

1855 ESTATE'S RECOVERY FOR PAIN AND SUFFERING

The law provides that the estate of a deceased person is entitled to be compensated fairly and reasonably for pain and suffering endured by (name) from the time of the accident up to the time of death.

Pain and suffering includes all physical pain and discomfort, worry and mental distress. In determining the amount of damages for pain and suffering, you will consider the nature, extent, and duration of all physical pain and suffering, mental anguish, apprehension, discomfort or sorrow the deceased consciously endured and suffered between the time of the accident and death and insert as your answer such sum as will, in your judgment, represent reasonable compensation for such pain and suffering as you are reasonably certain (name) endured and suffered as a natural result of injuries received in the accident.

COMMENT

The instruction and comment were initially approved by the Committee in 1978. The comment was updated in 2018.

Schultz v. General Casualty Co., 233 Wis. 118, 128 N.W. 803, 808 (1939); Prange v. Rognstad, 205 Wis. 62, 65-67, 236 N.W. 650, 652 (1931); Koehler v. Waukesha Milk Co., 190 Wis. 52, 56, 208 N.W. 901, 902-03 (1926); Tidmarsh v. Chicago M. & St. P. Ry., 149 Wis. 590, 598-99, 136 N.W. 337, 341 (1912).

In Wosinski v. Advance Cast Stone Co., 2017 WI App 51, 377 Wis.2d 596, 901 N.W.2d 797, the court of appeals concluded that credible evidence relating to pre-death pain and suffering distinguished the case from Bowen v. Lumbermens Mut. Casualty Co., 183 Wis.2d 627, 517 N.W.2d 432 (1994), and affirmed the trial court's holding that damages were properly awarded for pre-death pain and suffering.

For negligent infliction of emotional distress, see Wis JI-Civil 1510 and 1511.