

## Does Joint & Several Liability Apply to Punitive Damages?

By Nick Adair

The application of joint and several liability to economic and non-economic damage awards is well established, but its application to punitive damages is less clear. In Ohio, a defendant who is found more than 50% responsible for a plaintiff's injuries can be held responsible for 100% of the plaintiff's economic damages. This is referred to as joint and several liability. On the other hand, a defendant who is found 50% or less at fault for a plaintiff's injuries can only be held responsible for its share of the economic damages. No matter what percentage of fault is allocated to the defendant, the defendant is only responsible for its own share of the non-economic damages awarded by the jury.

Where there is more than one defendant, and the jury awards punitive damages in favor of the plaintiff, the question then becomes where punitive damages is likewise allocated pursuant to joint and several liability principles. Discussion of this issue has been rare in Ohio. Many appellate court decisions lack clarity on how this question is to be addressed.

Nearly 40 years ago, in 1982, an Ohio appellate court upheld a verdict finding a group of defendants jointly and severally liable for punitive damages because "their conduct [was a] joint effort in a common scheme, we see no reason why [punitive] damages cannot be ordered against them jointly." *Schmidt v. Lanz*, 8th Dist. Cuyahoga No. 44248, 1982 WL 2452, \*9. Similarly, in 1992 an Ohio appellate court upheld a ruling that two defendants who committed vandalism on a golf course were jointly and severally liable for the \$2,000 in punitive damages awarded to the plaintiff. *Powell v. Mayle*, 5th Dist. Stark No. CA-8835, 1992 WL 207023, \*3.

More recently, in 2014, an Ohio appellate court held that two defendants were jointly and severally liable for over \$2.5 million in punitive damages following a determination that they had committed fraud following a real estate purchase. *Northpoint Properties, Inc. v. Charter One Bank*, 8th Dist. Cuyahoga No. 100210, 2014-Ohio-1430, ¶ 115. These decisions certainly suggest that the jury can find a group of defendants jointly and severally liable for punitive damages, should their conduct warrant it.

Yet, a relatively recent decision from the U.S. District Court for the Northern District of Ohio held that joint and several liability does not apply to punitive damages awards. *MAR Oil Co. v. Korpan*, N.D. Ohio No. 3:11CV1261, 2015 WL 5732125, \*3. Despite the case precedent discussed above, the court explained that a joint and several punitive award "does not appear clearly to be a permissible remedy in Ohio." *Id.*

The fact that there are contradictory opinions in Ohio on this issue suggests that defendants remain vulnerable to joint and several punitive awards. Effective representation can make all the difference. In an era where outsized verdicts are all too common, it is important to evaluate the potential for joint and several punitive damages from the earliest notice of a claim. If the facts present conduct that is potentially punitive, then an early case evaluation must consider the possibility that a court will find joint and several liability applicable to any punitive damages award. Appropriate filings made prior to trial can address this issue and help reduce exposure.

If you would like more information or insight on this issue, please contact one of the listed Roetzel attorneys.

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