

1700 DAMAGES: GENERAL

The verdict contains the following damage questions, numbered __ through __.

[Read question(s).]

[Note: Select the following paragraphs which are appropriate.]

[I have answered question(s) _____ because the parties have agreed on the amount(s) to be inserted. You should not conclude from the fact I have answered (this) (these) question(s) as to the amount of damages that any party has admitted fault or that any party may be responsible for the amount(s) inserted. Finally, you should not assume that because I have answered (this) (these) question(s), that a party already has or necessarily will recover (this) (these) amount(s). Parties, may, as here, agree on an amount of damages without admitting they are responsible for the damages.]

[You must answer the damage question(s) no matter how you answered any of the previous questions in the verdict. The amount of damages, if any, found by you should in no way be influenced or affected by any of your previous answers to questions in the verdict.]

[In answering the damage question(s), completely disregard any percentages which you may have inserted as your answers to the subdivisions of question _____, the comparative negligence question.]

[In answering the damage questions, be careful not to include or duplicate in any answer amounts included in another answer made by you or me.]

[Your answer(s) to the damage question(s) should not be affected by sympathy or resentment (or by the fact that one (or more) of the parties from whom damages are sought

(is an insurance corporation) (are insurance corporations)); nor should you make any deductions because of a doubt in your minds as to the liability of any party to this action.]

[Note: Do not use this paragraph if Wis JI-Civil 202 is used: In considering the amount to be inserted by you in answer to each damage question, the burden of proof rests upon each person claiming damages to satisfy you by the greater weight of the credible evidence, to a reasonable certainty, that the person sustained damages with respect to the element or elements mentioned in the question and the amount of the damages. The greater weight of the credible evidence means that the evidence in favor of an answer has more convincing power than the evidence opposed to it. Credible evidence means evidence you believe in light of reason and common sense. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. The amount inserted by you should reasonably compensate the person for the damages from the accident.]

[Determining damages for (pain and suffering) (insert other type of damages) cannot always be made exactly or with mathematical precision; you should award as damages amounts which will fairly compensate (named party) for (his) (her) injuries.]

[The amount you insert in answer to each damage question is for you to determine from the evidence. What the attorneys ask for in their arguments is not a measure of damages. The opinion or conclusions of counsel as to what damages should be awarded should not influence you unless it is sustained by the evidence. Examine the evidence – carefully and dispassionately – and determine your answers from the evidence in the case.]

COMMENT

This instruction and comment were approved in 1978. The instruction was revised in 2000, 2002 and 2003. The revision in 2002 conformed the language regarding the burden of proof to the Committee's 2002 revisions to Wis. JI-Civil 200 and 205, the instructions on the civil burdens of proof. See Wis. JI-Civil 200, Comment. An editorial correction was made in 2004. The change in 2003 revised the second paragraph on page 1 and the first paragraph on page 2. The comment was revised in 2016.

These are suggested general instructions, which may be used when appropriate, but paragraph four should always be used when there is a comparison of negligence question.

Additional instructions on the need for assessing damages even though mathematical certainty cannot be attained are contained in Wis JI-Civil 1722 (apportionment among tortfeasors) and in Wis JI-Civil 1755 (pain and suffering.)

An adaptation of this instruction was discussed in Johnson v. Ray, 99 Wis.2d 777, 299 N.W.2d 849 (1981).

Answering Special Verdict Questions in Medical Negligence Cases. See Comment to Wis JI-Civil 1023.