

13-1802A. Measure of the loss of a chance.

Provided, however, for the loss of a chance for [a better outcome to a medical problem], [survival], [_____ (*other*)], while you must (1) first determine total damages for the [loss of limb], [loss of life], [_____ (*other*)] under the above-listed elements, you then must (2) base your award on a percentage representing the lost opportunity to avoid [loss of limb], [loss of life], [_____ (*other*)]. The valuation of lost chances is necessarily imprecise; the value of the loss may be established by fair approximations, by numbers or verbal descriptions, from which you will arrive at a percentage to apply to the total damages.

USE NOTES

This instruction provides the measure of damages where plaintiff alleges defendant's negligence resulted in a lost opportunity to obtain a better outcome from a preexisting condition. When loss of a chance is an issue to be determined by the jury, this instruction must be included in the general measure of damages instruction, UJI 13-1802, following the listing of the elements of damages plaintiff is entitled to recover. [Approved, effective March 20, 2000.]