§ 5041. Basis for determining judgment to be entered. In order to determine what judgment is to be entered on a verdict in an action to recover damages for personal injury, injury to property or wrongful death under this article, and not subject to article fifty-A of this chapter, the court shall proceed as follows:

(a) The court shall apply to the findings of past and future damages any applicable rules of law, including set-offs, credits, comparative negligence pursuant to section fourteen hundred eleven of this chapter, additurs, and remittiturs, in calculating the respective amounts of past and future damages claimants are entitled to recover and defendants are obligated to pay.

(b) The court shall enter judgment in lump sum for past damages, for future damages not in excess of two hundred fifty thousand dollars, and for any damages, fees or costs payable in lump sum or otherwise under subdivisions (c) and (d) of this section. For the purposes of this section, any lump sum payment of a portion of future damages shall be deemed to include the elements of future damages in the same proportion as such elements comprise of the total award for future damages as determined by the trier of fact.

(c) Payment of litigation expenses and that portion of the attorney's fees related to past damages shall be payable in a lump sum. Payment of that portion of the attorney's fees related to future damages for which, pursuant to this article, the claimant is entitled to a lump sum payment shall also be payable in a lump sum. Payment of that portion of the attorney's fees related to the future periodically paid damages shall also be payable in a lump sum, based on the present value of the annuity contract purchased to provide payment of such future periodically paid damages pursuant to subdivision (e) of this section.

(d) Upon election of a subrogee or a lien holder, including an employer or insurer who provides workers' compensation, filed within the time permitted by rule of court, any part of future damages allocable to reimbursement of payments previously made by the subrogee or the lien holder shall be paid in lump sum to the subrogee or the lien holder in such amount as is calculable and determinable under the law in effect at the time of such payment.

(e) With respect to awards of future damages in excess of two hundred fifty thousand dollars in an action to recover damages for personal

injury, injury to property or wrongful death, the court shall enter judgment as follows:

After making any adjustment prescribed by subdivisions (b), (c) and (d) of this section, the court shall enter a judgment for the amount of the present value of an annuity contract that will provide for the payment of the remaining amounts of future damages in periodic installments. The present value of such contract shall be determined in accordance with generally accepted actuarial practices by applying the discount rate in effect at the time of the award to the full amount of the remaining future damages, as calculated pursuant to this subdivision. The period of time over which such periodic payments shall be made and the period of time used to calculate the present value of the annuity contract shall be the period of years determined by the trier of fact in arriving at the itemized verdict; provided, however, that the period of time over which such periodic payments shall be made and the period of time used to calculate the present value for damages attributable to pain and suffering shall be ten years or the period of time determined by the trier of fact, whichever is less. The court, as part of its judgment, shall direct that the defendants and their insurance carriers shall be required to offer and to guarantee the purchase and payment of such an annuity contract. Such annuity contract shall provide for the payment of the annual payments of such remaining future damages over the period of time determined pursuant to this subdivision. The annual payment for the first year shall be calculated by dividing the remaining amount of future damages by the number of years over which such payments shall be made and the payment due in each succeeding year shall be computed by adding four percent to the previous year's payment. Where payment of a portion of the future damages terminates in accordance with the provisions of this article, the four percent added payment shall be based only upon that portion of the damages that remains subject to continued payment. Unless otherwise agreed, the annual sum so arrived at shall be paid in equal monthly installments and in advance.

(f) With the consent of the claimant and any party liable, in whole or in part, for the judgment, the court shall enter judgment for the amount found for future damages attributable to said party as such are

determinable without regard to the provisions of this article.