

801.05 – MALICIOUS PROSECUTION—DAMAGES.

The (*state number*) issue reads:

“What amount of damages is the plaintiff entitled to recover from the defendant for the malicious [criminal] [civil] proceeding?”

If you have answered (*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 wrongful conduct of the defendant.

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 wrongful conduct of the defendant.

Actual damages are the fair compensation to be awarded to a person for any [past] [present] [future] injury caused by the wrongful conduct of another.

In determining the amount, if any, you award the plaintiff, you will consider the evidence you have heard as to (each of the following types of damages):

[medical expenses]

[loss of earnings]

[pain and suffering]

[Reasonable attorney’s fee paid by the plaintiff in the case in which the [criminal] [civil] proceeding was instituted.¹]

(*state any other type of damage supported by the evidence*).

I instruct you that if you reach this issue,² 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 plaintiff has sustained actual damages under the law as I have explained it to you, you will answer this issue by writing the amount of such damages you find in the blank space provided.

On the other hand, if you fail to find any actual damages, then you would answer this issue by writing a nominal amount such as “One Dollar” in the blank space provided.

1. *Stanford v. A. F. Messick Grocery Co.*, 143 N.C. 419, 55 S.R. 815 (1906); see also *Nelson v Chin Yung Chang*, 78 N.C. App. 471, 476, 337 S.E.2d 650, 653 (1985).

2. If counsel makes a per diem argument, modify this portion of the instruction in accordance with N.C.P.I.—Civil 810.56 – Wrongful Death Damages—Final Mandate. (Per Diem Argument by Counsel).