

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

The (*state number*) issue reads:

"What amount is (*name claimant*) entitled to recover for loss of consortium?"

If you have answered the (*state number*) issue in favor of (*name claimant*), (*name claimant*) is entitled to recover nominal damages even without proof of actual damages. Nominal damages consist of some trivial amount such as one dollar in recognition of the technical damages incurred by the plaintiff.

(*Name claimant*) may also be entitled to recover actual damages. On this issue the burden of proof is on (*name claimant*). This means that (*name claimant*) must prove, by the greater weight of the evidence, the amount of actual damages for loss of consortium [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant.

(*Name claimant*) is entitled to fair compensation for the actual loss of the marital services, society, affection, companionship or sexual relations of *his* spouse [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant.<sup>2</sup> In considering this issue, you must not duplicate any damages you have already awarded to (*name claimant*). Thus, damages for loss of consortium may not include

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<sup>1</sup>See generally, *Nicholson v. Chatham Hospital*, 300 N.C. 295, 266 S.E.2d 818 (1980).

<sup>2</sup>These are the elements recognized in *Nicholson*, 300 N.C. at 296, 266 S.E.2d at 819.

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any [medical expenses] [loss of earnings] [pain and suffering] [scars and disfigurement] [loss (of use) of a part of the body] [permanent injury] [*state any other type of damage at issue in claimant's case*]. You must limit your consideration to (*name claimant's*) actual damages for loss of the marital services, society, affection, companionship or sexual relations of *his* spouse.

To decide the amount of damages for loss of consortium, if any, you may consider all of the evidence presented concerning disruption to the marital relationship [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant. The amount of disruption, if any, cannot be measured by any precise mathematical formula. You must use your own good sense and fair judgment in placing a value on the loss, if any, suffered by (*name claimant*) as a result of a disruption of the marital relationship.<sup>3</sup> You are not to engage in sheer speculation.<sup>4</sup>

*(Use where there is evidence that a spouse died or has been divorced: (Name claimant) is only entitled to recover for any loss of consortium occurring between the time of the injury to (name plaintiff) and the [divorce between (name claimant) and his spouse] [death of [(name claimant)] [his spouse]]).*

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<sup>3</sup>*Nicholson, supra.*

<sup>4</sup>*See Brown v. Moore, 286 N.C. 664, 213 S.E.2d 342 (1975) and Gay v. Thompson, 266 N.C. 394, 398, 146 S.E.2d 425, 428 (1966).*

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*(Use where there is evidence that loss of consortium will continue into the future: (Name claimant) is also entitled to fair compensation for any loss of future consortium [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant which will occur during (name claimant's) marriage to his spouse. This means that you may award future damages, but recovery is limited to the shorter of the two life expectancies of (name claimant) or his spouse. Life expectancy is the period of time a person may reasonably be expected to live. (Name claimant) has offered the life expectancy tables to show that for a person of (name claimant's) present age, his life expectancy is (state expectancy) years. They also show that for a person of his spouse's present age, her life expectancy is (state expectancy) years.<sup>5</sup> In determining their expectancies, you will consider not only these tables, but also all other evidence as to their respective healths, constitutions and habits.<sup>6</sup> Any amount you allow as future damages for loss of consortium must be reduced to its present value, because a smaller sum received now is equal to a larger sum received in the future. (There is evidence before you that (name*

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<sup>5</sup>"The [life expectancy] table is statutory, N.C.G.S. §8-46, and need not be introduced but may receive judicial notice when facts are in evidence requiring or permitting its application." *Chandler v. Chemical Co.*, 270 N.C. 395 (1967).

<sup>6</sup>A failure to include this sentence, or its equivalent, is reversible error. See *Kinsey v. Kenly*, 263 N.C. 376, 139 S.E.2d 686 (1965); *Harris v. Greyhound Corp.*, 243 N.C. 346, 90 S.E.2d 710 (1956).

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*claimant's*) actual damages for future loss of consortium have already been reduced to their present value. Whether they have in fact so been reduced is for you to determine from the evidence using logic and common sense. Therefore, if you find that (*name claimant's*) actual damages for loss of future consortium have already been reduced to present value, you must not reduce them again.))

I instruct you that your findings on this (*state number*) issue must be based upon the evidence and the rules of law I have given you with respect to the measure of damages. You are not required to accept the amount of damages suggested by the parties or their attorneys. Your award must be fair and just. You should remember that you are not seeking to punish either party, and you are not awarding or withholding anything on the basis of sympathy or pity.

Finally, as to the (*state number*) issue on which (*name claimant*) has the burden of proof, if you find by the greater weight of the evidence the amount of actual damages [proximately caused by the negligence] [caused by the wrongful conduct] of the defendant for loss of consortium, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal sum such as "One Dollar" in the blank space provided.