

Products Liability Series: What Is Arkansas' Law on Causation for a Products Claim?



Devin Bates

dbates@mwlaw.com
(501) 688.8864



Benjamin Jackson

bjackson@mwlaw.com
(501) 688.8887

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What is Arkansas' law on causation for a products claim? The mere fact of an accident does not establish liability, nor does the fact that the product was found in a defective condition after an accident. *Williams v. Smart Chevrolet Co.*, 292 Ark. 376, 730 S.W.2d 479 (1987) (automobile door). In products liability cases, Arkansas law requires that causation be proved to a probability. *See Kapp v. Bob Sullivan Chevrolet Co.*, 234 Ark. 395, 353 S.W.2d 5 (1962) (only probable causes may be presented to the jury, not mere possible causes); *see also Boatmen's Tr. Co. v. St. Paul Fire & Marine Ins. Co.*, 995 F. Supp. 956, 961 (E.D. Ark. 1998) (citing *Henry H. Cross Co. v. Simmons*, 96 F.2d 482, 483 (8th Cir. 1938) for the rule statement: "To submit to a jury a choice of possibilities is but to permit the jury to conjecture or guess, and where the evidence presents no more than such choice it is not substantial, and where proven facts give equal support to two inconsistent inferences, neither of them can be said to be established by substantial evidence and judgment must go against the party upon whom rests the burden of sustaining one of the inferences as against the other.")).

The problem of speculative causation is illustrated by one recent Arkansas products case where the plaintiff's expert's testimony did not establish any cause of the alleged seat ejection to a probability, but only suggested a range of possibilities. Concluding that the entire case rested "upon conjecture and speculation" the Arkansas Court of Appeals rejected several possible causes that had been argued, explaining that "in truth, they are only *possibilities*, and do not reach the status of probabilities." *Miaoulis as Next Friend of Lopez v. Toyota Motor N. Am., Inc.*, 2021 Ark. App. 19, 8 (2021), *reh'g denied* (Feb. 17, 2021).

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