

1885 DEATH OF ADULT CHILD: PECUNIARY LOSS

In answering subdivision ____ of question ____, you will insert as your answer the sum of money representing the pecuniary loss, if any, you find has been sustained by the parents, _____, as a result of the death of their adult (son) (daughter) from injuries received in the accident.

By the term "pecuniary loss" is meant financial loss. In answering this subdivision, you must restrict your answer to a fair and reasonable compensation for any such loss. You must not consider or include anything on account of grief or other mental suffering of _____, the parents of _____.

The deceased (son) (daughter) in this case was over 18 years of age at the time of (his) (her) death and under the law a parent may not claim the services of such an adult child as a matter of right. When a child attains 18 years of age, (he) (she) is entitled to retain all of the money earned as the result of (his) (her) services and (he) (she) is not required to turn over the money to (his) (her) parents upon demand of the parents.

In arriving at your answer to this subdivision, you should consider the amount of money and the pecuniary value of services, if any, the deceased child contributed to (his) (her) parents after (he) (she) became of age and before (his) (her) death; [that (he) (she) was single at the time this money was contributed, and the likelihood of continued contributions in the event of (his) (her) marriage and acquiring a family of (his) (her) own;] the length of time the parents may reasonably expect financial aid from (him) (her). If you are satisfied that by reason of the age and physical health of the parents their life expectancy is limited to such a degree that they could not reasonably expect financial assistance for many years, you will make allowances for that fact.

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 1960 and revised in 2000. The comment was updated in 1980 and 2000.

Bump v. Voights, 212 Wis. 256, 261-62, 249 N.W. 508, 510 (1933); Prange v. Rognstad, 205 Wis. 62, 65-67, 236 N.W. 650, 650-52 (1931).

The fifth paragraph of this instruction was approved in Sandeen v. Willow River Power Co., 214 Wis. 166, 185, 252 N.W. 706, 713 (1934).

In Wisconsin, separate rules govern the recovery of premajority and postmajority pecuniary loss to a parent. Peot v. Ferraro, 83 Wis.2d 727, 733, 266 N.W.2d 586 (1978); Keithley v. Keithley, 95 Wis.2d 136, 279 N.W.2d 503 (1980).

There is no presumption in favor of parents receiving pecuniary benefits from their children after the children reach majority. Nordahl v. Peterson, 68 Wis.2d 538, 553, 229 N.W.2d 682 (1975). There must be some evidence justifying an inference that the parents would have received pecuniary benefits after the attainment of the child's majority if the death had not occurred. Peot v. Ferraro, *supra* at 734.

Wis JI-Civil 1890, Death of Minor Child: Premajority Pecuniary Loss, also includes a portion relating to postmajority pecuniary injury. See Peot, *supra* at 736.

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). "Wisconsin cases have recognized that, in order to show the impairment of future earning capacity, a plaintiff must be permitted to introduce evidence that is more speculative and uncertain than would be acceptable for proof of historical facts (citations)." McCrosen v. Nekoosa Edwards Paper Co., 59 Wis.2d 245, 208 N.W.2d 148 (1973).

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.