

**UNITED STATES DISTRICT COURT**  
EASTERN DISTRICT OF ARKANSAS  
RICHARD SHEPPARD ARNOLD UNITED STATES COURTHOUSE  
500 W. CAPITOL, ROOM D444  
LITTLE ROCK, ARKANSAS 72201-3325  
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January 5, 2011

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RE: Schultz v. Walker, 4:09-cv-00460-WRW

Dear Counsel,

The facts of this case may present a question of first impression.

Plaintiff contends, as I understand it, that Defendant's insurance company's payment of \$40,450 to Plaintiff's insurance company was a voluntary payment, and therefore should not be credited against a judgment. Alternatively, Plaintiff argues that evidence of the payment should be excluded under the collateral source doctrine.

Was there any kind of agreement between Defendant's insurance company and Plaintiff's insurance company (as there were in other cases along this line)? Was there any pertinent language on the check or draft payable from Defendant's insurance company to Plaintiff's insurance company?

Does a setoff such as this have to be pled by the Defendant? I do not see that it has been pled in (am I overlooking something?).

As a practical matter, it is hard for me to view this as “voluntary” since the payment undoubtedly would not have been paid if Defendant didn’t anticipate being held liable. Am I on the wrong track in this line of thinking?

I realize that a decision on this issue is overripe, but I guess I’m like the judge who had a seven year old son that he had not yet named—couldn’t make a decision.

Please submit short, simultaneous letter briefs regarding the above by 5 p.m., January 12, 2010.

Cordially,

Wm. R. Wilson

CC: Mr. James W. McCormack, Clerk of the Court