

Defamation Damages¹

If PLF proves all four things I have just described, PLF must prove the amount of damages caused by the false and damaging statement. By instructing you on damages, I am not suggesting anything about your answers to questions x, or y.

The purpose of damages is to compensate PLF for the harm done by the false statement. You may not award damages for the purpose of rewarding PLF or punishing DFT.

As with the other elements of his/her/its claim, PLF must prove that, more likely than not, DFT's conduct caused the damages. You should not award damages for any harm that PLF or someone other than DFT caused.

(a) Types of Damages

There are several types of damages you should consider.

You should award damages for any out-of-pocket loss that the statement caused PLF to suffer.

PLF is also entitled to damages for PLF's loss of reputation in the community, emotional distress, personal humiliation, shame and disgrace and mental suffering caused by the statement. When evaluating these types of damages, you may consider, among other things, the following factors:

- The nature and type of the alleged harm;
- The severity or extent of the harm;
- The length of time PLF has suffered and reasonably expects to suffer; and
- Whether PLF has attempted to reduce the harm, for instance by counseling or by taking medication.

¹ See *Ayash v. Dana-Farber Cancer Inst.*, 443 Mass. 367, 404-406 (2005).

You should award damages for any specific economic losses resulting from the false statement. For instance, you should award damages for lost wages and job benefits or lost business from customers and clients.

You should also award damages for loss of economic benefits in the future, such as the inability to get a new job.

< *for cases involving slander per se* > In this case, your damages award cannot be zero. You must award at least a small amount of damages.

< *future damages* > If PLF has proven that, more likely than not, in the future, s/he will suffer any [emotional distress, lost economic benefits] because of the false statement, you should award damages for that future harm. [If you find that PLF will suffer damages throughout his/her lifetime, you may consider life expectancy tables in evidence, to determine how long s/he will live.] There will be no future trial to consider any future damages that PLF may suffer. You must keep in mind that any judgment in this case will be paid in a lump sum and may be invested and earn money. Therefore, if you award future damages, you must reduce that portion of the damages to its present value as of [year], when PLF filed this case.

(b) Retraction and Mitigation < if applicable >

DFT claims that s/he/retracted or took back the false statement by [describe action allegedly retracting the defamatory statement.]. DFT claims that this later statement reduced the amount of damages that PLF suffered. Unlike the issues I have discussed earlier, DFT, not PLF has the burden to prove that, more likely than not, the retraction occurred and reduced, shortened or eliminated PLF's damages. If DFT has proven these things, you must remove from your award any damages for any potential harm that the retraction prevented.

(c) General Instructions on Damages

I'll conclude with a few general instructions about all types of damages that I have mentioned in this case.

First, sometimes there is an element of uncertainty in proving one or more area of damage. That does not necessarily prevent you from awarding full and fair compensation. It is true that the evidence must make it possible for you to determine damages in a reasonable manner. However, we leave the amount of damages to your judgment, as members of the jury, sometimes with little evidence. Even so, you may not determine the plaintiff's damages by guessing. It is enough if the evidence allows you to draw fair and reasonable conclusions about the extent of the damages.

Second, you must not consider any interest upon your damages award. The court will calculate interest on any award. In addition, you may not consider federal or state income taxes, because any damages in this case may or may not be subject to taxation. Someone else will have to address any tax considerations depending upon what you decide. In other words, just follow my instructions on what issues to consider. If you go beyond what I have outlined, your verdict may well have consequences that you did not intend.

[Third, the law allows the lawyers to suggest an amount of damages in their closing arguments, but you should understand that any suggestions the lawyers make are not evidence and do not set any sort of standard or floor or ceiling for the amount of damages – it is up to you to evaluate the damages, based on the evidence and your own judgment.]

Finally, once you have calculated damages for [each area of damage that I described], you should add each of these areas of damages to arrive at a total award. The total sum must not exceed fair compensation for the entire injury. You must avoid duplication or double counting of any elements of damages. When you have made your determination on the amount of damages, using the instructions I have just given, you should write down an amount both in numbers and in words.