

**PROPOSED REVISIONS TO THE UNIFORM JURY INSTRUCTIONS - CIVIL
PROPOSAL 2025-013**

March 6, 2025

The Uniform Jury Instructions – Civil Committee has recommended amendments to UJI 13-1718 NMRA for the Supreme Court’s consideration.

If you would like to comment on the proposed amendments set forth below before the Court takes final action, you may do so by either submitting a comment electronically through the Supreme Court’s website at <https://supremecourt.nmcourts.gov/rules-forms-files/rules-forms/open-for-comment/> or sending your written comments by mail, email, or fax to:

Elizabeth A. Garcia, Chief Clerk of Court
New Mexico Supreme Court
P.O. Box 848
Santa Fe, New Mexico 87504-0848
rules.supremecourt@nmcourts.gov
505-827-4837 (fax)

Your comments must be received by the Clerk on or before April 5, 2025, to be considered by the Court. Please note that any submitted comments may be posted on the Supreme Court’s website for public viewing.

13-1718. Punitive damages.

If you find that _____ (*plaintiff*) should recover compensatory damages for the bad faith actions of the insurer, and you find that the conduct of the insurer was [in reckless disregard for the interests of _____ (*plaintiff*)], [based on a dishonest judgment], [or] [malicious, willful or wanton], then you may award punitive damages.

 [“Reckless disregard” is an insurer’s [frivolous or unfounded refusal to pay] [or] [dishonest or unfair balancing of its own interests and the interests of the insured].]

 [“Dishonest judgment” is a failure by the insurer to honestly and fairly balance its own interests and the interests of the insured.]

 [“Malicious conduct” is the intentional doing of a wrongful act with knowledge that the act was wrongful.]

 [“Willful conduct” is the intentional doing of a wrongful act with knowledge that harm may result.]

 [“Wanton conduct” is the doing of an act with utter indifference to or conscious disregard for a person’s rights.]

Punitive damages are awarded for the limited purposes of punishment and to deter others from the commission of like offenses.

The amount of punitive damages must be based on reason and justice, taking into account all the circumstances, including the nature of the wrong and any aggravating and mitigating circumstances as may be shown. The property or wealth of the defendant is a legitimate factor for

your consideration. The amount awarded must be reasonably related to the injury and to any damages given as compensation and not disproportionate to the circumstances.

[_____ (*plaintiff*) has introduced evidence of [harm to others] [risk of harm to others] as a result of _____ (*defendant*)’s conduct. You may consider this evidence in determining the nature and enormity of _____ (*defendant*)’s wrongful conduct toward _____ (*plaintiff*). You may not, however, include in your award of punitive damages any award that punishes _____ (*defendant*) for harm to others not before this court.]

USE NOTES

This instruction must ordinarily be given in an action for insurance bad faith in which punitive damages are available under the law. The trial court may omit this instruction only in those circumstances in which the plaintiff fails to make a *prima facie* showing that the insurer’s conduct exhibited a culpable mental state. ~~[Because this instruction is complete on the availability of punitive damages in insurance bad faith actions, UJI 13-1827 NMRA is unnecessary and should not be given in these cases.]~~

The final bracketed paragraph of this instruction must be given when evidence of harm or injury to non-parties to the litigation has been admitted into evidence during the trial. It is not intended to limit the jury’s consideration of evidence of harm to the first-party insured in third party cases.

[As amended, effective March 21, 2005; as amended by Supreme Court Order No. S-1-RCR-2023-00028, effective for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

Committee commentary. — The substance of this instruction derives, in part, directly from *Sloan v. State Farm Mutual Automobile Insurance Co.*, 2004-NMSC-004, 135 N.M. 106, 85 P.3d 230. *Sloan* establishes the standard for an award of punitive damages: “when the insurer’s conduct was in reckless disregard for the interests of the plaintiff, or was based on a dishonest judgment, or was otherwise malicious, willful, or wanton.” *Id.* ¶ 2. *Sloan* also provides a basis for defining these terms. *See id.* (“An insurer’s frivolous or unfounded refusal to pay is the equivalent of a reckless disregard for the interests of the insured, and a dishonest or unfair balancing of interests is no less reprehensible than reckless disregard, which has historically justified an award of punitive damages.”); *id.* ¶ 23 (“The trial court should include also the definition[] of ‘dishonest judgment’—‘a failure by the insurer to honestly and fairly balance its own interests and the interests of the insured.’”).

The form of this instruction derives from the first option contained in the general punitive damages instruction, UJI 13-1827, which relates to a direct claim for punitive damages against the defendant based on the defendant’s actions. In the typical case, this instruction together with the standard instruction that a corporation acts through its employees, UJI 13-409, is intended to encompass the collective conduct of the insurer’s employees culminating in the insurer’s action(s) claimed by the plaintiff to constitute bad faith. The second and third bracketed paragraphs of UJI 13-1827 also expressly include theories allowing punitive damages to be assessed against a defendant based on the actions of an employee or agent. If the trial court determines that the other theories identified in UJI 13-1827 are appropriate in the circumstances of the case being tried, they may be incorporated into this instruction.

Sloan overruled prior case law that required a plaintiff to establish bad faith plus “an additional culpable mental state” before the jury could be instructed on punitive damages. ~~[Id.]~~

2004-NMSC-004, ¶ 6 (overruling *Teague-Strebeck Motors, Inc. v. Chrysler Ins. Co.*, 1999-NMCA-109, ¶ 72, 127 N.M. 603, 985 P.2d 1183). “[U]nder New Mexico law, bad-faith conduct by an insurer typically involves a culpable mental state, and therefore the determination whether the bad faith evinced by a particular defendant warrants punitive damages is ordinarily a question for the jury to resolve.” *Id.* “[B]ad faith supports punitive damages upon a finding of entitlement to compensatory damages.” *Id.* (internal quotation marks and citation omitted). But the trial court still has the discretion “to withhold a punitive-damages instruction in those rare instances in which the plaintiff has failed to advance any evidence tending to support an award of punitive damages.” *Id.*

The New Mexico Supreme Court has “allowed the award of punitive damages in insurance cases under a more relaxed standard [than that for contracts not involving insurance] in part because of the fiduciary obligations inhering in insurance relationships and because of concerns arising from the bargaining position typically occupied by the insured and insurer.” *Romero v. Mervyn’s*, 1989-NMSC-081, ¶ 23 n.3, 109 N.M. 249, 784 P.2d 992 (citing *Chavez v. Chenoweth*, 1976-NMCA-076, ¶¶ 43-44, 89 N.M. 423, 553 P.2d 703).

In the event the insured also brings a cause of action for violation of the Unfair Practices Act (UPA) and the fact finder finds the insurer willfully engaged in the trade practice based on the same conduct supporting the punitive damage award for bad faith, the insured must elect a remedy between treble damages under the UPA and punitive damages for the bad faith claim. *See* NMSA 1978, § 57-12-10(B) (2005); *Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 20, 110 N.M. 314, 795 P.2d 1006 (“[R]ecovery of both statutory treble damages and punitive damages based upon the same conduct would be improper.”).

[Revised, effective March 21, 2005; as amended by Supreme Court Order No. S-1-RCR-2023-00028, effective for all cases pending or filed on or after December 31, 2023; as amended by Supreme Court Order No. _____, effective for all cases pending or filed on or after _____.]

**No Comments
Received**