

PUNITIVE DAMAGES--Issue of Existence of Outrageous or Aggravated Conduct.¹

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

The (state number) issue reads:

"Was the defendant's (name tort) accompanied by outrageous or aggravated conduct?"

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's (name tort) was accompanied by outrageous or aggravated conduct. Outrageous or aggravated conduct may include one or more of the following: actual malice, oppression, a gross and willful wrong, insult, rudeness, indignity or a reckless or wanton disregard of the plaintiff's

¹The trial judge should be aware that this instruction may be redundant in two instances. The first is where the sole liability issue in the case involves a tort which has as one of its elements outrageous or aggravated conduct. Examples would be a single issue case on "gross negligence" (N.C.P.I.--Civil 102.85) or "fraud" (N.C.P.I.--Civil 800.00). The second is where there are multiple liability issues in a case, but each issue involves a tort which has as one of its elements outrageous or aggravated conduct.

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rights.²

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's (*name tort*) was accompanied by outrageous or aggravated conduct such as one or more of the following: actual malice, oppression, a gross and willful wrong, insult, rudeness, indignity, or a reckless or wanton disregard of the plaintiff's rights, 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.

²*Rogers v. T.J.X. Companies, Inc.*, 329 N.C. 226, 230-231, 404 S.E.2d 664, 666-667 (1991); ("The tort in question must be accompanied by additional aggravating or outrageous conduct in order to justify the award of punitive damages (citations omitted). To constitute outrageous behavior, there must exist evidence of 'insult, indignity, malice, oppression or bad motive' (citations omitted). 'Actual ill will or vindictiveness of purpose is not as a rule required; and exemplary damages have been frequently awarded when the ... [tort] ... was accompanied by circumstances of fraud, recklessness, wantonness, ... bad faith, circumstances of oppression, ...insult or outrage, willful injury, or a wrongful act without a reasonable excuse, ...or in known violation of law' (citations omitted)"). See also *VanLeuven v. Motor Lines*, 261 N.C. 539, 546, 135 S.E.2d 640, 645 (1964); *Hinson v. Dawson*, 244 N.C. 23, 27, 92 S.E.2d 393, 396 (1956).