

# Products Liability Series: Can a Plaintiff Pursue Punitive Damages From Multiple Defendants?



**Devin Bates**  
dbates@mwlaw.com  
(501) 688.8864



**Benjamin Jackson**  
bjackson@mwlaw.com  
(501) 688.8887

10/11/2022

Can a plaintiff pursue punitive damages from multiple defendants? Yes, but this comes with significant limitations for the plaintiff. Pursuing relief from multiple defendants generally results in the conclusion that joint tortfeasors may be held jointly and severally liable.<sup>[1]</sup> However, when pursuing punitive damages against multiple defendants, evidence of any one defendant's individual wealth or financial condition is deemed inadmissible, as the Arkansas Supreme Court has explained that "the right to make such proof is waived where there are two or more defendants."<sup>[2]</sup> The rationale behind this rule is that admitting such evidence would result in one defendant being punished based on a separate defendant's wealth.<sup>[3]</sup>

For this reason, a savvy plaintiff's lawyer may elect to seek compensatory damages from all defendants, but punitive damages only from one. We see this tactic surface in cases where a product manufacturer is a large company with deep pockets, and the case is also brought against one or more local product sellers or servicers of more limited means. This approach is not always permissible, the propriety instead being determined from the pleadings. If two or more defendants are "alleged to have committed *virtually identical wrongs*," then by attempting to seek punitive damages against only one defendant a plaintiff will have been deemed to have waived the right to collect punitive damages from any of the defendants.<sup>[4]</sup> On the other hand, where a plaintiff seeks punitive damages from only one defendant and that defendant's allegedly improper conduct is "different from, and greater than, that of the other defendants" then a plaintiff may properly introduce information about that defendant's financial condition and proceed against them alone for punitive damages.<sup>[5]</sup>

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<sup>[1]</sup> *Missouri Pacific R. Co. v. Arkansas Sheriff's Boys' Ranch*, 280 Ark. 53, 655 S.W.2d 389 (1983).

<sup>[2]</sup> *Berkeley Pump Co. v. Reed-Joseph Land Co.*, 279 Ark. 384, 400, 653 S.W.2d 128, 136 (1983).

<sup>[3]</sup> See e.g. *Life & Cas. Ins. Co. of Tenn. v. Padgett*, 241 Ark. 353, 407 S.W.2d 728 (1966) (reversing trial court for admitting evidence that a servant had a net worth of \$1000, and a master had a net worth of \$61,000,000); see generally *Washington Gas Light Company v. Lansden*, 172 U.S. 534, 19 S.Ct. 296, 43 L.Ed. 543 (1898).

<sup>[4]</sup> *Missouri Pac. R. Co. v. Arkansas Sheriff's Boys' Ranch*, 280 Ark. 53, 60, 655 S.W.2d 389, 393 (1983); *Curtis v. Partain*, 272 Ark. 400, 405, 614 S.W.2d 671, 674 (1981), *overruled on other grounds by Lupo v. Lineberger*, 313 Ark. 315, 855 S.W.2d 293 (1993).

<sup>[5]</sup> *Berkeley Pump Co. v. Reed-Joseph Land Co.*, 279 Ark. 384, 401-B, 653 S.W.2d 128, 137 (1983).

