Products Liability Series: Does Arkansas Recognize Market Share Liability as a Theory of Liability?

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06/10/2021

No. Arkansas has not adopted alternative or market share liability, but has retained the traditional requirement of proximate cause in all tort cases. *See Woodward v. Blythe*, 249 Ark. 793, 462 S.W.2d 205 (1971). To prove a products liability case in Arkansas, a plaintiff must show that a product manufactured or distributed by the named defendant caused her injuries. *See Chavers v. Gen. Motors Corp.*, 349 Ark. 550, 79 S.W.3d 361, 369–70 (2002); *Jackson v. Anchor Packing Co.*, 994 F.2d 1295, 1303 (8th Cir. 1993) (observing "plaintiffs in Arkansas must introduce sufficient evidence to allow a jury to find that more likely than not their exposure to a particular defendant's product was a substantial factor in producing their injuries"); *Fields v. Wyeth, Inc.*, 613 F.Supp.2d 1056, 1060 (W.D. Ark. 2009) ("A basic requirement of products-liability actions under Arkansas law is product identification, i.e. that the actual product manufactured or distributed by the defendant caused injury to the plaintiff.").

This all stems from the Arkansas Product Liability Act, which broadly defines "product liability action" to include "all actions brought for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, ... warning, instruction, marketing, packaging, or labeling of any product," and that broad language encompasses a plaintiff's various claims regardless of her theory of recovery. Ark. Code Ann. § 16–116–102(5). But a plaintiff must still satisfy Arkansas' product identification requirement necessary to state a product liability claim. *See Bell v. Pfizer, Inc.*, 716 F.3d 1087, 1092 (8th Cir. 2013). Where a plaintiff cannot satisfy this requirement, such as an inappropriate attempt to rely on market share liability, a claim fails at the motion to dismiss stage.

This article is part of the Mitchell Williams Products Liability Series explaining the nuances of how Arkansas Products Liability law is interpreted and practiced.

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