

1 **13-1809. Loss of earning capacity by minor.**

2 The present cash value of earning capacity reasonably certain to be lost in the future after
3 the plaintiff has reached the age of eighteen (18) years.

4 USE NOTES

5 In the proper case, where a minor has sustained personal injuries and the parent is suing
6 for expenses incurred, such as medical expenses and money lost, such as earnings of the minor,
7 and the minor is also suing for pain and suffering and impairment of earning capacity after [~~he~~]
8 the minor becomes of age, it will be proper to utilize UJI 13-1802 NMRA for the parent with the
9 necessary elements of damage that pertain thereto and then another UJI 13-1802 [~~NMRA~~] for the
10 minor with the necessary elements that pertain to that matter.

11 In like manner, such an instruction would apply when one other than the parent is the
12 guardian of the estate of the minor.

13 When, and if, a case is presented involving a spouse situation where the community is
14 liable for the expenses incurred in treatment and has a loss of earnings, a separate set of damages
15 instructions may be necessary for the community and a further set for the injured spouse. In such
16 situations, it will be necessary to custom tailor an instruction to include in the measure of damages
17 each of the legal elements, including the reasonable value of the services of the spouse, but loss of
18 consortium is not a legal measure of damages in a spouse situation in New Mexico. *Roseberry v.*
19 *Starkovich*, [~~73 N.M. 211, 387 P.2d 321 (1963)~~] 1963-NMSC-201, 73 N.M. 211, 387 P.2d 321;
20 *Kilkenny v. Kenney*, [~~68 N.M. 266, 361 P.2d 149 (1961)~~] 1961-NMSC-019, 68 N.M. 266, 361 P.2d
21 149. Even before the Equal Rights Amendment [N.M. Const., art. II, § 18] to the New Mexico
22 Constitution, the New Mexico Supreme Court had held that a [~~wife~~] spouse alone may recover
23 damages for [~~her~~] the spouse's personal injury and for the resulting pain and suffering. *Soto v.*

1 *Vandeventer*, [~~56 N.M. 483, 245 P.2d 826, 35 A.L.R.2d 1190 (1952)~~] 1952-NMSC-064, 56 N.M.
2 483, 245 P.2d 826.

3 [As amended, effective November 1, 1991; as amended by Supreme Court Order No. S-1-RCR-
4 2025-00126, effective for all cases pending or filed on or after December 31, 2025.]

5 **Committee commentary.** — In the first edition a separate form of damages instruction was drawn
6 for injury to a spouse, with subparts thereto (former UJI Civ. 14.18, UJI Civ. 14.19, UJI Civ. 14.20,
7 UJI Civ. 14.21), but it is doubtful that such separate instructions are now needed in the book as the
8 bench and bar have become accustomed to the form of damages presentation contained in UJI 13-
9 1802. Therefore, with the foregoing explanation, additional instructions in this area will not be
10 included in this work.