

## 1750.1 PERSONAL INJURIES: SUBDIVIDED QUESTION AS TO PAST AND FUTURE DAMAGES

No Instruction.

### COMMENT

This comment was approved in 1998 as part of a large scale revision and renumbering of the personal injury damage instructions.

In the past, an instruction, Wis JI-Civil 1750A (now withdrawn), was approved for use in trials where the plaintiff sought past and future medical expenses, loss of earnings and earning capacity and pain, suffering, and disability and the special verdict contained a single subdivided question on past and future damages. The Committee has withdrawn this instruction because it only repeated the language in the individual instructions on the separate categories of compensatory damages for personal injuries.

It has long been established that the trial court has absolute discretion as to the formulation of the special verdict. Traditionally, there has been great diversity of practice in the trial courts as to how the damage question in the special verdict is framed. Some courts combine all damage elements in a single question; others combine pain and suffering and disability, future medical, and loss of future earning capacity into a single question inquiring about plaintiff's personal injury, while submitting separate questions as to past medical expense and past wage loss which are often answered by the court. Others divide each element of damages into separate inquiries. This latter approach appears to be the prevailing method.

The Committee believes the preparation of separate instructions on each element of damages provides greater flexibility so that each judge can more easily adapt these instructions to his or her preferred special verdict form.

**Special Verdict.** A special verdict with subdivisions separating the elements of damages, allows each judge to submit the damage question/subdivision in the order or combination he or she deems appropriate in each case. It is suggested that the trial judge use the form of the damage question in each case which is most likely to be clear to the jury, fair to all parties, and to serve the interests of justice. Should separate inquiries be made, as seems to be recommended by the Wisconsin Supreme Court in Ianni v. Grain Dealers Mut. Ins. Co., 42 Wis.2d 354, 166 N.W.2d 148 (1969), the following sequence of component instructions and special verdict questions may be considered when the question of permanency is raised.

- a. Past Medical (JI-Civil 1756)
- b. Future Medical (JI-Civil 1758)
- c. Past Loss of Earning Capacity (JI-Civil 1760)
- d. Future Loss of Earning Capacity (JI-Civil 1762)
- e. Past Pain, Suffering, and Disability (JI-Civil 1766)
- f. Future Pain, Suffering, and Disability (JI-Civil 1768)

**SPECIAL VERDICT**

What sum of money will fairly and reasonably compensate (plaintiff) with respect to:

- |     |   |                  |
|-----|---|------------------|
| (a) | past health care expenses?              | Answer: \$ _____ |
| (b) | future health care expenses?            | Answer: \$ _____ |
| (c) | past loss of earning capacity?          | Answer: \$ _____ |
| (d) | future loss of earning capacity?        | Answer: \$ _____ |
| (e) | past pain, suffering, and disability?   | Answer: \$ _____ |
| (f) | future pain, suffering, and disability? | Answer: \$ _____ |
| (g) | (other:)                                |                  |