

1707A PUNITIVE DAMAGES: PRODUCTS LIABILITY [FOR ACTIONS COMMENCED BEFORE MAY 17, 1995]

Punitive damages may be awarded, in addition to compensatory damages, if you find that the defendant's conduct was outrageous.

A person's conduct is outrageous if the person acts either maliciously or in wanton, willful, or reckless disregard of the plaintiff's rights. Acts are malicious when they are the result of hatred, ill will, a desire for revenge, or inflicted under circumstances where insult or injury is intended. A person's conduct is wanton, willful, and in reckless disregard of the plaintiff's rights when it demonstrates an indifference on (his) (her) part to the consequences of (his) (her) actions, even though (he) (she) may not intend insult or injury. The purpose of punitive damages is to punish a wrongdoer or deter the wrongdoer and others from engaging in similar conduct in the future. Punitive damages are not awarded to compensate the plaintiff for any loss (he) (she) has sustained.

A plaintiff is not entitled to punitive damages as a matter of right. Even if you find that the defendant acted maliciously or in wanton, willful, or reckless disregard of the plaintiff's rights, you do not have to award punitive damages. Such damages may be awarded or withheld at your discretion. You may not, however, award punitive damages unless you have awarded compensatory damages.

If you determine that punitive damages should be awarded, you may then award such sum as will accomplish the purpose of punishing or deterring wrongful conduct. Factors you should consider in answering this question include:

1. the seriousness of the hazard to the public;
2. the profitability of the misconduct;

3. the attitude and conduct on discovery of the misconduct;
4. the degree of the manufacturer's awareness of the hazard and of its excessiveness;
5. the employees involved in causing or concealing the misconduct;
6. the duration of both the improper behavior and its concealment;
7. the financial condition of the manufacturer and the probable effect on the manufacturer of a particular judgment; and
8. the total punishment the manufacturer will probably receive from other sources.

(Burden of Proof, Middle Burden, use Wis JI-Civil 210.)

SPECIAL VERDICT

If you answered "yes" to question ____,* answer this question:

Was (defendant)'s conduct outrageous?

Answer: _____

Yes or No

If you answered the preceding question "yes," answer this question:

What sum, if any, do you assess against (defendant) as punitive damages?

Answer: \$_____

*This question blank refers to the cause question relating to defendant's negligence.

COMMENT

[**Special Note:** This instruction applies only to actions commenced before May 17, 1995. For actions commenced on or after this date, see JI-Civil 1707.1 and 1707.2.] This instruction was approved in 1989. Editorial changes were made in 1992 to address gender references in the instruction. The comment was modified in 1996. This instruction is to be used in product liability actions. See Comment, Wis JI-Civil 1707 and 1707.1.