

Court of Appeals Distinguishes Between Possible and Probable Causes, Affirming Directed Verdict in Products Liability Case

01/21/2021

The Arkansas Court of Appeals recently emphasized that a plaintiff must put on evidence during her case-in-chief to eliminate other causes that may fairly arise from the evidence. Otherwise, there is no question for the jury on proximate cause. The dispute in *Miaoulis v. Toyota*, 2021 Ark. App. 19, arose from a rollover accident during which a passenger was ejected from a Toyota Sienna. The plaintiff claimed the latches securing the passenger's seat were defective. At trial, the plaintiff presented expert testimony on causation but her expert testified that there was evidence to support three different modes of failure, which were equally likely. Only one of those possible modes of failure—inertial release of the seat latch—involved the allegedly defective latches.

The circuit court granted Toyota's motion for directed verdict, finding the plaintiff did not prove proximate cause because her expert merely suggested a range of possibilities. The plaintiff argued on appeal that her expert's testimony was enough to create a jury question on proximate cause because there was substantial evidence that an inertial release of the seat latch caused the ejection. The Court of Appeals disagreed, explaining that possibilities are not probabilities. Because the plaintiff's expert testified that all three modes of failure could potentially happen but he could not distinguish between the likelihood of each, the plaintiff's evidence amounted only to possible causes for the passenger's harm. The trial court must direct a verdict when the jury would be left to speculation and conjecture as to which of several possible causes was the proximate cause of an injury.