

PUNITIVE DAMAGES--Issue of Whether to Make Award and Amount.

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 810.98.

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 (identify issues and specify answers necessary for a consideration of this issue).

Whether to award punitive damages is a matter within the sound discretion of the jury.¹ 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. In deciding whether to award punitive damages, you must determine that there is a need to punish the defendant for his conduct, or to deter

¹Punitive damages are for the jury to award. *Rogers v. T.J.X. Companies, Inc.*, 329 N.C. 226, 230-231, 404 S.E.2d 664, 667 (1991). Neither the trial court nor the appellate courts can substitute their own judgment for that of the jury; however, the courts have historically exercised their inherent power to set aside excessive or disproportionate awards. *Harris v. Queen City Coach Co.*, 220 N.C. 67, 69, 16 S.E.2d 464, 465 (1941). See also, *Binder v. General Motors Acceptance Corp.*, 222 N.C. 512, 516, 23 S.E.2d 894, 896 (1943). However, in the post-*Haslip* era this standard of review is no longer applicable. See *infra* note 2. The new standard of review applicable to such awards is whether the evidence before the jury permits an inference of a rational relationship between the amount awarded and the sum reasonably needed to punish the defendant, or to deter the defendant or others from similar conduct, or to make an example out of the defendant. In any event, Article I, Section 25 of the North Carolina Constitution in all probability precludes a post-trial review process which considers evidence not put before the jury.

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the defendant or others from engaging in this or similar conduct in the future, or to make an example out of the defendant.

Furthermore, 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 *his* conduct, or to deter the defendant or others from engaging in this or similar conduct in the future, or to make an example out of the defendant.³

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, or to deter the defendant or others from engaging in this or similar conduct in the future, or to make an example out of the defendant. 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.

²To 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). North Carolina's law meets 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, *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).

³In some special cases, it may be appropriate to instruct the jury as to what factors may be considered in determining what a rational relationship is. In those cases, the court may wish to use N.C.P.I.--Civil 810.94.