

13-208. Insurance has no bearing.

The [possible] existence of any insurance or employment-related benefits has no bearing on whether [a] [the] defendant [was negligent] [is liable] or on the amount of any damages that may be awarded to [a] [the] plaintiff.

[You have heard evidence that (*plaintiff, defendant, etc.*) [was insured] [was covered by certain employment benefits]. You may consider this evidence only for the purpose of proving (*agency, ownership or control, bias or prejudice of a witness, etc.*). You must not consider the existence of insurance or other benefits in determining any other issue in this case.]

USE NOTES

The first paragraph of this instruction should be given in all cases, with the first bracketed term included, to instruct the jury that it may not consider the presence or absence of insurance, whether liability insurance, health insurance, or employment-related benefits for either the plaintiff or the defendant, in determining liability or damages. See *Safeco Ins. Co. v. United States Fid. & Guar. Co.*, 1984-NMSC-045, ¶¶ 17-19, 101 N.M. 148, 679 P.2d 816; Rule 11-411 NMRA. The bracketed words “was negligent” or “is liable” should be chosen depending on whether negligence or some other basis of liability is asserted.

In a case where evidence of insurance has been admitted pursuant to Rule 11-411 after the court’s consideration of such evidence under Rule 11-403 NMRA, the entire instruction should be read, with the first bracketed term excluded, near the time of the disclosure and again at the close of trial. The proper purpose for use of the evidence, stated with precision and clarity, should be inserted in the second paragraph.

The use of evidence pursuant to Rule 11-411 presupposes disclosure to the court outside the presence of the jury that an insured status will be elicited for the purpose set forth in this instruction.

This instruction may also be used as a curative instruction in the event evidence of insurance is introduced inadvertently rather than for a permissible purpose. In such a case, the second paragraph of the instruction should be modified to inform the jury that it must not consider the existence of insurance in determining any issue.

[As amended, effective January 1, 1987; March 1, 2005; as amended by Supreme Court Order No. 21-8300-017, effective for all cases filed or pending on or after December 31, 2021.]