

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



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Is there a defense where a plaintiff altered a product? Yes. In an Arkansas products liability claim, the plaintiff must prove that the product was supplied by the defendant in a defective condition. AMI 1008. “If a product is not unreasonably dangerous at the time it leaves the control of the manufacturer or supplier but was made unreasonably dangerous by subsequent unforeseeable alteration, change, improper maintenance, or abnormal use, such conduct may be considered as evidence of fault on the part of the user.” Ark. Code Ann. § 16-116-206; *see also Elk Corp. of Arkansas v. Jackson*, 291 Ark. 448, 725 S.W.2d 829 (1987) (no summary judgment because of the existence of fact issues related to driver’s contribution to loading and with respect to degree of negligence in shipper’s loading practices).

With respect to proof of a defective condition, if the jury finds that in the normal course of events no injury, death, or property damage would have occurred in the absence of some defect, the jury is permitted, but not required, to infer that a defect existed. AMI 1016.

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