1. **Minimum liability limits**

Operators of motor vehicles in Arkansas are required to carry liability insurance coverage with limits of at least $25,000 per person for bodily injury, $50,000 per accident, and $25,000 to cover property damage to other person’s property.

*See* Arkansas Code § 27-22-104(b).

2. **Negligence laws** (Is the jurisdiction a pure contributory negligence state; what type of comparative fault is applicable, etc?)

In any action for personal injury, wrongful death, or damage to property in which recovery is based upon fault, liability is determined by comparing the fault of the party seeking damages with the fault assessable to all parties from whom the party seeks to recover damages. If the fault assessed to the party seeking damages is 50% or greater, then the party is not entitled to recover damages; if claimant’s fault is below 50%, then damages are reduced by the percentage of claimant’s fault.

*See* Arkansas Code § 16-64-122.

3. **Bodily Injury Statute of Limitations**

All actions for bodily injury must be commenced within three (3) years after the date the cause of action accrues, however, the filing date is tolled in limited instances (e.g., for persons deemed disabled by reason of minority or insanity and for armed forces personnel during time of war).

*See* Arkansas Code § 16-56-105(1).

4. **Property Damage Statute of Limitations**

All actions for damage to property must be commenced within three (3) years after the date the cause of action accrues.

*See* Arkansas Code §§ 16-56-105(6), 116(a) and 118(a).

5. **Are punitive damages insurable in the jurisdiction?**

Punitive damages are insurable under Arkansas law provided they arise from an otherwise insurable event. *Unigard Sec. Ins. Co. v. Murphy Oil USA, Inc.*, 331 Ark. 211, 962 S.W.2d 735 (1998); *Southern Farm Bureau Cas. Ins. Co. v. Daniel*, 246 Ark. 849, 440 S.W.2d 582 (1969) (finding there is nothing in the state's public policy that prevents an insurer from indemnifying its insured against punitive damages arising from an accident) A distinction, however, is made for intentional conduct. *Id.*

6. **Is there an intrafamily immunity defense?**


Arkansas law does recognize immunity for torts between child and parent. There are, however, two exceptions: (1) when the parent has committed an intentional or willful tort. *Attwood v. Estate of Attwood*, 276 Ark. 230, 633 S.W.3d 366 (1982); and (2) when the suit is a direct action against an insurer and the damages sought are for uninsured – motorist benefits. *Fields v. Southern Farm Bureau Cas. Ins. Co.*, 350 Ark. 75, 87 S.W.3d 224 (2002).

In 2009, the Arkansas Supreme Court indicated that it is willing to consider additional exceptions to parental immunity. *Greenwood v. Anderson*, 2009 Ark. 360, 324 S.W.3d 324 (2009).

7. **Is there a bodily injury damage threshold? If so, what is it?**

There is no bodily injury damage threshold.
8. **What are the quick rules on Subrogation MP/PIP?**

Practically, an insurer will not be able to recover on a subrogation claim for medical or disability benefit payments.

Technically, Arkansas law does provide an insurer who pays medical or disability benefits with a subrogation lien when the recipient of those benefits recovers in tort for injury through settlement or judgment. Arkansas Code § 23-89-207(c). However, an insurer is not entitled to subrogation unless the insured has been made whole for his or her loss. *Ryder v. State Farm Mut. Auto. Ins. Co.*, 371 Ark. 508, 268 S.W.3d 298 (2007). Because of that, a subrogation lien cannot arise until the insured has received the settlement process or damage award and until there is a judicial determination that the insured has been made whole. *Riley v. State Farm Mut. Auto. Ins. Co.*, 2011 Ark. 256, 381 S.W.3d 840 (2011). Since 1997, no Arkansas appellate court has ruled that a personal injury victim was made whole.

In 2013, the Arkansas Court of Appeals found that because a subrogation lien cannot arise until the insured has received the settlement proceeds or damage award and until a judicial determination that the insured has been made whole, a settling tortfeasor or insurance company cannot condition payment of the settlement proceeds on including a potential subrogation lien holder on the settling check. *Lopez v United Auto. Ins. Co.*, 2013 Ark. App. 246, 427 S.W.3d 154 (2013).

9. **Are there no fault laws in the jurisdiction?**

Arkansas law requires automobile liability insurance carriers to offer no-fault insurance coverage for medical and health benefits; income disability benefits; and accidental death benefits. The named insured has the right to reject in writing any or all of the no-fault coverage.

*See* Arkansas Code §§ 23-89-202 & 203.

10. **Is the customer’s insurance primary?**

Generally yes, but contract language may modify.

11. **Is there a seat belt defense?**

An Arkansas statute does not allow the fact that an occupant of a vehicle failed to wear a seat belt to be admitted into evidence in a civil action (other than in certain products liability cases). However, the constitutionality of this statute is currently being litigated before the Arkansas Supreme Court.

*See* Arkansas Code § 27-37-703(a)(1).
12. **Is there a last clear chance defense?**


13. **Is there an assumption of risk defense?**

With the adoption of comparative negligence rules, Arkansas law no longer recognizes the doctrine of assumption of risk. However, it is recognized as one aspect of comparative negligence for a jury to consider. *Dawson v. Fulton*, 294 Ark. 624, 745 S.W.2d 617 (1998).

14. **Is there a UM requirement?**

Arkansas law provides that underinsured/uninsured motorist insurance coverage must be offered by the insurer, but it can be rejected by the insured.

*See* Arkansas Code §§ 23-89-209 & 403.

15. **Is there a physical contact requirement?**

Yes, Arkansas courts have long held that “there can be no recovery for fright or mental pain and anguish caused by negligence, where there is no physical injury.” *Erwin v. Milligan*, 188 Ark. 658, 67 S.W.2d 592 (1934). However, physical contact is not required in intentional tort cases. *Midwest Buslines, Inc. v. Johnson*, 291 Ark. 304, 305, 724 S.W.2d 453 (1987).

16. **Is there a mandatory ADR requirement?**

Trial and appellate courts have discretionary authority to order mediations, Ark Code Ann § 16-7-202(b), and on motion of all parties, a court must refer to mediation. Ark. Code Ann. § 16-7-202(a)(2).

17. **Are agreements reached at a mediation enforceable?**

Yes. *See* Ark Code Ann. § 16-07-202(c).

18. **What is the standard of review for a new trial?**

2. If the motion for new trial was granted (finding that the verdict was contrary to the preponderance of the evidence), then the standard is abuse of discretion. *Scott v. McClain*, 296 Ark. 527, 758 S.W.2d 409 (1988).

3. If the motion for new trial was denied, then the standard is whether the verdict is supported by substantial evidence (giving the verdict the benefit of all reasonable

4. If the motion primarily concerns the adequacy of the award, rather than a question of liability, then the standard is abuse of discretion. *Smith v. Pettit*, 300 Ark. 245, 778 S.W.2d 616 (1989).

5. If the motion concerns liability, then the standard is substantial evidence to support the verdict. *Minerva Enters., Inc. v. Howlett*, 308 Ark. 291, 824 S.W.2d 377 (1992).

19. **Is pre-judgment interest collectable? If so, at what rate?**

The general rule is no. Prejudgment interest is not recoverable on claims that are neither liquidated as a dollar sum nor ascertainable by fixed standards. Prejudgment interest is allowable where at the time of loss the amount of damages is definitely ascertainable by mathematical computation, or if the evidence furnishes data that make it possible to compute the amount without reliance on opinion or discretion. *Woodline Motor Freight, Inc. v. Troutman Oil Co., Inc.*, 327 Ark. 448, 453, 938 S.W.2d 565, 568 (1997). The rate is traditionally capped at 6%. *City National Bank of Ft. Smith v. First Nat’l Bank & Trust Co.*, 22 Ark. App 5, 732 S.W.2d 489 (1987).

20. **Is post judgment interest collectable? If so, at what rate?**

For contract actions, the rate is the greater of (a) a rate specified in the contract; or (b) 10%. For other judgment, the rate is 10%. However, in no case may interest exceed the state’s usury ceiling. See Ark. Code Ann § 16-55-114.

21. **Is there a workers compensation exclusive remedy defense?**

Yes.


22. **Is the doctrine of joint and several liability applicable?**

Yes, in a modified form.

*See* Ark. Code Ann. §§ 16-55-102 and 16-55-205. (verify)

23. **Is there a self critical analysis privilege?**

24. **Is accident reconstruction data admissible?**

   Yes.

25. **What is the rule on admissibility of medicals paid/reduced vs. total bills submitted?**

   Total bills may be submitted. *Thomas v. Rockwell Automation, Inc.*, 2009 Ark. 241 (2009). The fact that a medical care provider accepts an insurer’s lower payment schedules is considered “collateral source” and is not admissible.

26. **What is the jurisdiction's rule on offers of judgment?**

   Offers of judgment are limited to costs – not attorney’s fees.

   *See* Ark. R. Civ. P. 68.

27. **What is the jurisdiction's rule on spoliation of evidence?**


   However, Arkansas permits a jury to draw a negative inference in two contexts: (a) where a party knows a piece of evidence may be material to a claim but intentionally destroyed or loses it, *see* AMI 106A (2016 ed.); and (b) where a party has control of relevant evidence but fails to produce it without a satisfactory explanation, *see* AMI 106 (2016 ed.). A specific finding of bad faith or intent to suppress the truth on the part of the spoliator is not required. *Bunn Builders, Inc. v. Womack*, 2011 Ark. 231 (2012).

28. **Are there damages caps in place?**

   No. In 2011, the cap on damages was declared unconstitutional by the Arkansas Supreme Court. *Bayer CropScience LP v. Schafer*, 2011 Ark. 518 (2011).

29. **Is CSA 2010 data admissible?**


30. **Briefly, does the jurisdiction have any unique rules on electronic discovery?**

   Electronic discovery is governed by Ark. R. Civ. P. 26.1. In most cases, Ark. R. Civ. P. 26 and 34 are broad enough to cover discovery of electronically stored information. Rule
26.1 is optional: either the parties must agree to follow it or the court must so order on motion for good cause shown. Within 120 days after the complaint is filed, unless the court reopens this period, all parties should agree to invoke the rule and advise the court or one party should move the court to apply the rule. In addition to being optional, the Arkansas rule differs from the provisions of the federal rules governing e-discovery because absent the parties’ agreement or the court’s order to the contrary, “the responding party shall produce the information in a form in which it is ordinarily maintained or in a form that is reasonably useful.” The responding party, however, “shall also produce any specialized software, material, or information not ordinarily available so that the requesting party can access and use” the electronically stored information produced.

31. **Is the sudden emergency doctrine recognized in the jurisdiction?**


32. **Are there any rules prohibiting or limiting the use of the reptile theory at trial?**

There are no specific rules prohibiting the use of the reptile theory at trial. However, here are rules that *limit* the use of the reptile theory.

Arkansas law clearly prohibits “Golden Rule” arguments in the context of damages. *Smith v. Pettit*, 300 Ark. 245 (1989). A “Golden Rule” argument, as defined in Arkansas, is an argument that suggests to jurors that they “place themselves in the position of a party or victim.” *King v. State*, 317 Ark. 293, 297, 877 S.W.2d 583, 586 (1994). Similarly, the Eighth Circuit defines a Golden Rule argument as one that “asks the jury to place itself in the defendant’s position.” *Lovett ex rel. Lovett v. Union Pac. R. R.*, 201 F.3d 1074, 1083 (8th Cir. 1999). Neither the Arkansas Supreme Court nor the Eighth Circuit has addressed whether this prohibition also applies to liability. However, there are indications that the Arkansas Supreme Court would be equally offended by a Golden Rule argument regarding liability as one concerning damages.

Golden Rule arguments are prohibited because they tend to “subvert the objectivity of the jury” and can be “seen as an attempt to dissuade the jurors from their duty to weigh the evidence and instead to view the case from the standpoint of a litigant or party.” *King*, 317 Ark. at 297, 877 S.W.2d at 586. Judges fear that allowing Golden Rule arguments will encourage the jury to “depart from neutrality and to decide the case on the basis of personal interest and bias rather than on evidence.” *Dole v. USA Waste Servs. Inc.*, 100 F.3d 1384, 1388 (8th Cir. 1996). Neither the Eighth Circuit nor Arkansas courts, when discussing the prohibition of Golden Rule arguments, specify that the prohibition applies only to Golden Rule arguments relating to damages. Instead, the prohibitions are set out in a generic fashion, centered broadly on the policy of ensuring that the jury’s focus is on the facts and evidence.

In conclusion, the Eighth Circuit and Arkansas courts have not yet addressed whether Golden Rule arguments regarding liability are prohibited. In Arkansas, at least, there are
indications that Golden Rule arguments might be treated the same regardless of the issue they are made in regard to, but there are also some implications that Golden Rule arguments are narrowly tailored to damages issues.

Motions in limine and trial objections based on Ark. R. Evid. 401, 403 and 404 may be invoked to prohibit Reptile theory proof and arguments regarding general safety rules/regulations, potential harm to the public and endangering the public/community. For example, before a general FMCSA rule violation can be admitted, there must be a nexus to the facts at issue. See Brumley v. Keech, 2012 Ark. 263 (evidence of FMCSR violation foreclosed due to lack of proof that it [failure to conduct post-crash drug testing] contributed to or caused accident, failure).

33. **What are the jurisdictional limits of the jurisdiction's civil courts - i.e. Small Claims, District Court, Superior Court?**

   Small Claims Court and District Court have a jurisdictional limit of $5,000.00. Any amount over $5,000.00 must be brought in Circuit Court.

34. **Are state judges elected or appointed?**

   State judges are elected.