

### 13-1830. Measure of damages; wrongful death.

This lawsuit has been brought by \_\_\_\_\_ (*name of personal representative*) on behalf of the estate of \_\_\_\_\_ (*name of decedent*), who is now deceased.

New Mexico law allows damages to be awarded to the estate of a deceased person if the death or the related damages described in this instruction were caused by the wrongful act, neglect, or default of another. If you should find for the estate of \_\_\_\_\_ (*name of decedent*) on the question of liability, you must then fix the amount of money which you deem fair and just for the life of \_\_\_\_\_ (*name of decedent*), including in your award compensation for any of the following elements of damages proved by the evidence:

1. The reasonable expenses of necessary medical care and treatment and funeral and burial;
2. The pain and suffering experienced by \_\_\_\_\_ (*name of decedent*) between the time of injury and death;
3. The lost earnings, the lost earning capacity, and the value of the lost household services of \_\_\_\_\_ (*name of decedent*) considering \_\_\_\_\_'s (*name of decedent*) age, earning capacity, health, habits, and life expectancy. In considering loss of earnings or earning capacity, deductions must be made for income taxes, social security taxes, other taxes, and personal living expenses of \_\_\_\_\_ (*name of decedent*). The damages set forth in this paragraph are damages for future loss of money and are paid in a lump sum. Therefore, a reasonable discount must be made for the future earning power of the damages awarded;
4. The value of \_\_\_\_\_'s (*name of decedent*) life apart from \_\_\_\_\_'s (*name of decedent*) earning capacity;
5. The mitigating or aggravating circumstances attending the wrongful act, neglect, or default;
6. The loss of guidance and counselling to \_\_\_\_\_'s (*name of decedent*) minor children.
7. You may also consider the loss to the beneficiaries of other expected benefits that have a monetary value. While the presence or absence of a measurable monetary loss to beneficiaries is a factor for consideration, damages may be awarded even where monetary loss to the surviving beneficiaries cannot be shown.

The property or wealth of the beneficiaries or of the defendant is not a legitimate factor for your consideration.

No fixed standard exists for determining fair and just damages. You must use your judgment to decide a reasonable amount. Your verdict must be based on evidence, not on speculation, guess, or conjecture. You must not permit the amount of damages to be influenced by sympathy or prejudice, or by the grief or sorrow of the family.

#### USE NOTES

The wrongful death instruction enumerates the various elements of damage that may be recovered upon the wrongful death of an individual. The personal representative may not always recover each of the elements of damages depending upon the evidence

produced at trial. If there are no minor children, item 6 should be excluded. Similarly, if there are no lost earnings, earning capacity, or household services item 3 should be excluded, and so on. Only those elements supported by the evidence are to be included in the instruction given the jury.

If the personal representative is also a loss of consortium claimant, the verdict form should include a line for a separate award of loss of consortium damages to the personal representative. If there are additional loss of consortium claimants, the verdict form should include a line for a separate award of loss of consortium damages to each loss of consortium claimant. A sample special verdict form appears in UJI Chapter 22 at UJI 13-2223 NMRA.

[As amended, effective October 1, 1996; March 20, 2000; as amended by Supreme Court Order No. 08-8300-033, effective November 24, 2008; as amended by Supreme Court Order No. 16-8300-018, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. 19-8300-014, effective for all cases pending or filed on or after December 31, 2019.]