

DAMAGES – LOSS OF CONSORTIUM

Loss of Consortium – Spouse

In addition to PLF's claim, PLF's spouse, SPSE, also seeks damages for loss of his/her right to enjoy PLF's company, companionship and affection as a part of the marriage relationship. We call this a claim for loss of consortium.¹

SPSE can recover for loss of consortium only if you find that DFT's negligence caused injury to PLF. In addition, SPSE must prove that PLF's injury caused harm to the marital relationship.

[< *If The Fact Of Loss Of Consortium Is Contested*> To prove harm to the marriage relationship, PLF must prove that DFT's negligence caused some loss of the full enjoyment of the marriage. That may include any loss of right to enjoy the company, companionship and affection [including sexual relations] between the spouses, any loss of comfort or moral support any restrictions on the couple's social or recreational life, any loss of services that SPSE would have provided or any other harm to full enjoyment of the marriage. If you find that as a result of DFT's negligence, SPSE suffered a loss of consortium, you should answer "yes" to question __. If not, then answer "no."]

< *In all cases*.> Question __ asks: "What total amount of money will fully and fairly compensate SPSE for loss of consortium?" To answer this question, you should determine how the marriage relationship changed because of PLF's injury. In awarding damages for loss of consortium, you may consider what amount of money will fairly and reasonably compensate SPSE for:

- loss of company and companionship;
- loss of comfort, and moral support;

¹ See *Feltch v. General Rental Co.*, 383 Mass. 603, 607-609 (1981); *Diaz v. Eli Lilly & Co.*, 364 Mass. 153, 160 (1973); *Mouradian v. General Elec. Co.*, 23 Mass. App. Ct. 538, 544 (1987).

- [loss of enjoyment of sexual relations or the ability to have children];
- any restrictions on social or recreational life;
- any loss of services that PLF would have provided to SPSE; and
- basically, any deprivation of the full enjoyment of the marital state.²

< *Future Damages—If Applicable, See Insert Below* >

There is no special formula or rule to measure loss of consortium damages. You must make your determination(s) on [whether there was a loss of consortium, and if so,] the amount of damages, based on your own common sense, good judgment, experience, and conscience. You should award damages for all of SPSE's loss of consortium, whether or not PLF also suffered the same kind of harm to the marital relationship. To avoid duplication, however, you must not award SPSE any damages that belong to PLF.

² The Court should instruct the jury by "describing and distinguishing the different elements of compensable damage." *Diaz v. Eli Lilly & Co.*, 364 Mass. 153, 162 (1973).

Loss of Parental Society – Child/Later-Born Child/Disabled Adult

In addition to PLF's claim, PLF's [minor] child[ren], CHD, has brought a claim for damages to his/her right to enjoy the company, companionship and affection of his/her parent. We call this a claim for loss of parental society.³

[< ***If Applicable—Later-Born Child.***> Even though CHD was born after PLF's injury, CHD can recover for loss of parental society if s/he proves, more likely than not, that two things are true: first, that s/he had already been conceived at the time of the injury and, second, that there was a reasonable expectation that CHD would have a parent-child relationship with PLF.

{< ***If applicable***> CHD may recover for loss of society whether or not his/her parents were married when s/he was born.⁴ }

[< ***If Applicable—Disabled Adult.***> If PLF's adult child, CHD, proves that s/he is a mentally or physically disabled adult and was physically, emotionally, and financially dependent upon PLF, CHD can recover for loss of parental society resulting from PLF's injuries.⁵]

CHD can recover for loss of parental society only if you find that DFT's negligence caused injury to PLF. In addition, CHD must prove that PLF's injury harmed the parent-child relationship.

[< ***If the fact of loss of parental society is contested.***> To prove that PLF's injury harmed that relationship, PLF must prove that DFT's negligence caused some loss of full enjoyment of the parent-child relationship. That may include any loss of right to enjoy the parent's company, companionship and affection, any loss of comfort or moral support, any restrictions on their social or recreational life, any loss of services that PLF would have provided for CHD or any other harm to full enjoyment of the parent-child relationship. If you find that as a result of DFT's negligence, CHD suffered or

³ See *Ferriter v. Daniel O'Connell's Sons, Inc.*, 381 Mass. 507 (1980).

⁴ *Angelini v. OMD Corp.*, 410 Mass. 653, 661-663 (1991).

⁵ *Morgan v. Lalumiere*, 22 Mass. App. Ct. 262 (1986).

will suffer a loss of parental society, you should answer “yes” to question __. If not, then answer “no.”]

< *In all cases*:> Question __ asks: “What total amount of money will fully and fairly compensate CHD for loss of parental society?” To answer this question, you should determine how the parent-child relationship changed because of PLF’s injury. In awarding damages for loss of parental society, you may consider what amount of money will fairly and reasonably compensate CHD for:

- loss of the parent’s company, companionship, guidance and nurture;
- loss of comfort, solace, and moral support;
- any significant restructuring of the child’s life due to the parent’s injury or harm
- any loss of services that PLF would have provided to CHD; and
- basically, any deprivation of the full enjoyment of the parent-child relationship.

< *Future Damages—If Applicable, See Insert Below*>

There is no special formula or rule to measure damages for loss of parental society. You must base your determination(s) on [whether there was a loss of parental society, and if so,] the amount of damages, upon your own common sense, good judgment, experience, and conscience. To avoid duplication, however, you must not award to CHD any damages that belong to PLF.

Loss of Society and Companionship – Parent’s Claim

In addition to PLF’s claim, PLF’s parent, PNT, also has brought for damages to his/her right to enjoy the society, companionship and affection of his/her [minor] child, PLF. We call this a claim for loss of society and companionship.

[< ***If Applicable***> PNT may recover for loss of society and companionship of his/her adult child, PLF, if PLF was dependent upon PNT for support and DFT’s negligence seriously injured PLF.⁶]

PNT can recover for loss of society and companionship only if you find that DFT’s negligence caused injury to PLF. In addition, PNT must prove that PLF’s injury also caused or will cause injury to the parent-child relationship, including the right to enjoy the child’s society, companionship and affection.⁷

[< ***If the fact of loss of society and companionship is contested***>

If you find that as a result of DFT’s negligence, PNT suffered or will suffer a loss of the society and companionship of his/her child, PLF, you should answer “yes” to question __. If not, then answer “no.”]

< ***In all cases***> Question __ asks: “What total amount of money will fully and fairly compensate PNT for loss of society and companionship?” To answer this question, you should determine how the parent-child relationship changed because of PLF’s injury. In awarding damages for loss of society and companionship, you may consider what amount of money will fairly and reasonably compensate PNT for:

- loss of company and companionship;
- loss of comfort, solace, and moral support;
- any restrictions on social or recreational life; and

⁶ G.L. c. 231, § 85X. See *Leibovich v. Antonellis*, 410 Mass. 568, 578-580 (1991).

⁷ See G.L. c. 231, § 85X; *Reckis v. Johnson & Johnson*, 471 Mass. 272, 300 (2015), cert. denied, 136 S.Ct. 896 (2016).

- basically, any deprivation of the full enjoyment of the parent-child relationship.

< Future Damages—If Applicable, See Insert Below >

There is no special formula or rule to measure damages for loss of society and companionship. You must base your determination(s) on [whether there was a loss of society and companionship, and if so,] the amount of damages, upon your own common sense, good judgment, experience, and conscience. To avoid duplication, however, you must not award to PNT any damages that belong to PLF.

INSERT - IF FUTURE DAMAGES ARE AT ISSUE:

You may award damages for past loss of consortium [loss of parental society, loss of society and companionship] and any future loss of consortium [loss of parental society, loss of society and companionship] that SPSE/PNT/CHD is reasonably likely to suffer in the future. If you find that SPSE/PNT/CHD 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 evaluate any future damages that SPSE/PNT/CHD may suffer, and so you should award that amount, if any, now. 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.