

106.98 PUNITIVE DAMAGES - ISSUE OF WHETHER TO MAKE AWARD AND AMOUNT.

NOTE WELL: Use this instruction in conjunction with claims for relief arising on or after January 1, 1996.¹ For claims for relief arising prior to January 1, 1996, use N.C.P.I.-Motor Vehicle 106.93 or 106.94, as applicable.

ALSO NOTE WELL: Statutory limitations are placed on the amount of punitive damages that may be awarded in all cases (except driving while impaired offenses). N.C. Gen. Stat. § 1D-25(c) specifically directs that the statutory limitations "not be made known to the trier of fact through any means, including voir dire, the introduction into evidence, argument, or instructions to the jury." Thus, it would be error to do so. If the limitations are exceeded by the jury, "the trial court shall reduce the award and enter judgment for punitive damages in the maximum amount." N.C. Gen. Stat. § 1D-25(b) (1996).

The (state number) issue reads:

"What amount of punitive damages, if any, does the jury in its discretion award to the plaintiff?"

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

Whether to award punitive damages is a matter within the sound discretion of the jury. Punitive damages are not awarded for the purpose of compensating the plaintiff for *his* [injury] [damage], nor are they awarded as a matter of right.

If you decide, in your discretion, to award punitive damages, any amount you award must bear a rational relationship² to the sum reasonably needed to punish the defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful

acts.³ In making this determination, you may consider only that evidence which relates to

[the reprehensibility of the defendant's motives and conduct]

[the likelihood, at the relevant time, of serious harm (to the plaintiff or others similarly situated)]

[the degree of the defendant's awareness of the probable consequences of *his* conduct]

[the duration of the defendant's conduct]

[the actual damages suffered by the plaintiff]

[any concealment by the defendant of the facts or consequences of *his* conduct]

[the existence and frequency of any similar past conduct by the defendant]

[whether the defendant profited by the conduct]

[the defendant's ability to pay punitive damages, as evidenced by *his* revenues or net worth].⁴

Finally, if you determine, in your discretion, to award punitive damages, then, you may award to the plaintiff an amount which bears a rational relationship to the sum reasonably needed to punish the defendant for egregiously wrongful acts and to deter the defendant and others from committing similar wrongful acts. That amount should be written in the space provided on the verdict sheet.

If, on the other hand, you determine, in your discretion, not to award the plaintiff any amount, then you should write the word "None" in the space provided on the verdict sheet.

1. Chapter 1D of the North Carolina General Statutes became effective January 1, 1996, displacing common law punitive damages. It applies to all "claims for relief arising on or after that date." 1995 N.C. Sess. Laws 514, § 5.

2. To meet due process requirements, jury discretion must be exercised "within reasonable constraints." *Pacific Mutual Life Insurance Co. v. Haslip*, 499 U.S. 1, 20 (1991). The enactment of N.C. Gen. Stat. § 1D does not obviate the need for this constitutionally mandated standard. Pre-enactment cases also embraced this standard. "[I]t has been uniformly held with us that punitive damages may be awarded in the sound discretion of the jury *and within reasonable limits*. . .". *Swinton v. Savoy Realty Co.*, 236 N.C. 723, 725, 73 S.E.2d 785, 787 (1953) (emphasis added), *partly overruled on other grounds in Newton v. Standard Fire Ins. Co.*, 291 N.C. 105, 229 S.E.2d 297 (1976); *Blackwood v. Cates*, 297 N.C. 163, 167, 254 S.E.2d 7, 10 (1979) (quoting *Swinton*); *Oestreicher v. American National Stores*, 290 N.C. 118, 133, 225 S.E.2d 797, 807 (1976) (quoting *Swinton*); *Baker v. Winslow*, 184 N.C. 1, 5, 113 S.E. 570, 572 (1922).

3. N.C. Gen. Stat. § 1D-35(1) (1996).

4. N.C. Gen. Stat. § 1D-35(2).