

## Civ. J.I. 13.1810A Loss of consortium.

The 2000 amendment, effective March 20, 2000, rewrote Directions for Use.

### 13-1810A. Loss of consortium.

Statute text

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).

#### DIRECTIONS FOR USE

This is another element of damage to be included in the appropriate case in UJI 13-1802 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 in appropriate circumstances. Reference should be made to the Directions for Use under UJI 13-1830.

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.

#### History

[Adopted, effective October 1, 1996; as amended, effective March 20, 2000.]

#### Annotations

**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.

#### COMPILER'S ANNOTATIONS