

1 **13-1010. Actual injury and compensatory damages.**

2 If you should decide in favor of the plaintiff on the question of liability, you must then fix
3 the amount of money which will reasonably and fairly compensate plaintiff for the actual injury
4 caused by the defamatory communication.

5 Plaintiff claims and has the burden of proving that the defamatory communication caused
6 one or more of the following injuries:

7 [(1) Loss of business profits] [;] [and]

8 [(2) Loss of salary] [;] [and]

9 [(3) Loss of the sale of plaintiff[']s stock] [;] [and]

10 [(4) Out-of-pocket expenses for _____] [;] [and]

11 [(5) Harm to plaintiff[']s good name and character among [~~his~~ ~~her~~] plaintiff's
12 friends, neighbors and acquaintances] [;] [and]

13 [(6) Harm to plaintiff[']s good standing in the community] [;] [and]

14 [(7) Personal humiliation] [;] [and]

15 [(8) Mental anguish and suffering] [;] [and]

16 [(9) _____]

17 The cause of an injury is that which in a natural and continuous sequence unbroken by an
18 independent intervening cause produces that injury, and without which the injury would not have
19 occurred. It need not be the only cause, nor the last, nor nearest cause. It is sufficient if it occurs
20 with some other cause acting at the same time, which, in combination with it, causes the injury.

21 In determining the amount of damages, you may only award money to compensate for the
22 above-listed actual injuries proved by the plaintiff to have been suffered by [~~him~~ ~~her~~] plaintiff.

23 It is not necessary for plaintiff to present evidence which assigns an actual dollar value to the

1 injuries. In determining compensation for plaintiff[-]'s actual injuries, if any, you should follow
2 your conscience as impartial jurors, using calm and reasonable judgment and being fair to all
3 parties.

4 USE NOTES

5 This instruction states the measure for determining compensatory damages in all
6 defamation actions. It encompasses only those elements of actual damages, both general
7 compensatory damages and special damages, which are proven at trial. The instruction omits
8 reference to presumed damages because of the uncertainty engendered by recent decisions
9 concerning when, if ever, New Mexico can and will permit recovery for presumed, but unproven,
10 compensatory damages. *See* committee commentary. The court should modify this instruction to
11 include an award of presumed damages only if it is convinced that under the facts presented, New
12 Mexico would permit an award of presumed damages in circumstances in which the United States
13 Supreme Court would permit such an award.

14 The listed types of actual damages are illustrative only. The court should tailor this portion
15 of the instruction to the instruction tendered by the plaintiff at trial.

16 [As amended, effective November 1, 1991; March 1, 2005; as amended by Supreme Court Order
17 No. S-1-RCR-2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

18 **Committee commentary.** — The appropriate measure of compensatory damages in defamation
19 actions is still evolving. In the past, New Mexico authorized an award of damages which could be
20 [“]“presumed to have resulted from[“]” the defamatory communication. *See* UJI Civ. 10.19 (Repl.
21 1980). In 1973, however, the United States Supreme Court held that even when a private plaintiff
22 sued for defamation, [“]“the States may not permit recovery of presumed . damages, at least when
23 liability is not based on a showing of knowledge of falsity or reckless disregard of truth [because]

1 the States have no substantial interest in securing . . . gratuitous awards of money damages far in
2 excess of any actual injury[“]. *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 349[~~94 S. Ct. 2997,~~
3 ~~41 L. Ed. 2d 789~~] (1974). The New Mexico Supreme Court adopted this approach, limiting awards
4 of compensatory damages to actual damages in accordance with the decision in *Gertz. Marchiondo*
5 *v. Brown*, 1982-NMSC-076, ¶ 43, 98 N.M. 394,[~~402,~~] 649 P.2d 462[~~470 (1982)~~]. In 1984, a
6 divided United States Supreme Court held that a state could allow recovery of presumed damages
7 by a private plaintiff so long as the subject of the defamation did not involve a matter of [“]“public
8 concern[“]. *Dun & Bradstreet, Inc. v. Greenmoss Bldrs., Inc.*, 472 U.S. 749[~~105 S. Ct. 2939, 86~~
9 ~~L. Ed. 2d 593~~] (1985). The opinion permits but does not compel states to allow awards of presumed
10 damages in such cases.

11 The New Mexico Supreme Court has not yet determined whether New Mexico will return to the
12 former law authorizing presumed damages in cases involving a private plaintiff and defamatory
13 statements not of public concern. This instruction reflects the law in *Gertz* and *Marchiondo*. It is
14 not intended to foreclose debate concerning the law of presumed damages New Mexico might
15 hereafter adopt in light of the *Dun & Bradstreet* decision.

16 This instruction limits awards of compensatory damages to [“]“actual injury[“]” suffered by the
17 plaintiff. The phrase has been partially defined by the United States Supreme Court, *Gertz* [~~v.~~
18 ~~*Robert Welch, Inc.*~~], 418 U.S. 323[~~94 S. Ct. 2997, 41 L. Ed. 2d 789 (1974)~~], and the New Mexico
19 Supreme Court has adopted the description used in *Gertz. Marchiondo*[~~v. Brown~~], 1982-NMSC-
20 076, ¶ 43[~~98 N.M. 394, 402, 649 P.2d 462, 470 (1982)~~].

21 We need not define [“]“actual injury[“]”, as trial courts have wide experience in framing
22 appropriate jury instructions in tort actions. Suffice it to say that actual injury is not limited to out-
23 of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood

1 include impairment of reputation and standing in the community, personal humiliation, and mental
2 anguish and suffering. Of course, juries must be limited by appropriate instructions, and all awards
3 must be supported by competent evidence concerning the injury, although there need be no
4 evidence which assigns an actual dollar value to the injury.

5 ~~Gertz~~[~~v. Robert Welch, Inc.~~], 418 U.S.[~~323,~~]at 349-[~~3~~]50, ~~94 S. Ct. 2997, 41 L. Ed. 2d 789~~
6 (~~1974~~).

7 [Revised[~~, effective March 1, 2005~~]; as amended by Supreme Court Order No. S-1-RCR-2025-
8 00126.]