

**1880 DEATH OF PARENT: PECUNIARY LOSS**

Subdivision \_\_\_ of question \_\_\_ asks what sum of money would fairly compensate the children of (name of deceased) for the pecuniary loss suffered by them as a result of the death of their (father) (mother).

In answering this subdivision of question \_\_\_, you will insert as your answer such sum of money representing the pecuniary loss, if any, as you may find has been sustained by the plaintiff children by reason of the (father)'s (mother)'s death resulting from the injuries received in the accident.

The term "pecuniary loss" means the same as financial loss, and in answering this question and assessing damages to the plaintiff children, you are to restrict it to that meaning. You are not to include anything in your answer to the subdivision of question \_\_\_ on account of any grief or injury to feelings or like suffering on the part of the plaintiff children, nor should the fact that the (father)'s (mother)'s death may have hastened the period when the children came into possession of the (father)'s (mother)'s estate be considered by you in arriving at your answer to this subdivision.

In arriving at your answer to this subdivision, you will consider the number of years the (father) (mother) would probably have lived had it not been for the injury sustained as a result of the accident; the reasonable expectation of the amount of (his) (her) estate and property being increased, and the reasonable expectation which the plaintiff children had of pecuniary advantage by ultimately receiving a share of such earnings as one of (his) (her) next of kin; the reasonable expectation of pecuniary benefit to the children, or any of them, by way of support, or otherwise, had the deceased continued to live without such injury.

[In considering the pecuniary loss, if any, sustained by a minor child or children upon the death of a parent, you may consider the care and nurture and the intellectual, moral, and physical training which the parent would have given the child or children except for such parent's death, such as when obtained from others, must be for financial compensation.]

You may properly consider the state of health of the (father) (mother) at and before the time of (his) (her) death, (his) (her) habits of industry, and (his) (her) ability to work and save and accumulate property.

[While the plaintiff has the burden of establishing pecuniary loss, the evidence relating to this item need not be as exact or precise as evidence needed to support your findings as to other items of damage. The reason for this rule is that the concept of pecuniary loss requires that you consider factors which, by their very nature, do not admit of any precise or fixed rule. You, therefore, are not required in determining the pecuniary loss to base your answer on evidence which is exact or precise but rather upon evidence which, under all of the circumstances of the case, reasonably supports your determination of damages.]

#### COMMENT

The instruction and comment were originally published in 1965 and revised in 2000. The comment was also updated in 1980, 1982, 1990, and 2016.

In 1975, Wis. Stat. § 895.04(4) was amended to broaden the right to recover pecuniary losses in wrongful death actions. Prior to this amendment, the right to pecuniary recovery for wrongful death was restricted to the spouse, the unemancipated or dependent children, or the parents of the deceased. Harris v. Kelley, 70 Wis.2d 242, 255, 234 N.W.2d 628 (1975); Rabe v. Outagamie County, 72 Wis.2d 492, 502, 241 N.W.2d 428 (1976). As explained in Rabe, the effect of the amendment is to permit awards of pecuniary losses to any person entitled to bring an action for wrongful death. The amendment, thus, allows such persons as nondependent and emancipated children as well as other relatives of the deceased to also recover pecuniary losses. For example, in Rabe, the court stated that, based on the legislative change, the sister of the deceased was allowed to seek recovery for pecuniary losses. Although the amendment broadened the right to pecuniary recovery, Wis. Stat. § 895.04(4) still restricts recovery for loss of society and companionship to the spouse, unemancipated or dependent children, or parents of the deceased.

If the plaintiff is an adult, the second from the last paragraph of the instruction should be deleted.  
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This instruction was cited with approval in Boles v. Milwaukee County, 150 Wis.2d 801, 817, 443 N.W.2d 679 (Ct. App. 1989).

In regard to hastening the child's possession of the parent's estate, see Kaesler, Adm'r v. Milwaukee Elec. Ry. & Light Co., 195 Wis. 108, 113, 217 N.W. 687, 689 (1928); Stahler v. Philadelphia & R.R., 199 Pa. 383, 386, 49 Atl. 273, 274 (1901); 5 Sutherland, Damages § 1267 (4th ed. 1916).

In support of the fourth paragraph of the instruction, see Tuteur, Adm'r v. Chicago & N. W. Ry., 77 Wis. 505, 507-08, 46 N.W. 897, 898 (1880).

As to present worth of future payments and finding proper discount rate, see Miller v. Tainter, 252 Wis. 266, 31 N.W.2d 531 (1948). See also Herman v. Milwaukee Children's Hosp., 121 Wis.2d 531, 552, 361 N.W.2d 297 (Ct. App. 1984).

A posthumous illegitimate child may not maintain an action for the death of his putative father under wrongful death statutes where the paternity has not been established either by admissions in writing or in court or in accordance with Wis. Stat. § 852.05(1). Robinson v. Kolstad, 84 Wis.2d 579, 267 N.W.2d 886 (1976).

The value of pecuniary loss suffered as the result of wrongful death cannot be ascertained precisely or by mathematical formula; the jurors, on the basis of their common knowledge and judgment, can determine the value from data that is reasonably supported in the evidence. Redepinning v. Dore, 56 Wis.2d 129, 201 N.W.2d 580 (1972).

**Evidence of Loss.** The last paragraph of the instruction was previously contained in Wis JI-Civil 1705 as a general instruction. The Committee believed it was important and more convenient to users to add this general language from Wis JI-Civil 1705 to each instruction on future loss of earning capacity and pecuniary loss.

**Collateral Source Payments.** See commentary to Wis JI-Civil 1757.