

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 404

By: Jolley

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6 AS INTRODUCED

7 An Act relating to personal injury trusts; creating
8 the Personal Injury Trust Fund Transparency Act;
9 providing short title; defining terms; requiring
10 plaintiff in certain actions to disclose certain
11 information; requiring certain court order;
12 establishing certain presumption; prohibiting certain
13 claims of privilege; authorizing certain discovery;
14 prohibiting scheduling of certain trial within
15 specified time period; requiring stay under certain
16 circumstances; authorizing certain motion by
17 defendant; establishing procedures upon
18 identification of certain trust; requiring court to
19 make certain determination; requiring court to order
20 filing of claim under certain circumstances;
21 requiring certain documents to be entered into record
22 within specified time period; establishing rebuttable
23 presumption; requiring certain valuation; authorizing
24 certain credits; providing for sanctions; providing
for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 81 of Title 76, unless there is
created a duplication in numbering, to read as follows:

This act shall be known and may be cited as the "Personal Injury
Trust Fund Transparency Act."

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 82 of Title 76, unless there is
3 created a duplication in numbering, to read as follows:

4 As used in the Personal Injury Trust Fund Transparency Act:

5 1. "Personal injury claim" means any claim for damages, loss,
6 indemnification, contribution, restitution or other relief,
7 including punitive damages, that is related to bodily injury or
8 another harm, including loss of consortium, society, or
9 companionship, loss of support, personal injury or death, mental or
10 emotional injury, risk or fear of disease or other injury, or costs
11 of medical monitoring or surveillance. "Personal injury claim"
12 includes a claim made by or on behalf of the person who claims the
13 injury or harm or by or on behalf of the person's representative,
14 spouse, parent, minor child, or other relative. "Personal injury
15 claim" does not include a claim for compensatory benefits pursuant
16 to crime victim's compensation, worker's compensation or veteran's
17 benefits.

18 2. "Personal injury trust" means a trust, qualified settlement
19 fund, compensation fund or claims facility created as a result of an
20 administrative or legal action, bankruptcy, agreement, or other
21 settlement or pursuant to 11 USC 524 (g) or 49 USC 40101, that is
22 intended to provide compensation to claimants alleging personal
23 injury claims as a result of harm, also potentially compensable in
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1 the immediate tort action, for which the entity creating the trust,
2 compensation fund, or claims facility is alleged to be responsible.

3 3. "Trust claims materials" means all documents and information
4 relevant or related to a pending or potential claim against a
5 personal injury trust. "Trust claims materials" include, but are
6 not limited to, claims forms and supplementary materials,
7 affidavits, depositions and trial testimony, work history, and
8 medical and health records.

9 4. "Trust governance document" means any document that
10 determines eligibility and payment levels, including claims payment
11 matrices, trust distribution procedures, or plans for
12 reorganization, for a personal injury trust.

13 SECTION 3. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 83 of Title 76, unless there is
15 created a duplication in numbering, to read as follows:

16 REQUIRED DISCLOSURES BY PLAINTIFF.

17 A. Within thirty (30) days after the effective date of this act
18 or within thirty (30) days after an action for a personal injury or
19 other tort is filed, the court shall order the plaintiff to provide
20 to the court and to all parties a statement identifying all personal
21 injury claims the plaintiff has or anticipates filing against a
22 personal injury trust, and for each claim, whether there has been a
23 request to defer, delay, suspend or toll the claim against the
24 personal injury trust. The statement shall include an attestation

1 that the plaintiff swears or affirms, under penalties of perjury,
2 that the statement is complete and is based on the plaintiff's and
3 plaintiff's attorney's good faith investigation of all potential
4 claims against personal injury trusts.

5 B. The court shall order the plaintiff to produce to the court
6 and to all parties, for each personal injury claim he or she filed
7 against a personal injury trust identified in subsection A of this
8 section, a final executed proof of claim and all other trust claims
9 materials relevant to each claim.

10 C. The court shall order the plaintiff to produce to the court
11 and to all parties, for each personal injury claim he or she
12 anticipates filing against a personal injury trust identified in
13 subsection A of this section, all trust claims materials relevant to
14 each claim. The court shall order the plaintiff to produce to the
15 court and to all parties a final executed proof of claim for each
16 claim when the plaintiff files the claim.

17 D. The court shall order the plaintiff to supplement the
18 information and materials he or she provided pursuant to each order
19 entered under this section within thirty (30) days after the
20 plaintiff files an additional claim, supplements an existing claim
21 or receives additional information or materials.

22 SECTION 4. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 84 of Title 76, unless there is
24 created a duplication in numbering, to read as follows:

1 DISCOVERY; USE OF MATERIALS.

2 A. The court shall presume trust claims materials and trust
3 governance documents to be relevant and authentic and shall allow
4 any party to present the trust claims materials to prove, without
5 limitation, alternative causation for a plaintiff's injuries or to
6 allocate liability for the plaintiff's injury. No claims of
7 privilege may apply to trust claims materials or trust governance
8 documents.

9 B. A defendant in a personal injury claim may seek discovery
10 against a personal injury trust identified under Section 3 of this
11 act. The plaintiff may not claim privilege or confidentiality to
12 bar discovery under this paragraph and shall provide consent or
13 other expression of permission that may be required by the personal
14 injury trust to release information and materials sought by the
15 defendant.

16 SECTION 5. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 85 of Title 76, unless there is
18 created a duplication in numbering, to read as follows:

19 SCHEDULING TRIAL; STAY OF ACTION.

20 A. The court may not schedule a trial in a personal injury
21 action until at least one hundred eighty (180) days after the
22 plaintiff makes the disclosures required under Section 3 of this
23 act.

1 B. If a party states under Section 3 of this act that he or she
2 anticipates a claim against a personal injury trust, the court shall
3 stay all proceedings until the party files his or her claim against
4 the personal injury trust and provides to the court and to all
5 parties a final executed proof of claim and all other trust claims
6 materials relevant to each claim the party has against a personal
7 injury trust. The party shall also state whether there has been a
8 request to defer, delay, suspend, or toll the claim against the
9 personal injury trust.

10 SECTION 6. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 85 of Title 76, unless there is
12 created a duplication in numbering, to read as follows:

13 DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE
14 PERSONAL INJURY TRUSTS.

15 A. Any defendant may move the court for an order under
16 subsection D of this section by identifying a personal injury trust
17 against which the defendant in good faith believes the plaintiff can
18 file a successful claim. For each personal injury trust a defendant
19 identifies, the defendant shall produce or describe the evidence
20 sufficient to meet the personal injury trust distribution procedure
21 requirements to file a valid claim and the amount of money the trust
22 should pay for the claim.

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1 B. Within ten (10) days of receiving a motion under subsection
2 A of this section, the plaintiff shall, for each personal injury
3 trust identified by the defendant, either:

- 4 1. File a claim with the personal injury trust; or
- 5 2. File a written response with the court that sets forth
6 reasons why there is insufficient evidence to permit the plaintiff
7 to file a claim in good faith under the personal injury trust
8 distribution procedure identified by the defendant.

9 C. The court shall determine, for each personal injury trust
10 identified under subsection A of this section, whether there is a
11 good faith basis for the plaintiff to file a claim with the personal
12 injury trust or if the plaintiff does not meet criteria set forth in
13 the personal injury trust's trust governance documents.

14 D. If the court determines that there is a good faith basis for
15 the plaintiff to file a claim against a personal injury trust
16 identified by a defendant, the court shall order the plaintiff to
17 file a claim with the personal injury trust and shall stay the
18 immediate action until the plaintiff swears or affirms that he or
19 she has filed the claim against the personal injury trust and the
20 plaintiff provides to the court and to all parties a final executed
21 proof of claim and all other trust claims materials relevant to each
22 claim the plaintiff has against a personal injury trust.

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1 E. Not less than sixty (60) days after the plaintiff provides
2 the documentation required under subsection D of this section, the
3 court may schedule the plaintiff's action for trial.

4 F. Not less than thirty (30) days prior to trial, the court
5 shall enter into the record a trust claims document that identifies
6 each personal injury claim the plaintiff has made against a personal
7 injury trust.

8 SECTION 7. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 86 of Title 76, unless there is
10 created a duplication in numbering, to read as follows:

11 VALUATION OF PERSONAL INJURY TRUST CLAIMS; JUDICIAL NOTICE.

12 If a plaintiff proceeds to trial under this section before one
13 of more of his or her personal injury trust claims is resolved,
14 there is a rebuttable presumption that the plaintiff is entitled to,
15 and will receive, the compensation specified in the trust governance
16 document applicable to his or her claim. The court shall take
17 judicial notice that the trust governance document specifies
18 compensation amounts and shall establish an attributed value to the
19 plaintiff's personal injury trust claim.

20 SECTION 8. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 87 of Title 76, unless there is
22 created a duplication in numbering, to read as follows:

23 SETOFFS; CREDIT.
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1 In any personal injury claim for which damages are awarded, a
2 defendant is entitled to a setoff or credit in the amount of the
3 valuation established under Section 7 of this act and any amount the
4 plaintiff has been awarded from a personal injury trust claim
5 identified in subsection F of Section 6 of this act. If multiple
6 defendants are found liable for damages, the court shall distribute
7 the amount of setoff or credit proportionally, according to the
8 liability of each defendant.

9 SECTION 9. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 88 of Title 76, unless there is
11 created a duplication in numbering, to read as follows:

12 FAILURE TO PROVIDE INFORMATION; SANCTIONS.

13 A plaintiff who fails to provide all of the information required
14 under Section 3, subsection B of Section 4 or subsection D of
15 Section 6 of this act is subject to sanctions as provided in
16 Sections 2011 and 3237 of Title 12 of the Oklahoma Statutes.

17 SECTION 10. This act shall become effective November 1, 2013.

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