

Products Liability Series: Does Arkansas Recognize a "Malfunction Theory" of Liability?



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Does Arkansas recognize a “malfunction theory” of liability? A recent federal case has created law suggesting that Arkansas recognizes a so-called “malfunction theory” of liability in products liability actions. As further identified in a [previous post](#), 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.

The “malfunction theory” arguably applies circumstantial evidence when direct evidence of a defect no longer exists, thus allowing a plaintiff in a product liability action to establish a defect. *See Campbell Soup Co.*, 319 Ark. at 59 (citing *Nationwide Rentals Co. v. Carter*, 298 Ark. 97 (1989); *Higgins v. Gen. Motors Corp.*, 287 Ark. 390 (1985)). In *American National Property and Casualty Company v. Broan-Nutone*, the plaintiff successfully argued that there was ample circumstantial evidence that an internal failure or malfunction of the subject exhaust fan caused the fire at issue. The plaintiff established through expert testimony that the bathroom fan was the sole explanation for the fire and they ruled out all other potential ignition sources, establishing that the failure was not caused by improper installation of the fan, improper service or maintenance of the fan, or improper use of the fan. Even though plaintiff’s expert admittedly could not identify the specific defect within the fan that caused the fire, this was still enough to survive summary judgment in this particular case. *American National Property and Casualty Company v. Broan-Nutone*, Case No. 5:18-cv-5250 (W.D. Ark. July 1, 2020).

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