

PJI 3:50A. Intentional Torts—Misuse of Legal Procedure—Malicious Civil Prosecution

As you have heard, in this action, the plaintiff AB seeks damages that (he, she) claims resulted from a lawsuit that the defendant CD brought (and, or) continued against AB in *[state year of prior lawsuit]*. The defendant CD claims that (he, she, it) brought (and, or) continued the *[state year of prior lawsuit]* lawsuit with a reasonable belief that AB had *[specify acts constituting civil wrong alleged in prior proceeding]*. In order to recover, AB must prove: (1) that, at the time CD brought (and, or) continued the *[state year of prior lawsuit]* lawsuit, (he, she, it) did not actually believe that AB had *[specify acts constituting civil wrong alleged in prior proceeding]*, or (2) that, if (he, she, it) did have that belief, it was not reasonable, (3) that CD acted maliciously in bringing (and, or) continuing the *[state year of prior lawsuit]* lawsuit and (4) that AB suffered a special injury as a result of CD's bringing (and, or) continuing the *[state year of prior lawsuit]* lawsuit.

Whether CD reasonably believed that AB had *[specify acts constituting civil wrong alleged in prior proceeding]* depends on whether a reasonable person would have had that belief on the basis of the facts known to CD or the facts as they reasonably appeared to CD at the time (he, she, it) brought (and, or) continued the *[state year of prior lawsuit]* lawsuit. The fact that CD lost the *[state year of prior lawsuit]* lawsuit against AB is not enough in itself to establish that CD lacked a reasonable belief at the time (he, she, it) brought (and, or) continued it that AB had *[specify acts constituting civil wrong alleged in prior proceeding]*. The question on the issue of CD's reasonable belief is not whether AB had, in fact, *[specify acts constituting civil wrong alleged in prior proceeding]*, or whether CD was in fact mistaken or correct in (his, her, its) belief, but rather whether, on the facts known to or as they reasonably appeared to CD, a reasonable person would have believed that AB had *[specify acts constituting civil wrong alleged in prior proceeding]*.

CD brought (and, or) continued the *[state year of prior lawsuit]* lawsuit against AB for *[specify civil claim alleged in prior proceeding, e.g., breach of contract, trespass]*. CD claims that, at the time (he, she, it) brought (and, or) continued the *[state year of prior lawsuit]* lawsuit, the facts as they appeared to (him, her, it) were *[specify the facts alleged by the defendant to constitute the basis for the prior lawsuit]*. If you find that CD actually believed that AB had *[specify the facts alleged by the defendant to constitute the basis for the prior lawsuit]*, and that CD's belief was reasonable, you will find for CD and proceed no further *[state where appropriate: on this claim]*. On the other hand, if you find that CD did not actually believe that AB had *[specify the facts alleged by the defendant to constitute the basis for the prior lawsuit]* or that CD's belief was not reasonable, you will then consider whether CD acted maliciously in bringing (and, or) continuing the *[state year of prior lawsuit]* lawsuit.

AB claims that CD brought (and, or) continued the lawsuit maliciously in that *[state AB's claims]*. CD claims *[state CD's claims]*.

You may, but are not required to, conclude that CD acted maliciously if you find that CD did not actually believe or did not reasonably believe that AB had *[specify acts constituting civil wrong alleged in prior proceeding]*. However, if you find that (he, she, it) brought (and, or) continued the lawsuit only out of personal ill will or only to harm AB, you will decide that CD acted maliciously.

If you decide that CD did not act maliciously in bringing (and, or) continuing the lawsuit against AB, you will find for CD and proceed no further. *[Where there is a dispute as to whether AB sustained a special injury, state:]* On the other hand, if you decide that CD acted maliciously in bringing (and, or) continuing the lawsuit against AB, you will go on to consider whether AB suffered any special injury as a result of CD's having brought (and, or) continued the lawsuit.

AB claims that (he, she) suffered special injury in that *[state AB's claims]*. CD claims *[state CD's claims]*.

If you find that AB did not *[state the facts on which AB's claim of special injury is based]*, you will conclude that AB did not sustain a special injury and will proceed no further *[state where appropriate: on this claim]*. On the other hand, if you find that AB *[state the facts on which AB's claim of special injury is based]*, you will decide that CD caused AB to suffer special injury and will go on to consider AB's damages.

On the question of damages, AB is entitled to recover for all of the actual damages caused by CD's bringing (and, or) continuing the *[state year of prior lawsuit]* lawsuit against (him, her). Those damages are not limited to the damages that resulted from AB's special injury. You will award AB such amount as, in the exercise of your good judgment and common sense, you find is fair and just compensation for the *[state as appropriate: injury to AB's reputation, humiliation and mental anguish]* resulting from the lawsuit, as well as the inconvenience and other losses that AB claims were incurred, including *[state as appropriate: reasonable attorney's fees, job loss, salary loss, expenses of litigation, etc.]*. The fact that I charge you on the law of damages must not be taken as an indication that you should find for AB.

[Where punitive damages are requested, the punitive damages charge set forth in PJI 3:50 should be given]