

Civ. J.I. 13.1808 Aggravation of preexisting condition.

Am. Jur. 2d Damages § 360.

13-1808. Aggravation of preexisting condition.

Statute text

The aggravation of any preexisting ailment or condition, but you may allow damages only for the aggravation itself and not for the preexisting ailment or condition.

DIRECTIONS FOR USE

When the evidence shows that the plaintiff was suffering from a preexisting condition and the same has been aggravated as a result of the injury and the extent of the aggravation is proved, this instruction is proper. This is a portion of the general damages instruction to be inserted in the blank in UJI 13-1802 when appropriate.

Annotations

Committee comment. - The law recognizes "aggravation" as a separate element of compensable damages.

The New Mexico case of *Hebenstreit v. Atchison, T. & S.F. Ry.*, 65 N.M. 301, 336 P.2d 1057 (1959), cites cases from other jurisdictions and holds that in tort cases the plaintiff must prove the extent of aggravation of a preexisting condition with reasonable certainty, otherwise the issue should not go to the jury. Also see *Britton v. Boulden*, 87 N.M. 474, 535 P.2d 1325 (1975); *Vaca v. Whitaker*, 86 N.M. 79, 519 P.2d 315 (Ct. App. 1974); *Demers v. Gerety*, 85 N.M. 641, 515 P.2d 645 (Ct. App. 1973), rev'd on other grounds, 86 N.M. 141, 520 P.2d 869 (1974).

In order to get the issue to the jury, plaintiff must prove the aggravation by medical evidence. *Woods v. Brumlop*, 71 N.M. 221, 377 P.2d 520 (1962).

Library references. - 25A C.J.S. Damages § 184.

COMPILER'S ANNOTATIONS

Proper denial of instructions. - This instruction was applicable to plaintiff's claim of aggravation of a preexisting ailment or condition, but her first request for an instruction on aggravation was not limited thereto, and her second request did not include the claim of aggravation. So that, although the two requests, at least in part, were repetitious, neither request was correct and both were properly denied. *Britton v. Boulden*, 87 N.M. 474, 535 P.2d 1325 (1975).

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