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Products Liability Series: What is the Statute of Limitations on a Products Claim Under Arkansas Law?

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For a products liability claim in Arkansas, the general rule is that a lawsuit shall be commenced within three years after the date on which the death, injury, or damage complained of occurs. Ark. Code Ann. § 16-116-203. In this week's installment of the Mitchell Williams Products Liability Series we explore some related legal issues that arise in the context of products liability cases in Arkansas.

Exceptions to the three year rule. When a products claim is asserted alongside a claim under the Arkansas Medical Malpractice Act, the two-year limitation in the medical malpractice act controls. *Adams v. Arthur,* 333 Ark. 53, 969 S.W.2d 598 (1998). Conversely, a products liability claim based on a warranty has a four-year statute of limitations period because such claims fall under the Uniform Commercial Code. Ark. Code Ann. § 4-2-725.

When does the statute of limitations begin to run? Arkansas follows what some have dubbed the discovery rule. That is, the statute of limitations period begins to run when the plaintiff "first becomes aware of her condition, including both the fact of the injury and the probable causal connection between the injury and the product's use," *Stewart v. Philip Morris, Inc.,* 205 F.3d 1054, 1055 (8th Cir. 2000), or when the plaintiff "by the exercise of reasonable diligence, should have discovered the causal connection between the product and the injuries suffered." *Martin v. Arthur,* 339 Ark. 149, 159, 3 S.W.3d 684, 690 (1999). An issue can develop whereby the parties dispute whether the uncontroverted proof is subject to interpretation and thus presents a triable factual issue of fact of when plaintiff should have become aware of the injury. See e.g., *Uhiren v. Bristol-Myers Squibb Co.,* 346 F.3d 824, 828 (8th Cir. 2003).

Getting a claim dismissed on statute of limitations grounds. Determining whether to file a motion to dismiss on statute of limitations grounds is sometimes about more than just the law. Often times it is a question of strategy. It involves reading one's opponent, and being familiar with their reputation as a litigator. Where the motion is a slam-dunk it is often promptly filed. This is especially true when the motion would result in dismissing all claims against a defendant. Additionally, if winning on a motion to dismiss just some claims would be successful, then it can still be wise to file such a motion if the ruling will significantly reduce the scope of discovery resulting in cost savings. However, where no discovery scope advantage can be gained, there is sometimes strategy in leaving the barred claims pending for a time. An unsuspecting plaintiff's lawyer will sometimes spend significant time spinning their wheels to develop the facts to support a time-barred claim at the expense of focusing on a claim that is not time-barred. Herein can lie the advantage to waiting until later in litigation. And if the statute of limitations is a close call, the tie is often times resolved in plaintiff's favor. That is because when a defendant moves to dismiss a claim based on it being brought outside of the period of the statute of limitations, the plaintiff is entitled to the

benefit of reasonable inferences arising from record. *See Uhiren v. Bristol-Myers Squibb Co.,* 346 F.3d 824, 828 (8th Cir. 2003). The facts, law, and lawyers of each case dictate the strategy that should be pursued, but the age-old practice of *file a motion to dismiss whenever remotely* possible is not always the cheapest or most strategic way to litigate. Developing the proper strategy takes experience and foresight.

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