

800.71 INVASION OF PRIVACY - OFFENSIVE INTRUSION - DAMAGES.

The (*state number*) issue reads:

“What amount is the plaintiff entitled to recover?”

If you have answered the (*state number*) issue “Yes” in favor of the plaintiff, the plaintiff 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 damage caused by the defendant’s offensive intrusion upon the privacy of the plaintiff.

The plaintiff may also be entitled to recover actual damages. On this issue the burden of proof is on the plaintiff. This means that the plaintiff must prove, by the greater weight of the evidence, the amount of actual damages caused by the defendant’s offensive intrusion upon the privacy of the plaintiff.

*(Here give appropriate instructions as to the type of damage claimed if supported by the evidence, e.g., pain and mental suffering<sup>1</sup>, loss of earnings<sup>2</sup>, medical expenses<sup>3</sup>, etc.).<sup>4</sup>*

I instruct you that if you reach this issue,<sup>5</sup> your decision must be based on 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 this (*state number*) issue on which the plaintiff has the burden of proof, if you find, by the greater weight of the evidence,

the

amount of actual damages caused by the wrongful conduct of the defendant, 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.

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1. See N.C.P.I.-Civil 810.08 ("Personal Injury Damages-Pain and Suffering").
  2. See N.C.P.I.-Civil 810.06 ("Personal Injury Damages-Loss of Earnings").
  3. See N.C.P.I.-Civil 810.04 ("Personal Injury Damages-Medical Expenses").
  4. One who has established a cause of action for invasion of his privacy is entitled to recover damages for
    - (a) The harm to his interest in privacy resulting from the invasion;
    - (b) his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion; and
    - (c) special damage of which the invasion is a legal cause.

*Restatement (Second) of Torts* § 652H (1977).

5. If counsel makes a *per diem* argument, modify this portion of the instruction in accordance with N.C.P.I.-Civil 810.22 ("Personal Injury Damages-Final Mandate (*Per Diem* Argument by Counsel)").