

Products Liability Series: Does a Supplier of a Defective Product Have Recourse Against a Manufacturer?



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Does a supplier of a defective product have recourse against a manufacturer? Yes. By statute, Arkansas has created indemnification rights accruing in favor of product suppliers. When a supplier of a defective product is not the manufacturer, the supplier “shall have a cause of action for indemnity from the manufacturer of a defective product arising from the supplying of the defective product.” Ark. Code Ann. § 16-116-207. However, there is no right to indemnity when the claim for a defective product fails. *Calpener v. Bluebonnet Milling Co.*, 322 Ark. 751, 911 S.W.2d 586 (1995) (retailer’s request for litigation expenses from manufacturer was denied because summary judgment was granted on the product defect claim). While Arkansas case law is vague on the issue, commentators have suggested that a supplier may be deprived of the statutory right of indemnification against the manufacturer where the supplier is shown to be independently negligent. Robert A. Sachs, *Product Liability Reform and Seller Liability: A Proposal for Change*, 55 Baylor L. Rev. 1031 (2003).

Oftentimes, we see situations where a supplier seeks indemnification from a manufacturer through its contract. Under Arkansas law, an indemnity provision in a contract will be construed in accordance with the general rules for construction of a contract. Nevertheless, a non-negligent party’s intention to obligate itself to indemnify a third party for the third party’s own negligence is given heightened scrutiny. The intent must be expressed in clear and unequivocal terms and to the extent that no other meaning can be ascribed. *Chevron U.S.A., Inc. v. Murphy Exploration & Prod. Co.*, 356 Ark. 324, 330, 151 S.W.3d 306, 310 (2004). Arkansas law allows a negligent party to be indemnified by another party for the negligent party’s own negligence if the parties have specifically contracted for that outcome. See *Arkansas Kraft Corp. v. Boyed Sanders Constr.*, 298 Ark. 36, 764 S.W.2d 452 (1989) (stating that a contract to indemnify a party for their own negligence must be expressed in unequivocal terms); *United Sys. of Ark., Inc. v. Beason & Nalley, Inc.*, 2014 Ark. App. 650, at 4, 448 S.W.3d 731, 733-34 (2014) (citing *Restatement (Third) of Torts: Apportionment of Liability* § 22 (2000) for the proposition that it is possible to contract to indemnify an indemnitee for the indemnitee’s own negligence but a high standard for contractual language must be met).