.42	\$878.60	\$0.00	\$3,563,221.42	4,373,564.69	4,520,531.22
Total Plaintiff's Award	\$6,232,787.14	\$5,933,010.80	\$1,462.93	\$1,119,144.64	\$7,351,931.78	\$1,812.81	\$0.00	\$7,351,931.78	\$8,162,275.05	\$8,309,071.58

	PV of 4111 Verdict (for entry of judgment)	PV of 4111 Verdict w/ Future Damages discounted to date of liability decision 03/24/2004 for pre-judgment interest purposes only (Pay v. State)	Pre-Judgment Interest Charge Per Day (for entry of judgment)	Pre-Judgment Interest Charge for 765 Days at \$734.43 Per Day (for entry of judgment)	PV of 4111 Verdict with Pre-Judgment Interest Charge (for entry of judgment)**	Post-Judgment Interest Charge Per Day	Post-Judgment Interest Charge for 0 Days at \$909.52 Per Day	PV of 4111 Verdict including Pre and Post Judgment Interest Charges	Estimated Projected Payoff of 4111 Verdict w/Pre and Post Judgment Interest Charges	Payments Surviving Death for 4111 Verdict w/Pre and Post Judgment Interest Charges
Attorney's Fee:										
Verdict Past Damages:										
Pain & Suffering - Carmen	\$998,752.71	\$998,752.71	\$246.27	\$188,394.85	\$1,187,147.57	\$282.72	\$0.00	\$1,187,147.57	\$1,187,147.57	\$1,187,147.57
Pain & Suffering - Marty, Ceasar	\$249,688.18	\$249,688.18	\$81.57	\$47,098.72	\$296,786.89	\$73.18	\$0.00	\$296,786.89	\$296,786.89	\$296,786.89
Medical expense - Carmen	\$13,605.01	\$13,605.01	\$3.35	\$2,568.31	\$16,171.32	\$3.99	\$0.00	\$16,171.32	\$16,171.32	\$16,171.32
Pain & Suffering - Marty, Ariel	\$249,688.18	\$249,688.18	\$61.57	\$47,098.72	\$296,786.89	\$73.18	\$0.00	\$296,786.89	\$296,786.89	\$296,786.89
Damage #5	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Total Atty's. Fee - Past Damages:	\$1,511,734.08	\$1,511,734.08	\$372.76	\$285,158.61	\$1,796,892.68	\$443.07	\$0.00	\$1,796,892.68	\$1,796,892.68	\$1,796,892.68
Verdict Future Damages:										
Pain & Suffering - Carmen	\$1,497,024.61	\$1,357,190.41	\$334.65	\$256,007.01	\$1,753,031.63	\$432.25	\$0.00	\$1,753,031.63	\$1,753,031.63	\$1,753,031.63
Medical expense - Carmen	\$24,405.49	\$22,125.82	\$5.46	\$4,173.60	\$28,579.08	\$7.05	\$0.00	\$28,579.08	\$28,579.08	\$28,579.08
Damage #3	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Damage #4	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Damage #5	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Damage #6	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Damage #7	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
Plaintiff's Future Damages	\$1,521,430.10	\$1,379,316.23	\$340.11	\$260,180.61	\$1,781,610.71	\$439.30	\$0.00	\$1,781,610.71	\$1,781,610.71	\$1,781,610.71
First \$250,000 of future damages	\$83,229.39	\$73,455.09	\$ 8.61	\$14,233.10	\$97,462.50	\$24.03	\$0.00	\$97,462.50	\$97,462.50	\$97,462.50
Attorney's fee - Future Damages:	\$1,604,659.49	\$1,454,771.32	\$358.71	\$274,413.71	\$1,879,073.21	\$463.33	\$0.00	\$1,879,073.21	\$1,879,073.21	\$1,879,073.21
Expenses & Disbursements:	\$12,000.00	\$12,000.00	\$2.96	\$2,263.56	\$14,263.56	\$3.52	\$0.00	\$14,263.56	\$14,263.56	\$14,263.56
Total Attorney's Fee:	\$3,126,393.57	\$2,978,505.40	\$734.43	\$561,335.88	\$3,680,229.45	\$899.92	\$0.00	\$3,680,229.45	\$3,680,229.45	\$3,680,229.45
TOTAL PRESENT VALUE/COST:	\$2,381,180.71	\$1,911,516.12	\$2,197.36	\$1,680,980.52	\$11,042,181.23	\$2,722.72	\$9.00	\$11,042,181.23	\$11,859,502.50	\$7,999,301.03

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Is this a CPLR Article 50-A or 50-B (enter as "A" or "B"):

Plaintiff
 Defendant
 Liability Percentage
 If less than 100% Liability, is other entity another defendant ("Y" or "N")?
 Expenses and Disbursements
 Setoffs/Credits \$
 Type of Setoff (Custodial Care, etc [enter exactly as the damage is written below])
 Term of Setoff (Past or Future [enter as "Past" or "Future"])
 Increase rate
 Pre Judgment Interest Rate
 Post Judgment Interest Rate
 Date of Liability Decision
 Entry of Judgment (number of days for pre-judgment interest)
 Date of Annuity/Lump Sum Funding (number of days for post-judgment interest)

B	
CARMEN VALDEZ	
CITY of NEW YORK	
100.00%	
-	
n/a	
\$12,000.00	
\$0.00	
n/a	
n/a	
4.00%	
9.00%	
9.00%	
03/28/08	
05/01/08	765
05/01/08	0

	Certain or Temporary Certain = 1 Temporary = 2	Discount Rate	Period of Years	Gross 4111 Verdict	4111 Verdict Including 100.00% Liability Percentage	Setoff/Credit of n/a n/a \$0.00 Application*	4111 Verdict Including 100.00% Liability Percentage Less Setoffs/Credits	Percentage of Future Damages to Total Future Damages	\$21
Verdict Past Damages:									
Pain & Suffering-Carmen	n/a	n/a	n/a	\$3,000,000.00	\$3,000,000.00	\$0.00	\$3,000,000.00	-	
Medical Expense-Carmen	n/a	n/a	n/a	\$40,868.00	\$40,868.00	\$0.00	\$40,868.00	-	
Pain & Suffering-Cesar Marty	n/a	n/a	n/a	\$750,000.00	\$750,000.00	\$0.00	\$750,000.00	-	
Pain & Suffering-Ariel Marty	n/a	n/a	n/a	\$750,000.00	\$750,000.00	\$0.00	\$750,000.00	-	
Damage #5	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	-	
Total Past Damages:				\$4,540,868.00	\$4,540,868.00	\$0.00	\$4,540,868.00		
Verdict Future Damages:									
Pain & Suffering-Carmen	2	4.79%	10	\$5,000,000.00	\$5,000,000.00	\$0.00	\$5,000,000.00	88.43%	(\$2)
Medical Expense-Carmen	2	4.79%	5	\$80,000.00	\$80,000.00	\$0.00	\$80,000.00	1.57%	0
Damage #3	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	
Damage #4	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	
Damage #5	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	
Damage #6	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	0.00%	
Damage #7	n/a	n/a	n/a	\$0.00	\$0.00	\$0.00	\$0.00	=	
Total Periodic Future Damages				\$5,080,000.00	\$5,080,000.00	\$0.00	\$5,080,000.00	100.00%	(\$2)
First \$250,000 of future damages*	-	4.78%	-	--	--	--	=	=	\$2
Total Future Damages:				\$5,080,000.00	\$5,080,000.00	\$0.00	\$5,080,000.00	100.00%	
Net 4111 Verdict before Attorney's Expenses and Disbursements:				\$9,620,868.00	\$9,620,868.00		\$9,620,868.00		
Attorney's Expenses and Disbursements	--	--	--	--	--	--	--	--	
Net 4111 Verdict after Attorney's Expenses and Disbursements:				\$9,620,868.00	\$9,620,868.00	\$0.00	\$9,620,868.00	100.00%	

* Amount to be applied multiplied by the liability percentage (if remainder of liability is owed by another defendant)

** Present Value is calculated by simultaneously reducing the future damages by the discount rate and increasing the future damages by the 4% increase for the duration of the award