

2516 DEFAMATION: COMPENSATORY DAMAGES

A person wronged by a defamatory statement is entitled to recover money damages. The measure of recovery is such sum as will compensate the person for the damages suffered as a result of the statement.

In arriving at your answer, you should consider whether (plaintiff) has suffered any humiliation, mental anguish, physical injury, and damage to (his) (her) reputation in the community where (his) (her) reputation is known. The plaintiff's reputation is presumed to have been good at the time the statement was made (published). However, in determining damages, you should consider all evidence that has been offered bearing on (his) (her) reputation in the community.

It is not required that (plaintiff) prove damages by any financial yardstick measuring in dollars and cents. Injury to reputation, good name, and feelings are not subject to mathematical calculations or certainty. [Further, it is not necessary for (plaintiff) to prove an actual out-of-pocket loss.]

[If special damages are proved, add the following paragraph:

With respect to your answer to subdivision (b), you will insert the amount of the actual financial loss sustained by (plaintiff), including loss of income, loss of employment opportunities, and loss or injury to (plaintiff)'s credit standing.]

COMMENT

This instruction and comment were approved by the Committee in 1985 and revised in 1991.

This instruction should be used in all libel cases and in slander per se cases. If the slander alleged is not slanderous per se, eliminate the last sentence of paragraph 3 which appears in brackets because special damages in such a case must be proved.

Wisconsin has adopted the Restatement, Second, Torts §§ 569 through 575 in defining the type of damages recoverable. If the defamatory statement is in the form of libel, it is actionable without alleging
©1991, Regents, Univ. of Wis.

special damages. If the statement is in the form of slander, and is not slander per se, it is not actionable without alleging special damages. Slander per se imputes to another a criminal offense or a loathsome disease or a matter affecting plaintiff's business or sexual misconduct. Martin v. Outboard Marine Corp. 15 Wis.2d 452, 461, 113 N.W.2d 135 (1962); Dalton v. Meister, 52 Wis.2d 173, 179, 188 N.W.2d 494 (1971).

Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards must be supported by competent evidence concerning the injury, although there need be no evidence which assigns an actual dollar value to the injury.

Gertz v. Robert Welch, Inc., 94 S.Ct. 2997, 3012 (1974); Denny v. Mertz, 106 Wis.2d 636, 659, 318 N.W.2d 141 (1982).

The burden of proof is the ordinary civil burden in all cases except those involving a public figure against a media defendant. In the latter type of case, the middle burden is required for recovery of compensatory damages. See matrix following Law Note for Trial Judges, Wis JI-Civil 2500.