

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CIVIL  
PROPOSAL 2019-012**

**March 4, 2019**

The UJI-Civil Committee has recommended amendments to UJI 13-1810A and 13-1830 NMRA and the adoption of new UJI 13-1810B and 13-2223 NMRA for the Supreme Court's consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court's web site at <http://supremecourt.nmcourts.gov/open-for-comment.aspx> or sending your written comments by mail, email, or fax to:

Joey D. Moya, Clerk  
New Mexico Supreme Court  
P.O. Box 848  
Santa Fe, New Mexico 87504-0848  
[nmsupremecourtclerk@nmcourts.gov](mailto:nmsupremecourtclerk@nmcourts.gov)  
505-827-4837 (fax)

**Your comments must be received by the Clerk on or before April 3, 2019**, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court's web site for public viewing.

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**13-1810A. Loss of consortium; definition.**

~~[The emotional distress of \_\_\_\_\_ (plaintiff) due to the loss [of the society], [guidance], [companionship] and [sexual relations] resulting from the injury to \_\_\_\_\_ (name of injured or deceased spouse or child of plaintiff).]~~

Loss of consortium is a claim to recover compensation for damage to a relationship. To recover for loss of consortium, \_\_\_\_\_ (name of loss of consortium claimant or names of loss of consortium claimants) must show that \_\_\_\_\_ (name of loss of consortium claimant or names of loss of consortium claimants) and [ \_\_\_\_\_ (name of injured party)] [ \_\_\_\_\_ (name of decedent)] had a mutually dependent relationship. Mutual dependence means that \_\_\_\_\_ (name of loss of consortium claimant or names of loss of consortium claimants) and [ \_\_\_\_\_ (name of injured party)] [ \_\_\_\_\_ (name of decedent)] relied on the relationship and could not enjoy life in the same way once [the injury took place] [after the death].

In deciding whether a relationship is mutually dependent, factors to consider may include:

[The duration of the relationship;]

[The degree of mutual dependence;]

[The extent of common contributions to a life together;]

[The extent and quality of shared experience;]

[Whether \_\_\_\_\_ (name of loss of consortium claimant or names of loss of consortium claimants) and [ \_\_\_\_\_ (name of injured party)] [ \_\_\_\_\_ (name of decedent)] were members of the same household;]

[Their emotional reliance on one another;]

[The particulars of their day-to-day relationship;]

[The manner in which \_\_\_\_\_ (name of loss of consortium claimant or names of loss of consortium claimants) and [ \_\_\_\_\_ (name of injured party)] [ \_\_\_\_\_ (name of deceased party)] related to each other in addressing life's day-to-day requirements;]

[Other \_\_\_\_\_.]

#### USE NOTE

[This is another element of damage to be included in the appropriate case in UJI 13-1802 NMRA when the spouse or child of the plaintiff has been injured or killed. The specific bracketed elements of loss of consortium should be included as appropriate to the plaintiff's loss.

In a wrongful death case, the loss of consortium is a separate claim of the surviving spouse or "familial caretaker" and may be included in the elements of a wrongful death claim in UJI 13-1830 NMRA in appropriate circumstances. Reference should be made to the Use Note under UJI 13-1830 NMRA.

If there is a factual dispute whether the person seeking loss of consortium damages for a minor child was the "familial caretaker", then the jury should be provided with a definition of "familial caretaker". The Supreme Court described a "familial caretaker" as a person who lived with and cared for the child for a significant period of time prior to the death or injury. *Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-39, P31, 126 N.M. 263, 273, 968 P.2d 774.]

This instruction should be given when there is a jury question as to whether a claimant or claimants had a sufficiently close relationship with an injured or a deceased person to recover for loss of consortium. When this instruction is given, UJI 13-1810B NMRA should also be given.

[Adopted, effective October 1, 1996; as amended, effective March 20, 2000; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

#### **Committee commentary. —**

[*Romero v. Byers*, 117 N.M. 422, 872 P.2d 840 (1994) recognized loss of consortium as a claim for damages in the context of death or injury to a spouse. *Romero* overruled *Roseberry v. Starkovich*, 73 N.M. 211, 387 P.2d 321 (1963), and *Kilkenny v. Kenny*, 68 N.M. 266, 361 P.2d 149 (1961), on this issue. *Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-39, 126 N.M. 263, 968 P.2d 774 recognized loss of consortium for a "familial caretaker", such as a parent or grandparent who loses a child to death or where the child suffers a serious injury.]

#### **Who may recover**

New Mexico has rejected the notion that only those with "special legal status" in relation to the injured party, such as spouses or blood relatives, may recover consortium damages. *Wachocki v. Bernalillo Cty. Sheriff's Dep't*, 2011-NMSC-039, ¶ 7, 150 N.M. 650, 265 P.3d 701 (citing *Lozoya v. Sanchez*, 2003-NMSC-009, ¶ 19, 133 N.M. 579, 66 P.3d 948, *abrogated on other grounds by Heath v. La Mariana Apartments*, 2008-NMSC-17, ¶ 21, 143 N.M. 657, 180 P.3d 664). Loss of consortium damages are intended to compensate "for damage to a *relational* interest, not a legal interest[, because] . . . the use of legal status necessarily excludes many persons whose loss of a significant relational interest may be just as devastating as the loss of a legal spouse."

Lozoya, 2003-NMSC-009, ¶ 20. For example, co-habitants, even though not legally married, may be entitled to recover, id. ¶ 27, as can a grandparent under certain circumstances, Fernandez v. Walgreen Hastings Co., 1998-NMSC-039, ¶¶ 23-32, 126 N.M. 263, 968 P.2d 774, a sibling, Wachocki, 2011-NMSC-039, ¶ 12, and Silva v. Lovelace Health Sys., 2014-NMCA-086, ¶¶ 43-44, or a parent, id. ¶¶ 41-42.

#### **Nature of claim**

“Loss of consortium damages are derivative in nature because they arise from a physical injury upon another person.” Thompson v. City of Albuquerque, 2017-NMSC-021, ¶ 9, 397 P.3d 1279. “[A] plaintiff who sues for loss of consortium damages must prove that the alleged tortfeasor caused the wrongful injury or death of someone who was in a sufficiently close relationship to the plaintiff, resulting in harm to the relationship.” Id. ¶ 14.

However, this does not mean that a loss of consortium claim must always be brought with the underlying tort claim, or that actual recovery for the underlying tort is a prerequisite for the recovery of loss of consortium damages. Id. ¶ 17; see also State Farm Mut. Auto. Ins. Co. v. Luebbers, 2005-NMCA-112, ¶ 37, 138 N.M. 289, 119 P.3d 169. “Although claims for loss of consortium damages derive from injury to another, the claimant has also suffered a direct injury for which he or she may seek recovery separately from the underlying tort.” Thompson, 2017-NMSC-021, ¶ 16. “The direct injury alleged by a loss of consortium claimant is one to a relational interest with another who was physically injured.” Id.

#### **Elements**

“A loss-of-consortium claimant must demonstrate two elements in order to recover damages.” Wachocki, 2011-NMSC-039, ¶ 5. “The first element is that the claimant and the injured party shared a sufficiently close relationship. . . . The second element is a duty of care.” Id.

#### **Mutual dependence**

“In Lozoya, [the Supreme Court] held that the degree of mutual dependence, as well as a host of other factors, such as duration of the relationship, emotional reliance, and a sharing of a common residence, bear upon whether the claimant and injured party shared a sufficiently close relationship.” Wachocki, 2011-NMSC-039, ¶ 9; see also Lozoya, 2003-NMSC-009, ¶ 27 (noting that additional potential factors that may bear upon whether the claimant and injured party shared a sufficiently close relationship include “the extent of their common contributions to a life together, the extent and quality of their shared experience, . . . the particulars of their day to day relationship, and the manner in which they related to each other in attending to life’s mundane requirements” (internal quotation marks and citation omitted)); Fitzjerrell v. City of Gallup, 2003-NMCA-125, ¶ 13, 134 N.M. 492 (“[T]he qualities of the relationship that give rise to the claim are flexible in scope.”).

In Wachocki, the Supreme Court recognized that “[the Lozoya] factors may be helpful in the context of some relationships, especially spousal-type relationships[,]” but, in seeking to provide “a uniform analysis applicable to all relationships,” identified mutual dependence as “the key element.” See Wachocki 2011-NMSC-039, ¶¶ 9-10. In providing illustrative examples, the Supreme Court discussed Lozoya, 2003-NMSC-009, in which an unmarried co-habitant brought a loss of consortium claim, and Fernandez, 1998-NMSC-039, in which a grandmother brought a loss of consortium claim. Wachocki, 2011-NMSC-039, ¶ 10. In both cases, circumstances were present indicating that the claimant and injured party “relied on the relationship and could not

enjoy life in the same way once the relationship was severed.” *Id.* Under such circumstances, the claimant and the injured party may be found to be mutually dependent. *See id.*

**Duty**

Although imposition of a duty is a legal question for the court, whether a duty exists often depends on a factual determination, which we entrust to the jury. *Lozoya*, 2003-NMSC-009, ¶ 21. “It is appropriate that the finder of fact be allowed to determine, with proper guidance from the court, whether a plaintiff had a sufficient enough relational interest with the victim of a tort to recover for loss of consortium.” *Id.*

**Judge or jury**

As with any action, a defendant may contend that a claimant’s loss of consortium claim is insufficient as a matter of law, at which time the judge will decide whether there is sufficient evidence supporting a loss of consortium claim to allow the claim to proceed to the factfinder. *See, e.g., Couch v. Astec Indus., Inc.*, 2002-NMCA-084, ¶ 64, 132 N.M. 631, 53 P.3d 398 (holding that evidence as to loss of consortium was insufficient as a matter of law to permit the jury to consider a loss of consortium claim).

[As amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**[NEW MATERIAL]**

**13-1810B. Loss of consortium; damages.**

If you decide \_\_\_\_\_ (*name of loss of consortium claimant or names of loss of consortium claimants*) [has] [have] proven damage to a mutually dependent relationship as the result of [\_\_\_\_\_'s (*name of decedent*) death] [\_\_\_\_\_'s (*name of injured party*) injury], you also must decide the amount of money that will reasonably compensate \_\_\_\_\_ (*name of loss of consortium claimant or names of loss of consortium claimants*) for the harm \_\_\_\_\_ (*name of loss of consortium claimant or names of loss of consortium claimants*) suffered from the [loss of][injury to] \_\_\_\_\_'s (*name of loss of consortium claimant or names of loss of consortium claimants*) relationship with [\_\_\_\_\_] (*name of decedent*)] [\_\_\_\_\_] (*name of injured party*)). No fixed standard exists for deciding the amount of these damages. You must use your judgment to decide a reasonable amount of money to compensate \_\_\_\_\_ (*name of loss of consortium claimant or names of loss of consortium claimants*).

**USE NOTE**

This instruction should be given when a jury is asked to decide whether damages for loss of consortium should be awarded and, if so, the amount of damages the loss of consortium claimant or claimants should recover. Such damages may be recovered in cases involving injury or death.

When the instruction is given in an injury case, a special verdict form should be drafted which includes lines that provide for a separate award of damages to the injured party and a separate award of damages to any loss of consortium claimant or claimants. If there is more than one loss of consortium claimant, the verdict form should include a line for a separate award of loss of consortium damages to each loss of consortium claimant. A sample special verdict form appears in UJI Chapter 22 at UJI 13-2223 NMRA.

When the instruction is given in a wrongful death case, it should immediately follow UJI 13-1830. In a wrongful death case, a special verdict form should be drafted which includes lines that provide for a separate award of damages to the personal representative of the estate and for a separate award of loss of consortium damages to any loss of consortium claimant or claimants. If

the personal representative is also a loss of consortium claimant, the verdict form should include a line for a separate award of loss of consortium damages to the personal representative. If there are additional loss of consortium claimants, the verdict form should include a line for a separate award of loss of consortium damages to each loss of consortium claimant. A sample special verdict form can be found at UJI 13-2223 NMRA.

If loss of consortium is not contested by the defendant or defendants, and only the amount of damages is at issue, this instruction should be modified in keeping with the circumstances of the case.

[Approved by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — “Loss of consortium is a type of personal injury damage because damages for consortium are damages for the plaintiff’s emotional distress due to the harm to a sufficiently close relationship.” *Thompson v. City of Albuquerque*, 2017-NMSC-021, ¶ 8, 397 P.3d 1279 (alteration, internal quotation marks, and citations omitted). In the setting of a child losing a parent, for example, this is the value of the loss of the parent’s “love, care, society, companionship, and the like.” *State Farm Mut. Auto. Ins. Co. v. Luebbers*, 2005-NMCA-112, ¶ 42, 138 N.M. 289, 119 P.3d 169.

[Approved by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

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

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

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

1. The reasonable expenses of necessary medical care and treatment and funeral and burial;
2. The pain and suffering experienced by \_\_\_\_\_ (*name of decedent*) between the time of injury and death;
3. The lost earnings, the lost earning capacity, and the value of the lost household services of \_\_\_\_\_ (*name of decedent*) considering \_\_\_\_\_’s (*name of decedent*) age, earning capacity, health, habits, and life expectancy. In considering loss of earnings or earning capacity, deductions must be made for income taxes, social security taxes, other taxes, and personal living expenses of \_\_\_\_\_ (*name of decedent*). The damages set forth in this paragraph are damages for future loss of money and are paid in a lump sum. Therefore, a reasonable discount must be made for the future earning power of the damages awarded;
4. The value of \_\_\_\_\_’s (*name of decedent*) life apart from \_\_\_\_\_’s (*name of decedent*) earning capacity;
5. The mitigating or aggravating circumstances attending the wrongful act, neglect, or

default;

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

[7.] 6. The loss of guidance and counselling to \_\_\_\_\_'s (name of decedent) minor children.

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

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

No fixed standard exists for determining fair and just damages. You must use your judgment to decide a reasonable amount. Your verdict must be based on evidence, not on speculation, guess, or conjecture. You must not permit the amount of damages to be influenced by sympathy or prejudice, or by the grief or sorrow of the family [~~or the loss of the deceased's society to the family~~].

#### USE NOTE

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

~~[If the personal representative is also the surviving spouse or familial caretaker, the damages described in item 6 should be included and the bracketed material in the last sentence of the instruction should be excluded. If the personal representative is not the surviving spouse or familial caretaker, the damages in item 6 should not be included in the instruction and the bracketed language in the last sentence should remain in the instruction. The amount awarded to the beneficiary's personal representative must be set out separately in a special verdict form from the amount awarded to the surviving spouse or familial caretaker for her or his loss of consortium.]~~ If the personal representative is also a loss of consortium claimant, the verdict form should include a line for a separate award of loss of consortium damages to the personal representative. If there are additional loss of consortium claimants, the verdict form should include a line for a separate award of loss of consortium damages to each loss of consortium claimant. A sample special verdict form appears in UJI Chapter 22 at UJI 13-2223 NMRA. In addition, various elements of damages can be broken out separately on the special verdict form if the court determines that there is a need to do so in order to identify damages recoverable by the estate, by the statutory beneficiaries, and by the surviving spouse or familial caretaker for loss of consortium. [If there is a factual dispute whether the person seeking loss of consortium damages for a minor child was the "familial

caretaker”, then the jury should be provided with a definition of “familial caretaker”. The Supreme Court described a “familial caretaker” as a person who lived with and cared for the child for a significant period of time prior to the death or injury. *Fernandez v. Walgreen Hastings Co.*, 1998-NMSC-39, 126 N.M. 263, 273, 968 P.2d 774.]

[As amended, effective October 1, 1996; March 20, 2000; as amended by Supreme Court Order No. 08-8300-033, effective November 24, 2008; as amended by Supreme Court Order No. 16-8300-018, effective for all cases pending or filed on or after December 31, 2016; as amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**Committee commentary.** — The wrongful death instruction was drafted as a consequence of [the] our Supreme Court’s opinion in *Romero v. Byers*, 1994-NMSC-031, 117 N.M. 422, 872 P.2d 840 [(1994)]. [*Fernandez v. Walgreen Hastings Co.*, 1998 NMSC 039, 126 N.M. 263, 968 P.2d 77, recognized loss of consortium for a “familial caretaker”, such as a parent or grandparent who loses a child to death or where the child suffers a serious injury.] After our Supreme Court’s opinion in *Estate of Saenz, ex rel. Saenz v. Ranack Construction, Inc.*, 2018-NMSC-032, 420 P.3d 576, the committee recommended revisions to UJI 13-1830 and UJI 13-1810A NMRA, and the addition of UJI 13-1810B and UJI 13-2223 NMRA, in an attempt to further clarify the separate nature of wrongful death damages and loss of consortium damages in situations where the personal representative is also a loss of consortium claimant.

[As amended by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

**[NEW MATERIAL]**

**13-2223. Wrongful death damages and loss of consortium damages; sample special verdict form.**

On the questions submitted, the jury finds as follows:

Question No. 1: Did the Defendant act negligently toward John Doe?

Answer: \_\_\_\_\_ (Yes or No)

If the answer to Question No. 1 is “No,” you are not to answer further questions. Your foreperson must sign this special verdict form, which will be your verdict for the Defendant and against the Plaintiffs, and the jury should return to open court.

If the answer to Question No. 1 is “Yes,” you are to answer Question No. 2.

Question No. 2: Did any negligence on the part of the Defendant cause or contribute to cause John Doe’s death?

Answer: \_\_\_\_\_ (Yes or No)

If the answer to Question No. 2 is “No,” you are not to answer further questions. Your foreperson must sign this special verdict form, which will be your verdict for the Defendant and against the Plaintiffs, and the jury should return to open court.

If the answer to Question No. 2 is “Yes,” you are to answer Question No. 3.

Question No. 3: In accordance with the damages instruction given by the court, we find the total amount of compensatory damages suffered by the Estate of John Doe to be as follows:

<u>Type of Damages:</u>	<u>Amount of Damages</u>
Medical Expenses	\$ _____
Funeral expenses	\$ _____
Lost earnings	\$ _____
Lost value of life	\$ _____
Loss of household services	\$ _____
Pain and suffering	\$ _____
Total compensatory damages for the Estate of John Doe	\$ _____

Question No. 4: Compare the negligence of the following parties and find a percentage of fault for each. The total of the percentages must equal 100%, but the percentage for any one or more of the persons named may be zero if you find that any party was not negligent or was not a cause of John Doe's death.

The Defendant	_____ %
John Doe	_____ %
	_____
	Total 100%

Question No. 5: Did John Doe and Plaintiff Jane Doe have a mutually dependent relationship that was damaged by the death of John Doe?

Answer: \_\_\_\_\_ (*Yes or No*)

If the answer to Question No. 5 is "No," go on to question 7.

If the answer to Question No. 5 is "Yes," answer Question 6.

Question No. 6: In accordance with the loss of consortium instructions given by the court, we find the total amount of loss of consortium damages to Plaintiff Jane Doe to be as follows:

Loss of consortium damages for \_\_\_\_\_ \$ \_\_\_\_\_  
John Doe's wife, Plaintiff Jane Doe

Question No. 7: Did John Doe and Plaintiff Junior Doe have a mutually dependent relationship that was damaged by the death of John Doe?

Answer: \_\_\_\_\_ (*Yes or No*)

If the answer to Question No. 7 is "No," you are not to answer further questions. Your foreperson must sign this special verdict form and the jury should return to open court.

If the answer to Question No. 7 is "Yes," answer Question 8.

Question No. 8: In accordance with the loss of consortium instructions given by the court, we find the total amount of loss of consortium damages to Plaintiff Junior Doe to be as follows:

Loss of consortium damages for \_\_\_\_\_ \$ \_\_\_\_\_  
John Doe's daughter, Plaintiff  
Junior Doe

\_\_\_\_\_  
Foreperson

[Approved by Supreme Court Order No. \_\_\_\_\_, effective \_\_\_\_\_.]

## Google Groups

## Proposal 2019-012

Ryan T. Sanders &lt;rtsanders@btblaw.com&gt;

Mar 24, 2019 3:55 PM

Posted in group: nmsupremecourtclerk

To whom it may concern:

I must express my opposition to the proposed changes to the UJIs dealing with loss of consortium. First, the proposed language, "Loss of consortium is a claim to recover compensation for damage to a relationship" is grossly over broad and invites any person with a "relationship" to file a claim seeking loss of consortium damages. Once filed, the proposed UJI requires courts to deny summary judgment because the closeness of the "relationship" now becomes a fact issue to be determined by the jury. The proposed language fails to take into consideration that only those with a "substantially close relationship" are entitled to claim loss of consortium.

Second, the proposed language is inadequate to prevent double recovery for an LOC claimant who is also a WD statutory beneficiary. There is no proposed instruction on this. Additionally, nothing makes clear that "the injured person must be entitled to general damages before the [LOC claimant] is entitled to loss-of-consortium damages." *Archer v. Roadrunner Trucking, Inc.*, 1997-NMSC-003, ¶¶11-13, 122 N.M. 703; see *Turpie v. Sw. Cardiology Assocs., P.A.*, 1998-NMCA-042, ¶7, 124 N.M. 787 (LOC damages cannot be recovered "if the defendant is found not to be responsible for the injury suffered by the" other party to the claimed relationship).

I appreciate your consideration of my concerns.

**Ryan T. Sanders**

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SUPREME COURT OF NEW MEXICO  
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MAR 25 2019

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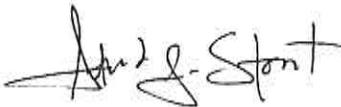


Re: Rule Proposal 2019-012

Dear Mr. Moya:

Please accept this comment on the proposed form of 13-2223, the sample special verdict form. I appreciate the effort of the UJI Civil Committee in clarifying the instructions related to loss of consortium, but have two concerns. First, Question No. 5 seems to direct the jury away from the complete analysis of the elements of loss of consortium that are stated in the revised 13-1810A. The issue on the special verdict should be whether there was a loss of consortium the ultimate finding of fact, not whether there was a mutually dependent relationship. There next question on the verdict form, Question No. 6 then directs the jury to award damages for loss of consortium and my concern is that if the two questions do not align, there may be confusion for the jury. Second, the proposed redefinition of loss of consortium fails to take into account circumstances where one party is the caretaker for the other. In those circumstances the disabled party, a quadriplegic child or a failing spouse, may be 100% dependent upon the parent or spouse, but the same would not be true for the caretaker. Yet the loss of the relationship may be profound even if the caretaker does not have a mutual dependency and may have no dependence. I do not believe the proposed definition adequately addresses this possibility and that either an alternative instruction or more detailed commentary be provided for guidance. Thank you for the opportunity to express these concerns.

Very truly yours,



David J. Stout