

# OADC OUTLOOK

A Publication of the Oklahoma Association of Defense Counsel

March 2012

## OADC Outlook

Page 1

President's Message

Page 2

2011 Lawsuit Reforms

Page 3

Summer Meeting,  
New Members,  
2012 Officers & Directors

Page 4

Memoriam

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## President's Message

by Nathan E. Clark

My term as President for OADC is proving to be a busy one. Last October, President-Elect Malinda Matlock and I attended the 2011 DRI National Meeting in Washington, D.C. The conference was both informative and enjoyable. In particular, in front of thousands of lawyers waiting to hear a presentation from Justice Antonin Scalia, there was one attorney nationwide that was singled out for recognition for his service to the defense community – our own Burt Johnson.

On January 20, 2012, OADC conducted its Winter Meeting at the Oaks Country Club in Tulsa, Oklahoma. I am pleased to report that not only was attendance outstanding, but John Woodard received a Lifetime Achievement Award for his commendable service to OADC. G. Calvin Sharpe was also recognized for his outstanding contributions as OADC's 2011 President.

While more extensive biographical materials will be included in the next OADC Outlook, I also wanted to take a moment to acknowledge OADC's retention of Brett Robinson and Dennis Adkins to lobby on OADC's behalf. Brett and Dennis have been active in their work at the capitol already, and this marks yet another way that OADC works to the benefit of its membership.

As always, our members have an open invitation to become more active on behalf of OADC. If you are interested in serving in general or in some specific capacity, please contact my office, and I will be glad to assist.

I look forward to the remainder of my term as OADC's President, and I welcome you to contact my office with any comments or suggestions you may have.

[www.OADC.org](http://www.OADC.org)

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# 2011 OKLAHOMA LAWSUIT REFORMS

By Thomas Manning, Angela D. Ailles & Associates

Much has been made about the rush to the court house by plaintiff attorneys in the days prior to the effective date of the new laws in 2011. For example, there were 1400 civil cases (> \$10,000) filed in Oklahoma County and 788 civil cases filed in Tulsa County in the last six business days before the November 1, 2011 effective date of the new laws. In contrast, from November 1, 2011 through December 31, 2011, there were a total of 1150 civil cases filed in Oklahoma County and 973 civil cases filed in Tulsa County.

While on the surface the number of civil filings just prior to the November 1 effective date might seem excessive, in reality, it may be a non-issue because many, if not all, of these cases would have resulted in a lawsuit and only the timing of the filing may have been affected. Interestingly, the total number of suits for the year was actually below the 2010 levels in many counties. The total number of civil lawsuits filed in the 13 counties on OSCN was 21,673 in 2011, compared with 22,144 in 2010, a decrease of 1,444 cases.

The “lawsuit reform” changes which became effective November 1, 2011 are summarized below.

**23 O.S. § 15- Several Liability.** The liability of a joint tortfeasor is limited to the amount of damages allocated to that tortfeasor. This is applicable only to actions that accrue after November 1, 2011.

**23 O.S. §9.3 - Future Damages - Future Loss of Earnings - Periodic Payments.** This is applicable on where the present value of an award of future damages exceeds \$100,000.00. At the request of a party, the court may order that the future damages be paid in whole or in part in periodic payments rather than lump sum. Periodic payments shall not exceed 7 years from date of judgment. The entry of the order for periodic payments constitutes a release of the health care liability claim filed by the plaintiff.

**CHANGE IN LAW. 23 O.S. §61.2 – Limitations on Damages for Bodily Injury (Cap on Damages).** Non-economic damages shall not exceed \$350,000.00, unless the judge and jury find, by clear and convincing evidence that the defendant’s acts were 1. In reckless disregard for the rights of others; 2. Grossly negligent; 3. Fraudulent; or 4. Intentional or with malice. The statute also requires, in cases where the verdict is for the plaintiff, that the trier of fact shall return a general verdict accompanied by answers to interrogatories setting forth: 1. total compensatory damages; 2. portion of total compensatory damages representing economic loss; 3. portion of total compensatory damages representing non-economic loss; and 4. whether the acts of the defendant was in reckless disregard for the rights of others; grossly negligent; fraudulent; or intentional or with malice. This section applies only to civil actions filed on or after November 1, 2011. (Cases challenging the constitutionality of this statute are expected on the basis that Section 15 of the Oklahoma Constitution states that no law may require a court to direct a jury to make findings of particular questions of fact).

**NEW LAW. 12 O.S. § 577.4 - Tax Consequences of Award for damages in Personal Injury and Wrongful Death Actions.** Requires a OUJI instruction in a civil 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, and that 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. Exhibits admitted at trial shall accurately reflect tax ramifications. Applies only to civil actions filed on or after November 1, 2011.

**NEW LAW. 12 O.S. § 3009.1 - Admissibility of Medical Expenses.** In civil cases involving personal injury, the actual amounts paid for any doctor bills, hospital bills, ambulance service bills, drug bills and similar bills for expenses incurred in the treatment of the party shall be the amounts admissible at trial and not the amounts billed for expenses incurred in the treatment of the party. This applies only to civil actions filed on or after November 1, 2011.

Lawsuit Reform continued....

The real question is what, if any, has been the effect of these new laws, other than causing plaintiff attorneys to file their suits prior to the effective date in order to exempt their cases from the application of the new laws.

At this point we have little, if any, real information on the actual effect of the lawsuit reform bills. We would request input from members relating to direct experiences with the application of the new 2011 laws, as well as the 2009 changes (e.g., required initial disclosures, initial pleading requiring statement of amount in excess of federal jurisdictional requirement or specific amount if less, etc...), by the district courts and direct challenges of the laws pending before appellate courts. We would like to follow up this article later in the year to share the feedback received. Please share your experiences by emailing the author at [tom.manning.r308@statefarm.com](mailto:tom.manning.r308@statefarm.com).

## OADC Summer Meeting June 21 - 23, 2012 Las Colinas, Texas



### Thursday, June 21

1:00 - 4:00 CLE

5:30 Welcoming Reception

### Friday, June 22

8:30 - Noon CLE

Afternoon and Evening Free

### Saturday, June 23

6:30 President's Reception & Dinner

**Make your hotel reservations today!**  
**1.972.717.0700**

## OADC Welcomes 10 New Members

- |                  |                   |
|------------------|-------------------|
| Jennifer Ahrend  | - Hiltgen Brewer  |
| Jobby Mathew     | - Hiltgen Brewer  |
| Michelle Harris  | - Steidley & Neal |
| Joshua Adams     | - Fenton, Fenton  |
| Lauren Ray       | - Fenton, Fenton  |
| Sterling Pratt   | - Fenton, Fenton  |
| Sarah Yates      | - Fenton, Fenton  |
| Benjamin Saunier | - Pierce Couch    |
| Benjamin Reed    | - Best & Sharp    |
| Gregg Lytle      | - Foliart Huff    |

## 2012 Officers & Directors

- |                                |                    |
|--------------------------------|--------------------|
| President .....                | Nathan E. Clark    |
| President Elect .....          | Malinda Matlock    |
| Immediate Past President ..... | G. Calvin Sharpe   |
| Vice President .....           | Jennifer Annis     |
| Treasurer .....                | Angela Ailles-Bahm |
| Secretary .....                | Erin Renegar       |
| DRI State Representative ..... | Grady Parker       |
| Executive Director .....       | Skoshi Heron       |

### 2012:

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|--------------------------|----------------------|
| Board of Directors ..... | Carrie Palmer        |
| Board of Directors ..... | Whitney Eschenheimer |
| Board of Directors ..... | Mike Carter          |

### 2013:

- |                          |                  |
|--------------------------|------------------|
| Board of Directors ..... | Jason Glass      |
| Board of Directors ..... | Leslie Lynch     |
| Board of Directors ..... | Pete Serrata III |

### 2014:

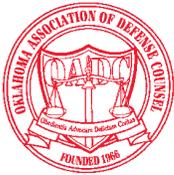
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|--------------------------|-------------------|
| Board of Directors ..... | W. Joseph Pickard |
| Board of Directors ..... | Lindsay McDowell  |
| Board of Directors ..... | Eric Begin        |

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## Hugh Baysinger In-Memoriam



Hugh A. Baysinger died February 1. He was born June 24, 1938, in Kansas City, MO. He graduated with honors from Yale University in 1960 with a B.E. in civil engineering. He earned a graduate degree in civil engineering in 1961, and earned his J.D. from the OU College of Law in 1966, teaching engineering at OU while attending law school. He practiced law with Pierce, Couch, Hendrickson, Baysinger & Green from 1966 until his death, becoming a partner in 1974. He was a member of the Oklahoma County Bar Association, ABA, Oklahoma Association of Defense Council (serving as its president in 1983-84), International Association of Defense Council, Defense Research Institute, Inc. and the American Arbitration Association. During his law career, he enjoyed speaking as a guest lecturer for his peers and as a mentor for both younger attorneys and high school students. He was a lifelong member of the United Methodist Church, where he enjoyed many years as a member of the church choir. He enjoyed music and had a great passion for singing, and he was a member of the Oklahoma Master Chorale. The things he loved most in life were family, music, law and food. Memorial donations may be made to Village United Methodist Church, Music Department.



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