

1766 PERSONAL INJURIES: PAST PAIN, SUFFERING, AND DISABILITY (DISFIGUREMENT)

(Question _____) (Subdivision _____ of Question _____) asks what sum of money will fairly and reasonably compensate (plaintiff) for past pain, suffering, and disability (disfigurement).

Your answer to this (question) (subdivision) should be the amount of money that will fairly and reasonably compensate (plaintiff) for the pain, suffering, and disability (disfigurement) (he) (she) has suffered from the date of the accident up to this time as a result of the accident.

Pain, suffering, and disability (disfigurement) includes any physical pain, humiliation, embarrassment, worry and distress which (plaintiff) has suffered in the past. You should consider to what extent (his) (her) injuries impaired (his) (her) ability to enjoy the normal activities, pleasures, and benefits of life.

COMMENT

This instruction and comment were originally published in 1960 (as JI-Civil 1755). They were revised in 1983 and renumbered and revised in 1998. Editorial corrections were made in 2009.

When, notwithstanding complete recovery at time of trial, there has been a substantial period during convalescence in which plaintiff endured discomfort rather than pain and suffering, in the sense that the latter words connote at least acute discomfort, the word discomfort may be added so that the instruction will relate to "discomfort, pain, and suffering."

When the proof shows curtailment of recreational activities to be of such substantial nature to warrant special mention, add a phrase to include "impairment of his or her ability to enjoy his or her usual pleasurable activities of life."

When evidence is presented that the plaintiff was unconscious for a period of time following the accident, this instruction should be modified to instruct the jury that it should only consider such pain and suffering as the plaintiff suffered while conscious. Leibl v. St. Mary's Hosp. of Milwaukee, 57 Wis.2d 227, 203 N.W.2d 715 (1973); Blaisdell v. Allstate Ins. Co., 1 Wis.2d 19, 24, 82 N.W.2d 886 (1957).

In Stahler v. Beuthin, 206 Wis.2d 610 557 N.W.2d 487 (1996), the plaintiff argued that where the jury found liability for her physical injuries, the jury's failure to award anything for pain and suffering showed that justice had been miscarried in the case. The court of appeals rejected this argument concluding that when the jury has answered liability questions unfavorably to the plaintiff, which findings are supported by credible evidence, the granting of inadequate damages to the plaintiff does not necessarily show prejudice or render the verdict perverse. The court of appeals cited Dickman v. Schaeffer, 10 Wis.2d 610, 103 N.W.2d 922 (1960) for the proposition that "in most cases where there are medical bills and loss of services, pain and suffering exist; but we cannot say as a matter of law that this is necessarily true in every case." The court of appeals concluded that a verdict is not inconsistent because it allows damages for medical expenses but denies recovery for personal injuries or pain and suffering. Stahler v. Beuthin, 206 Wis.2d at 623 supra. The court in Stahler said that the jury may well have concluded that the plaintiff's alleged pain and suffering were not related to her injuries from the accident but rather to other causes. It said this issue boiled down to the jury's assessment of the plaintiff's credibility, and the jury was not obligated to find the plaintiff's testimony credible regarding pain and suffering.

For disfigurement, see McCartie v. Muth, 230 Wis. 604, 284 N.W. 529 (1939).