

N.C.P.I.-Civil. 810.92
PUNITIVE DAMAGES - INSURANCE COMPANY'S BAD FAITH REFUSAL TO
SETTLE A CLAIM.
GENERAL CIVIL VOLUME
MAY 1996

810.92 PUNITIVE DAMAGES - INSURANCE COMPANY'S BAD FAITH
REFUSAL TO SETTLE A CLAIM.

NOTE WELL: Use this instruction only in conjunction with claims for relief arising prior to January 1, 1996. Claims for relief arising on or after January 1, 1996 are governed by N.C. Gen. Stat. §§ 1D-1 et seq., effective January 1, 1996. For such cases, use N.C.P.I.-Civil 810.96.

The (*state number*) issue reads:

"Did the defendant refuse in bad faith to settle the plaintiff's insurance claim?"

You will answer this issue only if you have answered the (*state issue number*) "Yes" in favor of the plaintiff.¹

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, three things:²

First, that the defendant failed to pay the plaintiff's insurance claim after recognizing it as valid.

Second, that the defendant's failure to pay was intentional, in bad faith and not due to innocent mistake or honest disagreement.³

And Third, that the defendant's failure to pay was accompanied by aggravating or outrageous conduct. Aggravating or outrageous conduct may include one or more of the following: fraud, actual malice, oppression, a gross and willful wrong, insult, rudeness, indignity or a reckless or wanton disregard of the plaintiff's rights.⁴

Finally, as to this issue on which the plaintiff has the burden of

proof, if you find by the greater weight of the evidence that the defendant refused in bad faith to settle the plaintiff's insurance claim, then it would be your duty to answer this issue "Yes" in favor of the plaintiff.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the defendant.⁵

1. The preceding issue is likely to be whether the defendant insurer was obligated upon a contract of insurance to pay the plaintiff's claim.

2. *Lovell v. Nationwide Mutual Ins. Co.*, 108 N.C. App. 416, 420, 424 S.E.2d 181, 184 (1993), *aff'd* 334 N.C. 682, 435 S.E.2d 71 (1993) (*per curiam*). See also *Dailey v. Integon v. Gen. Ins. Corp.*, 75 N.C. App. 387, 394-95, 331 S.E.2d 148, 154 (1985), *disc. rev. denied*, 314 N.C. 664, 336 S.E.2d 399 (1985).

3. *Lovell*, 108 N.C. App. at 421, 424 S.E.2d at 185 (citing *Dailey*, 75 N.C. App. at 396, 331 S.E.2d at 155). See also *Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 112, 229 S.E.2d 297, 301 (1976); *Payne v. N.C. Farm Bureau Mut. Ins. Co.*, 67 N.C. App. 692, 694-95, 313 S.E.2d 912, 914 (1984).

4. *Lovell*, 108 N.C. App. at 422, 424 S.E.2d at 185 (citing *Dailey*, 75 N.C. App. at 394, 331 S.E.2d at 154). See also *Newton*, 291 N.C. at 112, 229 S.E.2d at 301; *Payne*, 67 N.C. App. at 694, 313 S.E.2d at 913.

5. After giving this instruction, the court should charge the jury under N.C.P.I.-Civil 810.93 (Punitive Damages-Issue of Whether to Make Award and Amount).