

### **13-1809. Loss of earning capacity by minor.**

The present cash value of earning capacity reasonably certain to be lost in the future after the plaintiff has reached the age of eighteen (18) years.

#### USE NOTES

In the proper case, where a minor has sustained personal injuries and the parent is suing for expenses incurred, such as medical expenses and money lost, such as earnings of the minor, and the minor is also suing for pain and suffering and impairment of earning capacity after he becomes of age, it will be proper to utilize UJI 13-1802 NMRA for the parent with the necessary elements of damage that pertain thereto and then another UJI 13-1802 NMRA for the minor with the necessary elements that pertain to that matter.

In like manner, such an instruction would apply when one other than the parent is the guardian of the estate of the minor.

When, and if, a case is presented involving a spouse situation where the community is liable for the expenses incurred in treatment and has a loss of earnings, a separate set of damages instructions may be necessary for the community and a further set for the injured spouse. In such situations, it will be necessary to custom tailor an instruction to include in the measure of damages each of the legal elements, including the reasonable value of the services of the spouse, but loss of consortium is not a legal measure of damages in a spouse situation in New Mexico. *Roseberry v. Starkovich*, 73 N.M. 211, 387 P.2d 321 (1963); *Kilkenny v. Kenney*, 68 N.M. 266, 361 P.2d 149 (1961). Even before the Equal Rights Amendment [N.M. Const., art. II, § 18] to the New Mexico Constitution, the New Mexico Supreme Court had held that a wife alone may recover damages for her personal injury and for the resulting pain and suffering. *Soto v. Vandeventer*, 56 N.M. 483, 245 P.2d 826, 35 A.L.R.2d 1190 (1952). [As amended, effective November 1, 1991.]