

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 404

By: Jolley of the Senate

and

Jordan of the House

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10 COMMITTEE SUBSTITUTE

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

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

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

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

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

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

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

23 2. "Personal injury trust" means a government-approved or
24 court-approved trust, qualified settlement fund, compensation fund

1 or claims facility created as a result of a federal or state
2 administrative or legal action, a court-approved bankruptcy, or
3 pursuant to 11 USC 524(g) or 49 USC 40101, that is intended to
4 provide compensation to claimants alleging personal injury claims as
5 a result of harm, also potentially compensable in the immediate tort
6 action, for which the entity creating the trust, compensation fund,
7 or claims facility is alleged to be responsible;

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

14 4. "Trust governance document" means any document that
15 determines eligibility and payment levels, including claims payment
16 matrices, trust distribution procedures, or plans for
17 reorganization, for a personal injury trust.

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

21 REQUIRED DISCLOSURES BY PLAINTIFF.

22 A. Within ninety (90) days after an action for a personal
23 injury or other tort is filed, the plaintiff, without awaiting a
24 discovery request, shall provide to all parties a statement

1 identifying all personal injury claims the plaintiff has or
2 anticipates filing against a personal injury trust, and for each
3 claim, whether there has been a request to defer, delay, suspend or
4 toll the claim against the personal injury trust. The statement
5 shall include an attestation that the plaintiff swears or affirms,
6 under penalties of perjury, that the statement is complete and is
7 based on the plaintiff's and plaintiff's attorney's good-faith
8 investigation of all potential claims against personal injury
9 trusts.

10 B. The plaintiff shall produce to all parties, for each
11 personal injury claim he or she filed against a personal injury
12 trust identified in subsection A of this section, a final executed
13 proof of claim and all other trust claims materials relevant to each
14 claim.

15 C. The plaintiff shall supplement the information and materials
16 he or she provided under this section within thirty (30) days after
17 the plaintiff files an additional claim, supplements an existing
18 claim or receives additional information or materials.

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

22 DISCOVERY; USE OF MATERIALS.

23 A. Trust claims materials and trust governance documents shall
24 be presumed to be relevant and authentic, subject to the Rules of

1 Evidence governing admissibility. Any party may present trust
2 claims materials to prove alternative causation for a plaintiff's
3 injuries or to allocate liability for the plaintiff's injury. No
4 claims of privilege may apply to trust claims materials or trust
5 governance documents.

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

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

16 SCHEDULING TRIAL; STAY OF ACTION.

17 A. The trial date in a personal injury action in this state
18 shall be no earlier than one hundred eighty (180) days after the
19 plaintiff makes the disclosures required under subsections A and B
20 of Section 3 of this act.

21 B. If a plaintiff states under Section 3 of this act that he or
22 she anticipates a claim against a personal injury trust, all
23 proceedings shall be stayed until the plaintiff files such trust
24 claims and provides to all parties a final executed proof of claim

1 and all other trust claims materials relevant to each claim. The
2 plaintiff shall also state whether there has been a request to
3 defer, delay, suspend, or toll the claim against the personal injury
4 trust.

5 SECTION 6. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 86 of Title 76, unless there is
7 created a duplication in numbering, to read as follows:

8 DEFENDANT'S IDENTIFICATION OF ADDITIONAL OR ALTERNATIVE
9 PERSONAL INJURY TRUSTS.

10 A. 1. Not later than ninety (90) days before trial, any
11 defendant may move the court for an order under subsection D of this
12 section by identifying a personal injury trust against which the
13 defendant in good faith believes the plaintiff can file a successful
14 claim. For each personal injury trust a defendant identifies, the
15 defendant shall produce or describe the evidence sufficient to meet
16 the personal injury trust distribution procedure requirements to
17 file a valid claim and the amount of money the trust should pay for
18 the claim.

19 2. Notwithstanding any other provision of this subsection, if
20 the plaintiff produces additional information that supports the
21 filing of an additional personal injury trust claim, a defendant may
22 file a motion to stay the proceedings within seven (7) days of
23 receiving the additional information.

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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:

4 1. File a claim with the personal injury trust;

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; or

9 3. File a written response with the court requesting a
10 determination that the plaintiff's or attorney's fees and expenses
11 to prepare and file the personal injury trust claim identified in
12 the defendant's motion exceed the plaintiff's reasonably anticipated
13 recovery from the personal injury trust.

14 C. If the defendant has met its burden under subsection A of
15 this section, and if the plaintiff files a response pursuant to
16 paragraph 2 of subsection B of this section, the court shall
17 determine, for each personal injury trust identified under
18 subsection A of this section, whether there is a good-faith basis
19 for the plaintiff to file a claim with the personal injury trust or
20 if the plaintiff does not meet criteria set forth in the personal
21 injury trust's trust governance documents.

22 D. If the defendant has met its burden under subsection A of
23 this section and if the plaintiff files a response pursuant to
24 paragraph 3 of subsection B of this section, the court shall

1 determine if the plaintiff's or attorney's fees and expenses to
2 prepare and file the personal injury trust claim identified in the
3 defendant's motion, exceed the plaintiff's reasonably anticipated
4 recovery from the personal injury trust.

5 E. If the court determines that there is a good-faith basis for
6 the plaintiff to file a claim against a personal injury trust
7 identified by a defendant, the court shall:

8 1. Order the plaintiff to file a claim with the personal injury
9 trust and stay the immediate action until the plaintiff swears or
10 affirms that he or she has filed the claim against the personal
11 injury trust and the plaintiff provides to all parties a final
12 executed proof of claim and all other trust claims materials
13 relevant to each claim the plaintiff has against a personal injury
14 trust; or

15 2. If the court determines, pursuant to subsection D of this
16 section, that the plaintiff's or attorney's fees and expenses exceed
17 the plaintiff's reasonably anticipated recovery from the personal
18 injury trust, the court shall stay the immediate action until the
19 plaintiff files with the court and produces to all parties a
20 verified statement of the plaintiff's history of exposure, usage, or
21 other connection, as relevant, to the products, services, or events
22 covered by the personal injury trust.

1 F. Not less than thirty (30) 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 G. 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 87 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 liquidated value specified in the trust
16 governance document applicable to his or her claim at the time of
17 trial. The court may take judicial notice that the trust governance
18 document specifies compensation amounts and payment percentages and
19 shall establish an attributed value to the plaintiff's personal
20 injury trust claim.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 88 of Title 76, unless there is
23 created a duplication in numbering, to read as follows:

24 SETOFFS; CREDIT.

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 89 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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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 04/10/2013 - DO
20 PASS, As Amended.
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