

1 **13-1718. Punitive damages.**

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

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

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

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

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

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

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

18 The amount of punitive damages must be based on reason and justice, taking into account  
19 all the circumstances, including the nature of the wrong and any aggravating and mitigating  
20 circumstances as may be shown. The property or wealth of the defendant is a legitimate factor for  
21 your consideration. The amount awarded must be reasonably related to the injury and to any  
22 damages given as compensation and not disproportionate to the circumstances.

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

6 USE NOTES

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

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

17 [As amended, effective March 21, 2005; as amended by Supreme Court Order No. S-1-RCR-2023-  
18 00028, effective for all cases pending or filed on or after December 31, 2023; as amended by  
19 Supreme Court Order No. S-1-RCR-2024-00075, effective for all cases pending or filed on or after  
20 December 31, 2025.]

21 **Committee commentary.** — The substance of this instruction derives, in part, directly  
22 from *Sloan v. State Farm Mutual Automobile Insurance Co.*, 2004-NMSC-004, 135 N.M. 106, 85  
23 P.3d 230. *Sloan* establishes the standard for an award of punitive damages: “when the insurer’s

1 conduct was in reckless disregard for the interests of the plaintiff, or was based on a dishonest  
2 judgment, or was otherwise malicious, willful, or wanton.” *Id.* ¶ 2. *Sloan* also provides a basis for  
3 defining these terms. *See id.* (“An insurer’s frivolous or unfounded refusal to pay is the equivalent  
4 of a reckless disregard for the interests of the insured, and a dishonest or unfair balancing of  
5 interests is no less reprehensible than reckless disregard, which has historically justified an award  
6 of punitive damages.”); *id.* ¶ 23 (“The trial court should include also the definition[] of ‘dishonest  
7 judgment’—‘a failure by the insurer to honestly and fairly balance its own interests and the  
8 interests of the insured.’”).

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

19 *Sloan* overruled prior case law that required a plaintiff to establish bad faith plus “an  
20 additional culpable mental state” before the jury could be instructed on punitive damages. [~~Id.~~]  
21 2004-NMSC-004, ¶ 6 (overruling *Teague-Strebeck Motors, Inc. v. Chrysler Ins. Co.*, 1999-  
22 NMCA-109, ¶ 72, 127 N.M. 603, 985 P.2d 1183). “[U]nder New Mexico law, bad-faith conduct  
23 by an insurer typically involves a culpable mental state, and therefore the determination whether

1 the bad faith evinced by a particular defendant warrants punitive damages is ordinarily a question  
2 for the jury to resolve.” *Id.* “[B]ad faith supports punitive damages upon a finding of entitlement  
3 to compensatory damages.” *Id.* (internal quotation marks and citation omitted). But the trial court  
4 still has the discretion “to withhold a punitive-damages instruction in those rare instances in which  
5 the plaintiff has failed to advance any evidence tending to support an award of punitive  
6 damages.” *Id.*

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

13 In the event the insured also brings a cause of action for violation of the Unfair Practices  
14 Act (UPA) and the fact finder finds the insurer willfully engaged in the trade practice based on the  
15 same conduct supporting the punitive damage award for bad faith, the insured must elect a remedy  
16 between treble damages under the UPA and punitive damages for the bad faith claim. *See* NMSA  
17 1978, § 57-12-10(B) (2005); *Hale v. Basin Motor Co.*, 1990-NMSC-068, ¶ 20, 110 N.M. 314, 795  
18 P.2d 1006 (“[R]ecovery of both statutory treble damages and punitive damages based upon the  
19 same conduct would be improper.”).

20 [Revised~~], effective March 21, 2005~~]; as amended by Supreme Court Order No. S-1-RCR-2023-  
21 00028~~], effective for all cases pending or filed on or after December 31, 2023~~]; as amended by  
22 Supreme Court Order No. S-1-RCR-2024-00075.]