

1 **13-208. Insurance has no bearing.**

2 ~~[[Whether a party is insured has no bearing on any issue in this case.]]~~

3 ~~[[Evidence has been admitted that \_\_\_\_\_ (plaintiff, defendant, etc.)~~

4 ~~was insured. You may consider this evidence only for the limited purpose of proving~~

5 ~~\_\_\_\_\_ (agency, ownership or control, bias or prejudice of a witness,~~

6 ~~etc.).] You may not consider this evidence for any other issue in the case.]~~

7 The [possible] existence of any insurance or employment-related benefits has no bearing

8 on whether [a] [the] defendant [was negligent] [is liable] or on the amount of any damages that

9 may be awarded to [a] [the] plaintiff.

10 [You have heard evidence that (*plaintiff, defendant, etc.*) [was insured] [was covered by

11 certain employment benefits]. You may consider this evidence only for the purpose of

12 proving (*agency, ownership or control, bias or prejudice of a witness, etc.*). You must not consider

13 the existence of insurance or other benefits in determining any other issue in this case.]

14

15 USE NOTES

16 ~~[When insurance is mentioned, the court, at the request of the party whose insurance~~

17 ~~coverage has been disclosed, shall immediately give the first paragraph of this instruction unless~~

18 ~~the court determines that the prejudice cannot be overcome in which case a mistrial should be~~

19 ~~granted. This instruction can also be given at the close of trial.] The first paragraph of this~~

1 instruction should be given in all cases, with the first bracketed term included, to instruct the jury  
2 that it may not consider the presence or absence of insurance, whether liability insurance, health  
3 insurance, or employment-related benefits for either the plaintiff or the defendant, in determining  
4 liability or damages. See *Safeco Ins. Co. v. United States Fid. & Guar. Co.*, 1984-NMSC-045,  
5 ¶¶ 17-19, 101 N.M. 148, 679 P.2d 816; Rule 11-411 NMRA. The bracketed words “was negligent”  
6 or “is liable” should be chosen depending on whether negligence or some other basis of liability  
7 is asserted.

8       In a case where evidence of insurance has been admitted pursuant to Rule 11-411 [NMRA]  
9 after the court's consideration of such evidence under Rule 11-403 NMRA, [~~then the bracketed~~  
10 ~~paragraph shall be used inserting the proper basis for its use at the end of the sentence. The limited~~  
11 ~~purpose of proof should be stated [in the final blank] with clarity, personalized to the case] the  
12 entire instruction should be read, with the first bracketed term excluded, near the time of the  
13 disclosure and again at the close of trial. The proper purpose for use of the evidence, stated with  
14 precision and clarity, should be inserted in the second paragraph.~~

15       The use of evidence pursuant to Rule 11-411 [NMRA] presupposes disclosure to the court  
16 outside the presence of the jury that an insured status will be elicited for the purpose[s] set forth in  
17 this instruction.

18       This instruction may also be used as a curative instruction in the event evidence of  
19 insurance is introduced inadvertently rather than for a permissible purpose. In such a case, the

1 second paragraph of the instruction should be modified to inform the jury that it must not  
2 consider the existence of insurance in determining any issue.

3 [As amended, effective January 1, 1987; March 1, 2005; as amended by Supreme Court Order No.  
4 21-8300-017, effective for all cases filed or pending on or after December 31, 2021.]

5 **Committee commentary.** — This instruction follows the ruling of the Supreme Court  
6 in *Safeco* [~~v. *United States Fid. & Guar.*, 101 N.M. 148, 679 P.2d 816 (1984)] *Ins. Co.*, 1984-  
7 NMSC-045. When the reference to insurance is neither inadvertent nor for permissible purposes,  
8 mistrial may be the appropriate remedy. [~~See *Safeco*] *See id.* [The compiler's notes under the cases~~  
9 ~~listed under Rules 11-403 and 11-411 NMRA are of aid in determining whether or not insurance~~  
10 ~~evidence is admissible.]~~~~

11 [As amended by Supreme Court Order No. 21-8300-017, effective for all cases filed or pending  
12 on or after December 31, 2021.]