

8.11 DAMAGES CHARGES — GENERAL

D. LOSS OF PROFITS (pre-1983; Revised 11/2023)

The measure of damages for loss of profits to a plaintiff who is an owner of a business is the value of the plaintiff's services in carrying on that business which were lost as a proximate result of the plaintiff's injuries. In determining the value of the plaintiff's services, the jury should take into consideration the nature of the business, the capital, assets, and personnel employed, the average weekly (or monthly) profits earned before and after the accident, and any expense to which the plaintiff was put to hire others to perform services which the plaintiff had previously performed.

Cases:

Woschenko v. Schmidt & Sons, 2 N.J. 269, 278 (1949): “The value of [plaintiff's] services is manifestly worth more than the mere cost of hiring another temporarily to fill [plaintiff's] place. The thorough knowledge of the business thus acquired together with personal acquaintance with the customers has a value in the commercial world readily recognized by any business[person]. The evidence must be such as to directly point up the value of the plaintiff's services in the operation of the business in which case it is not conjectural.”

East Jersey Water Co. v. Bigelow, 60 N.J.L. 201 (E. & A. 1897). Damages may be awarded for future loss of profits if capable of being estimated with a reasonable degree of certainty.

Passaic Valley Sewerage Comm'rs v. St. Paul Fire & Marine Ins. Co., 206 N.J. 596, 609-10 (2011): “Anticipated profits that are remote, uncertain or speculative . . . are not recoverable.”

Schwartz v. Menas, 251 N.J. 556, 576 (2022): “We concur with the majority of courts that reject a per se rule barring a new business’s claims for lost profits damages, and decline to follow the new business rule. . . . a trial judge must conduct a case-specific inquiry when deciding a motion to admit or bar a category of evidence.”