

## Civ. J.I. 13.1807 Pain and suffering.

### 13-1807. Pain and suffering.

Statute text

**The pain and suffering experienced [and reasonably certain to be experienced in the future] as a result of the injury.**

**The guide for you to follow in determining compensation for pain and suffering, if any, is the enlightened conscience of impartial jurors acting under the sanctity of your oath to compensate the plaintiff with fairness to all parties to this action.**

#### DIRECTIONS FOR USE

This is another portion of the general damages instruction that is to be inserted in the appropriate blank in UJI 13-1802 in the proper case.

Annotations

**Committee comment.** - Pain and suffering are proper elements of damages in a personal injury action. This matter was before the New Mexico Court of Appeals in 1974 in the case of *Vaca v. Whitaker*, 86 N.M. 79, 519 P.2d 315 (Ct. App. 1974).

**Library references.** - 25A C.J.S. Damages § 185.

#### COMPILER'S ANNOTATIONS

**No standard is fixed by law for measuring the value of pain and suffering;** rather, the amount to be awarded is left to the jury's judgment. *Strickland v. Roosevelt County Rural Elec. Coop.*, 99 N.M. 335, 657 P.2d 1184 (Ct. App. 1982), cert. denied, 463 U.S. 1209, 103 S. Ct. 3540, 77 L. Ed. 2d 1390 (1983).

**Compensable pain and suffering from injuries to the brain** extends far beyond that suffered at the time the initial injury occurs. *Hoskie v. United States*, 666 F.2d 1353 (10th Cir. 1981).

**Recoverable under parental liability statute.** - Pain and suffering is an actual damage recoverable under the parental liability statute, 32A-2-27 NMSA 1978. *Alber v. Nolle*, 98 N.M. 100, 645 P.2d 456 (Ct. App. 1982).

**For two-pronged approach for proof of future pain and suffering,** see *Rael v. F & S Co.*, 94 N.M. 507, 612 P.2d 1318 (Ct. App. 1979).

**Admissions.** - Defense counsel's statement to the jury in closing argument that defendants were responsible for plaintiff's pain resulting from an accident, but that the

jury should decide "what that should be," was not a judicial admission by defendant concerning the amount of damages. *Baxter v. Gannaway*, 113 N.M. 45, 822 P.2d 1128 (Ct. App. 1991).

**Standard of review of award.** - As a general rule, unless it appears that the amount awarded for pain and suffering is so grossly out of proportion to the injury received as to shock the conscience, an appellate court is precluded from substituting its judgment for that of the fact finder. Additionally, an appellate court will not disturb a trial court's award for pain and suffering unless it appears from the record that the award was influenced by partiality, prejudice, corruption, or a mistaken view of the evidence. *Sheraden v. Black*, 107 N.M. 76, 752 P.2d 791 (Ct. App. 1988).

**Amount awarded generally not reviewable.** - In every case of personal injury, a wide latitude is allowed for the exercise of the judgment of the jury; and, unless it appears that the amount awarded is so grossly out of proportion to the injury received as to shock the conscience, an appellate court cannot substitute its judgment for that of the jury. *Grammer v. Kohlhaas Tank & Equip. Co.*, 93 N.M. 685, 604 P.2d 823 (Ct. App. 1979).

**Pain and suffering award upheld.** - Appellate court sustained an award of \$83.00 for pain and suffering on the grounds that it was not the duty of the appellate court to evaluate the value of pain and suffering and because the amount in this case was not so unrelated to the evidence as to shock the conscience of the court. *Baxter v. Gannaway*, 113 N.M. 45, 822 P.2d 1128 (Ct. App. 1991).

**Review of award where mistake committed.** - Where the reviewing court is left with the definite and firm conviction that a mistake has been committed, resulting in an inadequate award, the trial court's award will be remanded for recomputation. *Hoskie v. United States*, 666 F.2d 1353 (10th Cir. 1981).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** - 22 Am. Jur. 2d Damages §§ 350 to 353.

Future pain and suffering as element of damages for physical injury, 81 A.L.R. 423.

Instructions regarding measurement of damages for pain and suffering, 85 A.L.R. 1010.

Per diem or similar mathematical basis for fixing damages for pain and suffering, 3 A.L.R.4th 940.

Excessiveness or adequacy of damages awarded for injuries causing particular diseases or conditions, 16

A.L.R.4th 736.

Excessiveness or adequacy of damages awarded for injuries to, or conditions induced in, sensory or speech organs and systems, 16 A.L.R.4th 1127.

Excessiveness or adequacy of damages awarded for noneconomic loss caused by personal injury or death of parent, 61 A.L.R.4th 251.

Excessiveness or adequacy of damages awarded for parents' noneconomic loss caused by personal injury or death of child, 61 A.L.R.4th 413.

Recoverability of compensatory damages for mental anguish or emotional distress for tortiously causing another's birth, 74 A.L.R.4th 798.