

## Products Liability Series: Should a Trial Be Bifurcated When Plaintiff Seeks Punitive Damages?



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Should a trial be bifurcated when plaintiff seeks punitive damages? Yes. Arkansas rules require a separate trial, on the motion of any party, to determine the amount of punitive damages. Ark. R. Civ. P. 42 (Addition to Reporter's Notes, 2015 Amendment).

**Procedure.** The jury first determines the liability of the defendant for compensatory damages, the amount of compensatory damages to be awarded, and the liability of the defendant for punitive damages. Ark. R. Civ. P. 42(b)(2). Then, if necessary, the jury determines in a separate proceeding the amount of punitive damages. *Id.*

**Safeguards created.** One of the main advantages of bifurcating a trial is that evidence of a defendant's financial condition shall not be admitted in the first proceeding unless relevant to an issue other than the amount of punitive damages. Ark. R. Civ. P. 42(b)(2). Another significant procedural advantage to bifurcation is that compensatory damages are awarded under the preponderance of the evidence standard, whereas punitive damages are awarded only upon a showing of clear and convincing evidence.

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