

8.62 PUNITIVE DAMAGES ACTIONS — PRODUCTS LIABILITY
(Approved 1/1997; Revised 12/2011)¹

NOTE TO JUDGE

Please review the comprehensive Note to Judge in Model Charge 8.60. Note also that the trial judge may reduce or eliminate the award if the judge considers such action necessary to satisfy the requirements of the PDA. *N.J.S.A. 2A:15-5.14(a)*.

INTRODUCTION

You will now consider the issue of punitive damages. Specifically, you must first decide whether to award punitive damages against the *[defendant]* and, if you decide to do so, what amount must be awarded.

GENERAL CHARGE

If you find that (defendant)² has *[insert a specific description of the conduct giving rise to a claim for damages]*, you must consider whether or not to award punitive damages to (plaintiff). Punitive damages are awarded to punish (defendant). (Plaintiff) is not automatically entitled to punitive damages simply because you have found that (defendant) has *[insert a specific description of the conduct giving rise to a claim for damages]* or because you have awarded damages to compensate (plaintiff)

¹ The Model Civil Jury Charge Committee suggests that the trial judge not explain to the jury at the outset of the trial that there is a request for punitive damages. Of course, the trial judge should take into account the additional time needed to complete the bifurcated hearing in a punitive damages action and should build that time into the schedule given to the jury at the outset.

² Placing the words “plaintiff” and “defendant” in parentheses is intended to suggest that the trial judge may use the names of the parties, in lieu of their status in the lawsuit, if he or she wishes.

for his/her/its injury. You may award punitive damages only under certain circumstances.

1. INTENT OF PUNITIVE DAMAGES

The purposes of punitive damages are different from the purposes of compensatory damages. Compensatory damages are intended to compensate (plaintiff) for the actual injury or loss he/she/it suffered as a result of (defendant's) product liability claim. In contrast, punitive damages are intended to punish a wrongdoer and to deter the wrongdoer from similar wrongful conduct in the future.³ Punitive damages are designed to require the wrongdoer to pay an amount of money sufficient to punish (defendant) for particular conduct and to deter that party from future misconduct. Punitive damages are not to be awarded as a routine matter in every case; they are to be awarded only in exceptional cases, to punish a party who/which has acted in an especially egregious or outrageous matter and to discourage that party from engaging in similar misconduct in the future. Therefore, (plaintiff) is not entitled to punitive damages simply because you have found that (defendant) engaged in specific conduct or because you have awarded damages to

³ The Appellate Division in *Tarr v. Ciasulli*, 390 *N.J. Super.* 557 (App. Div. 2007), *aff'd*, 194 *N.J.* 212, 224 (2008) found that the *New Jersey Punitive Damages Act*, *N.J.S.A. 2A:15-15-5.9*, *et al.* does not permit counsel to urge the jury to increase a punitive damage award to enhance the general deterrence of others. Accordingly prior language in earlier Model Charge allowing punitive damages to be awarded as a “deterrence to others” was deleted.

compensate (plaintiff) for his/her/its injury. You may award punitive damages to (plaintiff) only if you find that (plaintiff) has proved certain additional matters.

2. STANDARD OF PROOF FOR PUNITIVE DAMAGES

To support an award of punitive damages here, you must find that (plaintiff) has proved, by clear and convincing evidence, that the injury, loss, or harm suffered by (plaintiff) was the result of (defendant's) acts or omissions⁴ and that either (1) (defendant's) conduct was malicious or (2) (defendant) acted in wanton and willful disregard of (plaintiff's) rights. Malicious conduct is intentional wrongdoing in the sense of an evil-minded act. Willful or wanton conduct is a deliberate act or omission with knowledge of a high degree of probability of harm to another who foreseeably might be harmed by that act or omission and reckless indifference to the consequence of the act or omission.

The standard of “clear and convincing evidence”, which I mentioned above, means that evidence which leaves no serious or substantial doubt about the correctness of the conclusions drawn from the evidence. This is different – and less – than proof beyond a reasonable doubt. This is also different – and more – than a preponderance of evidence to support an award of punitive damages.

⁴ *N.J.S.A. 2A:15-5.12(a)*.

In determining whether to award punitive damages, consider all relevant evidence, including but not limited to the following: (1) the likelihood, at the relevant time, that serious harm would arise from (defendant's) conduct; (2) (defendant's) awareness or reckless disregard of the likelihood that such serious harm would arise from (defendant's) conduct; (3) consider the conduct of (defendant) upon learning that his/her/its initial conduct would likely cause harm; and (4) consider the duration of the conduct or any concealment of that conduct by (defendant).⁵

3. AMOUNT OF PUNITIVE DAMAGES

If you decide that (defendant) has engaged in the type of wrongdoing that justifies punitive damages, you must decide the amount of punitive damages that should be awarded.

In doing so, you must consider all relevant evidence, including but not limited to, evidence of the four factors that I discussed in connection with your determination as to whether punitive damages should be awarded at all. These are: (1) the likelihood, at the relevant time, that serious harm would arise from (defendant's) conduct; (2) (defendant's) awareness or reckless disregard of the likelihood that such serious harm would arise from his/her/its conduct; (3) the conduct of (defendant)

⁵ See *N.J.S.A. 2A:15-5.12(b)*, providing that the trier of fact must consider these four factors in determining whether punitive damages should be awarded. Other factors may be considered as well; the four statutory factors are not intended to be exclusive.

upon learning that his/her/its initial conduct would likely cause harm; and (4) the duration of the conduct or any concealment of it by (defendant).

Consider, also, the profitability, if any, of the misconduct to (defendant); when the misconduct was terminated; and the financial condition of (defendant) or his/her/its ability to pay the punitive damages award.⁶ You must also make certain that there is a reasonable relationship between the actual injury and the punitive damages.⁷

After considering all these factors, exercise your judgment and determine (1) whether punitive damages should be awarded in this case; and (2) if you decide to award punitive damages, what the proper amount should be.⁸

⁶ See *N.J.S.A. 2A:15-5.12(c)*. Sec. 5.12(c) provides that the trier of fact must consider these factors in determining whether punitive damages should be awarded. However, the trier of fact may consider additional factors, if appropriate, since the statutory factors are not intended to be exclusive. The trial judge should also instruct the jurors on any other aggravating or mitigating factors, if warranted by the evidence, that may justify an increase or reduction in the amount of punitive damages. With regard to the “financial condition” factor, see *Herman v. Sunshine Chemical Specialties, Inc.*, 133 *N.J.* 329, 345 (1993).

⁷ *Fischer v. Johns-Manville Corp.*, 103 *N.J.* 643, 675 (1986).

⁸ Occasionally, as in *Rusak v. Ryan Automotive, L.L.C., at als.*, 418 *N.J.* 107 (A. D. 2011), one jury may award compensatory damages and a second jury must address a punitive damages claim. In that event, the second jury must be told that it was determined in a different forum that defendant(s) engaged in unlawful or improper conduct and that plaintiff was awarded compensatory damages resulting from that conduct in specific categories (e.g., back pay) and amounts. In *Rusak, supra*, the first jury declined to award damages for emotional distress; the Appellate Division ruled that the second jury must be told that no award was made for emotional distress.