



Guide to Estimating FTCA Damages (SF-95 & Litigation)

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Overview

This guide provides a practical method for estimating and documenting damages in Federal Tort Claims Act matters, with a focus on (1) preparing a defensible “sum certain” demand for Standard Form 95 (SF-95) and (2) building a damages record for settlement or litigation. It explains the major categories of compensatory damages, offers field-tested ways to make rough but supportable estimates early in a case, and lists common resources for researching verdicts and settlements by jurisdiction and injury type.

1. FTCA damages in one page: what you can and cannot recover

Compensatory damages are the core remedy. The FTCA makes the United States liable “in the same manner and to the same extent as a private individual under like circumstances,” with two important limitations: the United States is not liable for punitive damages, and it is not liable for pre-judgment interest. 28 U.S.C. § 2674.

Bench trial, not a jury. If an FTCA case proceeds to trial, it is generally tried to the court without a jury. 28 U.S.C. § 2402. This can affect valuation. Judges may value pain and suffering differently than juries, and they may adhere more closely to jurisdictional damages norms.

The SF-95 number matters later. The amount you present administratively can cap the amount you may seek in federal court: an FTCA action “shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency,” except for newly discovered evidence not reasonably discoverable at presentment or intervening facts relating to amount. 28 U.S.C. § 2675(b).

Practice takeaway. Treat the SF-95 “sum certain” as a strategic decision. It must be high enough to preserve the client’s realistic ceiling, but supportable enough to defend as a good-faith estimate based on available information.

2. The SF-95 “sum certain” requirement and what it means for valuation

A claim must include a “sum certain” to be treated as properly presented. SF-95 instructions and agency guidance emphasize that omission of a “sum certain” can render the claim invalid for presentment purposes.

Good-faith estimating is acceptable early. A claimant rarely has perfect information at the SF-95 stage. The goal is not precision; it is a defensible estimate rooted in (1) documented economic loss to date, (2) reasonable projections of future economic loss, and (3) a reasoned valuation of non-economic harms.

3. A damages framework that works across states

For planning, it helps to sort damages into four buckets. The exact labels vary by state, but the concept is stable across jurisdictions: (1) past economic loss, (2) future economic loss, (3) past non-economic harm, and (4) future non-economic harm.

Bucket A: past economic losses (special damages). Common categories include medical bills already incurred, prescriptions, therapy, out-of-pocket costs, lost wages to date, transportation expenses, replacement services (childcare, housekeeping), and property loss. These are usually the easiest to document.

Bucket B: future economic losses. Common categories include future medical care and therapy, future prescriptions and assistive devices, ongoing wage loss or reduced earning capacity, and future replacement services. These require projections and are often supported by treating providers, medical records, or expert opinions (e.g., life care planning, vocational experts, economists) in larger cases.

Bucket C: past non-economic harms (general damages). Common categories include physical pain, emotional distress, fear, humiliation, loss of sleep, loss of enjoyment of life, and interference with relationships and daily functioning. These are supported through narrative evidence, medical and mental health records, and corroborating witnesses.

Bucket D: future non-economic harms. Where a client has ongoing symptoms or trauma impacts, valuation should reflect duration, intensity, and permanence.

4. Practical methods to estimate economic damages quickly

Medical expenses to date. Start with what you can obtain quickly: emergency records, urgent care records, discharge summaries, imaging reports, pharmacy receipts, and any billing statements. Even partial documentation is useful. If you do not have final bills yet, you can estimate using provider statements, insurance explanations of benefits, or reasonable fee schedule approximations (with clear labeling as estimates).

Using fee schedules as estimation tools. When full bills are unavailable, some practitioners use public fee schedule benchmarks as rough proxies for “reasonable value,” particularly for estimating future care. Medicare Physician Fee Schedule (MPFS) tools and guidance can help translate CPT-coded services into approximate rates. CMS MPFS guidance materials; Medicare fee schedule methodology resources.

Lost wages to date. The simplest approach is pay stubs or employer letters. If those are unavailable, estimate from hours missed multiplied by the client’s hourly wage (or salary divided by workdays). Document assumptions, such as hours missed, wage rate, typical schedule, and similar.

Reduced earning capacity. If the injury affects ability to work going forward, an early estimate can use labor-market wage benchmarks as a starting point until you obtain more specific proof. The Bureau of Labor Statistics Occupational Employment and Wage Statistics (BLS OEWS) program provides wage estimates by occupation and geography.

Replacement services. If the client needed help with childcare, cleaning, transportation, or other tasks, track (1) hours and (2) a reasonable market rate. Even if the family provided the help, it may still be a compensable economic loss in many jurisdictions; document the time and the tasks. Damage to a vehicle or home can be calculated based on the repair or replacement cost, depending on the extent of the damage.

5. Practical methods to estimate non-economic damages (without overclaiming)

Non-economic valuation is often the hardest part of an SF-95 estimate because it is inherently judgment-based. A workable approach is to tie valuation to three factors: duration, severity, and functional impact.

Severity and functional impact anchors: Document how the injury changed daily life: sleep disruption, panic, avoidance, inability to work, medical appointments, intimacy impacts, fear of future encounters, and community or family disruption. This narrative often becomes the heart of a damages submission.

Rule-of-thumb estimation methods (use cautiously): Some practitioners use (1) a multiplier approach (non-economic damages as a multiple of documented economic losses), or (2) a per-diem approach (a daily value for pain and disruption multiplied by the number of affected days). These are not legal formulas and should be framed as planning tools, not as “the law.” They work best when anchored to similar cases in the relevant jurisdiction.

Why similar-case research matters: The most defensible non-economic estimate is one that is consistent with outcomes in comparable cases (injury type, severity, duration, venue). That is where verdict and settlement research resources are especially valuable.

6. Where to find comparable verdicts and settlements (and how to use them)

*For additional details and links to some of the below sources, see the Toolkit resource: *Appendix: Resources for Researching Tort Damages and Valuation.**

Commercial databases: Many law offices use paid tools that compile verdicts and settlements, often with filters by venue, injury type, defendant type, and damages category. Examples include LexisNexis Verdict and Settlement Analyzer and Westlaw verdicts and settlements resources.

Publisher and regional reporters: Some regions have dedicated verdict-reporting services. Examples include Jury Verdict Alert for California and JVRA. Jury Verdict Alert; JVRA VerdictTrak; state-specific reporter compilations.

Public law library guides: Many county or state law libraries maintain curated guides to locating verdict and settlement information and identifying local reporter publications. These can be helpful for practitioners who do not have paid database access. Sacramento County Public Law Library guide; New York Courts public law library verdict information.

Court filings and dockets as indirect sources: Some settlements and judgments appear in docket entries, motions, or approval orders, particularly in federal cases. CourtListener and the RECAP Archive can be useful for finding federal dockets and documents.

How to use verdict data correctly: Comparable-case research works best when you (1) narrow by jurisdiction and venue, (2) prefer results within the last five years or adjust for inflation, (3) match injury severity and duration, and (4) account for unique factors (credibility, video evidence, punitive exposure in non-FTCA cases, attorney fee regimes). A verdict data point is a reference, not a prediction.

7. Building a damages package that supports the number

Even at the administrative stage, damages estimates are more persuasive when they are organized and supported. A strong SF-95 damages submission often includes: (1) a short narrative of harm and symptoms, (2) medical chronology and key records, (3) wage-loss proof, (4) itemized out-of-pocket losses, (5) a future-care discussion where relevant, and (6) a short comparable-case summary (if available).

Consider a two-number approach internally. Many practitioners track (a) a “floor” (documented specials plus conservative general damages) and (b) a “ceiling” (a realistic maximum supported by comparable outcomes and the client’s facts). The SF-95 “sum certain” should generally preserve the realistic ceiling, subject to reasonableness and credibility.

8. Practical cautions specific to FTCA valuation

No punitive damages and no prejudgment interest. Because 28 U.S.C. § 2674 bars punitive damages and pre-judgment interest, comparables from non-FTCA police misconduct litigation may overstate what is achievable under the FTCA if those comparables include punitive components or jury dynamics. 28 U.S.C. § 2674.

Bench-trial lens. Because FTCA trials are typically to a judge, it can be useful to research judge-awarded damages in similar bench contexts and to frame non-economic harms with careful, specific evidence rather than rhetorical multipliers. 28 U.S.C. § 2402.

Preserving the right number at SF-95. Because 28 U.S.C. § 2675(b) can limit the amount sought later, a too-low SF-95 sum can create avoidable risk. If damages are uncertain or evolving, document that clearly and consider a reconsideration strategy where appropriate. 28 U.S.C. § 2675(b).

9. SF-95 quick worksheet

- A. Past medical costs (documented): \$ _____
- B. Future medical costs (estimated): \$ _____
- C. Past lost wages (documented/estimated): \$ _____
- D. Future wage loss / reduced earning capacity (estimated): \$ _____
- E. Out-of-pocket and replacement services: \$ _____
- Subtotal economic losses (A–E): \$ _____
- F. Past non-economic harm (reasoned estimate): \$ _____

G. Future non-economic harm (reasoned estimate): \$ _____

Total proposed SF-95 “sum certain” (economic plus non-economic): \$ _____

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