

1 **13-1632. Negligent misrepresentations.**

2 A party is liable for damages caused by ~~his~~the party's negligent and material
3 misrepresentation.

4 A material misrepresentation is an untrue statement which a party intends the other party
5 to rely on and upon which the other party did in fact rely.

6 A negligent misrepresentation is one where the speaker has no reasonable ground for
7 believing that the statement made was true.

8 USE NOTES

9 This instruction is to be used in those cases where the misrepresentation is not fraudulent
10 in character. *See* UJI 13-1633 NMRA for fraudulent misrepresentation.

11 [As amended, effective March 1, 2005; as amended by Supreme Court Order No. S-1-RCR-2025-
12 00126, effective for all cases pending or filed on or after December 31, 2025.]

13 **Committee commentary.** — New Mexico has adopted the tort of negligent misrepresentation as
14 defined in Section 552 of the *Restatement (Second) of Torts* (1977), which involves a number of
15 elements that must be proved to establish the claim. *Stotlar v. Hester*, 1978-NMCA-067, 92 N.M.
16 26, 582 P.2d 403[~~(Ct. App.)~~], *cert. denied*, 92 N.M. 180, 585 P.2d 324 (1978).

17 This instruction is designed to inform the jury of the basic elements of a negligent
18 misrepresentation claim and to identify which of those elements are disputed in the case being
19 tried. To avoid overburdening the jury, other elements are not included in the instruction unless
20 they are actually at issue in the case.

21 Other potential elements are not even contained in the standard instruction. Negligent
22 misrepresentation applies to situations in which the defendant "in the course of his business,
23 profession or employment, or in any other transaction in which he has a pecuniary interest,"

1 supplies incorrect information "for the guidance of others in their business transactions." *Id.* [~~at~~
2 ~~29, 582 P.2d at 406~~]¶ 12 (quoting *Restatement (Second) of Torts* § 552 (1977)). In addition,
3 liability for negligent misrepresentation is limited to losses that were suffered "by the person or
4 one of a limited group of persons for whose benefit and guidance [the defendant] intends to supply
5 the information or knows that the recipient intends to supply it" and that resulted from reliance on
6 the information "in a transaction that [the defendant] intends the information to influence or knows
7 that the recipient so intends or in a substantially similar transaction." *Id.* [~~at 29, 582 P.2d at 406~~]
8 (quoting *Restatement (Second) of Torts* § 552 (1977)). The instruction is drafted under the
9 assumption that, in the ordinary case, the trial court will be able to determine as a matter of law
10 whether the defendant supplied the information "in the course of his business, profession or
11 employment, or in any other transaction in which he has a pecuniary interest," whether the
12 information was supplied for use in the kind of "business transactions" to which negligent
13 misrepresentation would be pertinent, and whether the plaintiff, if a member of a group that
14 received the information, was a member of a "limited" group within the meaning of the
15 Restatement. In some instances, however, making these determinations may require the resolution
16 of questions of fact by the jury. In such cases, the instruction should be supplemented or modified.
17 *See generally* Restatement § 552 and comments thereto.

18 Additionally, cases may arise where it would be appropriate for the trial court to determine as a
19 matter of law whether the transaction out of which the claimed injury arose was "substantially
20 similar" to the transaction for which the information at issue was actually provided. *See, e.g.*,
21 Restatement § 552 cmt. j, illus. 13-14. In such cases either the instruction would not be given at
22 all (no substantial similarity) or the optional language in the instruction relating to substantially
23 similar transactions would be omitted as not involving a jury issue.

1 With respect to the element of intent on the part of the defendant that the information at issue be
2 received by the plaintiff individually or as a member of a group, it may be appropriate in some
3 cases to supplement this instruction with a standard legal definition of "intent," *i.e.*, substantial
4 certainty that a particular consequence will occur. *See, e.g., California First Bank v. State, 1990-*
5 NMSC-106, ¶ 34 n.6, 111 N.M. 64, [~~73 n.6,~~] [802]801 P.2d 646[~~, 655 n.6 (1990).~~]

6 This instruction deals with misrepresentations resulting from negligence in the furnishing of false
7 information or information which, while true as far as it goes, is incomplete in a material respect
8 and therefore misleading. It is possible that a negligent misrepresentation claim may also arise
9 from a failure to disclose any information. Until a standard instruction is adopted, it will be the
10 responsibility of the trial court, with the assistance of counsel, to determine whether and how the
11 jury should be instructed with respect to such a claim.

12 [As amended by Supreme Court Order No. S-1-RCR-2025-00126.]