

8.10 DAMAGES — EFFECT OF INSTRUCTIONS (Approved 12/95)

A. General

I shall now instruct you on the law governing damages in the event you decide the liability issue in favor of *[plaintiff]*.

The fact that I instruct you on damages should not be considered as suggesting any view of mine about which party is entitled to prevail in this case. Instructions on damages are given for your guidance in the event you find that the *[plaintiff]* is entitled to a verdict. I am required to provide instructions on damages in all cases in which the trial includes a claim for damages.

NOTE TO JUDGE

See also Model Civil Charge 1.12O Damages.

B. Sample Damage Verdict Sheet for a Personal Injury Case
(Approved 2/98)

1. What sum of money will fairly and reasonably compensate the plaintiff *[name]* for damages he/she sustained as a proximate result of the accident/incident?

- A. Pain, Suffering, Disability, Impairment and
Loss of Enjoyment of Life? \$ _____
- B. Past Medical Expenses? \$ _____
- C. Future Medical Expenses? \$ _____
- D. Past Lost Wages? \$ _____
- E. Future Lost Wages? \$ _____
- TOTAL \$ _____

2. What sum of money will fairly and reasonably compensate the plaintiff [name] for the lost of his/her spouse's services, society and consortium that he/she sustained as a proximate result of the accident/incident?
- \$ _____

Cases and Comments:

This sample verdict sheet is intended to reflect the preference for itemized and segregated damages rather than a lump sum award on the verdict sheet. *See, Black v. Seabrook Associates, Ltd.*, 298 N.J. Super. 630, 638-39 (App. Div. 1997) (“Too many sins are buried in a lump sum award, especially where, as here, separate causes of action existed for wrongful death and survivorship claims.”); *Wachstein v. Slocum*, 265 N.J. Super. 6, 23 (App. Div. 1993) (ordering a new trial limited to the issue of damages because the jury had returned a lump sum verdict on two of plaintiff's distinct claims and the Appellate Court reversed the judgment on one of them), *certif. denied*, 134 N.J. 563 (1993); *Bussell v.*

DeWalt Prods. Corp., 204 N.J. Super. 288, 295 (App. Div. 1985) (“to...facilitate trial and appellate court inquiry as to alleged verdict excessiveness, the court and counsel might alternatively consider requiring the jury to separately assess and report the components of the lump sum verdict”), *rev'd*, 105 N.J. 223 (1987); *Amato v. Amato*, 180 N.J. Super. 210, 219-20 (App. Div. 1981) (“There is no immutable rule in negligence cases requiring a plaintiff to receive a lump sum verdict encompassing pain, suffering, medical expenses and lost wages. Special jury interrogatories may be utilized to delineate the separate factors of recovery.”) *But cf. Eyoma v. Falco*, 247 N.J. Super. 435, 454-55 (App. Div. 1991) (pursuant to New Jersey’s wrongful death statute, “damages for wrongful death must be assessed by the jury in a lump sum”).

The principle stated in *Eyoma, supra*, 247 N.J. Super. at 435, is not in conflict with *Black, supra*, 298 N.J. Super. at 630. While wrongful death damages such as loss of contribution, counsel and guidance are assessed in a lump sum, they are separable from economic losses (lost wages, medical expenses) and other non-economic losses (pain and suffering).

The trial judge should request proposed written verdict sheets from counsel sufficiently in advance of closing arguments. *Benson v. Brown*, 276 N.J. Super. 553, 565 (App. Div. 1994). The court should then discuss with counsel the proposed versions of the verdict sheet. *Ibid.* “In the end the judge has the ultimate responsibility for insuring the correctness of the verdict sheet.” *Ibid.*