

Legal Update | Arkansas Law Curtails Collateral Source Rule

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The Arkansas General Assembly has enacted a major change to which compensable damages may be recovered in a personal injury claim. On February 11, 2025, Governor Sarah Huckabee Sanders signed HB 1204 into law. An abbreviated and direct bill, HB 1204 adds a single sentence to Ark. Code Ann. § 16-64-120, which prescribes recovery of damages for medical expenses. The new law will have a new subsection reading: *"Recovery of damages under subsection (a) of this section for past necessary medical care, past necessary medical treatment, or past necessary medical services received includes only those costs actually paid by or on behalf of the plaintiff or that remain unpaid and for which the plaintiff or any third party is legally responsible."*

In other words, the new law essentially abrogates the collateral source rule on medical expenses adopted by the Arkansas Supreme Court in *Montgomery Ward & Co. v. Anderson*, 334 Ark. 561, 976 S.W.2d 382 (1998). In that case, the Court reasoned that an injured person must be compensated for the "total harm done," even if paid by collateral sources. The Court also established exceptions for this rule, primarily to rebut an injured person's testimony regarding financial necessity, return to work or whether they paid bills themselves.

Critics of the bill have invoked the "made whole doctrine," an Arkansas legal tenet that permits a third-party to recover from a verdict or settlement in favor of an injured person only if that person has been "made whole" by the settlement. Opponents of the bill argue that a person cannot be "made whole" if the total cost incurred by them is not fulfilled.

Supporters of the bill claim that the bill will lower hospital costs, discourage injured persons from claiming artificially inflated damages and more efficiently resolve tort claims, whether in settlement or in a verdict. Proponents also claim that the bill will lower liability insurance premiums in Arkansas if carriers reduce the value they pay on tort claims and settlements.

The law is set to take effect on August 4, 2025. We expect constitutional challenges to the new law, as the collateral source rule is widely observed, and is even enacted in many states by statute. The Plaintiffs' bar in Arkansas has been virulently opposed to HB 1204. It must be noted that in *Montgomery Ward*, the Court did not rely on a constitutional right to recovery in holding that a person is entitled to full costs incurred, but rather explicitly cited the Restatement (Second) of Torts.

There is a history of tort reform in Arkansas that has been overturned by the Court. In 2003, the Arkansas General Assembly passed the Civil Justice Reform Act of 2003, which prescribed caps on noneconomic damages recoverable to a Plaintiff, including punitive damages, and also enacted language similar, but not exactly, to that in HB 1204. In the 2009 opinion *Johnson v. Rockwell Automation*, 2009 Ark. 241, 308 S.W.3d 135 (2009), the Arkansas Supreme Court struck down this medical evidence section of the law, which was written as: “*Any evidence of damages for the costs of any necessary medical care, treatment, or services received shall include only those costs actually paid by or on behalf of the plaintiff or which remain unpaid and for which the plaintiff or any third party shall be legally responsible.*”

In *Johnson*, the Court held that permitting only this evidence to be admitted violated the separation of powers clause of Article II of the Arkansas Constitution and the 80th Amendment, § 3 to same, because evidence is the purview of the Court, and not of the legislature (“Because rules regarding the admissibility of evidence are within our province, we hold that the medical-costs provision also violates separation of powers under article 4, § 2 and amendment 80, § 3 of the Arkansas Constitution and, therefore, is unconstitutional.”)

Additionally, the Court also declared the caps on punitive damages prescribed in the Civil Justice and Reform Act of 2003 unconstitutional in *Bayer CropScience, LP v. Schafer*, 2011 Ark. 518, 385 S.W.3d 822 (2011) based on Article V, § 32 of the Arkansas Constitution.

Furthermore, as the law comes into effect in August, it is presently unclear as to whether the law will only apply to cases filed following its enactment or whether it will apply retroactively to cases filed prior to August 4, 2025. Litigation following August 4, 2025 may illuminate this issue.

Should this law survive any challenges, it may alleviate the burden on personal injury defendants by reducing a personal injury claimant’s recoverable past medical expenses to only those incurred and not paid for by a collateral source.

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