

## Products Liability Series: When Are Punitive Damages Awarded?



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When are punitive damages awarded? Under Arkansas law, a statute affixes the standard for awarding punitive damages, and the key element is a showing of express or implied malice.<sup>[1]</sup> Under this rule, punitive damages are appropriate only when the evidence shows something beyond negligence and gross negligence, because neither will support an award for punitive damages.<sup>[2]</sup> To be clear, gross negligence is not enough.<sup>[3]</sup> Arkansas law requires proof of intentional wrong or a conscious indifference to the consequences of one's actions.<sup>[4]</sup> The Arkansas Supreme Court had explained that malice is "an intent and disposition to do a wrongful act gravely injurious to another."<sup>[5]</sup> Malice must be proved under the "clear and convincing evidence" standard.<sup>[6]</sup> Clear and convincing evidence is "proof that produces a *firm conviction* . . . that the allegation is true."<sup>[7]</sup>

Unsurprisingly, the plaintiffs' bar would prefer to relax this high bar when it comes to putting on proof about punitive damages. Because of the serious nature of punitive damages, skilled defense counsel will make a record on this issue throughout litigation. This important issue is often preserved through motions for summary judgment, motions in limine, requests at trial, and jury instructions. When judges disregard this black letter law, the issue can create grounds for an appeal.

The statute to return to again and again, because of the high bar set, is as follows:

In order to recover punitive damages from a defendant, a plaintiff has the burden of proving that the defendant is liable for compensatory damages and that either or both of the following aggravating factors were present and related to the injury for which compensatory damages were awarded:

(1) The defendant knew or ought to have known, in light of the surrounding circumstances, that his or her conduct would naturally and probably result in injury or damage and that he or she continued the conduct with malice or in reckless disregard of the consequences from which malice may be inferred; and

(2) The defendant intentionally pursued a course of conduct for the purpose of causing injury or damage.

Ark. Code Ann. § 16-55-206.

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<sup>[1]</sup> Ark. Code Ann. § 16-55-206.

<sup>[2]</sup> Orsini v. Larry Moyer Trucking, Inc., 310 Ark. 179, 182, 833 S.W.2d 366, 368 (1992).

<sup>[3]</sup> Edwards v. Stills, 335 Ark. 470, 483-84; 984 S.W.2d 366, 373 (1998)

<sup>[4]</sup> See Welder v. Mercer, 247 Ark. 999, 1003, 448 S.W.2d 952, 954 (1970).

[\[5\]](#) Satterfield v. Rebsamen Ford, Inc., 253 Ark. 181, 186, 485 S.W.2d 192, 195 (1972) (quoting Ray Dodge, Inc. v. Moore, 251 Ark. 1036, 1042, 479 S.W.2d 518, 522 (1972)).

[\[6\]](#) See Ark. Code Ann. § 16-55-207.

[\[7\]](#) Carter v. Four Seasons Funding Corp., 351 Ark. 637, 653, 97 S.W.3d 387, 935 (2003) (emphasis added).