

13-1010. Actual injury and compensatory damages.

If you should decide in favor of the plaintiff on the question of liability, you must then fix the amount of money which will reasonably and fairly compensate plaintiff for the actual injury caused by the defamatory communication.

Plaintiff claims and has the burden of proving that the defamatory communication caused one or more of the following injuries:

[(1) Loss of business profits] [;] [and]

[(2) Loss of salary] [;] [and]

[(3) Loss of the sale of plaintiff's stock] [;] [and]

[(4) Out-of-pocket expenses for _____] [;] [and]

[(5) Harm to plaintiff's good name and character among [his] [her] friends, neighbors and acquaintances] [;] [and]

[(6) Harm to plaintiff's good standing in the community] [;] [and]

[(7) Personal humiliation] [;] [and]

[(8) Mental anguish and suffering] [;] [and]

[(9) _____]

The cause of an injury is that which in a natural and continuous sequence unbroken by an independent intervening cause produces that injury, and without which the injury would not have occurred. It need not be the only cause, nor the last, nor nearest cause. It is sufficient if it occurs with some other cause acting at the same time, which, in combination with it, causes the injury.

In determining the amount of damages, you may only award money to compensate for the above-listed actual injuries proved by the plaintiff to have been suffered by [him] [her]. It is not necessary for plaintiff to present evidence which assigns an actual dollar value to the injuries. In determining compensation for plaintiff's actual injuries, if any, you should follow your conscience as impartial jurors, using calm and reasonable judgment and being fair to all parties.

USE NOTES

This instruction states the measure for determining compensatory damages in all defamation actions. It encompasses only those elements of actual damages, both general compensatory damages and special damages, which are proven at trial. The instruction omits reference to presumed damages because of the uncertainty engendered by recent decisions concerning when, if ever, New Mexico can and will permit recovery for presumed, but unproven, compensatory damages. See committee commentary. The court should modify this instruction to include an award of presumed damages only if it is convinced that under the facts presented, New Mexico would permit an award of presumed damages in circumstances in which the United States Supreme Court would permit such an award.

The listed types of actual damages are illustrative only. The court should tailor this portion of the instruction to the instruction tendered by the plaintiff at trial. [As amended, effective November 1, 1991; March 1, 2005.]