

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



Devin Bates

dbates@mwlaw.com
(501) 688.8864



Benjamin Jackson

bjackson@mwlaw.com
(501) 688.8887

05/19/2021

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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