

1 **13-1827. Punitive damages.**

2 (Introduction)

3 In this case, _____ (*name of party making claim for punitive*
4 *damages*) seeks to recover punitive damages from _____ (*name of party*
5 *against whom punitive damages are sought*). You may consider punitive damages only if you find
6 that _____ (*party making claim*) should recover compensatory [or
7 nominal] damages.

8 (Theories of Liability)

9 [[1.] If you find that the conduct of _____ (*name of party against*
10 *whom direct liability for punitive damages is asserted*) was [malicious], [willful], [reckless],
11 [wanton], [fraudulent] [or] [in bad faith], then you may award punitive damages against ~~[[him]~~
12 ~~[her]~~~~[it]~~ that party.]

13 [[2.] [Also] [I]f you find that the conduct of _____ (*name of*
14 *agent or employee who was a tortfeasor*) was [malicious], [willful], [reckless], [wanton],
15 [fraudulent] [or] [in bad faith], you may award punitive damages against
16 _____ (*name of principal or employer party against whom liability for*
17 *punitive damages is asserted*) if:

18 (a) _____ (*name of agent or employee*) was acting [in
19 the] within scope of ~~[[his]~~~~[her]~~ employment with _____ (*name of*
20 *principal or employer party against whom liability for punitive damages is asserted*) and had
21 sufficient discretionary or policy-making authority to speak and act for ~~[[him]~~~~[her]~~~~[it]~~
22 _____ (*name of principal or employer party against whom liability for*

1 punitive damages is asserted) with regard to the conduct at issue, independently of higher
2 authority; [or if]

3 (b) _____ (name of principal or employer party against
4 whom liability for punitive damages is asserted) in some [other] way [authorized,] [participated
5 in] [or] [ratified] the conduct of _____ (name of agent or employee).]

6 [[3.] If you find that the conduct of the _____ (agents or employees), taken as a
7 whole, showed that _____ (name of principal or employer against whom liability
8 for punitive damages is asserted) was [malicious] [willful] [reckless] [wanton] [or] [in bad faith]
9 you may award punitive damages against _____ (name of principal or employer
10 party).]

11 (Definitions)

12 Malicious conduct is the intentional doing of a wrongful act with knowledge that the act
13 was wrongful.

14 Willful conduct is the intentional doing of an act with knowledge that harm may result.

15 Reckless conduct is the intentional doing of an act with utter indifference to the
16 consequences. When there is a high risk of danger, conduct that breaches the duty of care is more
17 likely to demonstrate recklessness.

18 Wanton conduct is the doing of an act with utter indifference to or conscious disregard for
19 a person's [rights] [safety].

20 (Conclusion)

21 Punitive damages are awarded for the limited purposes of punishment and to deter others
22 from the commission of like offenses. The amount of punitive damages must be based on reason
23 and justice taking into account all the circumstances, including the nature and enormity of the

1 wrong and such aggravating and mitigating circumstances as may be shown. The property or
2 wealth of the defendant is a legitimate factor for your consideration. The amount awarded, if any,
3 must be reasonably related to the injury and to any damages given as compensation and not
4 disproportionate to the circumstances.

5
6 **USE NOTES**

7 This instruction provides a general framework for a punitive damage instruction usable in
8 any civil action involving claims for punitive damages. Some other chapters of UJI Civil contain
9 punitive damage instructions specifically applicable to particular causes of action which should be
10 used where appropriate. *See, e.g.*, [~~UJI 13-861 (contracts)~~] UJI 13-861 NMRA (breach of contract)
11 and [~~13-1718 NMRA (insurance bad faith)~~] UJI 13-1718 NMRA (insurance bad faith).

12 This instruction is divided into sections by headers and numbers for ease of reference in
13 these use notes. The headers should not be included in the instruction as given to the jury, although
14 some form of numbering may be helpful if there are multiple claims for punitive damages. Within
15 each section, bracketed language should be selected as appropriate.

16 The sections labeled Introduction and Conclusion should always be given. UJI 13-1832
17 NMRA must be given following this instruction if the bracketed reference to nominal damages is
18 included in the “Introduction.” Where the case includes a claim for punitive damages against an
19 individual who directly injured the plaintiff, Paragraph 1 should be given. Paragraph (2)(a) applies
20 when the person who directly injured the plaintiff had sufficient discretionary or policy-making
21 authority to speak or act for the principal or employer with regard to the conduct at issue. Paragraph
22 2(b) applies when the person who directly injured the plaintiff did not have sufficient authority,
23 but the principal or employer authorized, ratified or participated in the act. Paragraph 3 applies
when the cumulative conduct of the agents or employees show that the principal or employer had

1 a culpable mental state, irrespective of whether the party who directly harmed the plaintiff had a
2 culpable mental state. *Grassie v. Roswell Hosp. Corp.*, 2011-NMCA-024, 150 N.M. 283, 258 P.3d
3 1075; *see also* *Clay v. Ferrellgas, Inc.*, [~~118 N.M. 266, 881 P.2d 11 (1994)~~] 1994-NMSC-080, 118
4 N.M. 266, 881 P.2d 11. The description of agents or employees can include specific names, if
5 available, categories of agents or employees, or generic references to agents or employees.
6 Depending on the facts and pleadings, more than one claim for punitive damages may be included
7 in the same case, against the same or different parties. Portions of Paragraphs 2 and 3 may not
8 need to be given if the court determines that the elements addressed in these subparagraphs (scope
9 of authority and managerial capacity, or authorization, participation, ratification) have been
10 established as a matter of law. Appropriate entries from the “Definitions” section should be given
11 depending on whether the offending conduct is alleged to be malicious, willful, etc.

12 Separate verdicts must be used for punitive damages when there is more than one party
13 against whom punitive damages are sought.

14 In an unusual or complex case, it may be appropriate to modify this general form of
15 instruction to instruct the jury clearly and correctly on the law. *See* Committee Commentary.
16 [Adopted, effective November 1, 1991; as amended, effective July 1, 1998; as amended by
17 Supreme Court Order No. 08-8300-021, effective September 10, 2008; as amended by Supreme
18 Court Order No. 13-8300-021, effective for all cases pending or filed on or after December 31,
19 2013; as amended by Supreme Court Order No. S-1-RCR-2025-00126, effective for all cases
20 pending or filed on or after December 31, 2025.]

21 **Committee commentary.** — Punitive damages cannot be awarded without the recovery of other
22 compensatory damages or nominal damages (where the cause of action does not require proof of
23 actual damages). In a negligence action, punitive damages cannot be awarded without recovery of

1 compensatory damages. In other actions, an award of nominal damages may be sufficient to
2 support a recovery of punitive damages. *See, e.g., Sanchez v. Clayton*, [~~117 N.M. 761, 767, 877~~
3 ~~P.2d 567, 573 (1994)~~] 1994-NMSC-064, ¶ 13, 117 N.M. 761, 877 P.2d 567; UJI 13-1832 NMRA.
4 Standards for an award of punitive damages against an principal or employer are addressed in
5 *Albuquerque Concrete Coring Co. v. Pan Am World [~~Services~~] Servs., Inc.*, [~~118 N.M. 140, 879~~
6 ~~P.2d 772 (1994)~~] 1994-NMSC-078, 118 N.M. 140, 879 P.2d 772; *Clay v. Ferrellgas, Inc.*, [~~118~~
7 ~~N.M. 266, 881 P.2d 11 (1994)~~] 1994-NMSC-080, 118 N.M. 266, 881 P.2d 11; *Brashear v. Baker*
8 *Packers*, [~~118 N.M. 581, 883 P.2d 1278 (1994)~~] 1994-NMSC-108, 118 N.M. 581, 883 P.2d 1278;
9 *Rhein v. ADT [~~Automotive~~] Auto., Inc.*, 1996-NMSC-066, 122 N.M. 646, 930 P.2d 783; and
10 *Grassie v. Roswell Hosp. Corp.*, 2011-NMCA-024, 150 N.M. 283, 258 P.3d 1075.

11 The definitions section of this instruction which describes the types of conduct giving rise to
12 punitive damages is disjunctive; if, for example, a defendant acts recklessly, it is unnecessary to
13 show intentional misconduct. *Greentree Acceptance, Inc. v. Layton*, [~~108 N.M. 171, 174, 769 P.2d~~
14 ~~84, 87 (1989)~~] 1989-NMSC-006, ¶ 10, 108 N.M. 171, 769 P.2d 84.

15 The New Mexico Supreme Court in *Paiz v. State Farm Fire & [~~Casualty~~] Cas. Co.*, [~~118 N.M. 203,~~
16 ~~210-213, 880 P.2d 300, 307-310 (1994)~~] 1994-NMSC-079, ¶¶ 27-29, 118 N.M. 203, 880 P.2d 300,
17 eliminated gross negligence as a basis for an award of punitive damages for contract claims.
18 Following the decision in *Paiz*, the committee recommended that gross negligence be removed as
19 a basis for punitive damages in both contract and tort cases. This recommendation was adopted by
20 the New Mexico Supreme Court in 1998.

21 In 1994, Supreme Court held that the risk of danger posed by the product or the tortfeasor's conduct
22 is a valid consideration in determining whether the conduct rises to the level of recklessness
23 necessary to show a culpable mental state. *See Clay*, [~~118 N.M. at 269, 881 P.2d at 14~~] 1994-

1 NMSC-080, ¶ 12. Thus, as the risk of danger increases, conduct that amounts to a breach of duty
2 is more likely to establish the requisite culpable mental state to support an award of punitive
3 damages. *Id.*

4 When punitive damages are awarded by a jury against more than one party, the damages awarded
5 against each must be separately stated by the jury. *Vickrey v. Dunivan*, [~~59 N.M. 90, 94, 279 P.2d~~
6 ~~853, 856 (1955)~~] 1955-NMSC-006, ¶ 9, 59 N.M. 90, 279 P.2d 853.

7 In some cases it may be appropriate to modify this general form of instruction to instruct the jury
8 clearly and correctly on the law. For instance, it may be necessary to specify the kind of conduct
9 allegedly giving rise to punitive damages liability against various parties - e.g.: “If you find that
10 the conduct of Truck Driver in [~~his~~] . . . driving [~~of~~] . . . the vehicle leading up to the accident was
11 reckless or wanton, then you may award punitive damages against [~~him~~] [Truck Driver]. If you
12 find that the conduct of Trucking Company in connection with its screening and hiring of Truck
13 Driver was reckless or wanton, then you may award punitive damages against it. Additionally, if
14 you find that the conduct of Truck Driver was reckless or wanton, you may award punitive
15 damages against Trucking Company if”

16 [As amended by Supreme Court Order No. 13-8300-021]~~[- effective for all cases pending or filed~~
17 ~~on or after December 31, 2013]~~; as amended by Supreme Court Order No. S-1-RCR-2025-00126.

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