

RULE 22.1

ADVANCE PAYMENTS IN TORT ACTIONS

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- 22.1.01(1)** At any time before damages are assessed in an action claiming damages arising from a tort, a plaintiff may move with affidavit material or other evidence for an advance payment by the defendant to the plaintiff on all or part of the pecuniary damages suffered, incurred or to be incurred by the plaintiff as claimed in the action if,
- (a) the defendant against whom the order is sought has admitted liability for all or part of the plaintiff's damages, or
 - (b) the plaintiff has obtained summary judgment against the defendant establishing liability with the amount of damages to be assessed pursuant to Rule 20.04.
- (2) In response to the affidavit material or other evidence supporting an advance payment by the defendant to the plaintiff, the defendant may respond with affidavit material or other evidence disputing the pecuniary damages suffered, incurred or to be incurred by the plaintiff.

Determination of amount of advance payment

- (3) In determining the amount of an advance payment, the judge may take into account any circumstances that the judge considers relevant, including
- (a) the amount of special damages already incurred or likely to be incurred before damages are assessed;
 - (b) any counterclaim by the defendant;
 - (c) the extent, if any, to which the plaintiff may be found at trial to be contributory negligent;
 - (d) the extent, if any, to which the plaintiff may be found at trial not to have mitigated the amount of special damages; and
 - (e) the needs and resources of the plaintiff and the means of the defendant, including the availability to the defendant of insurance to indemnify the defendant in respect of the

plaintiff's claim.

Payment

- (4) The judge may order that payment under Rule 22.1(1) may be made by lump sum, by installment, or in the case of ongoing expenses, as and when the expenses are incurred. The judge may order payments be made directly to third parties.

Advance payment not a full determination

- (5) An order for advance payment of pecuniary damages is not a final determination of the extent of the plaintiff's claim in respect of the type or types of pecuniary damages for which the advance payment was sought, but the receipt of the plaintiff of an advance payment shall be considered to be a release of the defendant to the extent of such payment.

Multiple applications

- (6) A plaintiff may make more than one application for an advance payment pursuant to this rule.

Rule not exhaustive

- (7) Nothing in this rule affects or precludes the right of a plaintiff to seek an advance payment of damages at common law.

Fraser v. Runighan, 2018 PESC 26

On a motion for advance payment (under the former Rules 20.10 to 20.12), the court applied a two-stage process. At step one, the plaintiff must establish it is more probable than not that the trial judge will award special damages of the type set out in the plaintiff's application. At step two, the appropriate amount of the advance payment is determined, taking into account any circumstance the motions judge considers relevant. Here, the court allowed payment for past loss of income, past costs of care and treatment, and past valuable services. The court did not allow for payment of disbursements, as these are not contemplated by the Rule.