

1837 INJURY TO MINOR CHILD: PARENT'S LOSS OF SOCIETY AND COMPANIONSHIP

Question _____ asks you to determine (the parent)'s loss of society and companionship resulting from injuries sustained by (child).

Society and companionship includes the love, affection, care, and protection the parent would have received from (his) (her) child had the child not been injured. It does not include the loss of monetary support from the child or the grief or mental suffering caused by the child's injury.

In determining (parent)'s loss of society and companionship, you should consider the age of the (child) and the age of the parent; the past relationship between the child and the parent; the love, affection, and conduct of each toward the other; the society and companionship that had been given to the parent by the child; and the personality, disposition, and character of the child and the parent. The amount inserted by you should reasonably compensate the parent for any loss of society and companionship (he) (she) has sustained since the injury to (his) (her) child and the amount you are reasonably certain (he) (she) will sustain in the future.

If you find that (minor child)'s disability (injuries) will continue in the future as a natural result of the injury and that (parent) will sustain a loss of the child's society and companionship in the future, you should include in your award the sum that will fairly and reasonably compensate (parent) for this future loss but only until the injured child reaches (his) (her) 18th birthday.

COMMENT

The instruction and comment were initially approved by the Committee in 1979 and revised in 1984, 1988, and 2000. The comment was updated in 2000.

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This instruction was originally written to cover a claim by both parents for loss of society and companionship of their child. The instruction has been revised and is based on a special verdict in which a separate inquiry for each parent is submitted to the jury. To avoid any potential problem with motions after verdict, the Committee believes the better procedure is to submit separate verdict questions for each parent. Although in some cases, the parents will agree to a single question.

See Herman v. Milwaukee Children's Hosp., 121 Wis.2d 531, 361 N.W.2d 297 (Ct. App. 1984).

Two causes of action arise for an injury to a child: the child's for his or her own injury and the parents for the invasion of the parents' interest. Korth v. American Family Ins. Co., 115 Wis.2d 326, 330, 340 N.W.2d 494 (1983).

Parents may maintain an action against a negligent tortfeasor for medical expenses and loss of society and companionship of the injured child. Korth v. American Family Ins. Co., *supra*; Shockley v. Prier, 66 Wis.2d 394, 225 N.W.2d 495 (1975). The parents' claim for loss of society and companionship must be combined with that of the child for personal injuries. Shockley v. Prier, *supra* at 404. In Korth, *supra*, the court stated that although Shockley v. Prier, *supra*, did not require the joinder of the parents' claim for medical expenses with the child's claim, as a practical matter the parents' claim for medical expenses should be joined with the parents' claim for loss of society and companionship. Korth v. American Family Ins. Co., *supra* at 331.

In Korth, *supra*, the court held that where the parents' claim for damages for loss of society and companionship and medical expenses was filed along with the minor child's within the statutory time period for filing the minor's claim, the parents' claim was timely filed.

Shockley v. Prier, *supra*, leaves undecided whether parents have a claim for damages after the child attains his or her majority.

The parents' claim is derivative but must be proved separately from the underlying claim of the child. Thus, distinct damages must be shown and any negligence of the parents in causing the child's injuries may reduce or defeat recovery through operation of the comparative negligence statute. Geise v. Montgomery Ward, Inc., 111 Wis.2d 392, 400, 405, 331 N.W.2d 585 (1983).