

Products Liability Series: Does Arkansas Law Recognize a Claim for Medical Monitoring?



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No. Medical monitoring may possibly be treated as a type of damages, but is not a separate cause of action in Arkansas.

The Rule. Although the case law on this topic is scant in Arkansas, in one case the Arkansas Supreme Court acknowledged that there is no standalone claim for medical monitoring. *Baker v. Wyeth-Ayerst Lab'ys Div., a Div. of Am. Home Prod. Corp.*, 338 Ark. 242, 245, 992 S.W.2d 797, 799 (1999); *Nichols v. Medtronic, Inc.*, No. 4:05-CV-00681-JLH, 2005 WL 8164643, at *11 (E.D. Ark. Nov. 15, 2005) (“Arkansas has not clearly recognized a claim for medical monitoring and would not where no physical injury is alleged.”). Also, Arkansas “questions its availability as a remedy.” *In re Prempro*, 230 F.R.D. 555, 569 (E.D. Ark. 2005).

The Confusion. States vary widely on their treatment of medical monitoring, in some places treating it as a separate cause of action. In class action certification and multi-district litigation this highly variable state specific rule can further complicate case administration. See *Zehel-Miller v. Astrazenaca Pharms., LP*, 223 F.R.D. 659, 663 (M.D. Fla. 2004) (“The fact that medical monitoring is not treated uniformly throughout the United States creates a myriad of individual legal issues.”)

Implications for Litigation. For those engaged in nationwide class action certification questions or multi-district litigation, the implications of Arkansas’ rule are potentially case determinative. As far as cases in Arkansas, where a plaintiff is trying to rely on medical monitoring to substantiate damages, defense counsel should use the law cited above to press hard for proof of present injury. Because there is a dearth of law on this subject, absent an established legally available method of recovery defense counsel should be able to argue against allowing the plaintiff to recover on such a theory. Litigation of this question is a higher stakes endeavor than it might immediately appear, because the absence of well-developed precedent comes with both the higher risk and reward of developing new case law.

This article is part of the Mitchell Williams Products Liability Series explaining the nuances of how Arkansas Products Liability law is interpreted and practiced.

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