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Recent Changes to the Oklahoma Uniform Jury Instructions-Civil (Second)

Earlier this year the Oklahoma Supreme Court adopted several new uniform civil jury instructions and made revisions to some existing uniform instructions. These changes had been recommended by the Oklahoma Supreme Court Committee for Uniform Civil Jury Instructions. *In Re: Amendments to the Oklahoma Uniform Jury Instructions - Civil (Second)*, 2014 OK 17. The amendments to OUJI-CIV became effective April 23, 2014. There were also a handful of recommended instructions the OUJI-CIV Committee had submitted to the Supreme Court that were not adopted. It is as important to be aware of the recommended instructions that were not adopted as it is to be aware of those that were adopted. This highlights the changes.

General Instructions.

OUJI-CIV No. 1.2A is new and allows the trial court to require prospective jurors to complete a juror questionnaire. The questionnaire is intended to assist the judge and attorneys in expediting the jury selection process. In order to maintain the confidentiality of the juror questionnaire new court rules were enacted regarding the disposition of the original and copies of the questionnaires. A new instruction regarding video/computer animations is included in Chapter 3. This instruction, OUJI-CIV No. 3.26, advises the jury it may accept or reject the animation and cautions it is not an actual re-creation of the events in question.

Taxation Of Awards.

In 2011 the legislature enacted 12 O.S. 2011 § 577.4. That statute directed the OUJI-CIV Committee to include an instruction notifying the jurors that no part of an award for personal injury or wrongful death is subject to federal or state income tax. The OUJI-CIV Committee revised OUJI-CIV No. 4.17 and submitted it to the Supreme Court in accordance with the legislative directive. The Supreme Court did not adopt revised OUJI-CIV 4.17. Instead, it deleted from existing OUJI-CIV No. 4.17 the language “NO INSTRUCTION SHOULD BE GIVEN”. The Comments on Use continue to point out that the Oklahoma Supreme Court has “ruled that the income tax consequences of a personal injury award are not a proper consideration for the jury”. The Supreme Court most likely wants to wait for an appropriate case to come before it to decide whether § 577.4 violates the separation of powers doctrine.

Exemplary Damages.

OUJI-CIV No. 5.9 was revised to include in brackets language from the United States Supreme Court’s decision in *Phillips Morris USA v. Williams*, 549 U.S. 346 (2007). The Comments on Use point out the bracketed language should be used where there is a significant risk of misunderstanding by the jury that it should impose punitive damages for harm to nonparties.

Several Liability.

Because joint and several liability was abolished by the legislature in 2011 (23 O.S. 2011 § 15), changes in certain verdict forms found in Chapter 9 were recommended by the Committee. The text of OUJI-CIV No. 9.24 and 9.26 was not changed but the Comments to each instruction were changed to limit their use to actions accruing before November 1, 2011, or where brought by or on behalf of the State of Oklahoma. OUJI-CIV No. 9.33, 9.34 and 9.36 were modified to be consistent with 23 O.S. 2011 § 15 which abolished joint and several liability in actions accruing after November 1, 2011.

Limits On Noneconomic Damages.

As a part of tort reform in 2011, the legislature enacted 23 O.S. 2011 § 61.2 which placed monetary limitations on damages for bodily injury and provided for a general verdict to be accompanied by interrogatories specifying questions to be answered by the jury. The statute further provided that the jurors were not to be instructed, or otherwise informed, of the limit on noneconomic damages. The Committee submitted two alternative proposed instructions for consideration by the Supreme Court. The first alternative proposed instruction followed the legislative directive and did not inform the jurors of the “cap” on noneconomic loss. The second alternative, however, did inform the jurors of the “cap” on noneconomic loss. The second alternative was offered in order to comply with *Smith v. Gizzi*, 1977 OK 91, 564 P.2d 100 where the Supreme Court held that under a general verdict the jury must know the effect of its answers to special findings, or else the verdict would be a special verdict in violation of art. VII, § 15 of the Oklahoma Constitution. The Supreme Court did not adopt either of the proposed alternative instructions. Again, the Supreme Court most likely wanted to wait for an actual case or controversy to present itself on appeal to address the situation.

False Representation.

Two instructions in OUJI-CIV Chapter 18 were revised. OUJI-CIV No. 18.1 deals with the elements of liability for false representation and OUJI-CIV No. 18.2 deals with the elements of liability for nondisclosure or concealment. Added to the body of each instruction was that a claim of deceit must be established by clear and convincing evidence.

Wrongful Discharge.

The Committee recommended, and the Supreme Court approved, changes to OUJI-CIV Chapter 21 dealing with wrongful discharge and employment discrimination. The Chapter was

divided into two parts. Part A included the thirteen instructions that were originally in Chapter 21. They deal with the public policy and statutory exceptions to the employment at will doctrine as well as contractual limitations on discharge. Part B includes three new instructions which deal with claims for employment based discrimination under 25 O.S. § 1350. The statute, enacted in 2011, provides a cause of action for employment discrimination or retaliation based on race, color, religion, sex, national origin, age, disability or genetic information.

Defamation.

The Supreme Court adopted nine instructions dealing with defamation and located them in new OUJI-CIV Chapter 28. OUJI-CIV No. 28.2 deals with the defamation of public figure plaintiffs, and OUJI-CIV No. 28.3 deals with the defamation of private figure plaintiffs. Five instructions, OUJI-CIV No. 28.4 through 28.8, deal with the affirmative defenses to defamation. OUJI-CIV No. 28.1 is an introductory instruction, and OUJI-CIV No. 28.9 sets forth the measure of damages for defamation.

Misappropriation Of Trade Secrets.

OUJI-CIV Chapter 29, dealing with the misappropriation of trade secrets, is another new OUJI-CIV chapter adopted by the Supreme Court. The new instructions deal with the elements of a misappropriation claim OUJI-CIV No. 29.1 and the definitions of a “trade secret” OUJI-CIV No. 29.2, “misappropriation” OUJI-CIV No. 29.3 and “improper means” OUJI-CIV No. 29.4. The last instruction in the chapter, OUJI-CIV No. 29.5, provides the jury with the measure of damages for a misappropriation claim. The Comments on Use point out that trade secret law in Oklahoma is governed by the Uniform Trade Secrets Act, 78 O.S. §§ 85-94.

Even though the Supreme Court adopted the revised and new OUJI-CIV instructions proposed by the Committee, in its Order it declined “to relinquish its constitutional or

statutory authority to review the legal correctness of these authorized Instructions when it is called upon to afford corrective relief in any adjudicative context.”

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