

1892 DAMAGES: DEATH OF MINOR CHILD: POSTMAJORITY PECUNIARY LOSS

(Plaintiffs), as parents of (child), claim loss of pecuniary benefits they would have received from (child) after (child) reached age 18 had (he) (she) continued to live. If you determine that (parents) would have received pecuniary benefits from (child) after (he) (she) reached age 18, you should insert the amount in answer to question __.

(Pecuniary benefits means gifts, assistance, and support that can be valued in money.)

In determining whether (parents) would have received pecuniary benefits, you should consider (parent)s' age, health, employment and earnings, and the degree to which they were dependent upon (child). You should also consider the (child)s' age, health, employment, earnings, amounts contributed in the past, if any, and the relationship between (child) and (parents).

(Give Wis JI-Civil 1796 on computation of present value.)

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 approved in 1979 and revised in 1997 and 2000.

Postmajority pecuniary loss is measured by the value of the benefits which the parents might reasonably have expected to receive from the child after he or she reached his or her majority at age 18. There must be some evidence justifying an inference that the parents would have received pecuniary benefits from the child after he or she reached majority if death had not occurred. McGonegle v. Wisconsin Gas & Elec. Co., 178 Wis. 594, 190 N.W. 471 (1922).

Wis JI-Civil 1890 covers damages for premajority pecuniary loss; Wis JI-Civil 1796 covers computation of the present value of future losses.

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. Redepenning 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)." McCrossen 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.