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Oklahoma's Liability Environment and Opportunities for Legal Reform

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Oklahoma has historically been a national leader in adopting legislative reforms to curb excessive liability, address litigation abuse, and maintain a balanced civil justice system. In recent years, however, Oklahoma has fallen behind in addressing areas of rising importance.

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Introduction and Executive Summary

Oklahoma has been at the forefront of enacting legislative reforms to maintain balance in its civil justice system, deter excessive liability, and prevent lawsuit abuse. Although the state remains a leader in legal reform, recent years have highlighted challenges and limitations. This report provides an overview of the state's litigation landscape through the lens of legislative achievements, judicial impact, and opportunities for future action.

Legislative Achievements

The Oklahoma Legislature has enacted many significant reforms, particularly between 2009 and 2014, that have enhanced the state's civil justice environment. These reforms include limiting joint liability, implementing restrictions on damages in personal injury cases, and promoting fairness in class action litigation. Specific actions, such as determining medical damages based on actual costs rather than "list prices," have helped reduce excessive awards. More recently, Oklahoma was one of the first states to enact liability protections related to COVID-19, shielding businesses and healthcare providers from certain pandemic-related lawsuits.

The pace of legal reform in Oklahoma has slowed, however, with few significant legislative achievements since 2020. While the legislature has enacted some reforms, such as a law providing transparency and oversight when the state hires outside counsel, it has not adopted measures that address some of the most pressing legal reform issues.

The Cost of Excessive Liability

Oklahomans bore a lawsuit system burden of $2,930 per household in 2022, according to a study conducted by The Brattle Group based on insurance data.[1] While this amount is substantial, it was about 25 percent below the national average, which likely reflects Oklahoma's past efforts to foster a balanced civil justice system. The burden on Oklahomans of excessive litigation and liability, however, is still significant.[2] And this burden is likely increasing due to the loss of the state's limit on

noneconomic damages and new unaddressed challenges.

The state's civil justice system also creates headwinds for its business climate. The Oklahoma State Chamber Research Foundation's 2024 edition of The Oklahoma Scorecard, which evaluates the state's economic competitiveness, ranked the state 30th overall, rising nine places from the prior year. Yet, Oklahoma's legal climate ranking dropped nine places from the prior year, falling to 34th and creating a counterweight that likely prevented its competitiveness from improving further. The Scorecard cited the appellate courts' record of invalidating and undermining tort reforms as among the reasons for the state's downward slide.[3]

Oklahoma also places in the middle of the pack in other rankings of state business environments. For example, CNBC's 2024 annual Top States for Business ranked the state 26th overall and gave Oklahoma a C+ for its "business friendliness," a category that includes the state's lawsuit and liability climate.[4]

By any measure, there is room for Oklahoma to further improve its reputation as a state with a fair legal climate that is open for business.

Unaddressed Areas of Rising Importance

This paper identifies four areas in which Oklahoma has fallen behind or is heading in the wrong direction.

- Third-Party Litigation Funding (TPLF): TPLF arrangements, in which outside funders invest in lawsuits for a share of potential recoveries, have raised ethical and procedural concerns. The influence of these hidden funders could mean more speculative litigation and impede the ability of parties to enter reasonable settlements. Oklahoma has yet to adopt legislation that would require TPLF disclosure.

- Nuclear Verdicts: With the removal of the cap on noneconomic damages, Oklahoma faces a heightened risk of "nuclear verdicts" (awards over $10 million). Recent Oklahoma legislation sought to reduce this risk by limiting "anchoring" tactics used by plaintiffs' attorneys to manipulate juries into reaching multimillion dollar verdicts, but has yet to pass. An additional option is to establish guidelines to evaluate whether awards are excessive based on objective criteria.

- Standards for Expert Testimony: The federal judiciary recently tightened standards for expert testimony to exclude unreliable evidence. Oklahoma should consider adopting similar standards to maintain alignment with federal rules and ensure

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courts act as gatekeepers in preventing made-for-litigation junk science from influencing juries.

- Misleading Lawsuit Advertising: Misleading tactics in lawsuit advertising have adversely affected public health, with reports of patients stopping their use of prescribed medication or not seeking beneficial medical care. In addition, by flashing multimillion-dollar verdicts, lawsuit ads have conditioned the public to believe that such award amounts are normal and that they actually make it into the pockets of consumers, when these outliers may in fact be substantially reduced or thrown out altogether on appeal. Other states have enacted laws to prevent common misleading practices in lawsuit advertising, but Oklahoma has not yet taken action.

Oklahoma should resume its prior leadership on civil justice reform. Addressing these and other issues of rising importance would bolster Oklahoma's legal and business environment.

Judicial Impact

Oklahoma's Supreme Court naturally has a significant impact on the treatment of civil justice issues in the state, including how it applies or, in some instances, invalidates legislative reforms. Certain of the Oklahoma Supreme Court's past rulings, which we discuss in further detail in this paper, show a willingness to invalidate tort reforms on state constitutional grounds. Most significantly, in 2019, the court invalidated a limit on noneconomic damages in personal injury cases,[5] removing a vital check on excessive awards.

Despite that decision and other setbacks, the Oklahoma Supreme Court has also issued some sound rulings that adhere to core tort liability principles. For example, the court rejected an expansive application of public nuisance law in a 2021 case involving opioid manufacturers, emphasizing that public nuisance laws are intended for criminal or offensive property-based activities.[6] In addition, the court has preserved Oklahoma's employment-at-will doctrine[7] and instructed trial courts to closely scrutinize the reasonableness of requests for attorneys' fees in class action litigation.[8]

The Oklahoma Legislature's Adoption of Legal Reform

Oklahoma has historically been a national leader in adopting legislative reforms to curb excessive liability, address litigation abuse, and maintain a balanced civil justice system. In recent years, however, Oklahoma has fallen behind in addressing areas of rising importance.

An Impressive Legal Reform Record

The Oklahoma Legislature has adopted a panoply of reforms, many of which were enacted between 2009 and 2014, that brought the state into the mainstream on a wide range of core liability issues.

Damages in Personal Injury Cases

Oklahoma took steps to ensure that damages in personal injury suits provided reasonable compensation for injuries and were not excessive. For example, one law ensures that damages for medical expenses reflect amounts actually paid for treatment, not the often-larger amounts that appear only on an invoice, eliminating "phantom damages."[9] Another law allows a court, upon request of a party, to order future damages for medical expenses to be paid in periodic payments, rather than upfront as a lump sum.[10] The legislature also adopted, as discussed earlier, a (now-defunct) limit on noneconomic damages in personal injury cases.[11] Another reform requires courts to instruct juries that damage awards for personal injury and wrongful death are not subject to federal or state income tax so that they do not mistakenly inflate such amounts.[12]

Improving Fairness in Litigation

Oklahoma also adopted several laws to improve fairness in litigation. The state strengthened its expert testimony standard,[13] improved safeguards in class action litigation,[14] and clarified its prohibition on filing frivolous lawsuits.[15] In addition, the legislature enacted a law addressing forum shopping, codifying a doctrine that allows courts to decline to decide cases that have little or no connection to where they are filed.[16] Another law clarifies the ability of defendants to obtain a plaintiff's medical records in personal injury cases.[17] Oklahoma also adopted legislation requiring discovery requests to be reasonably calculated

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to lead to admissible evidence and proportional to the needs of the case, consistent with the approach taken in federal courts.[18] In addition, Oklahoma provided an immediate (interlocutory) appeal of a trial court order granting or denying class certification,[19] recognizing that once such cases are certified, there is inordinate pressure to settle.

Supporting Representative Juries

The Sooner State is one of only two states with an innovative lengthy trial fund (the other state is Arizona). That fund, in place since 2005, facilitates broad participation on complex, high-stakes trials by making up to $200 per day available to jurors who serve more than 10 days and do not receive their usual income.[20] This system is funded by a $10 fee that lawyers pay when they file a civil complaint. Juries that include people from all walks of life enhance the quality of deliberations and may reduce the potential for outlier verdicts.[21]

Core Tort Liability Changes

Oklahoma has also modified several core areas of tort liability. For example, it abolished joint liability, replacing it with liability based on a defendant's fair share of fault.[22] Another law allows jurors to consider whether a person in a car accident was wearing his or her seatbelt.[23] The state codified and preserved longstanding law recognizing that those who own or lease property generally have no duty to protect trespassers from injury.[24] The legislature also clarified that any person who provides services to a charitable or nonprofit organization without compensation is entitled to the limited liability extended to volunteers.[25]

Product Liability Reforms

The state also addressed excessive liability and abuses in product liability litigation. For example, Oklahoma adopted a rebuttable presumption that a product is not defective when its design or labeling complied with or exceeded mandatory safety standards or federal regulations, or the product was subject to premarket licensing or approval by the federal government.[26] It also enacted a law, consistent with many other states, providing that businesses that solely sell products, but do not have anything to do with their design or warnings, are typically not subject to product liability lawsuits.[27] The legislature clarified a law recognizing that subsequent remedial measures undertaken by a defendant to improve safety are inadmissible to prove a defect in a product's design or warnings.[28] It also required plaintiffs claiming damages from exposure to asbestos or silica to meet certain medical criteria for injury,[29] and for asbestos claimants to disclose whether they filed claims with trust funds established by bankrupt companies for their injuries.[30] These laws were among several other product liability reforms.[31]

Oklahoma's Recent Accomplishments Are Helpful but Limited

Oklahoma's civil justice reform achievements since 2020 are helpful but fewer and more limited in scope compared with its earlier steps.

COVID-19 Liability Protections

Oklahoma again showed itself a leader on civil justice reform when it was among the first states to address liability concerns stemming from the COVID-19 pandemic. In May 2020, the legislature enacted three pandemic-related reform bills. The first limited the liability of healthcare providers when treating COVID-19 patients, during a public health emergency in which there were shortages of staffing, space, and equipment, to cases involving gross negligence or willful misconduct.[32] The second provided assurance to businesses that, if sued for exposing customers, employees, or others to COVID-19, compliance with executive orders, regulations, and government guidance would offer a defense.[33] The third assured those who stepped up to make, sell, or donate critical personal protective equipment, medical devices, and disinfecting and cleaning supplies to help during the pandemic would only be subject to product liability lawsuits if they knew the product was defective, deliberately disregarded a substantial and unnecessary risk that the product would cause serious injury, or intended to cause harm.[34] Many other states followed by enacting similar laws.

Transparency in Private Attorney Contracting

More recently, the Oklahoma Legislature enacted safeguards that apply when the state retains private outside counsel to pursue litigation.[35] That law, enacted in 2022, responded in part to concerns that former Attorney General Mike Hunter had provided lucrative contingency-fee contracts to attorneys and law firms who donated to his campaigns to pursue the state's opioid litigation.[36] That situation contributed to Oklahoma, "a once national leader in enacting fair and balanced civil justice reform," landing on the American Tort Reform Foundation's "Judicial Hellholes" list in 2019.[37] The 2022 law also caught Oklahoma up to many other states that had such good-government laws in place. The law requires state agencies and officials to use an open process when seeking outside counsel, mandates disclosure of relationships between the state agency and outside attorneys or firms, requires government attorneys to control the litigation and settlement, and establishes a sliding scale for contingency fees in state contracts with outside counsel, among other safeguards.[38]

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ALI "Restatements"

A third area addressed in recent years is the American Law Institute's (ALI) increasing proclivity to adopt "Restatement" provisions that, if adopted by courts, would expand liability rather than objectively "restate" existing legal rules.[39] The Oklahoma Legislature has preemptively attempted to prevent its courts from shifting the state's insurance law based on novel provisions in the ALI's 2019 Restatement of the Law, Liability Insurance, or similar works. Legislation enacted in 2021 accomplishes this goal by providing that a statement or restatement of the law of insurance that purports to create, eliminate, expand or restrict a cause of action, right, or remedy, or conflicts with other state law, is not the law or public policy of Oklahoma.[40]

This follows Oklahoma's earlier adoption of legislation providing that premises owners generally have no duty to protect trespassers from harm,[41] which also responded to a novel ALI provision.

Outstanding Needs: Reforms Addressing Issues of Rising Importance

Oklahoma's efforts to address liability expansions and lawsuit abuse have slowed over the past decade. After the surge of activity discussed above, the state adopted relatively few reforms. Oklahoma's latest achievements have been helpful, but limited in scope. Meanwhile, new issues have emerged or risen in importance that the state has yet to address. While other states have responded to these concerns, Oklahoma has fallen behind. Below, we describe four areas in which Oklahoma is heading in the wrong direction or needs to catch up.

Third-Party Litigation Funding

Over the past decade, outside investment in litigation has exploded. Dedicated commercial litigation finance firms, hedge funds, institutional investors, foreign sovereign wealth funds, and wealthy individuals are investing billions of dollars each year into funding U.S. lawsuits in exchange for a portion of any recovery obtained by a law firm.[42] These TPLF arrangements implicate wide-ranging concerns for which safeguards are needed. While several states have acted, Oklahoma legislation addressing TPLF did not make it over the finish line in the 2024 session.

TPLF funds a wide range of lawsuits, including mass tort litigation,[43] in which the outside money sometimes supports advertising intended to generate thousands of claims in addition to the litigation itself.[44] By spreading litigation costs and risks, funders may work with plaintiffs' lawyers to pursue speculative lawsuits or assert more questionable claims for a chance at a financial windfall.

Experts have observed that TPLF is "reshaping every aspect of the litigation process—which cases get brought, how long they are pursued, when are they settled."[45] An outside funder's presence can turn what is traditionally a negotiation between two opposing parties into a multi-party affair with a "behind the scenes"

funder interested solely in maximizing a return on their investment. Indeed, major funders recognize, and even tout, that their presence "make[s] it harder and more expensive to settle cases."[46]

These arrangements can also create serious ethical problems, as often-undisclosed funders may exert control over potential case settlements or other major litigation decisions in place of the law firm's client.[47] A growing list of examples shows the lengths some funders have gone to maximize their return on investment in others' lawsuits.[48] Fortress Investment Group, which funds mass tort and IP litigation, as well as other litigation funders, was recently described by insiders as intricately involved in the litigation it funds. As the funder's managing partner indicated, "We see where funds go. If you do something you're not supposed to do, we're gonna be upset."[49]

The influence of a litigation funder is often hidden. For example, Delaware federal district court Chief Judge Colm Connolly raised concerns that a patent monetization firm had used shell companies to obscure its own influence and financial interest in the cases.[50] Judge Connolly subsequently stressed the importance of requiring greater transparency in litigation financing so that courts do not become "casinos where people should just go to profit."[51]

The flood of TPLF investments into U.S. litigation also provides a means for foreign adversaries to "weaponize the courts for strategic goals."[52] Foreign interests may fund lawsuits in the U.S. to "weaken critical industries" or "obtain confidential materials through the discovery process."[53] According to a 2024 U.S. Government Accountability Office report, Department of Justice officials are "examining whether foreign entities are investing in U.S. patent litigation to gain proprietary information that would help their own industries."[54] Bloomberg Law has revealed instances in which litigation has been funded by a Chinese firm,[55] and in which Russian oligarchs have put their money in lawsuits to evade international sanctions.[56]

The full measure of how TPLF is impacting the legal system—whether by distorting litigation, creating ethical problems, threatening national security, or otherwise turning the "American justice system into a financial playground"[57]—is unclear. That is because these investments typically occur in secret and are not disclosed to courts or parties. Accordingly, a critical step to assess and respond to concerns is to provide basic transparency in TPLF arrangements.

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At a minimum, states should require parties to disclose to the court and other parties when a third party is funding someone else's lawsuit for a share in the profits. Such disclosure is consistent with rules, applicable in Oklahoma and elsewhere, requiring defendants to disclose insurance agreements that might cover a judgment in a lawsuit.[58] In both instances, the parties and the court learn who has a financial stake in the lawsuit and may seek to influence the case's resolution.

Thus far, five states have acted: Indiana, Louisiana, Montana, West Virginia, and Wisconsin.[59] These states' laws range from simply requiring disclosure of TPLF agreements in Wisconsin to comprehensively regulating litigation funding in Montana. In addition, Indiana and Louisiana have specific disclosure requirements and ban funding by certain foreign entities. At the federal level, a judicial advisory committee recently established a subcommittee focused exclusively on TPLF that will consider the need for a new disclosure requirement.[60] Legislation is also pending before Congress.[61]

TPLF legislation unanimously passed the Oklahoma House of Representatives in March 2023 (H.B. 2391) and passed the Senate by a wide margin in April 2024, but differences between the House and Senate versions were not reconciled before adjournment. The most recent version of that bill would have required parties to disclose a litigation funding agreement upon request and provide certain additional information when the funding is sourced from a foreign entity.

In addition, Oklahoma might consider protecting consumers from predatory lawsuit loans, another form of third-party litigation funding. Sometimes referred to as "cash for lawsuits," providers of these loans offer immediate cash to individual plaintiffs, typically in personal injury lawsuits. These loans can come with high interest rates and fees that can leave borrowers with little to no recovery.[62]

Aside from predatory lending concerns, these agreements can create conflicts of interest and improperly deter the reasonable settlement of cases, as plaintiffs who already must pay a substantial contingency fee to their lawyer "may want to make up the amount they will be forced to repay the funder."[63] In 2013, Oklahoma adopted a law that authorizes lawsuit loans without sufficient consumer protections or a requirement that such arrangements be disclosed

to the court or parties.[64] Other states have done more to protect consumers and the civil justice system.[65] The Oklahoma law should be revisited.

Nuclear Verdicts

"Nuclear verdicts" (those above $10 million) in personal injury and wrongful death cases are increasing nationwide in frequency and amount.[66] While Oklahoma is not known for nuclear verdicts, the invalidation of the state's statutory limit on noneconomic damages has opened the door to such enormous awards.

Oklahoma law has long placed effective constraints on punitive damages,[67] which the state supreme court has upheld,[68] avoiding jackpot judgments resulting from these types of damages.

Plaintiffs' lawyers sometimes seek to circumvent statutory limits and constitutional safeguards on the amount of punitive damages by encouraging juries to "send a message" through more subjective pain and suffering or other forms of noneconomic damages—which are intended to provide reasonable compensation for an injury, not punish a defendant.[69] In the wake of the Oklahoma Supreme Court's 2019 decision (discussed further below), they can now employ that strategy.

One means that plaintiffs' lawyers use to do so is a pernicious tactic called "anchoring." Knowing that jurors struggle with placing a financial value on a person's pain and suffering or other emotional harm, plaintiffs' lawyers suggest that juries either return an extraordinary multimillion-dollar sum that can hardly be viewed as compensatory or offer them a mathematical formula that suggests an amount per day, hour, or minute that will lead to an excessive award. These "anchors" are arbitrary, yet they create a psychologically powerful baseline that jurors often accept or "compromise" by negotiating the anchor upward or downward. Empirical research has proven that "the more you ask for, the more you get."[70] While courts do not allow expert witnesses or lay witnesses to suggest such amounts, they typically have provided lawyers (who are viewed as experts on litigation by jurors) with wide latitude. They now ask for tens or even hundreds of millions of dollars as compensation for emotional harm.

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When such tactics first came into use, noneconomic damage awards were relatively modest compared to today's levels. In 1960, when the Oklahoma Supreme Court considered

the tactic's "great potential for producing excessive verdicts," it decided that it would look only at whether the resulting verdict is excessive.[71] Rulings that followed allow plaintiffs' lawyers to urge jurors to return specific amounts or suggest calculations, often displaying them on a blackboard, whiteboard, or chart during the summation, and consider any error by a judge in allowing this approach "harmless" unless the verdict is actually shown to be excessive.[72] But Oklahoma judges will only set aside a verdict if it appears "so excessive as to strike mankind, at first blush, as being beyond all measure unreasonable and outrageous and such as manifestly shows the jury to have been actuated by passion, partiality, prejudice or corruption."[73] That extraordinarily high standard will often lead judges not to disturb even the highest awards.

In addition to considering alternatives for limiting noneconomic damages, the legislature can consider other approaches for curbing excessive awards. It considered one option in 2024, in the form of a bill that would prohibit anchoring by not permitting any party or counsel from seeking or referring to any dollar amount, stating a range, or suggesting a mathematical formula for the jury to consider with respect to an award for noneconomic damages.[74] The Oklahoma Senate passed the bill, but it did not advance in the House.

Another option may be for the legislature to establish a more objective method of assessing whether a noneconomic damage award is excessive. For example, courts might consider whether the award deviates materially from what would be reasonable compensation. In doing so, the court might consider factors such as verdicts previously reached and sustained on appeal in similar cases, the amount of the plaintiff's medical expenses, and the average annual household income of Oklahomans. This approach would not provide an unconstitutional cap on noneconomic damages but would provide courts with flexibility to review awards based on rational, objective criteria.

Standards Governing Admissibility of Expert Testimony

Effective December 1, 2023, the federal judiciary strengthened the federal rule governing the admissibility of expert testimony (Rule 702) to reduce the risk of junk science entering the courts. Oklahoma should amend its rules of evidence to maintain consistency with the federal changes.

The amendments to the federal rule, which require courts to evaluate reliability of expert testimony, clarify that the party that offers the testimony must "demonstrate to the court that it is more likely than not" that all of the rule's admissibility requirements are met.[75] Committee Notes explain that this change responds to courts that had misapplied the rule by punting shaky

expert opinions to juries.[76] Another change to the rule "emphasize[s] that each expert opinion must stay within the bounds of what can be concluded from a reliable application of the expert's basis and methodology."[77] The changes to the federal rule "cement the court's 'gatekeeper' function of keeping unhelpful and unreliable expert testimony from the jury."[78]

Only federal courts are bound to follow Federal Rule 702 and case law interpreting its requirements. That said, many states, including Oklahoma, have already adopted its core, pre-2023 requirements.[79] Five states have, thus far, incorporated the 2023 amendments to the federal rule into state law through judicial[80] or legislative action.[81] The Oklahoma Legislature should amend Oklahoma's equivalent of Rule 702, 12 Okla. Stat. § 2702, to be consistent with the 2023 amendments to the federal rule.

Misleading Lawsuit Advertising

Pervasive lawsuit advertising has pernicious effects for both public health and the civil justice system.[82] While other states have acted to address these concerns, Oklahoma has not done so.

Misleading tactics in advertisements for lawsuits have scared people away from taking medication that their doctor has prescribed or from seeking a beneficial treatment.[83] Such ads have resulted in actual harm to patients, including death.[84] The American Medical Association (AMA) has recognized that "[t]he onslaught of attorney ads has the potential to frighten patients and place fear between them and their doctor" and "jeopardize patient care."[85] It has called upon state legislatures to address this issue.[86]

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At least seven states have acted, including Florida, Indiana, Kansas, Louisiana, Tennessee, Texas, and West Virginia.[87] These laws vary from state to state, but most prohibit common misleading practices, such as presenting a lawsuit ad as a "medical alert," implying the content of the advertisement is government-approved, or suggesting a product has been recalled when it has not. States have also required lawsuit ads targeting medications to warn viewers not to stop taking a prescribed medication without first consulting their doctor. Some laws include provisions that protect the public by prohibiting the sale or misuse of a person's

private medical records to solicit that person to file or join a lawsuit. A federal appellate court has upheld one such law as "just the sort of health and safety warnings that have been long considered permissible."[88]

In addition to raising public health concerns, lawsuit advertising practices can also mislead the public by flashing multimillion-dollar verdicts in front of viewers. This practice not only suggests there is validity to the allegations, but that viewers may be entitled to a similar award. What viewers are not told is that courts often significantly reduce such excessive amounts and sometimes throw out the verdict entirely.[89]

State legislatures and courts have intervened here, as well. For example, Georgia enacted a law that prohibits attorneys from falsely portraying actors as clients or making statements likely to lead a person to have an unjustified expectation of future success based on past performance.[90] A Louisiana law requires any advertisement for legal services that refers to a monetary settlement or jury verdict obtained by the advertising attorney to disclose all fees paid to the attorney that are associated with the settlement or award.[91] And, the Texas Supreme Court amended a rule regulating advertising of an attorney's past successes to indicate that "[a] lawyer who knows that an advertised verdict was later reduced or reversed, or never collected, or that the case was settled for a lesser amount, must disclose the amount actually received by the client with equal or greater prominence to avoid creating unjustified expectations on the part of potential clients."[92]

The Judicial Impact on Oklahoma's Litigation Environment

The Oklahoma Supreme Court significantly influences the state's litigation environment. It has the final word on matters of state law, including tort liability and interpretations of state statutes and regulations. The court also decides constitutional challenges to legislative efforts to address excessive liability and litigation abuse. While in recent years, the court has struck down certain types of civil justice reform legislation, such as damage caps, its rulings on other tort law and liability issues have been more balanced.

Judicial Nullification of Legislative Reform

The Oklahoma Supreme Court has shown hostility to some legislatively enacted civil justice reforms, invoking state constitutional provisions to nullify such policy choices. The most striking example occurred in 2013, when the court struck down the Comprehensive Lawsuit Reform Act of 2009 in its entirety as violating the "single subject rule" of the state constitution, even though each provision of the bill clearly addressed civil liability concerns.[93] The decision sent the legislature, which had enacted the law with overwhelming support, scurrying to reenact its provisions through individual bills during a 2013 special session.[94]

More recently, the court dealt a significant blow to Oklahoma's litigation climate when, in a 5-3 ruling, it invalidated the state's limit on noneconomic damages in personal injury cases as an unconstitutional "special law."[95] That law, which was in place for about a decade before the court's 2019 ruling, limited awards for pain and suffering and other emotional harms, which are the most unpredictable, to $350,000.[96] This limit did not apply in cases involving gross negligence, or reckless, intentional, or malicious conduct.[97] The court bizarrely reasoned that since the Oklahoma Constitution prohibits statutory limits on damages in wrongful death cases, the General Assembly cannot limit damages in personal injury actions broadly.[98]

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Over the past decade, the Oklahoma Supreme Court has also invalidated legislative attempts to address excessive liability under the state's Workers' Compensation Act,[99] and repeatedly struck down laws that would, as in many other states, require plaintiffs to submit an affidavit of merit supporting complaints alleging medical and other professional liability claims.[100]

Some legal reform legislation, however, has appropriately withstood constitutional challenges. For example, in 2016, the court upheld legislation curbing inflated damage awards for medical expenses in personal injury cases. That law provides for juries to determine such damages based on amounts actually paid for treatment, rather than the often substantially higher "list prices" that may appear on an initial invoice. The court found that law, which "prevent[ed] a party from admitting into evidence amounts they did not have to pay and thus obtaining a potentially greater amount in damages for medical services than the amount actually paid or owed," was "neither arbitrary nor unreasonable."[101]

The justices also rejected a constitutional challenge, in 2023, in which a plaintiffs' lawyer claimed that a $10 fee collected from each attorney who files a new civil case that is set aside in a Lengthy Trial Fund is an unconstitutional special law.[102] As detailed above on pg. 5, that fund allows Oklahoma trial courts to provide additional compensation to summoned jurors who, because they do not receive their usual income during jury service, would otherwise be unable to serve on complex, high-stakes cases.

Sound Decisions on Certain Liability Issues

While the Oklahoma Supreme Court has shown hostility to some legislatively enacted civil justice reforms, in recent years, the court has reached sound decisions on aspects of tort law and other liability issues. It has repeatedly rejected invitations to expand common law claims and recognized the need for scrutiny of class action settlements.

Public Nuisance

In 2021, the court rejected a novel claim that would have radically expanded public nuisance law. In that 5-1 decision, the court reversed

a $465 million judgment that would have required a pharmaceutical company to fund programs addressing the state's opioid crisis (and pay the contingency fees of the private attorneys hired to represent the state).[103] The court recognized that, for a century, public nuisance law addressed only criminal activity or offensive property-based activities that harmed the surrounding community.[104] "Applying the nuisance statutes to lawful products," the court recognized, "would create unlimited and unprincipled liability for product manufacturers; this is why our Court has never applied public nuisance law to the manufacturing, marketing, and selling of lawful products."[105] A *Wall Street Journal* editorial applauded the court for its "reminder to judges who are tempted to loot companies under the trial bar's ever-expanding theories of liability" that "addressing social problems like opioid addiction is the job of the legislative and executive branches, not the courts."[106]

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Employment at Will

In 2022, the Oklahoma Supreme Court reaffirmed the state's employment at-will doctrine, which generally allows employers to "discharge an employee for 'good cause, no cause, or even for a morally wrong cause without being liable for a legal wrong.'"[107] The court declined to expand a narrow exception to at-will employment that prohibits terminating employees in violation of a clear and compelling public policy, such as in retaliation for reporting theft of public funds or preventing delivery of unsafe food.[108] The public policy exception to at-will employment, the court found, does not insulate an employee who disagrees with company practices or who claims to be acting in the general interest of consumers, who have their own remedies.[109] The alternative would have opened the door to significantly more wrongful termination lawsuits by disgruntled employees and increased liability risks for Oklahoma employers who dismiss underperforming workers.

Recovery for Emotional Harms

The court has also declined to abandon a longstanding constraint on recovery for emotional harms. In a 2018 ruling, the court found that recovery for negligent infliction of emotional distress in witnessing an accident is limited to "direct victims," meaning individuals who are "directly physically involved in the accident" and share a close personal relationship with the accident victim. The court rejected an invitation to expand the tort to a broad range of bystanders who witness an accident.[110]

Class Action Fees

Finally, the Oklahoma Supreme Court has instructed lower courts to scrutinize the reasonableness of fee requests in class action litigation. In that case, a trial court had awarded plaintiffs' attorneys $19 million of a $50 million settlement (40 percent) in a class action related to payment of oil and gas royalties.[111] When a class member asked his attorneys to provide records justifying this payment, he received 190 pages of useless, entirely redacted documents.[112] The justices found that a trial court has a "fiduciary duty to give full adversarial scrutiny" to requests for attorney's fees in class action litigation and that class members must have an opportunity to "meaningfully challenge" fee requests.[113] The court also observed that while a 40 percent contingency fee may be "normal" in an individual case, it is inappropriate in class action lawsuits that have significant economies of scale and larger settlement funds.[114]

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The court's adherence to established tort law principles in these cases, and its scrutiny of massive payouts to lawyers in class action litigation, is encouraging.

Conclusion

Oklahoma's historic leadership in civil justice reform reflects its commitment to fostering a balanced and fair litigation environment. The slower pace of legislative action in recent years, as new challenges mount, underscores the need for a renewed focus on legal reform.

Addressing the rising influence of TPLF is a critical step to ensuring transparency and reducing the risk of speculative lawsuits and potentially unethical practices. Similarly, mitigating the occurrence of nuclear verdicts by implementing objective criteria and guidelines for damage awards will help restore predictability and fairness. Strengthening standards for expert testimony, aligned with recent federal rules, can ensure the exclusion of unreliable evidence, preserving the integrity of trials. Oklahoma can also combat misleading lawsuit advertising to protect public health and maintain public trust in the legal system.

As other states move forward with proactive measures to tackle these issues, Oklahoma has the opportunity to reclaim its position as a national leader in civil justice reform. By addressing these emerging challenges, the state can enhance its litigation climate and reinforce its appeal as a destination for businesses and residents alike.

While the Oklahoma Supreme Court has invalidated some legal reforms, posing a setback, it has upheld others. The court has also made encouraging decisions in recent cases, rejecting invitations to permit novel claims or otherwise expand liability.

In sum, Oklahoma stands at a crossroads where decisive action can reaffirm its legacy of legal reform while adapting to the demands of a changing litigation landscape. Building on its achievements will ensure the state remains a model of fairness and balance in the civil justice system for years to come.

"... Oklahoma stands at a crossroads where decisive action can reaffirm its legacy of legal reform while adapting to the demands of a changing litigation landscape."

Endnotes

1 David McKnight & Paul Hinton, *Tort Costs in America: An Empirical Analysis of Costs and Compensation of the U.S. Tort System*, at 18 (U.S. Chamber Inst. for Legal Reform, 3d ed., Nov. 2024).

2 In 2022, the Census Bureau estimated the median household income in Oklahoma at $59,673 compared to the national median of $74,755. That is 20 percent below the national average, and it makes a nearly $3,000 per-household lawsuit system burden more significant than it might be in a different environment. Kirby G. Posey, *Household Income in States and Metropolitan Areas: 2022*, at 3 tbl. 1 (U.S. Census Bureau, Dec. 2023).

3 State Chamber Research Foundation, "2024 Oklahoma Scorecard," at 14 (2024).

4 "Oklahoma," Top States for Business, CNBC, July 11, 2024; Scott Cohn, "How We Chose America's Top States for Business 2024," CNBC, June 13, 2024; *see also* "Oklahoma," Best States, U.S. News (2024) (ranking Oklahoma 43rd overall and 30th for its business environment); "Oklahoma," Best and Worst States for Business, Chief Executive (2024) (ranking Oklahoma 20th largely due to promising economic development).

5 *Beason v. I.E. Miller Servs., Inc.*, 441 P.3d 1107 (Okla. 2019).

6 *State of Oklahoma ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021).

7 *Booth v. Home Depot, U.S.A.*, Inc., 504 P.3d 1153, 1157-58 (Okla. 2022).

8 *Strack v. Continental Resources, Inc.*, 507 P.3d 609, 611 (Okla. 2021).

9 H.B. 2023 (Okla. 2011) (amended by S.B. 789 (2015) and codified at 12 Okla. Stat. § 3009.1).

10 H.B. 2024 (Okla. 2011) (codified at 23 Okla. Stat. § 9.3).

11 H.B. 2128 (Okla. 2011) (amending 23 Okla. Stat. § 61.2, which was enacted in 2009).

12 S.B. 865 (Okla. 2011) (codified at 12 Okla. Stat. § 577.4).

13 S.B. 6 (Okla. Spec. Sess. 2013) (amending 12 Okla. Stat. §§ 2702, 2703).

14 S.B. 16 / H.B. 1013 (Okla. Spec. Sess. 2013) (amending 12 Okla. Stat. § 993); S.B. 704 (Okla. 2011) (amending 12 Okla. Stat. § 2023).

15 H.B. 1006 (Okla. Spec. Sess. 2013) (amending 12 Okla. Stat. § 2011(E)); *see also* H.B. 2837 (Okla. 2014) (codified at 23 Okla. Stat. § 112) (prohibiting false representations in communications related to patent litigation).

16 H.B. 1003 (Okla. Spec. Sess. 2013) (codified at 12 Okla. Stat. § 140.3).

17 H.B. 3375 (Okla. 2014) (amending 12 Okla. Stat. § 3226(A)(1)).

18 H.B. 1570 (Okla. 2017) (amending 12 Okla. Stat. § 3226(B)(1)(a)).

19 12 Okla. Stat. § 993(A)(6)); *see also* Okla. S. Ct. R. 1.60(g).

20 28 Okla. Stat. § 86; *see also In the Matter of the Implementation of the Lengthy Trial Fund*, 114 P.3d 441 (Okla. 2005). In 2023, Oklahoma raised juror compensation (on any trial) from $20 to $50 per day. H.B. 1024 (Okla. 1st Spec. Sess. 2023) (amending 28 Okla. Stat. § 86).

21 Cary Silverman, "Higher Juror Compensation Trend is Good for Justice System," Law360, Dec. 15, 2023.

22 S.B. 862 (Okla. 2011) (amending 23 Okla. Stat. § 15).

23 H.B. 1015 (Okla. Spec. Sess. 2013) (amending 47 Okla. Stat. §§ 11-1112(D), 12-420).

24 S.B. 494 (Okla. 2011) (codified at 76 Okla. Stat. § 80).

25 S.B.11 (Okla. Spec. Sess. 2013) (amending 76 Okla. Stat. § 31).

26 H.B. 3365 (Okla. 2014) (codified at 76 Okla. Stat. § 57.2).

27 *Id*.

28 S.B. 1830 (Okla. 2012) (amending 12 Okla. Stat. § 2407).

29 S.B. 14 (Okla. Spec. Sess. 2013) (codified at 76 Okla. Stat. §§ 90 et seq.).

30 S.B. 404 (Okla. 2013) (codified at 76 Okla. Stat § 82 et seq.).

31 *See, e.g.*, S.B. 13 (Okla. Spec. Sess. 2013) (codified at 76 Okla. Stat. § 57.1) (limiting liability for "inherently unsafe" products known to be unsafe by the ordinary consumer who consumes the product); S.B. 12 (Okla. Spec. Sess. 2013) (codified at 76 Okla. Stat. §§ 39 et seq.) (precluding lawsuits alleging food causes obesity, weight gain, or a related health condition).

32 S.B. 300 (Okla. 2020) (codified at 63 Okla. Stat. § 6406).

33 S.B. 1946 (Okla. 2020) (codified at 76 Okla. Stat. § 111).

34 S.B. 1947 (Okla. 2020) (codified at 76 Okla. Stat. § 112).

35 S.B. 984 (Okla. 2022) (amending 74 Okla. Stat. § 20i).

36 Tiger Joyce, "Point of View: States' Lawyers Should Serve Public Interest," *The Oklahoman*, May 18, 2019; Paul Monies, "Working in Background, Lawyer Reaps Fees in Opioid Case," KGOU, Apr. 10, 2019.

37 American Tort Reform Found., "ATRA Announces Mid-Year Addition of Oklahoma to Judicial Hellholes List," JudicialHellholes.org, July 9, 2019.

38 74 Okla. Stat. § 20i.

[39] Cary Silverman & Christopher E. Appel, *101 Ways to Improve State Legal Systems*, at 81-83 (U.S. Chamber Inst. for Legal Reform, 8th ed., Dec. 2022).

[40] S.B. 137 (Okla. 2021) (codified at 12 Okla. Stat. § 2411.1).

[41] 76 Okla. Stat. § 80 (enacted 2011).

[42] *See* Westfleet Advisors, "The Westfleet Insider: 2023 Litigation Finance Market Report," at 3 (2024) (indicating that major dedicated commercial litigation funders alone reported more than $15 billion invested in U.S. litigation in 2023).

[43] Emily R. Siegel, "Fortress' Billions Quietly Power America's Biggest Legal Fights," Bloomberg Law, Oct. 16, 2024.

[44] Emily R. Siegel, "Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program," Bloomberg Law, Aug. 20, 2024.

[45] Leslie Stahl, "Litigation Funding: A Multibillion-dollar Industry for Investments in Lawsuits with Little Oversight," CBS's *60 Minutes*, Dec. 18, 2022 (interview with Prof. Maya Steinitz).

[46] Jacob Gershman, "Lawsuit Funding, Long Hidden in the Shadows, Faces Calls for More Sunlight," *The Wall Street Journal*, Mar. 21, 2018 (quoting Allison Chock, chief investment officer for IMF Bentham's U.S. division (now Omni Bridgeway)).

[47] *See* John Beisner et al., *Selling More Lawsuits, Buying More Trouble* 18-22 (U.S. Chamber Inst. for Legal Reform, Jan. 2020).

[48] *See, e.g., In re Pork Antitrust Litig.*, No. 18-cv-1776 (JRT/JFD), 2024 WL 511890 (D. Minn. Feb. 9, 2024), *aff'd*, 2024 WL 2819438 (D. Minn. June 3, 2024) (rejecting an assignment of a claim to a litigation funder that would "allow a financer with no interest in the litigation beyond maximizing profit on its investment to override decisions made by the party that actually brought suit" and observing that it "threatens the public policy favoring the settlement of lawsuits"); *see also* Editorial, "The Litigation Finance Snare," *The Wall Street Journal*, Mar. 21, 2023; Hannah Albarazi, "When a Litigation Funder is Accused of Taking Over the Case," Law360, Mar. 15, 2023.

[49] Emily R. Siegel, "Mass Tort Marketer Hires Ex-LexShares CEO to Lead Funding Program," Bloomberg Law, Aug. 20, 2024.

[50] *See Nimitz Techs. LLC v. CNET Media, Inc.,* Nos. 21-1247-CFC, 21-1362-CFC, 21-1855-CFC, 22-413-CFC, 2022 WL 17338396 (D. Del. Nov. 30, 2022), *mandamus pet. denied sub nom. In re Nimitz Techs. LLC,* 2022 WL 17494845 (Fed. Cir. Dec. 8, 2022); *see also Mellaconic IP LLC v. Timeclock Plus, LLC*, 2023 WL 3224584, at *1 (D. Del. May 3, 2023) (denying motion to set aside Nov. 2022 disclosure order).

[51] Michael Shapiro, "Courts Not a Casino, Says Judge Seeking Third-Party Transparency," Bloomberg Law, Mar. 28, 2024 (quoting Judge Connolly).

[52] Donald J. Kochan, Editorial, "Keep Foreign Cash Out of U.S. Courts," *The Wall Street Journal*, Nov. 24, 2022, at A13.

[53] *Id*.

[54] U.S. Gov't Accountability Office, GAO-25-107214, "Intellectual Property: Information on Third-Party Funding of Patent Litigation," at 25 (Dec. 2024).

[55] Emily R. Siegel, "China Firm Funds US Suits Amid Push to Disclose Foreign Ties," Bloomberg Law, Nov. 6, 2023 (quoting Joe Matal, former acting director of the U.S. Patent and Trademark Office); *see also* Joseph Matal, "Patent Lawsuits Are a National Security Threat," *The Wall Street Journal*, Mar. 20, 2024.

[56] Emily R. Siegel & John Holland, "Putin's Billionaires Dodge Sanctions by Financing Lawsuits," Bloomberg Law, Mar. 28, 2024.

[57] Donald J. Kochan, Editorial, "Keep Foreign Cash Out of U.S. Courts," *The Wall Street Journal*, Nov. 24, 2022, at A13.

[58] *See* 12 Okla. Stat. § 3226(B)(1)(b).

[59] H.B. 1160 (Ind. 2024) (codified at Ind. Code § 24-12-11): S.B. 355 (La. 2024) (codified at La. Rev. Stat. §§ 9:3580.1 to 9:3580.7 and §§ 9:3580.10 to 9:3580.12); S.B. 269 (Mont. 2023) (codified at Mont. Code Ann. §§ 31-4-101 et seq.): S.B. 850 (W. Va. 2024) (codified at W. Va. Code Ann. § 46A-6N-1 et seq.); Wis. Code § 804.01(2)(bg) (enacted 2018).

[60] Nate Raymond, "US Judicial Panel to Examine Litigation Finance Disclosure," Reuters, Oct. 10, 2024.

[61] Litigation Transparency Act of 2024, H.R. 9922, 118th Cong.; Protecting Our Courts from Foreign Manipulation Act of 2023, S. 2805 / H.R. 5488, 118th Cong.

[62] Ashby Jones, "Loan & Order: States Object to 'Payday' Lawsuit Lending," *The Wall Street Journal*, Apr. 28, 2013.

[63] Case Management Order No. 61 (Third Party Litigation Funding), , No. 3:19-md-02885 (N.D. Fla. Aug. 29, 2023), at 2.

[64] S.B. 1016 (Okla. 2013) (codified at Okla. Stat. tit. 14A, §§ 3-801 et seq.).

[65] *See, e.g.*, H.B. 1124 (Ind. 2023) (codified at Ind. Code Ann. § 24-12-4-2) (requiring disclosure and providing other safeguards for civil proceeding advance payment (CPAP) transactions); S.B. 269 (Mont. 2023) (codified at Mont. Code Ann. §§ 31-4-101 et seq.) (requiring disclosure, limiting fees, and providing other safeguards applicable to all litigation financing agreements); S.B. 360 (W. Va. 2019) (codified at W. Va. Code Ann. §§ 46A-6N-1 et seq.) (subjecting consumer lawsuit lenders to oversight and the state's usury law, providing various safeguards, and requiring disclosure of litigation financing agreements).

[66] *See generally* Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions* (U.S. Chamber Inst. for Legal Reform, May 2024).

[67] Enacted in 1995 and as amended in 2002, Oklahoma law generally limits punitive damages to the greater of the plaintiff's compensatory damages or $100,000. The limit rises to the

greater of twice the amount of compensatory damages, $500,000, or the amount of the defendant's financial benefit when there is clear and convincing evidence that a defendant "acted intentionally and with malice toward others." There is no limit on punitive damages when a judge additionally finds there is evidence beyond a reasonable doubt that a defendant "acted intentionally and with malice and engaged in conduct life-threatening to humans." 23 Okla. Stat. § 9.1.

[68] *Gilbert v. Sec. Fin. Corp. of Okla.*, Inc., 152 P.3d 165 (Okla. 2006).

[69] *See* Victor E. Schwartz & Leah Lorber, "Twisting the Purpose of Pain and Suffering Awards: Turning Compensation into 'Punishment,'" 54 S.C. L. Rev. 47 (2002).

[70] *See* Mark A. Behrens, Cary Silverman & Christopher E. Appel, "Summation Anchoring: Is it Time to Cast Away Inflated Requests for Noneconomic Damages?," 44 *Am. J. Trial Adv.*, at 321 (2021) (discussing studies).

[71] *Missouri-Kansas-Texas R. Co. v. Jones*, 354 P.2d 415, 420 (Okla. 1960).

[72] *See, e.g.*, Shuck v. Cook, 494 P.2d 305, 312 (Okla. 1972); *see also Fields v. Volkswagen of Am., Inc.*, 555 P.2d 48, 62-63 (Okla. 1976) (finding that jury's exposure to figures on blackboard prior to plaintiff's closing argument was harmless error when the verdict returned was less than the amount requested).

[73] *Austin Bridge Co. v. Christian*, 446 P.2d 46, 49 (Okla. 1968).

[74] S.B. 1523 (Okla. 2024).

[75] Fed. R. Evid. 702 advisory committee's note to 2023 amendment.

[76] *Id*.

[77] *Id*.

[78] Timothy F. Campbell & Anamayan Narendran, "Long-Awaited Changes to Rule 702 Impact Qualification and Admissibility of Expert Witness Testimony and May Signal Changes to Oklahoma Law," 95 Okla. Bar Ass'n, No. 1 (Jan. 2024).

[79] 12 Okla. Stat. § 2702; *see also Christian v. Gray*, 65 P.3d 591, 600 (Okla. 2003) (adopting the U.S. Supreme Court's standard for expert testimony).

[80] *In the Matter of Rule 702, Rules of Evidence*, No. R-23-0004 (Ariz. Aug. 24, 2023); Order, *In re: Amendment of Rule 506 and Rule 702 of the Kentucky Rules of Evidence*, No. 2024-19 (Ky. June 24, 2024); Order, *Amendments of Rules 702 and 804 of the Michigan Rules of Evidence*, ADM File No. 2022-30 (Mich. Mar. 27, 2024) (effective May 1, 2024); Amendment to Rule of Evidence 702 (Ohio, effective July 1, 2024).

[81] S.B. 16 (La. 2024) (Act No. 88).

[82] *See generally* Cary Silverman, *Bad for Your Health: Lawsuit Advertising Implications and Solutions* (U.S. Chamber of Commerce Inst. for Legal Reform, Oct. 2017).

[83] *See, e.g.*, Pedro A. Serrano et al., "Effect of Truvada Lawsuit Advertising on Preexposure Prophylaxis Attitudes and Decisions Among Sexual and Gender Minority Youth and Young Adults at Risk for HIV," 35 *AIDS*, at 131-39 (2021); Jesse King & Elizabeth Tippett, "Drug Injury Advertising,"18 *Yale J. Health Pol'y, L. & Ethics*, at 114 (2019); Christopher F. Tenggardjaja et al., "Evaluation of Patients' Perceptions of Mesh Usage in Female Pelvic Medicine and Reconstructive Surgery," 85 *Urology*, at 326- 327 (2015).

[84] Mohamed Mohamoud, et al., "Discontinuing of Direct Oral Anticoagulants in Response to Attorney Advertisements: Data from the FDA Adverse Event Reporting System," 53 *Annals of Pharmacotherapy*, at 962-63 (Sept. 2019).

[85] See Am. Med. Ass'n, Press Release, "AMA Adopts New Policies on Final Day of Annual Meeting," June 15, 2016; *see also* Jessica Karmasek, "AMA: Lawyer Ads Are Alarming Prescription Drug Users, Jeopardizing Health Care," *Forbes*, July 21, 2016.

[86] Am. Med. Ass'n, House of Delegates, Resolution 222 (A-19) (2019) (calling on state legislatures to prohibit attorney advertisements that misuse governmental logos or the term "recall," provide a clear warning on the dangers of stopping a course of treatment without consulting a physician, and require written consent before sharing personal health information).

[87] Fla. Stat. Ann. § 501.139 (enacted 2023); Ga. Code Ann. §§ 10-1-424.1, 10-1-427, 51-1-57 (enacted 2023); Ind. Code §§ 24-5-26.5 et seq. (enacted 2021); Kan. Stat. Ann. §§ 50-6,144, 50-6,145 (enacted 2022); La. Rev. Stat. § 51:3221 (enacted 2022); Tenn. Code Ann. §§ 47-18-3001 et seq. (enacted 2019); W. Va. Code Ann. §§ 47-28-1 et seq. (enacted 2020).

[88] *Recht v. Morrisey*, 32 F.4th 398, 417 (4th Cir. 2022).

[89] *See* Cary Silverman & Christopher E. Appel, *Nuclear Verdicts: An Update on Trends, Causes, and Solutions*, at 12 (U.S. Chamber Inst. for Legal Reform, May 2024).

[90] S. 74 (Ga. 2023) (codified at Ga. Code Ann. §§ 10-1-424.1, 10-1-427, 51-1-57).

[91] S.B. 115 (La. 2020) (codified at La. Rev. Stat. § 37:223).

[92] Order Amending Comment 10 to Rule 7.01 of the Texas Disciplinary Rules of Professional Conduct, Misc. Docket No. 22-9011 (Tex. Jan. 31, 2022).

[93] *Douglas v. Cox Retirement Props.*, Inc., 302 P.3d 789 (Okla. 2013).

[94] Robert McCampbell & Travis Jett, "Gavel to Gavel: Special Session Issues," *Journal Record*, Aug. 21, 2013.

[95] *Beason v. I.E. Miller Servs., Inc.*, 441 P.3d 1107 (Okla. 2019).

[96] 23 Okla. Stat. § 61.2(B).

[97] 23 Okla. Stat. § 61.2(C).

[98] *Beason*, 441 P.3d at 1112.

[99] *Whipple v. Phillips and Sons Trucking, LLC*, 474 P.3d 339 (Okla. 2020) (invaliding legislation limiting recovery for wrongful death through the Workers' Compensation Act to a spouse, child, or legal guardian dependent of the worker, precluding recovery by a parent as the next of kin when the decedent is an adult, unmarried, and childless); *Torres v. Seaboard Foods, LLC*, 373 P.3d 1057 (Okla. 2016) (invalidating, as applied, legislation requiring, in workers compensation claims, a 180-day period of continuous employment by workers to recover for cumulative trauma injuries); *see also Strickland v. Stephens Production Co.*, 411 P.3d 369 (Okla. 2018) (invalidating law extending the same civil immunity provided to employers under Oklahoma's workers' compensation statute to owners and operators of oil and gas wells, finding the statute an unconstitutional special law).

[100] *John v. St. Francis Hosp., Inc.*, 405 P.3d 681 (Okla. 2017); *Wall v. Marouk*, 302 P.3d 775 (Okla. 2013); *Zeier v. Zimmer, Inc.*, 152 P.3d 861 (Okla. 2006); *see also* Emma Cueto, "Okla. High Court Nixes Barrier for Med Mal Claimants," Law360, Oct. 26, 2017.

[101] *Lee v. Bueno*, 381 P.3d 736, 746 (Okla. 2016).

[102] *Berkson v. State ex rel. Askin*s, 532 P.3d 36, 56 (Okla. 2023).

[103] *State of Oklahoma ex rel. Hunter v. Johnson & Johnson*, 499 P.3d 719 (Okla. 2021).

[104] *Id*. at 724.

[105] *Id*. at 725.

[106] Editorial, "An Opioid Lawsuit Smackdown," *The Wall Street Journal*, Nov. 10, 2021; *see also* Andrew C. Spiropoulos, Op-ed, "Right Thinking: State Supreme Court Demonstrates Admirable Restraint," *Journal Record*, Dec. 8, 2021.

[107] *Booth v. Home Depot, U.S.A., Inc.*, 504 P.3d 1153, 1157 (Okla. 2022) (quoting *Reynolds v. Advance Alarms, Inc.*, 232 P.3d 907, 909 (Okla. 2009)).

[108] *Id*. at 1156-57.

[109] *Id*. at 1157-58.

[110] *Ridings v. Maze*, 414 P.3d 835 (Okla. 2018).

[111] *Strack v. Continental Resources, Inc.*, 507 P.3d 609, 611 (Okla. 2021).

[112] *Id*. at 613.

[113] *Id*. at 621

[114] *Id*. at 617.

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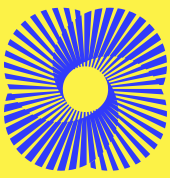

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