

Generally speaking I think 7J is pretty good, except it is not exactly clear if the economic section is the total value of all economic damages claimed or paid. If the question re economic damages aims to “paint the picture of the claim made” by reflecting all damages claimed then I would suggest a separate item of inquiry and then move on to the amounts paid which would reflect the strength of the defense on the economic items claimed, both incurred and future, as well as noneconomic damages.

Some of the total economic damages claimed may be legit and clearly related to the insured’s negligence. Others may be successfully contested as not being related at all, and others may be subject to compromise. This dilemma can be illustrated by an example:

A claim with significant specials of say \$100,000, and if the claim is valid it would have noneconomic value of \$300,000. The defense maintains that no amount is owed, but agrees to settle for \$10,000 to avoid a trial. Do you want the report to show \$100,000 economic and -\$90,000 noneconomic so the total is \$10,000? Or what some might consider more accurate \$0 economic and \$10,000 noneconomic? Or \$2,500 economic and \$7,500 noneconomic? It is not clear to me what alternative the NPDB would prefer given its instruction of “**If the sum of estimated economic and non-economic damages exceed total indemnity, the amount allocated to non-economic damages should be reduced by a proportionate amount.**”

Therefore, I would suggest:

J(a). Estimation of economic damages incurred and projected

- (1) The reporting entity must report economic damages/ costs incurred by the injured party due to the alleged medical negligence based on documented evidence obtained during the claim resolution process.
- (2) When a reporting entity makes a best estimate of economic damages, the reporting entity must use reasonable judgment to estimate the following elements of loss:
 - (a) Medical expenses;
 - (b) Loss of earnings;
 - (c) Burial costs;
 - (d) Loss of use of property;
 - (e) Cost of replacement or repair;
 - (f) Cost of obtaining substitute domestic service; and
 - (e) Loss of business or employment opportunities.
- (3) If a claimant presents claims for future economic damages, the reporting entity must estimate these future economic damages by projecting the elements of loss listed in subsection (2) of this section for the duration of the injury or disability or, in the event of death, for the anticipated life span of the injured person. ; Discount damages to present value using reasonable discount factors if permitted in the jurisdiction

J.b. Estimation of economic and noneconomic damages paid by this defendant

- (1) Noneconomic damages should bear a reasonable relationship to the nature and severity of the injury in terms of limitations on major life activities formerly enjoyed by the injured party, physical pain and suffering, loss of consortium, psychological or mental consequences of the injury, and any other reasonable non-pecuniary losses.
- (2) If a reporting entity makes indemnity payments to a claimant that include compensation for economic or non-economic damages, the reporting entity must estimate this payment in the following manner:
 - (a) Reporting entities may not determine economic damages using a fixed formula, such as fifty percent of total paid indemnity.
 - (a) Include the elements of loss listed in subsection J.a. which are related to the MPL event,
 - (b) Discount future damages to present value using reasonable discount factors if permitted in the jurisdiction; and
 - (c) Consider related factors, such as issues of negligence and liability, the relative strength of the defense, and the component of the indemnity payment driven by economic damages.
- (3) The total indemnity payment must be equal to the sum of the reporting entity’s best estimate of economic damages and the reporting entity’s best estimate of noneconomic damages, and neither estimate may exceed the total indemnity payment.