

501.2 PERSONAL INJURY AND PROPERTY DAMAGES: ELEMENTS

a. *Injury, pain, disability, disfigurement, loss of capacity for enjoyment of life:*

Any bodily injury sustained by (name) and any resulting pain and suffering [disability or physical impairment] [disfigurement] [mental anguish] [inconvenience] [or] [loss of capacity for the enjoyment of life] experienced in the past [or to be experienced in the future]. There is no exact standard for measuring such damage. The amount should be fair and just in the light of the evidence.

b. *Medical expenses:*

Care and treatment of claimant:

The reasonable [value] [or] [expense] of [hospitalization and] medical [and nursing] care and treatment necessarily or reasonably obtained by (claimant) in the past [or to be so obtained in the future].

Care and treatment of minor claimant after reaching majority:

The reasonable [value] [or] [expense] of [hospitalization and] medical [and nursing] care and treatment necessarily or reasonably to be obtained by (minor claimant) after [he] [she] reaches the age of (legal age).

c. *Lost earnings, lost time, lost earning capacity:*

When lost earnings or lost working time shown:

[Any earnings] [Any working time] lost in the past [and any loss of ability to earn money in the future].

When earnings or lost working time not shown:

Any loss of ability to earn money sustained in the past [and any such loss in the future].

d. *Spouse's loss of consortium and services:*

On the claim brought by (spouse), you should award (spouse) an amount of money which the greater weight of the evidence shows will fairly and adequately compensate (spouse) for any loss by reason of [his wife's] [her husband's] injury, of [his] [her] services, comfort, society and attentions in the past [and in the future] caused by the incident in question.

e. *Parental damages for care and treatment of claimant's minor child; parental loss of child's services, earnings, earning capacity:*

On the claim[s] of (parent(s)), you should award (parent(s)) an amount of money, which the greater weight of the evidence shows will fairly and adequately compensate (parent(s)) for damages caused by the incident in question. You shall consider the following element[s] of damage:

The reasonable [value] [or] [expense] of [hospitalization and] medical [and nursing] care and treatment necessarily or reasonably obtained by (parent(s)) for [his] [her] [their] child, (name), in the past [or to be so obtained in the future until (name) reaches the age of (legal age)].

[Any loss by (parent(s)) by reason of [his] [her] [their] child's injury, of the [services]

[earnings] [or] [earning ability] of [his] [her] [their] child in the past [and in the future until the child reaches the age of (legal age)].]

[Any economic loss sustained by (parent(s)) [including] [any earnings lost in the past] [and] [any loss of ability to earn money in the future] reasonably resulting from the need to care or provide for the child because of the child's injury [until (name) reaches the age of (legal age)].]

f. *Parental loss of filial consortium as a result of significant injury resulting in child's permanent disability:*

In addition, if the greater weight of the evidence shows that (claimant child) sustained a significant injury resulting in (claimant child's) permanent total disability, you shall consider the following element of damage:

Any loss by (parent(s)), by reason of that injury, of their child's companionship, society, love, affection, and solace in the past [and in the future until the child reaches the age of (legal age)].

If the greater weight of the evidence does not support (parent(s)'s) claim that their child sustained a significant injury resulting in permanent total disability, your verdict should be for (defendant(s)) on this element of damage.

NOTES ON USE FOR 501.2f

1. The committee believes that *United States v. Dempsey*, 635 So.2d 961 (Fla. 1994), which recognizes a parental right of recovery for loss of filial consortium, does not eliminate the common law right to recover for loss of the child's services or earnings. The common law also allows recovery for a parent's loss of earnings or other economic loss reasonably resulting from the need to care for an injured child. *Wilkie v. Roberts*, 91 Fla. 1064, 109 So. 225 (Fla. 1926).

2. This instruction does not address the issue of a child with extraordinary income-producing abilities prior to the injury. See *Dempsey*, 635 So.2d at 965.

3. A loss of filial consortium claim may require separate interrogatories on the verdict form on the issues of whether the child sustained a significant injury resulting in permanent total disability, and the amount of damages on such a claim.

g. *Unmarried dependent's claim for loss of parental consortium:*

In addition, if the greater weight of the evidence shows that (claimant parent) sustained a significant injury resulting in (claimant parent's) permanent total disability, you shall consider the following element of damage:

Any loss by reason of (claimant parent's) injury of (claimant parent's) services, comfort, companionship and society in the past and in the future.

If the greater weight of the evidence does not support the claim that (claimant parent(s)'s) sustained a significant injury resulting in permanent total disability, your verdict should be for (defendant(s)) on this element of damage.

NOTES ON USE FOR 501.2g

1. If issues arise as to the child's marital status, parentage, or dependency, this instruction should be modified.

2. *F.S.* 768.0415 does not define “significant permanent injury,” “dependent” or “permanent total disability.” Therefore, the instructions do not attempt to define the terms.

3. *F.S.* 768.0415 refers only to “negligence.” The committee takes no position as to whether the statute is limited to negligence cases or the definition of “negligence” in this statutory context. For example, see *F.S.* 768.81(4)(a) defining “negligence cases.”

4. Pending further development of the law, the committee takes no position as to whether there may be elements of damage not specifically enumerated in the statute.

5. The duration of future damages for which the child may recover is unclear. Pending further development of the law, the committee takes no position as to whether the statute limits recovery of future damages to the life of the parent or the duration of the claimant’s dependency.

h. Property damage:

Any damage to [his] [her] [its] (identify automobile or other personal property). The measure of such damage is:

[the difference between the value of the (name property) immediately before (incident complained of) and its value immediately afterward.]

[the reasonable cost of repair, if it was practicable to repair the (name property), with due allowance for any difference between its value immediately before the (incident complained of) and its value after repair.]

You shall also take into consideration any loss to (claimant) [for towing or storage charges and] by being deprived of the use of [his] [her] [its] (name property) during the period reasonably required for its [replacement] [repair].

NOTE ON USE FOR 501.2h

Concerning damages for loss of use, see *Meakin v. Dreier*, 209 So.2d 252 (Fla. 2d DCA 1968). Concerning prejudgment interest, contrast *Jacksonville, T. & K. W. Ry. Co. v. Peninsular Land, Transportation & Manufacturing Co.*, 27 Fla. 1, 27 Fla. 157, 9 So. 661 (Fla. 1891), and *McCoy v. Rudd*, 367 So.2d 1080 (Fla. 1st DCA 1979).