

PERSONAL INJURY DAMAGES--LOSS OF EARNINGS.<sup>1</sup>

Damages for personal injury also include fair compensation for the [past] [present] [future]<sup>2</sup> loss of time from employment, loss from inability to perform ordinary labor, or the reduced capacity to earn money experienced by the plaintiff as a proximate result of the negligence of the defendant.<sup>3</sup>

In determining this amount, you should consider the evidence as to:

[the plaintiff's age and occupation]

[the nature and extent of the plaintiff's employment]

[the value of the plaintiff's services]

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<sup>1</sup>The evidence may be such as to require elaboration of this instruction in one or more of the following respects:

Loss of earnings caused by delay in treatment or unsuccessful treatment is recoverable. See *Heath v. Kirkman*, 240 N.C. 303, 310, 82 S.E.2d 104, 108-09 (1954).

Loss of earnings caused by negligence of the original treating physician is recoverable, unless the injured person was negligent in selecting the physician. See *Bost v. Metcalfe*, 219 N.C. 607, 609, 14 S.E.2d 648, 651 (1941).

An unemancipated minor may recover lost earnings only for the period following the end of his minority. See *Emanuel v. Clewis*, 272 N.C. 505, 509, 158 S.E.2d 587, 590 (1968).

<sup>2</sup>If there is evidence of future loss of earnings, whether temporary or permanent, give N.C.P.I.--Civil 106.16 ("Personal Injury Damages--Future Worth in Present Value"). In addition, if there is evidence that the loss of earnings will be permanent, give N.C.P.I.--Civil 106.14 ("Personal Injury Damages--Permanent Injury").

<sup>3</sup>*Smith v. Corsat*, 260 N.C. 92, 95, 131 S.E.2d 894, 896-97 (1963). See also *Rolling Fashion Mart, Inc. v. Mainor*, 80 N.C. App. 213, 217, 341 S.E.2d 61, 64 (1986).

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[the amount of the plaintiff's income, at the time of his injury, from salary, wages or other compensation]

[the effect of the plaintiff's disability or disfigurement on his earning capacity]<sup>4</sup>

[the plaintiff's loss of profits from his business or profession]<sup>5</sup>

[the loss of capacity to earn money]

[specify any other factor supported by the evidence].

(The fact that a person [was not working at the time of his injury] [had not yet begun work at the time he was injured] does not, in and of itself, prevent a person from recovering fair compensation for loss of future earning capacity.)<sup>6</sup>

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<sup>4</sup>See generally *King v. Britt*, 267 N.C. 594, 148 S.E.2d 594 (1966); *Hunt v. Wooten*, 238 N.C. 42, 76 S.E.2d 326 (1953); *Griffin v. Griffin*, 45 N.C. App. 531, 263 S.E.2d 39 (1980).

<sup>5</sup>*Smith v. Corsat*, 260 N.C. at 92, 131 S.E.2d at 894, should be read carefully to determine when evidence of lost profits is admissible. See also *Rolling Fashion Mart, Inc.*, 80 N.C. App. 213 at 341 S.E.2d at 64 (explaining that an employer may not recover damages from a tortfeasor because of negligent injury to an employee).

<sup>6</sup>*Johnson v. Lewis*, 251 N.C. 797, 112 S.E.2d 512 (1960); *Purgason v. Dillon*, 9 N.C. App. 529, 176 S.E.2d 889 (1970).