



TORT REFORM IN OKLAHOMA? AGAIN??

In “The Godfather Part III”, Michael Corleone utters the famous line, “Just when I thought I was out, they pull me back in.” Similarly, the Oklahoma Legislature is at this very moment (the one that is taking place as I type, not necessarily as you read) working feverishly on restoring what the Oklahoma Supreme Court struck down in the case of *Douglas v. Cox Retirement Properties, Inc.*, 2013 OK 37 (June 4, 2013). The Court in *Douglas* invalidated the entirety of the 2009 tort reform laws for a variety of reasons, mainly because the law violated Oklahoma’s ‘single-subject’ rule (a pesky little thing found at Article 5, § 57 of the Oklahoma Constitution). The Court determined that many of the laws also had individual problems, including one that required a ‘certificate of merit’ from an expert before a professional negligence case could even be filed. The Supreme Court took a dim view of this, holding that the law unreasonably restrained access to the courts for many people who could not afford to pay the experts for the certificate, and in essence singled out professional negligence cases, among other things.

The immediate aftermath of the *Douglas* decision was to leave us with pre-2009 law¹ regarding all such things – joint and several liability, no statutory caps on non-economic damages, etc. Naturally, the backlash against the *Douglas* decision (and the Supreme Court) was

¹ SPOILER ALERT: But only on cases that arose before the 2011 reforms mentioned in the next paragraph.

swift. A Special Session of the Legislature has been called specifically to address the laws invalidated by the *Douglas* decision. The Legislature is on the fast track to getting all these bills passed individually, as well as expanding the ‘certificate of merit’ requirement to ALL negligence cases ‘where an expert witness is required’.

So—where are we now and where are we going? Well, first, you have to remember that there were a ton of tort reform laws passed in the 2011 session as well. Now, most of those reforms were passed in the same manner as the 2009 reforms, which is to say they too may have violated the single-subject requirement. But for now, they’re still law. Thus, anything that would have been subject to the 2009 reforms is clearly not-so-subjected, but any claim that arose after November 1, 2011 is subject to the 2011 reforms. And now, anything that arises after the effective date of the tort reform bills currently under consideration (and probably passed before you read this), will be subject to the new (formerly old) reforms.

Confused? I know I am. But hey – those bills will be challenged as well. And this will only add to our current confusion. But one thing’s for sure – it’ll be fun to watch. You get the soda, I’ll get the popcorn.

If you have questions about this decision, please contact Jeff Curran at (405) 235-5537.

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