

May 07, 2009

I wanted to let you know that Public Justice just struck another blow for justice -- this time in a critically important case before the Arkansas Supreme Court. The case -- *Johnson v. Rockwell* -- challenged the constitutionality of two aspects of Arkansas' "tort-reform" statute (Act 649 of 2003) that posed an enormous threat to the rights of Arkansas tort victims to achieve full recovery for their injuries.



Arkansas Supreme Court

One of the challenged provisions allowed a fact finder to consider or assess the negligence or fault of nonparties in order to reduce the recovery available to plaintiffs. The other limited plaintiffs' ability to introduce full evidence of the costs of necessary medical care, treatment, or services (an abrogation of the collateral source rule). On April 30, 2009, the Arkansas Supreme Court struck down both provisions on separation-of-powers grounds, as Public Justice had urged in an *amicus* brief to the court.

The underlying case provided a perfect example of how Act 649 worked in practice to harm tort victims and reward wrongdoers. The suit was filed by a worker -- Darrell Johnson -- who was injured on the job by a "starter bucket" manufactured by Rockwell Automation, Inc. Mr. Johnson sued Rockwell, alleging defective design and manufacture of the starter bucket.

In response, Rockwell argued that the bucket was modified by Mr. Johnson's employer without Rockwell's knowledge and invoked Act 649 in arguing that it should be permitted to "name nonparties at fault" (i.e., Mr. Johnson's employer) and that Rockwell's liability should be restricted to "its percentage share of actual liability," even though Mr. Johnson would be barred from seeking any damages from its employer by Arkansas' workers' compensation statute. Rockwell also argued that Mr. Johnson should only be permitted to introduce as evidence those medical costs actually paid by him or on his behalf or that remain unpaid and for which Mr. Johnson or any legal party is legally responsible.

In response, Mr. Johnson challenged Act 649 as violative of Arkansas' Constitution. The legal heart of the case was whether the Court or the Legislature has the ability to limit recoveries in personal-injury cases. Public Justice's brief argued that both aspects of the Arkansas tort reform statute violate the separation-of-powers provisions of the Arkansas Constitution. The Arkansas Supreme Court agreed, yielding a huge victory for Arkansas tort victims and a strong blow in favor of access to justice.

To read the Arkansas Supreme Court's decision in *Johnson v. Rockwell*, [click here](#).

To read the *amicus* brief filed by Public Justice, [click here](#).

Our heartfelt thanks to Public Justice Arkansas State Coordinator Hank Bates of Cauley, Bowman, Carney & Williams, who filed the brief on our behalf.

Thanks to you, too, for your support of Public Justice and our Access to Justice Campaign. With your help, we are making a huge difference.

Arthur Bryant
Executive Director
Public Justice
& the Public Justice Foundation

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