

8.47B MALICIOUS PROSECUTION BASED UPON PRIOR CIVIL PROCEEDINGS (Approved before 1984)

A. Compensatory Damages

Compensatory damages are those which you find that plaintiff sustained as a proximate result of the defendant's wrongdoing. (In cases in which an arrest was made in connection with a civil suit, compensatory damages consist of injury and loss to reputation, fame or character, time spent in jail or 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 cases where no arrest but other special grievance is shown, damages would include business losses and the like, and reasonable costs and counsel fees.)

In this connection the word "proximate" means that the malicious prosecution must have been the efficient, producing cause of 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

See either Model Civil Charge 8.60 or 8.61 depending on when 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 civil 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 civil action maliciously or in willful or wanton disregard of the plaintiff’s rights, as I have just defined these terms for you.