

# Products Liability Series: Is the Violation of a Statute Negligence Per Se?



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The answer to this question varies widely from state to state. But in Arkansas “the violation of a statute is only evidence of negligence and does not constitute negligence per se.” *Cent. Oklahoma Pipeline, Inc. v. Hawk Field Servs., LLC*, 2012 Ark. 157, 17, 400 S.W.3d 701, 712 (2012); *Shannon v. Wilson*, 329 Ark. 143, 947 S.W.2d 349 (1997).

**The flipside of this is also true.** That is, compliance with a statute does not conclusively resolve the issue of negligence in a defendant’s favor. The Arkansas Products Liability Act establishes that compliance with a statute existing at the time of manufacture “shall be considered as evidence that the product is not in an unreasonably dangerous condition.” Ark. Code Ann. § 16-116-205(a). Where a defendant in a products lawsuit is claiming that it complied with a statute, Arkansas Model Jury Instruction 1015 places the burden of proof on the defendant on this issue and instructs that when proven this shall be considered as evidence. But just because a product manufacturer complied with the statute, does not mean that they weren’t negligent.

**What can be done to control for this at trial?** In some cases it may make sense to seek an instruction whereby the jury is expressly cautioned that statutory non-compliance is not outcome determinative. Although in a different area of the law, such a model instruction does exist in the Arkansas Model Instructions. *See* AMI 903 (instructing that a violation of a statute although not necessarily negligence, is evidence of negligence to be considered along with all of the other facts and circumstances in the case). Another cautionary step may be filing a motion in limine to prevent plaintiff’s counsel from using conclusory and prejudicial labels to describe the conduct of defendant outside of opening and closing statements. Such a motion may be warranted if counsel has used words such as “illegal” or “unlawful” to describe a defendant’s conduct that is contrary to a statute but not indicative of negligence per se. Ultimately, the severity of the alleged statutory non-compliance can weigh heavily on the valuation of a case, but skilled products liability defense lawyers have ways and means of minimizing and controlling for this circumstance.

*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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