

1 **13-1830. Measure of damages; wrongful death (~~including loss of consortium~~).**

2 This lawsuit has been brought by _____ [~~(plaintiff)~~ ~~individually~~
3 ~~and~~] (*name of personal representative*) on behalf of the [~~surviving beneficiaries~~] estate of
4 _____ (*name of decedent*), who is now deceased. [~~The surviving~~
5 ~~beneficiaries are~~ _____ (*names of surviving beneficiaries*).]

6 New Mexico law allows damages to be awarded to [~~the surviving [spouse],~~
7 [~~parent(s)], [grandparent(s)], [other familial caretaker(s)] [and] beneficiaries~~] the estate of
8 a deceased person if the death or the related damages described in this instruction were
9 caused by the wrongful act, neglect, or default of another. If you should find for the estate
10 of _____ [~~(plaintiff)~~] (*name of decedent*) on the question of liability, you
11 must then fix the amount of money which you deem fair and just for the life of
12 _____ (*name of decedent*), including in your award compensation for any of the
13 following elements of damages proved by the evidence:

14 1. The reasonable expenses of necessary medical care and treatment and
15 funeral and burial;

16 2. The pain and suffering experienced by _____ (*name of*
17 *decedent*) between the time of injury and death;

18 3. The lost earnings, the lost earning capacity, and the value of the lost
19 household services of _____ (*name of decedent*) considering
20 _____'s (*name of decedent*) age, earning capacity, health, habits, and life
21 expectancy. In considering loss of earnings or earning capacity, deductions must be made

1 for income taxes, social security taxes, other taxes, and personal living expenses of
2 _____ (*name of decedent*). The damages set forth in this paragraph are
3 damages for future loss of money and are paid in a lump sum. Therefore, a reasonable
4 discount must be made for the future earning power of the damages awarded;

5 4. The value of _____'s (*name of decedent*) life apart from
6 _____'s (*name of decedent*) earning capacity;

7 5. The mitigating or aggravating circumstances attending the wrongful act,
8 neglect, or default;

9 ~~[6. — The emotional distress to the [spouse], [parent(s)], [grandparent(s)], [other~~
10 ~~familial caretaker(s)] caused by the loss of [society,] [guidance,] [companionship] and~~
11 ~~[sexual relations] enjoyed with _____ (*name of decedent*);]~~

12 ~~[7.]~~ 6. The loss of guidance and counselling to _____'s (*name of*
13 *decedent*) minor children.

14 ~~[8.]~~ 7. You may also consider the loss to the beneficiaries of other expected
15 benefits that have a monetary value. While the presence or absence of a measurable
16 monetary loss to beneficiaries is a factor for consideration, damages may be awarded even
17 where monetary loss to the surviving beneficiaries cannot be shown.

18 The property or wealth of the beneficiaries or of the defendant is not a legitimate
19 factor for your consideration.

20 No fixed standard exists for determining fair and just damages. You must use your
21 judgment to decide a reasonable amount. Your verdict must be based on evidence, not on

1 speculation, guess, or conjecture. You must not permit the amount of damages to be
2 influenced by sympathy or prejudice, or by the grief or sorrow of the family [~~or the loss of~~
3 ~~the deceased's society to the family~~].

4 **USE ~~[NOTE]~~ NOTES**

5 The wrongful death instruction enumerates the various elements of damage that
6 may be recovered upon the wrongful death of an individual. [~~It is important to note that the~~
7 ~~elements of damage listed in the instruction may not all be recoverable by the same person~~
8 ~~or entity. For example, a personal representative is not entitled to recover for the surviving~~
9 ~~spouse's or familial caretaker's loss of consortium unless the personal representative is one~~
10 ~~and the same as the surviving spouse or familial caretaker. Similarly, the]~~ The personal
11 representative may not always recover each of the elements of damages depending upon
12 the evidence produced at trial. If there are no minor children, item [7] 6 should be excluded.
13 Similarly, if there are no lost earnings, earning capacity, or household services item 3
14 should be excluded, and so on. Only those elements supported by the evidence are to be
15 included in the instruction given the jury.

16 [~~If the personal representative is also the surviving spouse or familial caretaker, the~~
17 ~~damages described in item 6 should be included and the bracketed material in the last~~
18 ~~sentence of the instruction should be excluded. If the personal representative is not the~~
19 ~~surviving spouse or familial caretaker, the damages in item 6 should not be included in the~~
20 ~~instruction and the bracketed language in the last sentence should remain in the instruction.~~
21 ~~The amount awarded to the beneficiary's personal representative must be set out separately~~

1 ~~in a special verdict form from the amount awarded to the surviving spouse or familial~~
2 ~~caretaker for her or his loss of consortium.] If the personal representative is also a loss of~~
3 ~~consortium claimant, the verdict form should include a line for a separate award of loss of~~
4 ~~consortium damages to the personal representative. If there are additional loss of~~
5 ~~consortium claimants, the verdict form should include a line for a separate award of loss of~~
6 ~~consortium damages to each loss of consortium claimant. A sample special verdict form~~
7 ~~appears in UJI Chapter 22 at UJI 13-2223 NMRA. [In addition, various elements of~~
8 ~~damages can be broken out separately on the special verdict form if the court determines~~
9 ~~that there is a need to do so in order to identify damages recoverable by the estate, by the~~
10 ~~statutory beneficiaries, and by the surviving spouse or familial caretaker for loss of~~
11 ~~consortium. If there is a factual dispute whether the person seeking loss of consortium~~
12 ~~damages for a minor child was the “familial caretaker”, then the jury should be provided~~
13 ~~with a definition of “familial caretaker”. The Supreme Court described a “familial~~
14 ~~caretaker” as a person who lived with and cared for the child for a significant period of~~
15 ~~time prior to the death or injury. *Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-39,~~
16 ~~126 N.M. 263, 273, 968 P.2d 774.]~~
17 [As amended, effective October 1, 1996; March 20, 2000; as amended by Supreme Court
18 Order No. 08-8300-033, effective November 24, 2008; as amended by Supreme Court
19 Order No. 16-8300-018, effective for all cases pending or filed on or after December 31,
20 2016; as amended by Supreme Court Order No. 19-8300-014, effective for all cases
21 pending or filed on or after December 31, 2019.]

1 **Committee commentary.** — The wrongful death instruction was drafted as a
2 consequence of ~~the~~ our Supreme Court's opinion in *Romero v. Byers*, 1994-NMSC-031,
3 117 N.M. 422, 872 P.2d 840 [(1994)]. [~~*Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-~~
4 039, 126 N.M. 263, 968 P.2d 77, recognized loss of consortium for a "familial caretaker",
5 such as a parent or grandparent who loses a child to death or where the child suffers a
6 serious injury.] After our Supreme Court's opinion in *Estate of Saenz ex rel. Saenz v.*
7 *Ranack Construction, Inc.*, 2018-NMSC-032, 420 P.3d 576, the committee recommended
8 revisions to UJI 13-1830 and UJI 13-1810A NMRA, and the addition of UJI 13-1810B and
9 UJI 13-2223 NMRA, in an attempt to further clarify the separate nature of wrongful death
10 damages and loss of consortium damages in situations where the personal representative is
11 also a loss of consortium claimant.
12 [As amended by Supreme Court Order No. 19-8300-014, effective for all cases pending or
13 filed on or after December 31, 2019.]