

30.07 Measure of Damages--Loss of Earnings or Profits--Past and Future--Adult Plaintiff, Emancipated Minor, or Minor Whose Parent Has Assigned Claim to Minor

[The value of (time) (earnings) (profits) (salaries) (benefits) lost] [.] [and] [(T)he present cash value of the (time) (earnings) (profits) (salaries) (benefits) reasonably certain to be lost in the future].

Notes on Use

One or more of these elements is to be inserted between the two paragraphs of IPI 30.01 when the evidence justifies its use.

If the plaintiff is a minor or minor's representative and the right to recover these expenses during minority has not been assigned to the minor, use IPI 30.08.

Comment

The first phrase of this instruction concerns earnings and profits lost prior to trial.

With reference to past lost time, an injured party may recover for the time lost even though he was paid his regular wage during incapacitation. *Hoobler v. Voelpel*, 246 Ill.App. 69 (2d Dist.1927); *Cooney v. Hughes*, 310 Ill.App. 371, 34 N.E.2d 566 (1st Dist.1941) (loss incurred by unemployed plaintiff who provided services in the home); *Jerrell v. Harrisburg Fair & Park Ass'n*, 215 Ill.App. 273, 280 (4th Dist.1919) (plaintiff must present evidence of lost earnings, time or wages); *Wever v. Staggs*, 264 Ill.App. 556, 564 (3d Dist.1932) (homemaker's lost services are a proper element of damages if value of lost services is established); *McManus v. Feist*, 76 Ill.App.2d 99, 106-107; 221 N.E.2d 418, 421-422 (4th Dist.1966).

The second portion of this instruction includes diminution of the plaintiff's capacity to earn. It may be based upon inability to earn in occupations or fields of endeavor like or unlike his past earning experience, so long as his lost capacity to earn is established by the evidence. Consequently, damages incurred as a result of impaired earning capacity are not necessarily measured by proof of past lost wages. *Buckler v. Sinclair Ref. Co.*, 68 Ill.App.2d 283, 216 N.E.2d 14 (5th Dist.1966). The element of damages for future lost earnings does not depend on whether the injured party was employed on the date of the occurrence. *Casey v. Baseden*, 131 Ill.App.3d 716, 475 N.E.2d 1375, 86 Ill.Dec. 808 (5th Dist.1985), *aff'd*, 111 Ill.2d 341, 490 N.E.2d 4, 95 Ill.Dec. 531 (1986). The instruction may also be proper even though he was employed at the time of trial and earning more than at the time of his injury. *Jackson v. Illinois Cent. Gulf R. Co.*, 18 Ill.App.3d 680, 309 N.E.2d 680, 688 (1st Dist.1974).

In actions for damages arising out of an injury to an unemancipated minor, the loss of earnings during minority are recoverable by the parents. *Ferreira v. Diller*, 176 Ill.App. 447 (3d Dist.1912); *Barrett v. Riley*, 42 Ill.App. 258 (2d Dist.1891). However, the usual practice in Illinois is to sue for these damages in the minor's action. This is accomplished by alleging an assignment, or waiver or relinquishment by the parents of their right to recover these damages. *Curtis v. Lowe*, 338 Ill.App. 463, 87 N.E.2d 865 (2d Dist.1949).

735 ILCS 5/13-203 (1994) provides that a derivative claim (i.e., a right of action arising out of an injury to the person of another) is governed by the same limitation period as is the action for damages for injury to such other person.

On the issue of present cash value, *see* the 34.00 series.