

## Products Liability Series: Is There a Defense Where a Plaintiff Misused a Product?



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Is there a defense where a plaintiff misused a product? Yes. Under Arkansas law, a defendant may assert that the plaintiff misused the product as part of its affirmative defense of comparative fault. AMI 1014. When invoking this defense, the defendant has the burden of proof to show that the misuse was unforeseeable and that such misuse was the proximate cause of the plaintiff's injuries. This must be done independent of any conduct on the part of the defendant. AMI 1014; *see* Ark. Code Ann. §§ 16-116-105.

For example, in one Arkansas case, the possibility of misuse by the consumer was cited as a reason for affirming grant of directed verdict in favor of the product manufacturer. *Lakeview Country Club, Inc. v. Superior Prod.*, 325 Ark. 218, 224, 926 S.W.2d 428, 431 (1996) (evidence suggested that paint may have been misapplied, suggesting consumer misuse, thus defeating liability against manufacturer).

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