

2015

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This article originally appeared at volume 86, page 821 of the Oklahoma Bar Journal.

Recommended Citation

86 Okla. B.J. 821 (2015).

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Tort Reform and Jury Instructions

By Charles W. Adams

This article discusses two recent statutes and the efforts of the Oklahoma Committee on Uniform Jury Instructions (Civil OUJI Committee) to recommend uniform jury instructions based on these statutes to the Oklahoma Supreme Court. The first statute is Okla. Stat. Title 12, §577.4, which deals with an instruction to juries that awards for damages for personal injuries and wrongful death that are nontaxable. The second statute is Okla. Stat. Title 23, §61.2, which imposes a \$350,000 cap on noneconomic losses for personal injuries.

The Civil OUJI Committee determined that both statutes raised possible constitutional issues, and so, decided to flag these issues in its recommendations to the Oklahoma Supreme Court. The committee comments to the proposed jury instruction on nontaxability of damages awards pointed out that there were instances when damages for personal injury awards were taxable and that there may be a constitutional question whether Okla. Stat. Title 12, §577.4 violated the doctrine of separation of powers. The Civil OUJI Committee presented two alternatives for the proposed jury instruction on the \$350,000 cap on noneconomic losses for personal injuries. The first alternative followed the language of Okla. Stat. Title 23, §61.2 and did not inform the jury of the \$350,000 cap on noneconomic losses, but it noted a constitutional question in the committee comments to the jury instruction. The second alternative informed the jury of the \$350,000 cap on noneconomic losses, contrary to a provision in Okla. Stat. Title 23, §61.2, and it explained the reason for doing so in the committee comments to the jury instruction and verdict form.

The Oklahoma Supreme Court did not adopt the proposed jury instruction on nontaxability

of damages awards or either alternative for the \$350,000 cap on noneconomic losses that the Civil OUJI Committee had proposed. Without having the benefit of actual cases before it, the Supreme Court declined to resolve the possible constitutional issues raised by the two statutes. This article provides a brief discussion of the possible constitutional issues that are raised by the two statutes, and it includes the text of the proposed recommendations that the Civil OUJI Committee presented to the Oklahoma Supreme Court.

NONTAXABILITY OF AWARDS FOR PERSONAL INJURIES AND WRONGFUL DEATH

The only case in which the Oklahoma Supreme Court has addressed the issue of whether a jury instruction on the taxability of an award of damages should be given is *Missouri-K.T.R.R. v. Miller*.¹ The case was brought under the Federal Employers Liability Act (FELA), and on appeal, the defendant argued that the trial court erred by admitting evidence of the plaintiff's gross income without giving instructions on the income tax on future earnings. The Oklahoma Supreme Court held that the income tax consequences of the injury and the award should not be considered by the

jury.² The original edition of the Oklahoma Uniform Jury Instructions (OUJI) provided at Instruction No. 4.17, which was titled “Effect of Income Tax on Award of Damages: ‘No Instruction Should Be Given.’” The comment to Instruction No. 4.17 stated: “In *Missouri-K.T.R.R. v. Miller*, 486 P.2d 630, 636 (Okla. 1971), the Oklahoma Supreme Court ruled that the income tax consequences of injury and award are not a proper consideration for the jury.” Instruction No. 4.17 was not changed until 2014.

The Oklahoma Legislature adopted Okla. Stat. Title 12, §577.4 in 2011. It provides:

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes. In order to be admitted at trial, any exhibit relating to damage awards shall reflect accurate tax ramifications.

This statute is unusual because it is directed to the content of the OUJI, rather than the law that governs in the state courts. In addition, it involves the effect of federal income tax law, rather than state law. Although in most cases, damages for personal injuries are not subject to federal income tax, there are circumstances where they may be taxable. For example, if a taxpayer had deducted medical expenses in a previous tax year, a recovery for medical expenses would be taxable.³ In addition, unlike compensatory damages for personal injuries, punitive damages are taxable, but the jury would not be aware of this distinction unless it was instructed on it. Moreover, the statute refers only to the taxability of a damages award to a plaintiff, but it does not address whether a damages award would be deductible by a defendant. The statute is also problematic, because it directs that juries must be informed that damages awards for personal injuries are not taxable, thereby inviting them to consider income taxes, but then it states that juries must not increase or decrease their awards on account of any consideration for income taxes. Finally, instructing juries on the applicable law in a case is a judicial function, rather than a legislative function, and there-

“ The statute is also problematic, because it directs that juries must be informed that damages awards for personal injuries are not taxable, thereby inviting them to consider income taxes, but then it states that juries must not increase or decrease their awards on account of any consideration for income taxes. ”

fore, section 577.4 may violate the separation of powers doctrine in the Okla. Const., Art. 4, §1.

The Civil OUJI Committee submitted the following proposed revisions to Instruction 4.17⁴ to the Oklahoma Supreme Court in 2012:

Instruction No. 4.17

Effect Of Income Tax On Award Of Damages

~~NO INSTRUCTION SHOULD BE GIVEN~~

[Name of Plaintiff] will not be required to pay any federal or state income taxes on any amount that you award for damages for (personal injury)/(wrongful death). [This rule does not apply to [the portion of the claim of [Name of Plaintiff] for [specify those claims that are subject to federal or state income taxes]]. You should not add to or subtract from the amount, if any, you determine to be proper compensation for (personal injury)/(wrongful death) because of income taxes.

Notes on Use

This Instruction should be given only in cases where the damages sought for personal injury or wrongful death are nontaxable. The second sentence that is shown in brackets should be given if there are claims or portions of a claim that are taxable so that the jury instruction will not be inaccurate or confusing to the jury. The trial court should decide what damages are or are not subject to income tax based on the circumstances of the particular case.

Comments

This Instruction is included on account of 12 O.S. 2011 §577.4. *See also* 26 U.S.C. §104(a)(2) (damages for personal physical injuries, other than punitive damages, are not taxable). The exclusion for damages for personal physical injuries covers not only medical bills but also amounts awarded for pain and suffering, loss of enjoyment, and lost earnings. *See C.I.R. v. Schleier*, 515 U.S. 323, 329 (1995) (dictum); Martin J. McMahon, Jr. & Lawrence A. Zelenak, Fed. Inc. Tax'n of Indiv. ¶7.03 (2011) ("When the exclusion [for damages for personal physical injuries] applies, it covers all elements of actual damages — nonpecuniary damages (pain and suffering, loss of enjoyment, and the like, medical expenses, and lost wages)."). Amounts received for personal injuries are taxable, however, to the extent that they are attributable to deductions allowed for medical and other similar expenses. *See* 26 CFR Part 1 §1.104-1 (a). In addition, damages for emotional distress are taxable unless the emotional distress is attributable to a physical injury. *Id.* §1-104 (c). This brief summary of the federal and state tax law is not exhaustive.

In *Missouri-K.T.R.R. v. Miller*, 1971 OK 68, ¶38, 486 P.2d 630, 636 (Okla. 1971), the Oklahoma Supreme Court ruled that the income tax consequences of injury and award are not a proper consideration for the jury. There may be a question whether 12 O.S. 2011 §577.4 violates the separation-of-powers doctrine described in *Yocum v. Greenbriar Nursing Home*, 2005 OK 27, ¶13, 130 P.3d 213, 220, as follows:

Legislative power is mainly confined to making law, while the judiciary is invested primarily with an adjudicative function — the authority to hear and determine forensic disputes. A legislative removal of the discretionary component in adjudicative process is a usurpation of the courts' freedom that is essential to the judiciary's independence from the other two branches.

Instructing a jury on the applicable law in a case is a fundamental adjudicative function, rather than a legislative function.

In its order dated March 24, 2014,⁵ the Oklahoma Supreme Court adopted the following revision to Instruction No. 4.17:

Instruction No. 4.17

Effect Of Income Tax On Award of Damages

NO INSTRUCTION SHOULD BE GIVEN

Comments

Title 12 O.S. 2011 §577.4 (Laws 2011, c. 16, §1, eff. Nov. 1, 2011), reads as follows:

Tax Consequences of Award for Damages in Personal Injury and Wrongful Death Actions

The Oklahoma Uniform Jury Instructions (OUJI) applicable in a civil case shall include an instruction notifying the jury that no part of an award for damages for personal injury or wrongful death is subject to federal or state income tax. Any amount that the jury determines to be proper compensation for personal injury or wrongful death should not be increased or decreased by any consideration for income taxes. In order to be admitted at trial, any exhibit relating to damage awards shall reflect accurate tax ramifications.

In *Missouri-K.T.R.R. v. Miller*, 1971 OK 68 ¶38, 486 P.2d 630, 636, the Oklahoma Supreme Court ruled that the income tax consequences of a personal injury award are not a proper consideration for the jury.

While the Supreme Court's order deleted the capitalized direction that no instruction should be given, it did not specify how the trial court should instruct the jury on the effect of income tax on the award of damages. The order quoted Okla. Stat. Title 12, §577.4 in the comments, and it also retained the prior comments, which cited the *Missouri-K.T.R.R.* case and stated that income tax consequences are not a proper subject for the jury. Instead of resolving how trial courts should instruct juries on the tax consequences of damages awards, the Supreme Court gave mixed signals. Thus, it appears that the Oklahoma Supreme Court will require the issues surrounding the giving of jury instructions on the taxability of damages awards to be presented in the context of a justiciable controversy,⁶ instead of in the context of reviewing proposed revisions to Instruction No. 4.17 from the Civil OUJI Committee, in order for it to resolve whether and how juries should be instructed on the tax consequences of damages awards. The standard of review on appeal for jury instructions "is whether the jury was misled to the extent of rendering a different verdict

than it would have rendered, if the alleged errors had not occurred.”⁷ Seeking an extraordinary writ in an original proceeding may be another means to obtain review by the Oklahoma Supreme Court of jury instructions on the taxability of damages awards by the Oklahoma Supreme Court.⁸

THE \$350,000 CAP ON DAMAGES FOR NONECONOMIC LOSS

The original version of Okla. Stat. Title 23, §61.2 was enacted in 2009 as part of the Comprehensive Lawsuit Reform Act.⁹ It provided for a \$400,000 cap on damages, but it was conditioned on the establishment of a Health Care Indemnity Fund, which would be used to pay damages for noneconomic losses in medical malpractice cases that exceeded the cap.¹⁰ The Health Care Indemnity Fund was never established, but the requirement for it was removed when Okla. Stat. Title 12, §61.2 was amended in 2011. In addition, the amount of the cap was reduced from \$400,000 to \$350,000.¹¹ The statute also provides that there is no limit on the amount of noneconomic damages if the judge and jury determine by clear and convincing evidence that the defendant’s actions were in reckless disregard for the rights of others, grossly negligent, fraudulent or intentional or with malice.¹²

Jury instructions on how the jury should allocate damages between economic and noneconomic losses would certainly be needed if the jury’s award were to include noneconomic losses in excess of the \$350,000 cap. The Civil OUJI Committee decided that the jury instructions should not have to be given in every case where a plaintiff sought more than \$350,000 for total compensatory damages, however, because the plaintiff might not actually recover more than \$350,000. The Civil OUJI Committee concluded that jury instructions on the \$350,000 cap should be reserved for a second stage of the trial that would be held if the jury awarded more than \$350,000 for total compensatory damages in the first stage. The Committee recognized, though, that whether to have two stages or a single stage was a matter for the trial court’s discretion.

The next issue that the Civil OUJI Committee considered was whether the \$350,000 cap should be applied to the damages that the jury determined were sustained by the plaintiff, or to the amount of the award after reduction for the percentage of the plaintiff’s comparative fault. The statute did not expressly address this

issue, but the Civil OUJI Committee noted that paragraph B defined the \$350,000 cap in terms of “the amount of compensation which a trier of fact may award a plaintiff for noneconomic loss” and paragraph D required the verdict to specify the “total compensatory damages recoverable by the plaintiff.” The Civil OUJI Committee concluded that this wording favored an interpretation that the \$350,000 cap should be applied to the net amount after reduction for the percentage of the plaintiff’s comparative fault, because that amount was what the trier of fact would award the plaintiff and what would be recoverable by the plaintiff.

The Civil OUJI Committee also addressed the constitutionality of Okla. Stat. Title 23, §61.2(F) of the statute, which provides:

F. In any civil action arising from claimed bodily injury which is tried to a jury, the jury shall not be instructed with respect to the limit on noneconomic damages set forth in subsection B of this section, nor shall counsel for any party, nor any witness inform the jury or potential jurors of such limitations.

Paragraph F appears to conflict with Article 7, §15 of the Oklahoma Constitution, which provides: “In all jury trials the jury shall return a general verdict, and no law in force, nor any law hereafter enacted, shall require the court to direct the jury to make findings of particular questions of fact, but the court may, in its discretion, direct such special findings.” In *Smith v. Gizzi*,¹³ the Oklahoma Supreme Court analyzed how Article 7, §15 applied to the Oklahoma comparative negligence statute,¹⁴ which provided for a plaintiff’s recovery to be diminished in proportion to a plaintiff’s negligence. The Oklahoma Supreme Court decided that a special verdict was characterized by the jury being limited to making special findings and not knowing the legal effect of its answers.¹⁵ The Supreme Court upheld the trial court’s use of a verdict that included special findings concerning the percentage of negligence attributable to both the plaintiff and defendant, because the jury instructions and verdict form informed the jury of the effect that the special findings would have on the outcome. The Supreme Court explained:

The jury not only must know the legal effect of its findings, but must determine the ultimate result, limited only by the special findings as to each parties [sic] degree

of negligence. Such special findings are constitutionally and statutorily permitted. Under a general verdict, a jury must know the effect of its answers or it is not a general verdict.¹⁶

The problem presented by Okla. Stat. Title 23, §61.2(F) is that it states that the jury must not be instructed or informed with respect to the limit on noneconomic damages, and therefore, it appears to conflict with Okla. Const. Art. 7, §15, as interpreted by the Oklahoma Supreme Court in *Smith v. Gizzi*.

As a result of the apparent conflict between Okla. Stat. Title 23, §61.2(F) and Okla. Const. Art. 7, §15, the Civil OUJI Committee submitted to the Oklahoma Supreme Court two alternative versions of proposed jury instructions and verdict forms concerning the \$350,000 cap on noneconomic loss. The first alternative did not refer to the \$350,000 cap on noneconomic loss, but the comments to the jury explained that there was a potential question concerning the constitutionality of not instructing the jury with respect to the \$350,000 cap on noneconomic loss. The text of the first alternative is set out below.

Instruction No. 9.52 (First Alternative)

Supplemental Verdict Form Specifying Economic and Noneconomic Losses Directions

Now that you have returned a verdict in favor of [Plaintiff] in the amount of \$ _____ for the total compensatory damages for [Plaintiff], you must now make additional findings on the Supplemental Verdict Form. [On the Supplemental Verdict Form, you must specify what portion of the total compensatory damages is for economic loss for [Plaintiff] and what portion of the total compensatory damages is for noneconomic loss for [Plaintiff].]

[First, you must decide whether or not you find by clear and convincing evidence that the conduct [was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)], and then indicate what you have decided with a check mark.]

["Reckless disregard of another's rights" means that the defendant was either aware, or did not care, that there was a substantial and unnecessary risk that his, her or its

conduct would cause serious injury to others. In order for the conduct to be in reckless disregard of another's rights, it must have been unreasonable under the circumstances and there must have been a high probability that the conduct would cause serious harm to another person.]

["Gross negligence" means the want of slight care and diligence.]

["Fraud" consists of the following acts committed with intent to deceive another party: **(the suggestion, as a fact, of that which is not true, by one who does not believe it to be true)/ (the positive assertion in a manner not warranted by the information of the person making it, of that which is not true, though he believe it to be true)/(the suppression of that which is true, by one having knowledge or belief of the fact)/(a promise made without any intention of performing it).**]

["Malice" involves hatred, spite or ill will, or the doing of a wrongful act intentionally without just cause or excuse.]

[If you find by clear and convincing evidence that the conduct [was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)], you must then specify what portion of the total compensatory damages is for economic loss for [Plaintiff] and what portion of the total compensatory damages is for noneconomic loss for [Plaintiff].]

"Economic loss" means any type of financial harm, past or future, from a bodily injury including:

1. All wages, salaries or other compensation;
2. All costs for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations, and
3. Any other costs on account of a bodily injury.

"Noneconomic loss" means any type of nonfinancial harm from a bodily injury including damages for pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction,

training, education, disfigurement, mental anguish and any other intangible loss.

Notes on Use

This Instruction and the following Supplemental Verdict Form should be used if the jury has returned a verdict for personal injury to a plaintiff of more than \$350,000 after reduction for any percentage of comparative negligence. The trial court should list only the examples of economic and noneconomic loss and the definitions of fraud, gross negligence, intent, malice, and reckless disregard of another's rights that are applicable. The trial court should include the paragraph of this instruction concerning the finding by clear and convincing evidence with respect to the conduct of the defendant only if the applicable conduct of the defendant has been alleged and supported by proof at trial.

If there have not been allegations of fraud, gross negligence, intent, malice, and reckless disregard of another's rights, or they have not been supported by proof at trial, the trial court should include the sentence of the first paragraph that appears in brackets, omit the next paragraphs that appear in brackets, and then give the definitions of economic and noneconomic loss in the instruction. On the other hand, if there have been allegations of fraud, gross negligence, intent, malice, and reckless disregard of another's rights that have been supported by proof at trial, the trial court should omit the sentence of the first paragraph that appears in brackets, and then give the next paragraphs in brackets that are applicable along with the definitions of economic and noneconomic loss in the instruction.

This instruction and the following Supplemental Verdict Form contemplate a two stage process in which the jury would first return a verdict, and then if the verdict for bodily injury exceeds \$350,000 after reduction for any comparative negligence of the plaintiff, the jury would then allocate the amount of compensatory damages between economic and noneconomic losses. If the verdict was for the defendant or did not exceed \$350,000, it would be unnecessary for the jury to address the allocation between economic and noneconomic losses, and therefore, a two stage process would

be more efficient than a single stage process. Also, a two stage process could be less confusing for the jury if the jury was also determining comparative negligence. A single stage process might be more efficient in some cases, however, and then it would be appropriate for the trial court to exercise its discretion to consolidate the two stages into a single stage by combining the substance of this instruction and the Supplemental Form to the appropriate instructions and verdict forms.

Comments

This instruction and the following Supplemental Verdict Form conform to the requirements of 23 O.S. 2011 §61.2, which applies to actions filed on or after Nov. 1, 2011. *Id.* §61.2(I). Section 61.2 requires the jury to return a general verdict accompanied by interrogatories that specify the plaintiff's total compensatory damages, and the portions of the total compensatory damages for economic and noneconomic loss. *Id.* §61.2(D). In addition, §61.2(E) requires the jury to specify, if alleged, whether the conduct of the defendant was, or amounted to, reckless disregard for the rights of others, gross negligence, fraud, or intentional or malicious conduct. Section 61.2(F) provides that the jury shall not be instructed with respect to the \$350,000 limit on noneconomic loss.

There may be a question concerning the constitutionality of not instructing the jury with respect to the limit on noneconomic damages. The Oklahoma Supreme Court addressed the application of Okla. Const. Art., VII, §15 to Oklahoma's comparative negligence statutes in *Smith v. Gizzi*, 1977 OK 91, 564 P.2d 1009. Art. VII, §15 provides: "In all jury trials the jury shall return a general verdict, and no law in force nor any law hereafter enacted, shall require the court to direct the jury to make findings of particular questions of fact but the court may, in its discretion, direct such special findings." The Supreme Court held that the comparative negligence statutes did not violate Art., VII, §15, because they did not require a special verdict. The Supreme Court reasoned that under a general verdict, the jury must know the effect of its answers to special findings, and that if the jury did not know the effect of its answers, the verdict would be a special verdict that

would violate Okla. Const. Art., VII, §15. 1977 OK 91, ¶¶11-12, 564 P.2d 1009, 1012-13.

Instruction No. 9.53 (First Alternative)

**Supplemental Verdict Form
Specifying Economic and Noneconomic
Losses**

IN THE DISTRICT COURT OF _____
COUNTY,

STATE OF OKLAHOMA

_____)
Plaintiff,)
vs.) CASE NO. _____
_____)
Defendant,)

SUPPLEMENTAL VERDICT FORM

We, the jury, empaneled and sworn in the above entitled cause, do, upon our oaths, find as follows:

1. The amount of total compensatory damages awarded **[after reduction for comparative negligence]** to **[Plaintiff]** is \$ _____ **[to be filled in by the trial court]**.

The portion of total compensatory damages for economic loss is \$ _____; and

The portion of total compensatory damages for noneconomic loss is \$ _____.

The sum of the portions for economic and noneconomic loss must equal the total compensatory damages set out above.

2. We further find by clear and convincing evidence that the conduct of **[Defendant]** (Check any that are applicable):

- was in reckless disregard for the rights of others
- amounted to gross negligence
- amounted to fraud
- was intentional or malicious
- none of the above

Foreperson _____

This Supplemental Verdict Form should be used if the jury has returned a verdict for personal injury to a plaintiff of more than \$350,000 after reduction for any percentage of comparative negligence. The trial court should specify the net award after reduction for any percentage of comparative negligence in paragraph 1. The trial court should include paragraph 2 to the extent that any applicable conduct of the defendant has been alleged and supported by proof at trial.

The second alternative that the Civil OUJI Committee submitted to the Oklahoma Supreme Court differed from the first alternative by including the following language in both proposed Instruction No. 9.52 and the verdict form in Instruction 9.53 to inform the jury of the \$350,000 cap on noneconomic loss:

The law provides that the amount of compensation for noneconomic loss from all defendants is limited to \$350,000, unless you find by clear and convincing evidence that their conduct **[was/(amounted to)] [(reckless disregard for the rights of others)/(gross negligence)/fraud/(intentional or malicious)]**.

The Oklahoma Supreme Court did not include any instruction or verdict form concerning the \$350,000 cap for noneconomic losses in its order dated March 24, 2014, which adopted amendments to the Oklahoma Uniform Jury Instructions — Civil (Second).¹⁷ The Oklahoma Supreme Court eventually will have to resolve how juries should be instructed in personal injury cases where the \$350,000 cap applies, but the Supreme Court will require a justiciable controversy to do so.

CONCLUSION

The statutes dealing with the taxability of damages for personal injuries and the \$350,000 cap on noneconomic losses present challenges for drafting jury instructions because they may involve possible constitutional issues. Resolution of these issues will require attorneys to make appropriate records in the trial courts and then to raise these issues properly on appeal.

1. 1971 OK 68, ¶38, 486 P.2d 630, 636.

2. *Id.* The Oklahoma Supreme Court relied on an annotation at 63 A.L.R.2d 1393, which indicated that the United States Supreme Court and all but one state supreme court had ruled that income tax considerations should not be considered, because they were too conjectural.

After the *Missouri-K.T.R.R.* decision, the United States Supreme Court ruled in *Norfolk & W. Ry. v. Liepelt*, 444 U.S. 490, 497-98 (1980), that a brief jury instruction explaining that damages received on account of personal injuries are not taxable income was required as a matter of federal law for all FELA cases in order to prevent jurors from mistakenly increasing awards to compensate for the effect of income taxes.

3. See 26 CFR Part 1 §1.104-1 (a). Also, an award of damages for emotional distress is taxable if it is not attributable to a physical injury. *Id.* §1.104-1 (c).

4. The Civil OUJI Committee also submitted a proposed revision to Instruction No. 59, which stated that punitive damages were taxable. The Notes on Use to the proposed revision said that the instruction on taxability of punitive damages should be given in the second stage of the trial, only if the trial court instructed the jury that the plaintiff would not be required to pay income taxes on an award for damages for personal injury or wrongful death during the first stage of the trial. The Oklahoma Supreme Court did not adopt the proposed revision to Instruction No. 59, but it did update several citations in the Notes on Use to Instruction No. 59.

5. In re: Amendments to the Oklahoma Uniform Jury Instructions, 2014 OK 17.

6. See *Tulsa Industrial Authority v. City of Tulsa*, 2011 OK 57, ¶13, 270 P.3d 113, 120 (“The term ‘justiciable’ refers to a lively case or controversy between antagonistic demands.”).

7. *Johnson v. Ford Motor Co.*, 2002 OK 24 ¶17, 45 P.3d 86, 93.

8. See Okla. Const. Art. 7, §4; Okla. Stat. Title 12, §1451; Okla. Sup. Ct. R. 1.190-1.191.

9. 2009 Okla. Sess. Laws c. 228, §24. The Comprehensive Lawsuit Reform Act was declared unconstitutional in *Douglas v. Cox Retirement Props.*, 2013 OK 37, 302 P.3d 789, because the Oklahoma legislature passed it through unconstitutional log-rolling in violation of the single subject rule in Okla. Const. Art. 5, §57. Section 24 was not affected by *Douglas*, however, because Okla. Stat. Title 23, §61.2 was amended by a separate statute before *Douglas* was decided.

10. *Id.* at ¶A, J.

11. 2011 Okla. Sess. Laws c. 14, §1.

12. Okla. Stat. Title 23, §61.2(C).

13. 1977 OK 91, 564 P.2d 1009.

14. Okla. Stat. Title 23, §11 (Supp. 1976), *repealed*, 1979 Okla. Session Laws c. 38 §14. .

15. *Smith*, 1977 OK 91, ¶11, 564 P.2d 1009, 1013.

16. *d.*

17. In re: Amendments to the Oklahoma Uniform Jury Instructions, 2014 OK 17.

ABOUT THE AUTHOR



Charles W. Adams has been a professor at the TU College of Law since 1979, where he teaches civil procedure and evidence. He has been a member of the OBA Civil Procedure Committee since 1983, serving as chairman from 1987-1989 and 1994-2001. He co-drafted much of the Oklahoma Pleading Code and its Commentary and co-authored *Civil Procedure* of Vernon's Oklahoma Forms, the *Oklahoma Discovery Practice Manual*, *Oklahoma Lien Laws* and *Oklahoma Civil Pretrial Procedure*.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF LOUIS J. BODNAR, SCBD #6202 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if Louis J. Bodnar should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Thursday, May 14, 2015**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL