

UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH DAKOTA

SOUTHERN DIVISION

MIKE DALLY,

Plaintiff,

vs.

STATE AUTO PROPERTY & CASUALTY
INSURANCE COMPANY,

Defendant.

4:23-CV-04175-RAL

PHASE II FINAL JURY INSTRUCTIONS

FINAL INSTRUCTION NO. 18

In addition to any actual damages that you awarded to Dally in Phase I, you may also, in your discretion, award punitive damages. Punitive damages may not be awarded for a breach of contract, but only related to conduct that justified your finding of bad faith.

In Phase I, you awarded compensatory damages to compensate Dally for his damages legally caused by State Auto. You should award punitive damages only if State Auto's blame is so reprehensive that it warrants further sanctions to punish or deter it.

FINAL INSTRUCTION NO. 19

In addition to any actual damages that you may award to Dally, you may also, in your discretion, award punitive damages if you find that Dally suffered injury to person or property as a result of the oppression, fraud, malice, intentional misconduct, or willful and wanton misconduct of State Auto. Dally has the burden of proof on the issue of punitive damages. The purpose of awarding punitive damages is to set an example and to punish State Auto.

If you find that punitive damages should be awarded, then in determining the amount, you must consider the following five factors:

- (1) The intent of State Auto. In considering State Auto's intent, you should examine the degree of reprehensibility of State Auto's misconduct, including, but not limited to, the following factors:
 - a. Whether the harm caused was physical as opposed to economic;
 - b. Whether the tortious conduct evinced an indifference to, or reckless disregard of, the health or safety of others;
 - c. Whether the target of the conduct was vulnerable financially;
 - d. Whether the conduct involved repeated actions or was an isolated incident; and
 - e. Whether the harm was the result of intentional malice, trickery or deceit, or mere accident.
- (2) The amount awarded in actual damages. In considering this factor, you should consider:
 - a. Whether Dally has been completely compensated for the economic harm caused by State Auto;
 - b. The relationship between the harm (or potential harm) suffered by Dally and the punitive damages award;
 - c. The magnitude of the potential harm, if any, that State Auto's conduct would have caused to its intended victim if the wrongful plan had succeeded; and
 - d. The possible harm to other victims that might have resulted if similar future behavior were not deterred.
- (3) The nature and enormity of the wrong.
- (4) State Auto's financial condition.
- (5) All of the circumstances concerning State Auto's actions, including any mitigating circumstances which may operate to reduce, without wholly defeating, punitive damages.

The amount of punitive damages must bear a reasonable relationship to the actual damages. You may not impose punitive damages on harm that any conduct of State Auto may have caused to persons other than Dally.

FINAL INSTRUCTION NO. 20

The term “oppression” as used in these instructions is conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person’s right.

FINAL INSTRUCTION NO. 21

Malice is not simply the doing of an unlawful or injurious act; it implies that the act complained of was conceived in the spirit of mischief or of criminal indifference to civil obligations. Malice may be inferred from the surrounding facts and circumstances.

Actual malice is a positive state of mind, evidenced by the positive desire and intention to injure another, actuated by hatred or ill will toward that person. Presumed, or legal, malice is malice which the law infers from or imputes to certain acts. Legal malice may be imputed to an act if the person acts willfully or wantonly to the injury of the other in reckless disregard to the other's rights. Hatred or ill will is not always necessary.

FINAL INSTRUCTION NO. 22

Conduct is intentional when a person acts or fails to act for the purpose of causing injury or knowing that injury is substantially certain to occur.

Knowledge or intent may be inferred from the person's conduct and the surrounding circumstances.

FINAL INSTRUCTION NO. 23

Willful and wanton misconduct is more than negligent conduct, but less than intentional conduct. Conduct is willful and wanton when a person acts or fails to act when the person knows, or should have known, that injury is likely to occur.

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SPECIAL VERDICT FORM ON PHASE II
OF TRIAL

We, the jury, duly empaneled in the above-entitled action and sworn to try the issues, find as follows:

1. On the issue of punitive damages against State Auto, we find in favor of: (circle one).
 - a. Mike Dally
 - b. State Auto

(If you answered State Auto, please sign and date the verdict form. If you answered Mike Dally, please proceed to question 2.)

2. If you found in favor of Mike Dally on the issue of punitive damages: Determine the amount of punitive damages against State Auto (please fill in the blank).

\$ _____ (Amount of punitive damages)

Dated this _____ day of May, 2026

Foreperson