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Mendoza v. WIS International, Inc.: **The Supreme Court's Decision Makes Seat Belt Non-Use Relevant Evidence**

By Justice J. Brooks, I



For decades, Arkansas Code Annotated § 27-37-703 barred Arkansas defense attorneys from introducing evidence related to a plaintiff's non-use or improper use of a seatbelt in lawsuits resulting from motor vehicle accidents (the "Failure to Comply Statute"). This allowed a plaintiff to keep evidence of his or her potentially negligent actions from juries even though the plaintiff was seeking damages for injuries that would likely have been mitigated or prevented had he or she been wearing a seat belt at the time of the accident. However, a recent Supreme Court of Arkansas decision, *Mendoza v. WIS International, Inc.*, which addresses the Failure to Comply Statute, may open the door for the introduction of this evidence at trial and offer insight into how the court may treat analogous cases in the future.

Mendoza v. WIS International, Inc.

The United States District Court for the Eastern District of Arkansas certified the following question of law to the court in *Mendoza*: does Arkansas Code Annotated § 27-37-703, which restricts the admissibility of seat-belt-nonuse evidence in civil actions, violate the separation-of-powers doctrine found in article IV, section 2, of the Arkansas Constitution? The court ultimately found the statute unconstitutional.¹ Specifically, the court held that "Arkansas Code Annotated § 27-37-703 violates separation of powers under article 4, § 2 and amendment 80, § 3 of the Arkansas Constitution and is therefore unconstitutional."²

The court noted that, while the legislature may establish substantive law through statute, the rules of evidence "fall within th[e] court's domain."³ "When conflicts arise between legislation and rules of evidence and procedure, [the court's] rules remain supreme."⁴ Thus, "if the statute is a rule of evidence, then it violates separation of powers and is unconstitutional."⁵ Accordingly, the court reasoned that the Failure to Comply Statute constituted a rule of evidence because it completely restricted the admittance of evidence related to the non-use or improper use of a seat belt, thus, rendering the Failure to Comply Statute unconstitutional.⁶

The court's decision was not unanimous. Three justices⁷ wrote dissenting opinions criticizing the majority decision. Two of the dissents argued that the Failure to Comply Statute did not apply to the facts



Justice J. Brooks, I, is an attorney with Quattlebaum, Grooms & Tull PLLC, where he primarily practices in the areas of commercial litigation, employment litigation, tort litigation, and both state and federal regulatory issues.

in *Mendoza*.⁸ Therefore, the majority should have answered in the negative or refused to answer the question because the federal district court limited the scope of the question to the *Mendoza* facts.⁹

The dissents of Justice Hart and Justice Woods also contend that Rule 402 of the Arkansas Rules of Evidence gives the legislature authority to determine the relevancy of evidence in court proceedings.¹⁰ Rule 402 states that “[a]ll evidence is admissible, except as otherwise provided by statute.”¹¹ It follows that the legislature, through statute, already determined that evidence of a failure to wear or improper use of a seatbelt is inadmissible; therefore, Arkansas Code Annotated § 27-37-703 is constitutional.¹² Ultimately, the majority rejected this argument but, nonetheless, requested that the Civil Practice Committee review Rule 402 in light of its *Mendoza* ruling.¹³ The committee must determine whether Rule 402 opens the door for the legislature to statutorily create rules of evidence related to relevancy. If so, it could lead to significant changes to Rule 402 so that the rule defines its scope more clearly.

Practical Application

The *Mendoza* decision, in baseball terms, is likely a ground rule double¹⁴ for attorneys who defend negligence claims arising from motor vehicle accidents. Typically, defense attorneys assert at least three affirmative defenses in negligence actions: contributory negligence, comparative fault, and assumption of the risk. In negligence cases where plaintiffs fail to wear seat belts, the severity of their injuries is often greater. Prior to *Mendoza*, defense attorneys could not present evidence of a plaintiff’s failure to wear a seat belt at trial, but now defense attorneys can present such evidence to show the non-use or improper use of a seat belt caused, contributed, or exacerbated a plaintiff’s injuries in support of the affirmative defenses. The presentation of this evidence at trial could lead to an increase in defense verdicts and a reduction of damages awarded to plaintiffs because juries will likely apportion a greater amount of fault to plaintiffs who fail to wear or improperly use their seat belts.

Still, Rule 403 of the Arkansas Rules of Evidence may serve as a significant impediment to the introduction of this evidence at trial. Rule 403 provides that “relevant evidence may be excluded if its probative value is substantially outweighed by the dan-

ger of unfair prejudice.”¹⁵ In applying Rule 403 to the introduction of seat-belt-nonuse evidence, the Supreme Court of Arkansas previously found that such evidence may be unfairly prejudicial in a negligence case, and even in the presence of a limiting instruction to a jury, the prejudicial effect may not be cured.¹⁶ The court’s position should soften the blow of the *Mendoza* decision on plaintiff attorneys and will likely allow them to effectively argue that evidence of improper or non-use of a seatbelt should be excluded in negligence cases involving motor vehicle accidents under Rule 403.

Potential Legislative Action

The *Mendoza* decision provides the legislature with a roadmap to ensure the constitutionality of any future legislation concerning the admissibility of evidence related to seatbelt use.¹⁷ The court indicated that, had the Failure to Comply Statute limited its restriction on admissibility to evidence of comparative or contributory negligence, it would have likely established a rule of substantive law and been found constitutional.¹⁸ Thus, if the legislature adopts a similar statute, it should limit the statute’s scope to preclude the introduction of evidence related to specific affirmative defenses. But unless and until the legislature acts, evidence of a plaintiff’s improper use or nonuse of a seat belt will be relevant and, subject to Rule 403, admissible in cases that involve motor vehicle accidents.

Broader Ramifications

In 2009, the Supreme Court of Arkansas struck down part of the Arkansas Civil Justice Reform Act of 2003 (CJRA) in *Johnson v. Rockwell Automation, Inc.*¹⁹ The court found that provisions of the CJRA violated the separation of powers under the Arkansas Constitution because the legislative provisions dictated court procedure or the admissibility of evidence, which only the court has the authority to do.²⁰ Approximately seven years later, with an entirely different court composition except for Justice Danielson, the court in *Mendoza* has again asserted its sovereign authority concerning any rule related to the pleading, practice, and procedure of Arkansas courts.²¹ With its decisions in *Mendoza* and *Johnson*, the court appears to be sending the Arkansas legislature a clear message—stay in your lane or else.

The court’s apparent stance offers attorneys a unique opportunity to examine and

scrutinize other statutory provisions to determine if they may impede on the court’s rule-making province. In cases in which such a claim is plausible, attorneys may find the court eager to enforce the separation of powers under the Arkansas Constitution to the benefit or detriment of their clients.

Endnotes:

1. See 2016 Ark. 157, at 1, 490 S.W.3d 298, 299.
2. *Id.* at 9-10, 490 S.W.3d at 303-04.
3. See *id.* at 5, 490 S.W.3d at 301.
4. *Id.* at 9, 490 S.W.3d at 303.
5. *Id.* at 5, 490 S.W.3d at 301.
6. *Id.* at 8-10, 490 S.W.3d at 303-04.
7. Justice Karen R. Baker, Justice Josephine Linker Hart & Justice Rhonda K. Wood.
8. See *Mendoza*, 2016 Ark. at 11-12, 490 S.W.3d at 304-05 (Baker, J. & Hart, J. dissenting).
9. See *id.*, 490 S.W.3d at 304-05 (Baker, J. & Hart, J. dissenting).
10. See *id.* at 17 & 19, 490 S.W.3d at 308-09 (Hart, J. & Wood, J. dissenting) (Justices cite the following language of Rule 402 in support of their arguments: “All relevant evidence is admissible, except as otherwise provided by statute”).
11. ARK. R. EVID. 402 (emphasis added).
12. See *Mendoza*, 2016 Ark. at 18-19, 490 S.W.3d at 308-09 (Hart, J. & Wood, J. dissenting).
13. See *id.* at 9 n.1, 490 S.W.3d at 303. The court also asked the committee to review “other rules of evidence” that conflict with its holding in *Johnson v. Rockwell Automation, Inc.*, 2009 Ark. 241, 308 S.W.3d 135 (the case in which the Supreme Court of Arkansas set forth the reasoning used in *Mendoza*).
14. For those unfamiliar with the rules of baseball, a ground rule double is an award of two bases to all baserunners including the batter for a ball that leaves the field of play after being hit fairly.
15. ARK. R. EVID. 403.
16. See *Grummer v. Cummings*, 336 Ark. 447, 450, 986 S.W.2d 91, 93 (1999).
17. See *Mendoza*, 2016 Ark. at 6-7, 490 S.W.3d at 302.
18. See *id.* at 7, 490 S.W.3d at 302.
19. 2009 Ark. 241, 308 S.W.3d 135.
20. *Id.* at 8-10, 308 S.W.3d at 141-42.
21. See *Mendoza*, 2016 Ark. 157, 490 S.W.3d 298. ■