

**8.47A MALICIOUS PROSECUTION BASED UPON PRIOR
CRIMINAL PROCEEDINGS (Approved 1/97)**

A. Compensatory Damages

In this case you must consider two categories of damages, compensatory damages and punitive damages.

I shall first deal with compensatory damages.

Compensatory damages are those that you find plaintiff sustained as a proximate result of the malicious prosecution. Compensatory damages consist of injury or loss to reputation or character, time spent in jail or in custody, humiliation, physical and mental suffering, distress, embarrassment, nervous shock, impairment of social and business standing, loss of earnings, and reasonable costs and counsel fees incurred in defending the action maliciously brought.

In this connection the word “proximate” means that the malicious prosecution must have been the cause that produced such injury or loss.

[Discuss testimony relating to proof of damages and to out of pocket items such as wage loss, medical and hospital bills, counsel fees in defense of the prosecution, etc.]

Your evaluation of plaintiff's claim for compensatory damages must be expressed in terms of one lump sum for all of the elements that you find comprise that claim.

B. Punitive Damages (Approved 1/97)

NOTE TO JUDGE

See either Model Civil Charge 8.60 or 8.61 depending on when the cause of action was filed. However, in one important respect, the general charges on punitive damages should be modified in a malicious prosecution action based upon a prior criminal action. In such a malicious prosecution action, the jury should be specifically instructed that the "malice" necessary to support a claim for malicious prosecution is very different than the "malice" necessary to justify an award of punitive damages.

The following language should, therefore, be inserted into the punitive damages charges immediately after the definitions of malice and willfulness or wantonness in 8.60 or 8.61.

As you recall when I described the elements of a malicious prosecution action I instructed you about the defendant's intent that is necessary to return a verdict in favor of plaintiff. To find in favor of plaintiff, you must find that the defendant intentionally committed a wrongful or unlawful act without any justification or excuse. Your finding of that kind of intent on the part of the defendant does not, without more, justify an award of punitive damages to the plaintiff.

However, you may award punitive damages to the plaintiff if you do find that the defendant initiated the criminal action maliciously or in willful or wanton disregard of the plaintiff's rights, as I have just defined these terms for you.

NOTE TO JUDGE

Malicious prosecution is a tort action and if the right of action is established, the damages recoverable would be those which proximately flowed from the plaintiff's wrongdoing. *Gierman v. Toman*, 77 N.J. Super. 18 (Law Div. 1962); *Dombrowski v. Metropolitan Life Ins. Co.*, 18 N.J. Misc. 240, *aff'd* 126 N.J.L. 545 (E.& A. 1941).

Specifically such damages include:

- (a) Reasonable costs and counsel fees incurred in defending the action maliciously brought. *Mayflower v. Thor*, 15 N.J. Super. 139 (1951), *aff'd* 9 N.J. 605 (1952).
- (b) Impairment of social and business standing. *Dombrowski, supra*.
- (c) Arrest and detention in jail until released on bail. *Dombrowski, supra*.
- (d) Mental suffering. *Dombrowski, supra*.