

PUNITIVE DAMAGES--Issue of Existence of Malicious, Willful or Wanton, or Grossly Negligent Conduct--Wrongful Death Cases. N.C.G.S. § 28A-18-2(b)(5).

NOTE WELL: Use this instruction in conjunction with wrongful death punitive damages claims arising prior to January 1, 1996. Wrongful death punitive damages claims arising on or after January 1, 1996 are governed by new standards.<sup>1</sup> See N.C.G.S. §§ 28A-18-2(b)(5) and 1D-1, et seq.

The (state number) issue reads:

"Did the defendant cause the death of the decedent through maliciousness, willful or wanton injury, or gross negligence?"

You are to answer this issue only if you have answered (identify issues and specify answers necessary for a consideration of this issue).

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, that the defendant caused the death

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<sup>1</sup>N.C.G.S. § 28A-18-2(b)(5), as amended effective January 1, 1996, now permits "[s]uch punitive damages as the decedent could have recovered pursuant to Chapter 1D of the General Statutes had he survived, and punitive damages for wrongfully causing the death of the decedent through malice or willful or wanton conduct, as defined in G.S. 1D-5." For instructions setting forth the requisite elements of G.S. 1D-1 et seq., see N.C.P.I.--Civil 810.96.

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of the decedent through maliciousness, willful or wanton injury, or gross negligence.<sup>2</sup>

[An act is malicious when the defendant is motivated by personal ill will or spite.<sup>3</sup>]

[An act is willful if the defendant intentionally fails to carry out some duty imposed by law or contract which is necessary to protect the safety of the person or property to which it is owed.<sup>4</sup> An act is wanton if the defendant acts in conscious or reckless disregard for the rights and safety of others.<sup>5</sup>]

[An act is grossly negligent when the defendant lacks even slight care, when he shows indifference to the rights and welfare of others, or when his negligence is of an aggravated character.<sup>6</sup>]

Finally, as to this issue on which the plaintiff has the burden of proof, if you find by the greater weight of

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<sup>2</sup>Under N.C.G.S. § 28A-18-2(b)(5), punitive damages may be recovered "for wrongfully causing the death of the decedent through maliciousness, willful or wanton injury, or gross negligence...."

<sup>3</sup>See *Cook v. Lanier*, 267 N.C. 166, 171, 147 S.E.2d 910, 915 (1966) (citing *Brown v. Martin*, 176 N.C. 31, 33, 96 S.E. 642, 643 (1918)).

<sup>4</sup>*Abernathy v. Consolidated Freightways Corp.*, 321 N.C. 236, 362 S.E.2d 559 (1987).

<sup>5</sup>*Bullins v. Schmidt*, 322 N.C. 580, 369 S.E.2d 601 (1988).

<sup>6</sup>*Cowan v. Brian Ctr. Management Corp.*, 109 N.C. App. 443, 448-49, 428 S.E.2d 263, 266 (1993).

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the evidence that the defendant caused the death of the decedent through maliciousness, willful or wanton injury, or gross negligence, 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.

