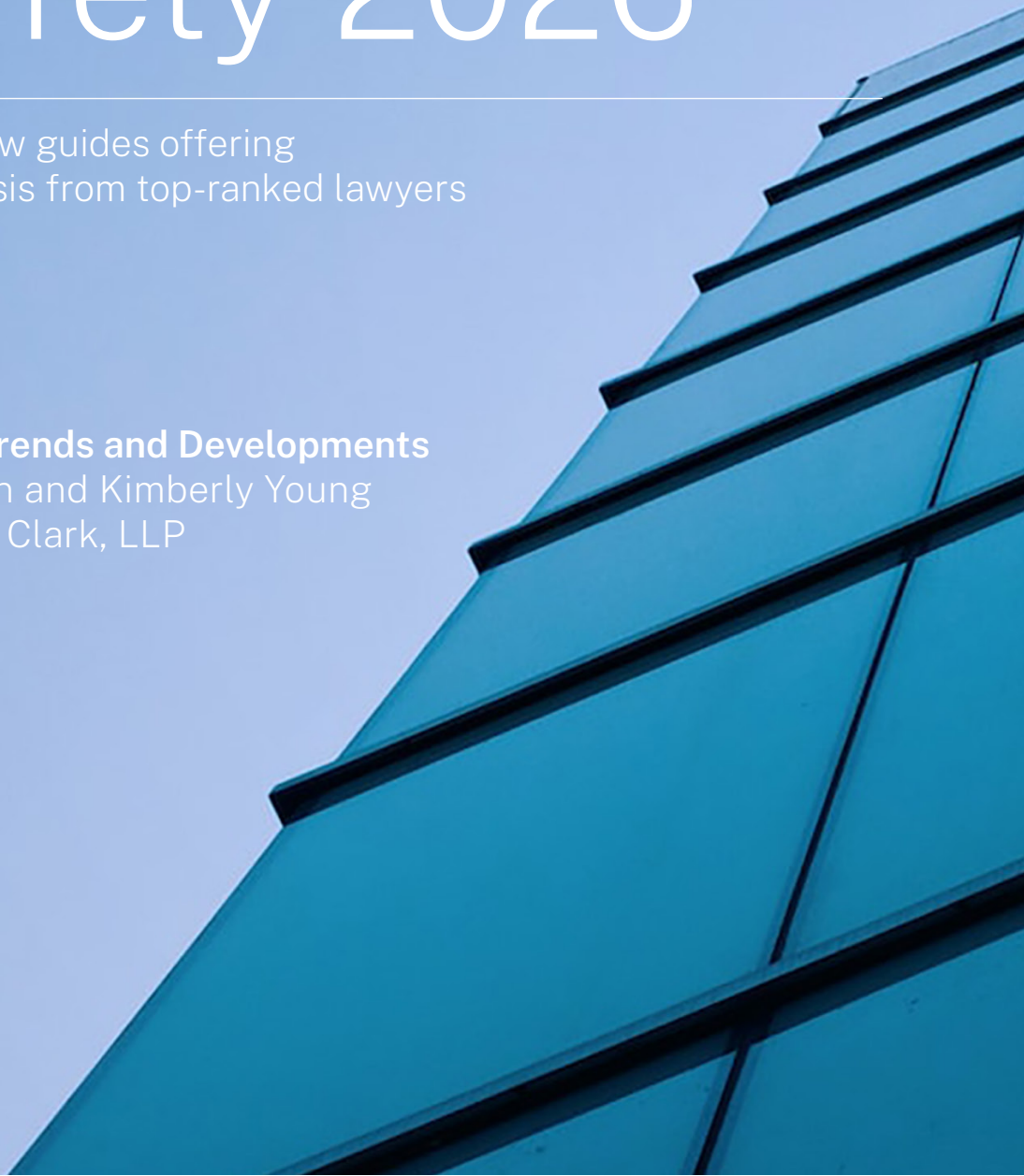

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USA – Arkansas: Trends and Developments

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USA – ARKANSAS



Trends and Developments

Contributed by:

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Friday, Eldredge & Clark, LLP is one of Arkansas's largest full-service law firms, with more than 90 attorneys based in Little Rock. The firm's litigation group includes a substantial team experienced in complex product liability matters, representing manufacturers, distributors and insurers in state and federal courts. Its work spans a range of industries, including medical devices, pharmaceuticals, industrial equipment and consumer products, and often intersects with

mass tort, class action and regulatory litigation. The team regularly handles high-exposure claims involving catastrophic injury, co-ordinates national and regional defence strategies, and manages multi-party litigation. In addition to product liability, the firm's broader litigation capabilities include commercial disputes, healthcare litigation and appellate advocacy, allowing it to provide comprehensive support across related risk areas.

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Managing Product Liability Risk Involving Minors in Arkansas

Claims involving minors carry unique and heightened risk

Claims involving minors have always been part of the product liability landscape, but an increase in technology-driven products and digital environments has been swiftly followed by an increase in related claims where the end user is a minor. Product liability claims involving minors present a distinct and elevated risk profile for businesses. While the governing legal theories (defective design, manufacture and warnings) remain the same, their application shifts significantly when the end user is a child.

Arkansas courts recognise that children are not simply “small adults”. Their limited ability to appreciate risk, combined with a greater likelihood of foreseeable misuse, expands the scope of potential liability. As a result, product liability claims that may be easily defended when the product is used by adults can create exposure when used by, or even just accessible to, children. This is especially true with failure-to-warn claims.

From a litigation perspective, product liability cases involving children are particularly challenging because:

- juries are more sympathetic to minors;
- the concept of “foreseeable misuse” expands; and
- traditional defences like comparative and contributory fault are less effective.

As such, litigation involving minors requires a thoughtful approach that recognises the different legal standards, strategies and available defences required when the end user is a child.

The “ordinary and reasonably careful child”

In law school, attorneys are taught to evaluate negligence based on what “The Reasonable Man” would do. Similarly, the Arkansas product liability statutes define an “unreasonably dangerous” product as one that is dangerous to an extent “beyond that which would be contemplated by the ordinary and reasonable buyer, consumer, or user” of the product.

When the injured party is a child, however, the bar for proving “unreasonably dangerous” is lowered. A plaintiff must prove only that the product is more dangerous than expected by an “ordinary and reasonably careful minor considering his or her age and intelligence”. This is true whether the product was specifically designed and marketed for children or whether it was simply foreseeable that minors would have access to it.

If a product is likely to be encountered by children, it may give rise to liability even if it is marketed exclusively to adults. Courts will examine whether the manufacturer should have anticipated that children would interact with the product and whether reasonable steps were taken to mitigate associated risks.

This principle has broad implications across industries. Appliances, medications, chemicals and consumer electronics may all fall within its scope, depending on how and where they are used. For companies, the key question is not how the product is marketed, but how it is likely to be used in practice.

When determining whether a child’s access to a product was reasonably foreseeable, the child’s local culture and customs are relevant. The types of products considered accessible to children by Arkansas courts may be surprising to some out-of-state and foreign manufacturers. For example, the Arkansas Supreme Court has held that it was reasonably foreseeable to the manufacturer of a tractor with a grain cart that children as young as eight and 13 would operate or otherwise access it. The court reasoned that farming in Arkansas is frequently a family operation and that all family, including the kids, may be expected to come into contact with the family’s farm machinery.

As a result, companies must evaluate not only how a product is intended to be used, but how it is likely to be encountered in real-world settings. If a product is accessible to children, attractive to them or commonly used in environments where children are present, Arkansas courts are likely to treat child interaction as foreseeable. That foreseeability, in turn, expands the scope of both design and warning obligations.

Design expectations

Design defect claims involving minors often focus less on technical product performance and more on whether the product should have incorporated features that mitigate risk to children. The presence of child users can shift that analysis in important ways.

A product that is reasonably safe for adult use may still be considered unreasonably dangerous if it presents a disproportionate risk to children and could have been made safer through reasonable design modifications. This issue frequently arises in products such as household chemicals, medications, appliances, and consumer goods with detachable components. In these contexts, the absence of child-resistant packaging, guards or safety mechanisms can become a focal point of litigation.

Of course, as products develop and evolve, the law works to keep up with the times. Plaintiffs are now asking the courts to treat aspects of digital platforms as products for purposes of strict liability claims. Rather than focusing on a risk of physical harm, these plaintiffs are shifting the focus to an alleged harm to the mental health of minor users. For example, these design claims may scrutinise features such as algorithmic recommendations, autoplay and infinite scroll.

Plaintiffs will typically argue not only that a safer design was possible, but that the risk to children was obvious and avoidable. This can be a compelling argument to jurors, particularly where the cost of additional safety features appears modest relative to the severity of the alleged harm.

From a defence perspective, design defect claims involving minors require reframing the analysis away from hindsight-driven expectations and toward the reasonableness of the product's design at the time it entered the market. While plaintiffs often argue that products should have incorporated additional child-protective features, Arkansas law does not impose a duty to design a product that is risk-free or child-proof in every conceivable scenario.

The appropriate legal standard remains whether the product was unreasonably dangerous for its foreseeable users, not whether it could have been made saf-

er in the abstract. This distinction is critical in cases involving minors. In this context, defence strategy often focuses on demonstrating that the product's design reflects accepted industry standards, regulatory compliance and practical utility considerations.

Defendants should also address the plaintiff's reliance on alternative design arguments. It is not sufficient for a plaintiff to suggest that a safer design was theoretically possible; the proposed alternative must be feasible, effective and reasonable under the circumstances. The defence must challenge speculative or overly simplistic proposals that do not account for feasibility, performance or unintended consequences.

Moreover, claims based on alleged mental health harms introduce additional challenges for plaintiffs, particularly with respect to causation and foreseeability. Defendants can emphasise the multifactorial nature of these harms and the difficulty of attributing them to specific design features, especially where user behaviour, parental oversight and external influences play a significant role.

Finally, while plaintiffs often argue that risks to children were "obvious" and that additional safeguards would have been inexpensive, the defence can reframe this argument by focusing on real-world design constraints and competing considerations. Jurors may initially be receptive to the idea that "more safety" is always better, but effective defence advocacy highlights that product design involves balancing safety, usability, cost and consumer expectations. When that balance is shown to be reasonable, the claim that the product was unreasonably dangerous becomes far less persuasive.

Warnings in a child-centred context

Failure-to-warn claims are often the most accessible and persuasive theory for plaintiffs in product liability cases, particularly where minors are involved. Unlike design defect claims, which typically require highly technical evidence and proof of a feasible alternative design, failure-to-warn claims focus on a more intuitive question: did the company adequately communicate known or foreseeable risks? Unlike complicated design components, jurors feel equipped to answer

this question simply based on their common experience.

Failure-to-warn claims involving minors provide certain advantages to plaintiffs. Arkansas law requires that warnings be reasonable and adequate under the circumstances – a standard that is inherently flexible and highly dependent on the characteristics of the expected user.

When the foreseeable user is a child, that analysis becomes more complicated. Children may not read warnings, may not understand them and may not appreciate the risks they describe. Even where warnings are directed at adults, plaintiffs may argue they were insufficient to be seen, understood or followed in a way that prevents harm to a child.

As a result, warnings that are sufficient in an adult-user context may be deemed inadequate when children are involved. Juries may focus on whether the warning effectively communicated risk to caregivers, whether it addressed child-specific hazards, and whether it was presented in a manner likely to influence behaviour.

Although failure-to-warn claims are often attractive to plaintiffs, they are not without meaningful defences. From the defence perspective, the central task is to shift the jury's focus away from the simplicity of the plaintiff's narrative that "the company should have just warned" and toward the reasonableness of the company's conduct under real-world conditions.

Arkansas law does not require perfect warnings, nor does it impose a duty to eliminate all risk; the standard is one of reasonableness under the circumstances. This allows defendants to frame the case not as a failure to act, but as a series of considered decisions made in light of what was known at the time. Evidence that the company evaluated risks, followed industry standards and implemented warnings consistent with regulatory guidance can help reposition the narrative from omission to diligence.

A key component of this defence is demonstrating that the warnings provided were adequate in content and placement. This includes showing that the warning clearly identified the risk, used understandable lan-

guage and was presented in a manner reasonably calculated to reach the user. In many cases, defendants can point to multiple layers of communication (packaging, instructions, digital disclosures or onboarding materials) to argue that the risk was not concealed but disclosed through appropriate channels.

Another key factor in defending failure-to-warn cases is to remember that the plaintiff must prove the element of causation. Even if a warning could have been more robust, liability depends on whether the alleged deficiency actually caused the injury. This creates an opportunity to argue that the outcome would have been the same even with a different or more prominent warning, particularly where the risk was already known, where the product was misused in an unforeseeable way, or where the user did not review available warnings. Depending on the strength of this argument, a defendant may be able to have the claim dismissed without ever reaching a jury.

In cases involving minors, this argument can be reframed to focus on whether the warning was reasonably directed to the appropriate audience, typically the caregiver. If the company can demonstrate that it provided clear guidance to adult users, it may argue that the law does not require warnings to be tailored to every potential misuse by a child, particularly where the product is not intended for child use.

Another important defence is that there is no duty to warn of open and obvious risks or risks that are already widely understood. While Arkansas courts have limited the scope of this doctrine, it remains relevant in cases where the hazard is apparent to the plaintiff or objectively obvious. Defendants can also argue that the alleged risk was not reasonably knowable at the time of distribution, particularly in cases involving emerging technologies or evolving scientific understanding.

Finally, internal company documents (often used by plaintiffs to suggest knowledge of risk) can be reframed as evidence of responsible corporate behaviour: risk assessments, internal debates and revisions to warnings may demonstrate that the company actively engaged with safety issues rather than ignore

them. When presented effectively, this evidence can counter the perception that the company failed to act.

Defending failure-to-warn claims requires more than pointing to the existence of a warning. It requires telling a cohesive story: that the company identified relevant risks, communicated them in a reasonable manner, and acted consistently with industry and regulatory expectations. When that narrative is established, the simplicity of the plaintiff's claim becomes easier to challenge, even in cases where juror sympathy may favour the injured party.

Comparative fault in theory and practice

Arkansas's comparative fault law provides a mechanism for allocating responsibility among parties based on their respective contributions to an injury. In theory, this framework allows defendants to reduce their liability by demonstrating that the plaintiff, or others, bore some share of fault.

In practice, however, comparative fault can be less effective when the injured party is a minor. Juries are reluctant to assign fault to minors, particularly younger ones, and may view behaviour that might otherwise be characterised as misuse as simply a foreseeable characteristic of immaturity.

The responsibility of the caregiver: the role and limits of parental fault in Arkansas

In cases involving injured minors, defendants will often look to the conduct of a parent or caregiver as part of the overall liability analysis. As a factual matter, this is frequently unavoidable. Many incidents arise in settings where adults control access to the product, make purchasing decisions, or are responsible for supervision. Where a caregiver failed to follow warnings, failed to supervise the product's use, allowed access to a product not meant for minors, or used it in an unintended way, those facts can be highly relevant to how the injury occurred.

Incorporating caregiver conduct into the case serves two related purposes for the defence. First, it helps reframe the narrative away from an alleged defect in the product and toward the totality of circumstances surrounding the incident. Second, it supports arguments that the product was not unreasonably dan-

gerous when used as intended, and that the injury resulted from intervening or superseding conduct.

In Arkansas, defendants may present evidence that a product was misused or that warnings were not followed, and caregiver actions often form the basis of those arguments. For example, where a warning clearly directs that a product be kept out of reach of children, evidence that a caregiver disregarded that instruction can be used to challenge both defect and causation. Similarly, where a product is used in a manner inconsistent with its instructions, defendants can argue that the resulting harm falls outside the scope of reasonably foreseeable use.

These arguments can be particularly effective when tied to causation. Even if a plaintiff establishes that a warning could have been clearer or more prominent, the defence can contend that the injury would not have occurred had existing warnings been followed. In that sense, caregiver conduct becomes central to the question of whether any alleged deficiency in the product actually caused the harm.

At the same time, this strategy is not without its limitations. Arkansas's doctrine of parental immunity generally prevents defendants from bringing parents into the lawsuit as parties for purposes of allocating fault. Under Arkansas law, an unemancipated minor generally cannot bring a negligence claim against a parent for conduct arising out of parental supervision and care. As a result, even where caregiver conduct is a substantial contributing factor, it may not translate into a formal reduction of liability in the same way it would with other third parties.

The parental immunity doctrine does not render caregiver-focused defences ineffective, but it does shape how they should be deployed. Rather than relying solely on formal fault allocation, defendants are often better served by using evidence of parental conduct to reinforce broader themes: that the product was reasonably designed, that adequate warnings were provided, and that the injury resulted from circumstances outside the product's intended and foreseeable use.

In addition, the Arkansas appellate courts have indicated a willingness to revisit the doctrine of parental

immunity, which many states have abandoned over the years. For this reason, the trial team may want to involve appellate counsel early in the litigation to ensure this argument is properly raised and preserved for appeal.

Therefore, caregiver conduct remains a relevant and often important component of the defence strategy, but it should be viewed as part of a holistic narrative rather than a standalone solution. Arkansas law may currently limit the ability to shift liability directly to parents, but it does not prevent defendants from presenting a full account of how the injury occurred and why responsibility should not rest with the product's design, manufacture or warnings.

Managing risk: a proactive approach

Given the heightened exposure associated with minors, risk management must be proactive and integrated across product design, warnings and distribution.

Effective strategies begin with a realistic assessment of how products are used in the market, including the likelihood of child interaction. Where such interaction is foreseeable, companies should evaluate whether design modifications can reduce risk without compromising functionality.

Equally important is internal co-ordination. Product, legal and marketing teams must work together to ensure that risk information is communicated consistently and effectively. In many cases, liability arises not from a lack of knowledge, but from a failure to translate that knowledge into clear and actionable warnings.

Conclusion

It is critical to ensure that cases involving minors are evaluated within the proper legal framework. Expanded notions of foreseeability and the practical limitations imposed by doctrines such as parental immunity can create pressure points in litigation, but the core legal standards remain grounded in reasonableness and foreseeability, not theoretical perfection judged with the bias of hindsight.

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