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JURY INSTRUCTION 1

DAMAGES – INTRODUCTORY

If you decide that defendant's Fault Legally Caused damages to [*name of plaintiff*] you must award the damages, if any, that you decide will fairly and adequately compensate [*name of plaintiff*] for these damages. There are two kinds of damages: Special Damages and General Damages. I will now explain Special and General Damages.

Comments

This instruction should be given as a preliminary instruction to all damage instructions and may or should be modified to fit the particular situation. The case may be submitted to the jury on special verdict, general verdict, or stipulated liability. The user may want to refer specifically to the special verdict question in modifying this form. Each specific damage instruction that applies to the case should then follow.

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JURY INSTRUCTION 2

PERSONAL INJURY - SPECIAL DAMAGE

MEDICAL CARE

Special Damages include expenses for medically related care which is reasonably required and legally caused by the accident. You should award the reasonable value of the medically related care in the past and for the care that more probably than not will be reasonably required in the future. [The fact, if it be a fact, that any of the foregoing expenses were paid by some source other than the *[name of plaintiff]*'s own funds does not affect *[name of defendant]*'s responsibility to pay for such expense.]

JURY INSTRUCTION 3

PERSONAL INJURY - SPECIAL DAMAGE

LOSS OF EARNINGS

Special Damages also include lost earnings and loss of earning capacity. You should award the reasonable value of the work [*name of plaintiff*] has been unable to do, and the reasonable value of his/her future earnings that more probably than not will be lost in the future. In determining this amount, you should consider evidence of: [*name of plaintiff*]'s earning capacity; (2) his/her actual earnings; (3) his/her work before and after the accident; and (4) what he/she would likely have earned if he/she had not been injured.

“Earning Capacity” is not the same as lost earnings. Earning capacity means the potential to earn income. It is not necessarily determined by the actual loss of earnings. To determine the reasonable value of the loss of earning capacity, you should consider whether the injury legally caused: (1) a reduction of [*plaintiff's name*]'s ability to earn income; and (2) a decreased ability to weather adverse economic circumstances, such as a discharge or lay-off, or a voluntary change of employment.

Dalebout v. Union Pacific R. Co., 980 P.2d 1194, 1200 (Ut. App. 1999)

Corbett v. Seamons dba Big O Tire, 904 P.2d 232, N.2 (Ut. App. 1995)

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JURY INSTRUCTION 4

PERSONAL INJURY - SPECIAL DAMAGE

LOSS OF HOUSEHOLD SERVICES

Special Damages also include loss of household services. To recover damages for this loss, *[name of plaintiff]* must prove the reasonable value of the household services that *[name of plaintiff]* has been unable to do, and the reasonable value of the household services that, more probably than not, he/she will be unable to do in the future.

JURY INSTRUCTION 5

GENERAL DAMAGES

In awarding general damages, you may consider the nature and extent of injuries sustained by [*name of plaintiff*], the degree and character of the disfigurement, the pain and suffering occasioned by the injuries, both mental and physical, their probable duration and severity, the extent to which [*name of plaintiff*] has been prevented from pursuing his/her ordinary affairs of life and the extent he/she has been limited in the enjoyment of life. You may consider whether the consequences of these injuries will, with reasonable probability, continue in the future and if so, you should award such damages as will fairly and justly compensate him/her throughout his/her life expectancy.

Pain, suffering, disfigurement and other such general damages are not capable of being exactly and accurately determined and there is no fixed rule, standard or formula in determining these general damages. Nevertheless, it is your duty to make this determination. The law does not require the opinion of any witness to establish the amount of general damages. The argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for general damages, you should exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

You are not precluded from awarding damages because of the difficulty in computing the damages. While you may not award damages based upon mere speculation, the law requires only that the evidence provide a reasonable basis for assessing the damages and does not require a mathematical certainty.

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JURY INSTRUCTION 6

PERSONAL INJURY – DAMAGE

SUSCEPTIBLE TO INJURY

A person who may be more susceptible to injury than someone else is still entitled to recover the full amount of damages that were Legally Caused by [*name of defendant*]'s Fault. In other words, the amount of damages should not be reduced merely because [*name of plaintiff*] is more susceptible to injury than someone else may be.

JURY INSTRUCTION 7

PERSONAL INJURY DAMAGES

AGGRAVATION OF PREEXISTING CONDITIONS

(Alternate A)

An injured person who has a condition or disability before the time of an injury is not entitled to recover damages for that condition or disability. However, the injured person is entitled to recover damages for any aggravation of the preexisting condition or disability caused from the injury, even if the person's preexisting condition or disability made the injured person more susceptible to problems than a healthy person would have been, and even if a healthy person may not have suffered the additional problems. However, the damages you may award are limited to the additional damages caused by [*defendant's name*]'s Fault.

Comments

Alternate Instruction A reflects the holding of the Utah Supreme Court in *Brunson v. Strong*, (cited below). The Court did not specifically address the issue of dormant and asymptomatic conditions. Alternate Instruction B reflects the holding of the Utah Court of Appeals in *Biswell v. Duncan* (cited below,) where the plaintiff claimed that the preexisting condition was dormant or asymptomatic. Modification of the instruction may be necessary based upon the evidence in any given case.

References:

Biswell v. Duncan, 742 P.2d 80 (Utah 19087)

Brunson v. Strong, 17 Utah 2d 364, 412 P.2d 451 (1966)

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JURY INSTRUCTION 8

PERSONAL INJURY DAMAGES

AGGRAVATION OF PREEXISTING CONDITIONS

(Alternate B)

A person who has a preexisting condition which doesn't cause the person any problems, may recover the full amount of damages legally caused by an aggravation of that condition. In other words, when a preexisting condition does not cause pain or disability, but that condition plus the injury brings on pain, disability or other problems, then it is the injury, not the preexisting condition, that is the legal cause of the pain or other problems.

References:

Biswell v. Duncan, 742 P.2d 80 (Utah 1987)

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JURY INSTRUCTION 9

PERSONAL INJURY – DAMAGES

APPORTIONMENT FOR PREEXISTING CONDITION

When a pre-existing condition exists which makes the injuries from an accident greater than they would have been in the absence of such a pre-existing condition, it is your duty, if possible, to apportion the amount of disability, impairment, pain, suffering, and other damages, between those caused by the pre-existing condition and those caused by the accident. But if you find that the evidence does not permit such an apportionment, then you must determine that the entire disability, impairment, pain, suffering, and other damages, are legally caused by [*name of defendant*]'s fault.

Reference:

Robinson v. All-Star Delivery, Inc., 992 P.2d 969 (Ut. 1999)

Tingey v. Christensen, 987 P.2d 588, 591-92 (Ut. 1999)

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JURY INSTRUCTION 10

PERSONAL INJURY – DAMAGES

DUTY TO MITIGATE

A person who has been injured is supposed to use reasonable diligence in caring for the injuries and in acting in a way that avoids a worse situation.

When an injured person does not use reasonable diligence to care for the injuries, and as a result the injuries are aggravated, the defendant is not responsible to pay damages for this aggravation. If [*name of plaintiff*] made reasonable efforts to avoid an aggravation of his/her situation, then your award should include the reasonable amounts he/she incurred for this purpose.

References:

C.S. v. Nielsen, 767 P.2d 504 (Utah 1988)

Thompson v. Jacobsen, 23 Utah 2d 359, 463, P.2d 801 (1970)

Morrison v. Perry, 104 Utah 151, 140 P.2d 772 (1943)

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JURY INSTRUCTION 11

PERSONAL INJURY – DAMAGES

LIFE EXPECTANCY

According to the mortality tables, [*name of plaintiff*] is expected to live ____ more years. You may consider this fact in arriving at the amount of future damages. A life expectancy is merely an estimate of the probable average remaining life of all persons in our country of a given age, with average health and exposure to danger. Some people live longer and others die sooner. You may consider all other evidence bearing on the expected life of the [*name of plaintiff*], including his/her occupation, health, habits, life style, and other activities.

References:

JIFU No. 90.36 (1957)

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JURY INSTRUCTION 12

PERSONAL INJURY – DAMAGES

WRONGFUL DEATH – ADULT

In determining damages for the death of [*decedent*], you will award an amount that will be just compensation for the loss that [*name of plaintiff*] has suffered from the death of [decedent].

You shall determine the loss based upon the circumstances that existed at the time of the decedent's death, including the following past and future items:

- 1) The loss of financial support or the right to receive financial support, if any, that [*name of plaintiff*] would have received from the decedent. In this regard, you should consider the disposition of the decedent to financially support [*name of plaintiff*] and the earning capacity of the decedent.
- 2) The loss of love, companionship, society, comfort, care, protection and affection which [*name of plaintiff*] has lost.
- 3) The age and health of the decedent and [*name of plaintiff*] immediately prior to the death.
- 4) Whether the deceased was kind, affectionate or otherwise.
- 5) The expenses for medical care incident to the death.
- 6) The reasonable expenses that were incurred for the funeral and burial.
- 7) The life expectancy of the decedent and [*name of plaintiff*]. [*Name of plaintiff*] could have only received benefits from the decedent as long as both were alive.
- 8) Any other evidence indicating the benefits that [*name of plaintiff*] might have reasonably received had the decedent lived.

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[In determining this award, you are not to consider any pain or suffering of the decedent; any grief or sorrow of the plaintiff; or the poverty or wealth of the plaintiff] [You may also consider the pain, anguish and mental suffering of the decedent before his/her death]? _____.]

References:

Utah Code Ann. §§ 78-11-7 – 12 (1992)

In re Behm's Estate, 117 Utah 151, 213 657 (1950)

Allen v. United States, 588 F. Supp. 247 (D. Utah 1984)

Platis v. United States, 288 F. Supp. 254 (D. Utah 1968), *aff'd*, 409 F.2d 1009 (10th Cir. 1969)

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JURY INSTRUCTION 13

PERSONAL INJURY – DAMAGES

**WRONGFUL DEATH – ADULT
(Alternate A)**

In determining damages for the death of [*decedent*], you should award an amount that will be just compensation for the loss that [*name of plaintiff*] has suffered from the death of [*decedent*]. You shall determine the loss based upon the circumstances that existed at the time of the decedent's death, including the following:

- 1) The past and future loss of financial support or the right to receive financial support, if any, that [*name of plaintiff*] would have received from the decedent. In this regard, you should consider the earning capacity of the decedent and the disposition of the decedent to financially support [*name of plaintiff*].
- 2) The past and future loss of love, companionship, society, comfort, care, protection and affection from the decedent which [*name of plaintiff*] has lost.
- 3) The age and health of the decedent and [*name of plaintiff*] immediately prior to the death.
- 4) Whether the decedent was kind, affectionate or otherwise.
- 5) The reasonable expenses for medically related care incident to the death.
- 6) The reasonable expenses that were incurred for the funeral and burial.
- 7) The life expectancy of the decedent and [*name of plaintiff*]. [*Name of plaintiff*] could have only received benefits from the decedent as long as both were alive.
- 8) Any other evidence indicating the benefits that [*name of plaintiff*] might have reasonably received had the decedent lived.

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In determining this award, you are not to consider any pain or suffering of the decedent; any grief or sorrow of the plaintiff; or the poverty or wealth of the plaintiff.

[If the case involves the wrongful death of a minor, the following paragraphs should be added at the end of subparagraph (1) above: “This amount should be reduced by the value of the costs that [*name of plaintiff*] would likely have incurred to support [*decedent*] had the child survived, until the child reached the age of eighteen.”]

References:

Utah Code Ann. §§ 78-11-7 – 12 (1992)

In re Behm’s Estate, 117 Utah 151, 213 657 (1950)

Allen v. United States, 588 F. Supp. 247 (D. Utah 1984)

Platis v. United States, 288 F. Supp. 254 (D. Utah 1968), *aff’d*, 409 F.2d 1009 (10th Cir. 1969)

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Comments

This instruction applies to claims for wrongful death brought under U.C.A. § 78-11-7. If the cause of action also includes claims under U.C.A. § 78-11-12, Alternate B should be used.

JURY INSTRUCTION 14

PERSONAL INJURY – DAMAGES

**WRONGFUL DEATH – ADULT
(Alternate B)**

In determining damages for the death of [*decedent*], you should make two separate awards:

- (1) An amount that will be just compensation for the loss that [*name of plaintiff(s)*] has [have] suffered from the death of [*decedent*]; and
- (2) The amount of special and general damages legally caused by [*defendant*]'s fault which [*decedent*] suffered before his/her death.

I will now explain how you should determine each of these two awards. First, to determine for [*name of plaintiff(s)*] the loss should be determined based upon all the circumstances that existed at the time of decedent's death. You should consider the following:

- (a) The past and future loss of financial support or the right to receive financial support, if any, that [*name of plaintiff*] would have received from the decedent. In this regard, you should consider the earning capacity of the decedent and the disposition of the decedent to financially support [*name of plaintiff*].
- (b) The past and future loss of love, companionship, society, comfort, care, protection and affection from the decedent which [*name of plaintiff*] has lost.
- (c) The age and health of the decedent and [*name of plaintiff*] immediately prior to the death.
- (d) Whether the decedent was kind, affectionate or otherwise.
- (e) The reasonable expenses for medically related care incident to the death.
- (f) The reasonable expenses that were incurred for the funeral and burial.

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- (g) The life expectancy of the decedent and [*name of plaintiff*]. [*Name of plaintiff*] could have only received benefits from the decedent as long as both were alive.
- (h) Any other evidence indicating the benefits that [*name of plaintiff*] might have reasonably received had the decedent lived.
- (i) In determining this award, you are not to consider any pain or suffering of the decedent; any grief or sorrow of the plaintiff; or the poverty or wealth of the plaintiff.

Second, regarding the special and general damages suffered by [*decedent*] you should determine the award based upon the following:

(A) Special Damages:

- (1) The expenses for medically related care which was reasonably required to treat the injuries legally caused by [*defendant*]'s fault [the fact, if it be a fact, that any of the foregoing expenses were paid by some source other than the [*name of plaintiff*]'s own funds does not affect [*name of defendant*]'s responsibility to pay for such expenses.
- (2) The reasonable value of the lost work [*decedent*] was unable to do;
- (3) The reasonable value of the loss of household services that [*decedent*] was unable to perform; and
- (4) Any other reasonable expenses [*decedent*] incurred.

(B) General Damages:

In awarding general damages you may consider the nature and extent of the injuries sustained by [*decedent*], the degree and character of pain and suffering, both mental and physical and the extent to which [*decedent*] was prevented from pursuing his/her ordinary affairs of life.

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Pain, suffering, and other such general damages are not capable of being exactly and accurately determined and there is no fixed rule, standard or formula in determining these general damages. Nevertheless, it your duty to make this determination. The law does not require the opinion of any witness to establish the amount of general damages. The argument of counsel is not evidence of reasonable compensation. The award shall be just and reasonable in light of the evidence.

References:

Utah Code Ann. §§ 78-11-7 – 12 (1992)

In re Behm's Estate, 117 Utah 151, 213 657 (1950)

Allen v. United States, 588 F. Supp. 247 (D. Utah 1984)

Platis v. United States, 288 F. Supp. 254 (D. Utah 1968), *aff'd*, 409 F.2d 1009 (10th Cir. 1969)

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Comments

This instruction applies to claims for wrongful death brought under both U.C.A. §§ 78-11-7 and 78-11-12. This instruction assumes that the decedent survived the accident but later died as a result of the injuries sustained in the accident. If the cause of decedent's death is contested, alternate Instruction C should also be given.

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JURY INSTRUCTION 15

PERSONAL INJURY – DAMAGES

**WRONGFUL DEATH – ADULT
(Alternate C)**

You may not award general damages suffered by [*decedent*] if [*decedent*]’s death resulted from a cause other than the injury legally caused by [*name of defendant*]’s fault. If you decide that his/her death resulted from some other cause, you may award only those special damages, as explained above.

Comments

This instruction applies only to a claim made under U.C.A. § 78-11-12, where it is contested whether the death resulted from a cause other than the injury legally caused by the defendant’s fault.

JURY INSTRUCTION 16

WRONGFUL DEATH – MINOR

In determining the damages for the death of [decedent] you will award an amount that will be just compensation for the loss that [*name of plaintiff*] has suffered from the death of [decedent].

You shall determine the award based upon the circumstances that existed at the time of the decedent's death, including the following past and future items:

1. The loss of financial support or the right to receive financial support, if any, that [*name of plaintiff*] would have received from the decedent. This amount should be reduced by the value of the costs that [*name of plaintiff*] would likely have incurred to support the decedent had the child survived, until the child reached the age of eighteen.

2. The loss of love, companionship, society, comfort, care, protection and affection which [*name of plaintiff*] has lost.

3. The age and health of the decedent and [*name of plaintiff*].

4. The expenses for medical care incident to the death.

5. The reasonable expenses that were incurred for the funeral and burial.

6. The life expectancy of the decedent and [*name of plaintiff*]. [*Name of plaintiff*] could have only received benefits from the decedent as long as both were alive.

7. Any other evidence indicating the benefits that [*name of plaintiff*] might have reasonably received had the decedent lived.

8. [In determining this award you are not to consider any pain or suffering of the decedent; any grief or sorrow of [*name of plaintiff*]; or the poverty or wealth of [*name of plaintiff*.]]
[You may also consider the pain, anguish and mental suffering of the decedent before his/her death.]

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Comments

The Committee disagreed on whether the jury may consider the pain, anguish, sorrow and mental suffering of the plaintiff arising from the wrongful death of a minor.

References:

Utah Code Ann. § 78-11-6, -12 (1992)

Jones v. Carvell, 641 P.2d 105 (Utah 1982)

JURY INSTRUCTION 17

**MITIGATION OF DAMAGES
(Property Damage)**

If you decide [*name of defendant*] is responsible for the damage to [*name of plaintiff*]'s property, [*name of plaintiff*] is not entitled to recovery damages to his/her property that [*name of defendant*] proves [*name of plaintiff*] could have been avoided with reasonable efforts or expenditures.

You should consider the reasonableness of [*name of plaintiff*]'s efforts in light of the circumstances facing him/her at the time, including his/her ability to make the efforts or expenditures without undue risk or hardship.

If [*name of plaintiff*] made reasonable efforts to avoid harm, then your award should include reasonable amounts that he/she spent for this purpose.

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JURY INSTRUCTION 18

PUNITIVE DAMAGES

You must not include in your award any damages to punish or make an example of [*name of defendant*]. Such damages would be punitive damages, and they cannot be a part of your verdict.

You must award only the damages that fairly compensate [*name of plaintiff*] for [his/her/its] loss.

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JURY INSTRUCTION 19

ARGUMENTS OF COUNSEL NOT EVIDENCE OF DAMAGES

The arguments of the attorneys are not evidence of damages. Your award must be based on the testimony of the witnesses and the other evidence that has been admitted during trial.

JURY INSTRUCTION 20

PROOF OF DAMAGES

Before you may award damages, [*name of plaintiff*] must prove two points.

First, he/she must prove that damages occurred. The evidence must do more than raise speculation that damages actually occurred; there must be a reasonable probability that [*name of plaintiff*] suffered damages from the Fault of [defendant].

Second, [*name of plaintiff*] must prove the amount of damages. The level of evidence required to establish that damages actually occurred is generally higher than that required to establish the amount of damage.

It is the wrongdoer, rather than the injured party, who should bear the burden of some uncertainty in the amount of damages. While the standard for determining the amount of damages is not so exacting as the standard for proving that damages actually occurred, there still must be evidence that rises above speculation and provides a reasonable, even though not necessarily precise, estimate of the amount of damages.

If damages actually occurred, the amount of damages may be based upon reasonable approximations, assumptions or projections.

Reference:

Atkin Wright & Miles v. Mountain States Telephone & Telegraph Co., et al., 709 P.2d (Utah 1985)

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INSTRUCTION NO. 21

PRESENT CASH VALUE

If you decide that [*name of plaintiff*]'s damages includes future special damages, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

To find present cash value, you must determine the amount of money that, if reasonably and frugally invested today, will provide [*name of plaintiff*] with the amount of [his/her/its] future damages.

[You may consider expert testimony in determining the present cash value of future economic damages.]

INSTRUCTION NO. 22

**[LOSS OF CONSORTIUM]
(Noneconomic Damage)**

[*Name of plaintiff*] claims that [he/she] has been harmed by the injury to [his/her] [husband/wife]. If you decide that [*name of injured spouse*] has proved the Fault of [*name of defendant*], you also must decide how much money, if any, will reasonably compensate [*name of plaintiff*] for loss of [his/her] [husband/wife]'s companionship and services, including:

1. The loss of love, companionship, comfort care, assistance, protection, affection, society, moral support; and
2. The loss of the enjoyment of sexual relations [or the ability to have children].

[*Name of plaintiff*] may recover for harm [he/she] proves [he/she] has suffered and for harm [he/she] is reasonably likely to suffer in the future. No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

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INSTRUCTION NO. 23

[SETTLEMENT DEDUCTION]

You have heard evidence that [*name of plaintiff*] has settled [his/her/its] claim against [*name of settled party*]. Your award of damages to [*name of plaintiff*] should be made without considering any amount that [he/she/it] may have received under this settlement. After you have returned your verdict, I will make any appropriate adjustment to your award of damages.

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INSTRUCTION NO. 24

INTRODUCTION TO TORT DAMAGES – LIABILITY CONTESTED

If you decide that [*defendant*] is at Fault, you also must decide how much money will reasonably compensate [*defendant*] for the harm. This compensation is called “damages.”

The amount of damages must include an award for each item of harm that was caused by [*plaintiff*]’s Fault.

[The damages claimed by [*name of plaintiff*] for the harm caused by [*name of defendant*] fall into two categories called economic damages and non-economic damages. You will be asked on the verdict form to state these damages.

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INSTRUCTION NO. 25

[INTRODUCTION TO TORT DAMAGES – LIABILITY ESTABLISHED]

[*Name of defendant*]'s responsibility for [*name of plaintiff*]'s claimed harm is not an issue for you to decide. You must only decide how much money will reasonably compensate [*name of plaintiff*] for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by [*name of defendant*]'s Fault.

[The damages claimed by [*name of plaintiff*] for the harm caused by [*name of defendant*] fall into two categories called economic damages and non-economic damages. You will be asked on the verdict form to state these damages.

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INSTRUCTION NO. 26

[ITEMS OF ECONOMIC DAMAGE]

The following are the specific items of economic damages claimed by [*name of plaintiff*]:

[Insert applicable instructions on items of economic damage.]

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INSTRUCTION NO. 27

**[LOSS OF ABILITY TO PROVIDE HOUSEHOLD SERVICES]
(Economic Damage)**

The loss of [*name of plaintiff*]'s ability to provide household services.

To recover damages for the loss of the ability to provide household services, [*name of plaintiff*] must prove the reasonable value of the services [he/she] would have been reasonably certain to provide to [his/her] household if the injury had not occurred.

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INSTRUCTION NO. 28

**[LOSS OF USE OF REAL PROPERTY]
(Special Damage)**

The loss of use of [*name of plaintiff*]'s [*insert identification of real property*].

To recover damages for the loss of use, [*name of plaintiff*] must prove the reasonable cost to rent similar property for the reasonable time when [he/she] could not use [his/her/its] own property.

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INSTRUCTION NO. 29

**[LOSS OF USE OF PERSONAL PROPERTY]
(Special Damage)**

The loss of use of [*name of plaintiff*]'s [*item of personal property*].

To recover damages for loss of use, [*name of plaintiff*] must prove the reasonable cost to rent a similar [*item of personal property*] for the amount of time reasonably necessary to repair or replace the [*item of personal property*].

INSTRUCTION NO. 30

[DAMAGE TO PERSONAL PROPERTY]
(Special Damage)

The damage to *[name of plaintiff]*'s *[item of personal property]*.

To recover damages for damage to personal property, *[name of plaintiff]* must prove the reduction in the *[item of personal property]*'s value or the reasonable cost of repairing it, whichever is less.

To determine the reduction in value, you must decide the fair market value of the *[item of personal property]* before the harm occurred and then subtract the fair market value of the *[item of personal property]* immediately after the harm occurred.

“Fair market value” is the highest price that a willing buyer would have paid to a willing seller, assuming:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller are fully informed of the condition and quality of the *[item of personal property]*.

[If you find that [name of plaintiff]'s [item of personal property] cannot be completely repaired, the damages are the difference between its fair market value before the harm and its fair market value after the repairs have been made, plus the reasonable cost of making the repairs. The total amount awarded must not exceed the [item of personal property]'s fair market value before the harm occurred.]

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INSTRUCTION NO. 31

[LOSS OR DESTRUCTION OF PERSONAL PROPERTY]
(Special Damage)

The [loss/destruction] of [*name of plaintiff*]'s [*item of personal property*].

To recover damages for the [loss/destruction], [*name of plaintiff*] must prove the fair market value of the [*item of personal property*] just before the harm occurred.

“Fair market value” is the highest price that a willing buyer would have paid to a willing seller, assuming,:

1. That there is no pressure on either one to buy or sell; and
2. That the buyer and seller are fully informed of the condition and quality of the [*item of personal property*].

INSTRUCTION NO. 32

**[LOST PROFITS]
(Special Damage)**

Lost profits:

To recover damages for lost profits, [*name of plaintiff*] must prove it is reasonably certain [he/she] would have earned profits but for [*name of defendant*]'s Fault.

To determine lost profits, you must decide the gross amount [*name of plaintiff*] would have received were it not for [*name of defendant*]'s Fault and then subtract from that amount the expenses [including the value of the [*specify categories of evidence, such as labor/materials/rents/all expenses/interest of the capital employed*]] [*name of plaintiff*] would have had if [*name of defendant*]'s Fault had not occurred.

The amount of the lost profits need not be calculated with mathematical precision, but there must be a reasonable basis for computing the loss.

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INSTRUCTION NO. 33

PRESENT CASH VALUE

If you decide that [*name of plaintiff*]'s damages includes future special damages, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

To find present cash value, you must determine the amount of money that, if reasonably and frugally invested today, will provide [*name of plaintiff*] with the amount of [his/her/its] future damages.

[You may consider expert testimony in determining the present cash value of future economic damages.]

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INSTRUCTION NO. 34

[ITEMS OF NONECONOMIC DAMAGE]

The following are the specific items of noneconomic damages claimed by [*name of plaintiff*]:

[*Insert applicable instructions on items of noneconomic damage.*]

INSTRUCTION NO. 35

**[LOSS OF CONSORTIUM]
(Noneconomic Damage)**

[*Name of plaintiff*] claims that [he/she] has been harmed by the injury to [his/her] [husband/wife]. If you decide that [*name of injured spouse*] has proved the Fault of [*name of defendant*], you also must decide how much money, if any, will reasonably compensate [*name of plaintiff*] for loss of [his/her] [husband/wife]'s companionship and services, including:

3. The loss of love, companionship, comfort care, assistance, protection, affection, society, moral support; and
4. The loss of the enjoyment of sexual relations [or the ability to have children].

[*Name of plaintiff*] may recover for harm [he/she] proves [he/she] has suffered and for harm [he/she] is reasonably likely to suffer in the future. No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount based on the evidence and your common sense.

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INSTRUCTION NO. 36

[COLLATERAL SOURCE PAYMENTS]

You shall award damages in an amount that fully compensates plaintiff for damages as I have instructed you. You shall not speculate or consider any other possible sources of benefit the plaintiff may have received. [Do not consider whether or not [*name of plaintiff*] received workers' compensation benefits for [his/her] injuries.] After you have returned your verdict the court will make whatever adjustments may be appropriate.