WORKERS' COMPENSATION: OKLAHOMA'S NEW SYSTEM REMAINS CONSTITUTIONALLY UNCLEAR AFTER *BROWN V. CLAIMS MANAGEMENT RESOURCES*

Carson Q. Turner*

I. INTRODUCTION

"Exactly as the workingman is entitled to his wages, so he should be entitled to indemnity for the injuries sustained in the natural course of his labor," advocated President Theodore Roosevelt in 1908.[1] Workers' compensation has since flourished and "withstood the test of time."[2] The doctrine was created to provide for the medical and financial needs of employees who were injured while working.[3]

> Its fundamental goals [have] included: the providing of adequate and punctual monetary benefits to an injured worker regardless of fault; the reduction of unnecessary and expensive litigation; the release of financial burden upon both public and private sector funding of industrial accidents; the added encouragement necessary for employers to upgrade safety equipment and procedures;

* Carson Quay Turner is a 2018 Juris Doctor Candidate at Oklahoma City University School of Law. She would like to thank her entire family here and above, the boy she met on the Brazos, and her entire West Texas village because it certainly takes one.

1. Bob Burke, *The Evolution of Workers' Compensation Law in Oklahoma: Is the Grand Bargain Still Alive?*, 41 OKLA. CITY U. L. REV. 337, 341 (2016) (quoting Theodore Roosevelt, Special Message of the President of the United States, 42 CONG. REC. 1347 (1908)).

2. Paul Raymond Gurtler, Comment, *The Workers' Compensation Principle: A Historical Abstract of the Nature of Workers' Compensation*, 9 HAMLINE J. PUB. L. & POL'Y 285, 295 (1989).

3. *Id.* at 285 (quoting Arthur Larson, *The Nature and Origins of Workmen's Compensation*, 37 CORNELL L.Q. 206, 206 (1952)).

> and the promotion of continued studies to aid in the reduction of industrial accidents and injury.[4]

Oklahoma has upheld these fundamental goals, but a series of legislative changes has made the new Oklahoma workers' compensation system less black and white and a little grayer.[5]

First, this Case Comment examines the history and development of workers' compensation in both the United States and Oklahoma. Second, this Comment describes the facts, procedural posture, and opinion of *Brown v. Claims Management Resources*,[6] a recent Oklahoma Supreme Court case. Finally, this Comment discusses the constitutional claims against the new Oklahoma workers' compensation system.

II. HISTORY

A. Workers' Compensation in the Early Days

Captain Morgan, who spent his days pirating the high seas in the seventeenth century, was known to compensate his fellow plunderers who were injured while working on his ship.[7] However, this pirate belief did not become a law in Europe until Prussia began "to legally protect injured workers."[8] "By the nineteenth century, [Prussian Chancellor] Otto von Bismarck had become an adherent of the view that workers injured in the course of employment ought to be compensated efficiently and humanely."[9] This new way of thinking caught on and eventually spread to the United States.[10]

The English Parliament adopted this view in the late-eighteenth century, but "a worker's only remedy was to sue his employer."[11] The United States adopted the same tort-claim view in its own courts, and a series of problems occurred.[12] Companies faced the issue of spending too

4. *Id.* at 295.
5. *See* Burke, *supra* note 1, at 403.
6. 2017 OK 13, 391 P.3d 111.
7. Burke, *supra* note 1, at 338; Michael C. Duff, *Worse Than Pirates or Prussian Chancellors: A State's Authority to Opt-Out of the Quid Pro Quo*, 17 MARQ. BENEFITS & SOC. WELFARE L. REV. 123, 132 (2016).
8. Burke, *supra* note 1, at 338.
9. Duff, *supra* note 7.
10. *Id.*
11. Burke, *supra* note 1, at 339.
12. *Id.* at 340.

much money defending cases in jury trials, workers' benefits were delayed, and tort claims flooded court dockets.[13] Under the "unholy trinity of defenses," an employer could claim "contributory negligence, the fellow-servant rule, and the assumption-of-the-risk doctrine,"[14] but this usually led to an unfair advantage over the injured employee.[15] "In negligence, workers were frequently defeated by affirmative defenses and ultimately received no compensation—an outcome made much less likely through passage of workers' compensation statutes."[16] In response to these issues, Congress passed the Federal Employer's Liability Act of 1908, and states began enacting their own statutes.[17]

B. The Evolution of Workers' Compensation in Oklahoma

In 1915, Oklahoma passed its first workers' compensation bill,[18] which faced backlash by companies but was held to be constitutional in *Adams v. Iten Biscuit Co.*[19] The Oklahoma Supreme Court held the statute fell within the police power of the state legislature because

> [t]he security of the state and the preservation of the peace and good order of society depends . . . upon the power of the state to make and alter its laws in accordance with a sound public policy, and to prescribe regulations to promote the health, peace, morals, education, and good order of the people, and every member of society obtains and holds all that he possesses through the aid and under the protection of the law and subject to the power mentioned, else the right of the community to prosper and advance and promote the public weal would be rendered subservient to the enjoyment of private rights.[20]

However, Oklahoma's first workers' compensation law only covered

13. *Id.* at 340–41.
14. *Id.* at 339.
15. *See* Duff, *supra* note 7, 132–33.
16. *Id.* (footnote omitted).
17. Burke, *supra* note 1, at 341–43.
18. *Id.* at 342–43.
19. 1917 OK 47, ¶ 3, 162 P. 938, 942; Burke, *supra* note 1, at 347–48.
20. *Adams*, 1917 OK 47, ¶ 1, 162 P. at 941.

workers who were engaged in *hazardous employment*,[21] which allowed the courts to be unfairly selective. As of 1973, Oklahoma "protected less than seventy percent of its workers under its workers' compensation laws,"[22] which sparked the state legislature to pass the Oklahoma Workers' Compensation Act in 1977.[23] The Act covered a larger variety of jobs, instead of only hazardous employment.[24] It also created a Workers' Compensation Court.[25] "There was no widespread criticism of the comprehensive coverage of most Oklahoma workers, rather than just those in hazardous occupations as had been the case since 1915."[26]

In recent years, Oklahoma's "business leaders [have] called for drastic changes to the workers' compensation system."[27] "In early 2011, [the State Chamber Vice President] cited statistics from the Workers' Compensation Court's annual reports to support his contention that the average court award for [Permanent Partial Disability (PPD)] rose from $13,176 in 2001 to $32,452 in 2010, and the average final settlement (joint petition) increased from $11,105 to $22,688."[28]

In 2011, the Oklahoma adopted its new Workers' Compensation Code.[29] However, "[d]espite the Workers' Compensation Code's major changes and Governor Fallin's prediction that the Code would save Oklahoma employers $30 million a year, it was never given a reasonable chance to succeed."[30] Right after the Workers' Compensation Code was signed by the Governor, "a small group of large Oklahoma companies began lobbying for additional reform."[31] One reason why the legislature felt pressure to reform the system could be because the workers' compensation reform's "overall purpose is to save businesses money."[32] As a result, large Oklahoma companies pushed for reform, and reform became a priority for the Oklahoma legislature in 2013.[33]

21. *See* Workmens Compensation Law, 1915 Okla. Sess. Laws 574, § 2.
22. Burke, *supra* note 1, at 372–73.
23. *Id.* at 378–79.
24. *Id.*
25. *Id.*
26. *Id.* at 380.
27. *Id.* at 392.
28. *Id.*
29. *Id.* at 392–93.
30. *Id.* at 394 (footnote omitted).
31. *Id.*
32. *See* Duff, *supra* note 7, at 135.
33. Burke, *supra* note 1, at 394–95.

C. The New Oklahoma System

In 2014, the Administrative Workers' Compensation Act (AWCA) became law and was codified under title 85A of the Oklahoma Statutes.[34] The new Act abolished the Workers' Compensation Court and created two compensation systems: the Court of Existing Claims and the Workers' Compensation Commission.[35]

Senate Bill 1062, which later became the AWCA, faced opposition from the Oklahoma Advisory Council on Workers' Compensation, "a statutory body the governor and leaders of the house and senate appoint that represents employers, workers, and medical groups."[36] "The Advisory Council voted 8–1 in opposition to Senate Bill 1062" and "complained that while many members agreed with some of the policy considerations, the Bill suffered from poorly written and contradictory language that weakened medical-treatment guidelines and inadequately provided for the transition from the old court system to the new administrative system."[37]

"Michael Clingman, former administrator of the Workers' Compensation Court and current director of the Oklahoma Coalition for Workers Rights, ... concluded that Senate Bill 1062 gave Oklahoma the lowest injured-worker benefits in the nation," and "while the new law might be saving money, any savings come on the backs of injured workers."[38] As Professor Michael C. Duff has observed, "To say that a system like Oklahoma's might provoke legal challenge is an understatement. To say that the Oklahoma system might get 'bad press' is obvious."[39] "As of April 2017, the Oklahoma Supreme Court, several district courts, and the Workers' Compensation Commission have declared forty provisions of Senate Bill 1062, codified as title 85A of the Oklahoma Statutes, 'unconstitutional, invalid or inoperable.'"[40]

34. *Id.* at 397 & n.379.
35. *Id.* at 397–99.
36. *Id.* at 399.
37. *Id.*
38. *Id.* at 401–02.
39. Duff, *supra* note 7, at 148.
40. Burke, *supra* note 1, at 400 (quoting Barbara Hoberock, *Many Provisions of 2013 Workers' Compensation Law Have Been Tossed*, TULSA WORLD (Sept. 21, 2016, 12:01 AM), http://www.tulsaworld.com/news/capitol_report/many-provisions-of-workers-compensaton-have-been-tossed/article_6d72c537-ce0e-55a1-8f93-b55201f017c1.html [https://perma.cc/G5KH-HENY]).

II. *BROWN V. CLAIMS MANAGEMENT RESOURCES, INC.*

A. Facts

Rodney Stanley Brown worked as a claims adjuster for Claims Management Resources (CMR).[41] Brown had a key card to access his parking spot and his second-floor office in CMR's building.[42] Brown was participating in a company-wellness program CMR had created to encourage employees to take the stairs instead of the elevator.[43] Even though taking the stairs was encouraged, it was not required.[44] Other tenants of the building, who were not employed by CMR, also had access to the stairwell.[45] "On March 25, 2014, Brown . . . had finished performing job functions, clocked out, [and] was leaving the office for the day when he was injured while descending an interior stairwell."[46] "Brown was unable to conclusively identify any factor that might have caused his fall."[47]

Brown attempted to claim workers' compensation, but CMR contended that Brown's injury was not entitled to compensation under the AWCA.[48] The company reasoned his "injury was not compensable . . . because Brown was not performing employment services at the time of the injury[,] and . . . the injury did not occur in the course and scope of employment."[49]

B. Procedural History

On September 25, 2014, the administrative law judge held that Brown's injury was outside the course and scope of his employment and not a compensable injury because Brown clocked out and was leaving work when he was injured.[50] Therefore, the injury did not arise out of the course of employment because Brown "was not engaging in activity

41. Brown v. Claims Mgmt. Res., Inc., 2017 OK 13, ¶ 1, 391 P.3d 111, 113.
42. *Id.* ¶¶ 1–2, 391 P.3d at 113.
43. *Id.* ¶ 2, 391 P.3d at 113.
44. *Id.*
45. *Id.*
46. *Id.* ¶ 1, 391 P.3d at 113.
47. *Id.*
48. *Id.* ¶ 3, 391 P.3d at 113.
49. *Id.*
50. *Id.* ¶ 4, 391 P.3d at 114.

carrying out [CMR's] purpose and in furtherance of the affairs or business of [CMR] when the accident occurred."[51]

> Brown sought review of the order by the Workers' Compensation Commission, asserting: 1) that he was engaged in employment services at the time of his injury; 2) he was not in a common area adjacent to CMR's place of business, as he was in CMR's building; 3) CMR created the risk; and 4) 85A O.S. Supp. 2013 § 2(9)(b)(3) and 85A O.S. Supp. 2013 § 2(13)(c) were unconstitutional because they denied him an adequate remedy.[52]

On January 21, 2015, the Commission affirmed the administrative law judge's decision,[53] and on January 30, 2015, Brown filed a Petition for Review with the Oklahoma Supreme Court, which assigned the case to the Oklahoma Court of Civil Appeals.[54] On appeal, Brown argued that the AWCA should not "exclude any injury occurring in a parking lot or other common area adjacent to an employer's place of business because ingress and egress to a worker's jobsite is an integral part of performing employment services."[55] Brown argued that if the AWCA did exclude those injuries, it would be "arbitrary, capricious, and violative of public policy."[56] Again, Brown asserted that two AWCA provisions violated the Oklahoma Constitution "by leaving him with no adequate remedy[] and depriv[ing] him of due process."[57]

In its opinion issued May 2, 2016, the Oklahoma Court of Civil Appeals affirmed the Workers' Compensation Commission's order and reasoned that Brown's injury "was not in the course and scope of employment because it occurred in a common area adjacent to [CMR's] place of business and was therefore not a compensable injury."[58] The court also "determined that a temporal boundary exist[ed]" for the scope of employment and that Brown's injury was not in that scope because he

51. *Id.*
52. *Id.* ¶ 5, 391 P.3d at 114.
53. *Id.*
54. *Id.* ¶ 6, 391 P.3d at 114.
55. *Id.*
56. *Id.*
57. *Id.*
58. *Id.* ¶ 7, 391 P.3d at 114.

had already clocked out for the day.[59] The court also considered Brown's constitutional claims and held that he did not have a "vested right in any particular statutory remedy, and further that the Oklahoma Constitution imposes no limitation on the legislature's authority to change existing law and abolish rights and remedies for causes of action accruing in the future."[60] Brown appealed, and the Oklahoma Supreme Court granted certiorari.[61]

C. The Oklahoma Supreme Court's Opinion

In its opinion filed February 22, 2017, the Oklahoma Supreme Court vacated both the Oklahoma Court of Civil Appeals' opinion and the order of the Workers' Compensation Commission.[62] In the majority opinion written by Chief Justice Combs, the Court focused on the application and interpretation of the two provisions of the AWCA.[63] Title 85A section 106 provides that "[t]he provisions of the [AWCA] shall be strictly construed."[64]

The Court held Brown's injury occurred in the course and scope of his employment because he was injured on his employer's property and his actions at the time of his injury were related to the business of CMR.[65] The Court also held that Brown had a compensable injury because the injury occurred while he was performing employment services for CMR.[66] The Court did not answer any constitutional questions because Brown had an adequate remedy under the statute.[67]

D. Course and Scope of Employment

First, the Court addressed the *course and scope of employment* provision of the AWCA.[68] The AWCA defines *course and scope of employment* to mean

59. *Id.*
60. *Id.*
61. *Id.* ¶ 8, 391 P.3d at 114–15.
62. *Id.* ¶ 27, 391 P.3d at 120.
63. *Id.* ¶ 12, 391 P.3d at 115–16.
64. OKLA. STAT. tit. 85A, § 106 (Supp. II 2016).
65. *Brown*, 2017 OK 13, ¶ 18, 391 P.3d at 117.
66. *Id.* ¶¶ 24–25, 391 P.3d at 119.
67. *Id.* ¶ 26, 391 P.3d at 119.
68. *Id.* ¶¶ 14–18, 391 P.3d at 116–17.

> an activity of any kind or character for which the employee was hired and that relates to and derives from the work, business, trade or profession of an employer, and is performed by an employee in the furtherance of the affairs or business of an employer. The term includes activities conducted on the premises of an employer or at other locations designated by an employer and travel by an employee in furtherance of the affairs of an employer that is specifically directed by the employer.[69]

The statute goes on to provide that the term *course and scope of employment* does not include "*any injury occurring in the parking lot or other common area adjacent to an employer's place of business* before the employee clocks in or otherwise begins work for the employer *or after the employee clocks out or otherwise stops work for the employer*."[70]

Here, "CMR assert[ed] Brown's injury was not within the course and scope of employment because it occurred in a parking lot or other common area adjacent to an employer's place of business after Brown clocked out for the day."[71] "Brown assert[ed] that ingress and egress to an employee['s] work station are necessary aspects of his employment . . . ."[72] Therefore, Brown argued that because CMR required its employees to clock out and leave the office he was acting in the course of employment pursuant to the statute, which provides that one is acting in the course and scope of employment if acting "in furtherance of the affairs of an employer" and "specifically directed by the employer."[73]

Using the AWCA's definition, the Court held that Brown was acting in the course and scope of employment.[74] The Court based its reasoning on *Bober v. Oklahoma State University*,[75] in which the Oklahoma Supreme Court recently interpreted and applied the meaning of *course and scope of employment* under the AWCA.[76]

69. OKLA. STAT. tit. 85A, § 2(13) (Supp. II 2016).
70. *Id.* § 2(13)(c) (Supp. II 2016) (emphasis added).
71. *Brown*, 2017 OK 13, ¶ 14, 391 P.3d at 116.
72. *Id.* ¶ 13, 391 P.3d at 116.
73. *See id.* at ¶¶ 12–13, 391 P.3d at 116 (quoting tit. 85A, § 2(13) (Supp. II 2016)).
74. *Id.* ¶ 18, 391 P.3d at 117.
75. 2016 OK 78, 378 P.3d 562.
76. *Brown*, 2017 OK 13, ¶¶ 15, 17–18, 391 P.3d at 116–17.

In *Bober*, the Court held that an employee who was injured on the employer's premises before clocking in for work was within the course and scope of employment.[77] The *Bober* Court reasoned that the employee was injured on the employer's premises and not "adjacent" to the premises: "The parking lot and sidewalk surrounding the building where [the employee] worked was not on property lying near or close, nearby, or having a common border with [the employer's place of business]. The parking lot and sidewalk were in fact on the premises of the [employer's place of business]. . . ."[78]

The Oklahoma Supreme Court in *Brown* relied on the facts and reasoning from *Bober* to determine whether Brown was acting within the course and scope of his employment.[79] The Court found that "all the evidence," from Brown's testimony to CMR's human resources manager's testimony, showed that CMR owned the entire building including the stairwell.[80] The Court reasoned that because all tenants of the building had access to the stairwell it was a "common area."[81] However, "[s]imilar[] to the parking lot in *Bober*, the interior stairwell is not a common area adjacent to an employer's place of business . . . . but on the premises itself."[82] The Court further reasoned that just because "Brown had clocked out for the day does not mean his injury was outside the course and scope of employment."[83] In *Bober*, the Court stated that the "[clock-out] exception does not apply until the employee leaves the premises," and when Brown was injured he had not yet left the employer's premises.[84]

E. Compensable Injury

The Court determined that since Brown sustained his injury in the course and scope of employment, "Brown's injury [was] a compensable injury within the meaning of [the AWCA], unless . . . a particular exclusion applie[d]."[85] The AWCA defines *compensable injury* as

77. *Bober*, 2016 OK 78, ¶¶ 9–11, 378 P.3d at 564–65.
78. *Id.* ¶ 9, 378 P.3d at 565 (emphasis in original).
79. *See Brown*, 2017 OK 13, ¶¶ 15, 17–18, 391 P.3d at 116–17.
80. *Id.* ¶ 16, 391 P.3d at 117.
81. *Id.* ¶¶ 16–17, 391 P.3d at 117.
82. *Id.* ¶ 17, 391 P.3d at 117.
83. *Id.*
84. *Id.* (quoting Bober v. Okla. State Univ., 2016 OK 78, ¶ 9, 378 P.3d 562, 565).
85. *Id.* ¶ 19, 391 P.3d at 117–18.

"damage or harm to the physical structure of the body, or prosthetic appliances, including eyeglasses, contact lenses, or hearing aids, caused solely as the result of either an accident, cumulative trauma or occupational disease arising out of the course and scope of employment."[86] The AWCA further provides that compensable injury "*does not include* . . . . injury which was inflicted on the employee *at a time when employment services were not being performed* or before the employee was hired or after the employment relationship was terminated."[87] CMR asserted that the injury fell into this exception under the AWCA.[88]

Neither the AWCA nor the Oklahoma Supreme Court has defined *employment services*.[89] The Court recognized that "[t]he primary goal of statutory construction is to ascertain and follow the intention of the Legislature."[90] The AWCA "requires [the] Court to strictly construe the provisions of the AWCA,"[91] but strict construction only applies "when the language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity."[92] The Court acknowledged that there could be some overlap of the plain meanings of both *employment services* and *course and scope of employment*.[93] However, the Court reasoned that the legislature did not intend the two phrases to be related because the AWCA already defines *course and scope of employment*, and it is included in the definition of *compensable injury*.[94]

In order to analyze the plain meaning of the terms, the Court acknowledged that the AWCA defines *employment* as "work or labor in a trade, business, occupation or activity carried on by an employer or any authorized voluntary or uncompensated worker rendering services as a firefighter, peace officer or emergency management worker."[95] However, the AWCA does not define *services*.[96] To help define that term, the Court looked at two definitions from *Black's Law Dictionary*:

86. OKLA. STAT. tit. 85A, § 2(9)(a) (Supp. II 2016).
87. *Id.* § 2(9)(b)(3) (Supp. II 2016) (emphasis added).
88. *Brown*, 2017 OK 13, ¶ 19, 391 P.3d at 116–18.
89. *Id.* ¶ 20, 391 P.3d at 118.
90. *Id.* (quoting Wylie v. Chesser, 2007 OK 81, ¶ 19, 173 P.3d 64, 71).
91. *Id.* ¶ 21, 391 P.3d at 118. *See also*, OKLA. STAT. tit. 85A, § 106 (Supp. II 2016).
92. *Id.* ¶ 21, 391 P.3d at 118.
93. *Id.* ¶ 22, 391 P.3d at 118.
94. *Id.*. *See also* OKLA. STAT. tit. 85A, § 2(9)(a) (Supp. II 2016).
95. tit. 85A, § 2(20) (Supp. II 2016).
96. *Brown*, 2017 OK 13, ¶ 23, 391 P.3d at 119.

> 2. Labor performed in the interest or under the direction of others; specif[ically] the performance of some useful act or series of acts for the benefit of another, usu[ally] for a fee . . . . In this sense, *service* denotes an intangible commodity in the form of human effort, such as labor, skill, or advice.
>
> 3. The official work or duty that one is required to perform.[97]

The Court recognized that "*[e]mployment services* should at a minimum be taken to include the performance of assigned duties."[98] However, the Court stated that "*employment services* encompasses something more than the literal performance of specific assigned tasks, and includes other necessities of employment specified by the employer."[99] The Court reasoned that Brown was required by his employer to clock out, leave his workstation, and he was simply following his employer's direction.[100] Therefore, "he was performing a duty that he was required to" and thus was performing *employment services*.[101]

III. ANALYSIS

A. The Oklahoma Supreme Court Should Face Constitutional Claims Head On

The *Brown* decision shows that the Court's treatment of the constitutional claims regarding the AWCA need to change. By strictly interpreting the statute, the Court evaded the inevitable constitutional challenges it will have to face. Evasive maneuvers like these will ultimately hinder the Oklahoma judiciary's ability to adequately address workers' compensation issues.

The future of the AWCA is arguably questionable. Several

97. *Id.* (quoting *Service*, BLACK'S LAW DICTIONARY (10th ed. 2014)).
98. *Id.* ¶ 24, 391 P.3d at 119 (emphasis added) (internal quotations omitted).
99. *Id.* (emphasis added) (internal quotations omitted).
100. *Id.* ¶ 25, 391 P.3d at 119.
101. *Id.*

constitutional challenges have been before the Oklahoma Supreme Court since the AWCA was enacted.[102] In *Torres v. Seaboard Foods, LLC*,[103] the Court held the requirement that an employee must have worked at least 180 days before bringing a claim for "cumulative trauma" violated the due process clause under the Oklahoma Constitution.[104] In *Maxwell v. Sprint PCS*,[105] the Court ruled that the AWCA's permanent partial disability-deferral provision was unconstitutional under the due process clause of the Oklahoma Constitution.[106]

Even before it became effective, the AWCA had already been constitutionally challenged.[107] Specifically, the challenges started with *Coates v. Fallin*.[108] In *Coates*, the Oklahoma Supreme Court held that the AWCA was constitutional with regard to the single-subject rule, but the Court left open the opportunity for other constitutional challenges.[109] In *Robinson v. Fairview Fellowship Home for Senior Citizens, Inc.*,[110] the Court held that the Workers' Compensation Commission could rule on the constitutionality of the AWCA as applied to a particular party.[111] This holding increased the number of constitutional claims against the AWCA.[112] One of those claims included *Bober*.[113]

In *Bober*, the employee argued that the AWCA violated her due process rights under the Oklahoma Constitution because it did not afford her a remedy.[114] In that case, the Court "rejected the legislature's attempt to exclude parking lot injuries"[115] and held instead that the injury was in the "course and scope of employment."[116] The Court explained its

102. *See* Burke, *supra* note 1, at 403 ("[A]s the Commission's administrative-law judges began deciding cases, a bevy of constitutional challenges began flowing to the supreme court.").
103. 2016 OK 20, 373 P.3d 1057.
104. *Id.* ¶¶ 4–5, 54, 373 P.3d at 1062, 1081.
105. 2016 OK 41, 369 P.3d 1079.
106. *Id.* ¶¶ 26–27, 369 P.3d at 1092–93.
107. *See* Burke, *supra* note 1, at 403.
108. 2013 OK 108, 316 P.3d 924.
109. *Id.* (citing *Coates*, 2013 OK 108, ¶ 3, 316 P.3d at 925).
110. 2016 OK 42, 371 P.3d 477.
111. *See* Burke, *supra* note 1, at 410–11 (citing *Robinson*, 2016 OK 42, ¶ 15, 371 P.3d at 484).
112. *Id.*
113. *Id.* at 411 (citing Bober v. Okla. State Univ., 2016 OK 78, 378 P.3d 562).
114. *Bober*, 2016 OK 78, ¶ 2, 378 P.3d at 565 (Colbert, J., concurring).
115. Burke, *supra* note 1, at 411 (citing *Bober*, 2016 OK 78, ¶¶ 1, 11, 378 P.3d at 562, 565).
116. *Bober*, 2016 OK 78, ¶ 11, 378 P.3d at 565.

reasoning for a strict interpretation of the statute:

> The primary goal of statutory construction is to ascertain and follow legislative intent. The plain meaning of a statute's language is conclusive as to such intent. Despite the Legislature's attempt to create a bright-line rule, cases of this nature have always been, and will continue to be highly dependent on the specific facts of each case.[117]

The Court reasoned that because the employee was acting within the "course and scope of employment," the constitutional issues did not have to be decided.[118]

The *Brown* Court restated the rules of statutory interpretation that were applied in *Wylie v. Chesser*: "The primary goal of statutory construction is to ascertain and follow the intention of the Legislature."[119] Further, statutory construction should "be done without violating the legislative intent."[120] However, in both *Brown* and *Bober* the Court did just that. Justice Winchester's dissent in *Bober* correctly addresses the problems with the Court's opinion:

> The legislature made a policy decision to draw a clear line for the employer and employee that the "clock" began and ended the employer's liability under Workers' Compensation, unless directed otherwise by the employer. . . .
>
> . . . .
>
> . . . The legislature has the authority and power to make such an exception. I conclude that it "clearly" made such an exception. . . .
>
> . . . What this Court has declared to be the law based on construction of former statutes, the legislature has specifically and intentionally rejected by current

117. *Id.* (footnote omitted).

118. *Id.*

119. Brown v. Claims Mgmt. Res., Inc., 2017 OK 13, ¶ 20, 391 P.3d 111, 118 (quoting Wylie v. Chesser, 2007 OK 81, ¶ 19, 173 P.3d 64, 71).

120. *Id.* (quoting *Wylie*, ¶ 19, 173 P.3d at 71).

statute.[121]

In *Bober*, the Court strictly construed the statute in favor of the employee's compensation rights to avoid constitutional claims.[122] Similarly, the *Brown* Court strictly construed the statute when it defined *compensable* in favor of the employee to avoid constitutional claims.[123]

In both cases, the Court interpreted the AWCA inconsistently with the legislature's intent. The intent of the legislature was to create a "bright-line rule" for "the course and scope of employment."[124] However, the Court has strayed away from the legislature's intent in favor of an overly strict statutory interpretation.[125] The Oklahoma Supreme Court is continuing to decide cases as if AWCA had not been enacted. Traditionally, "[i]njuries occurring during ingress and egress to work were found compensable, especially if the employer owned or was under control of the parking lot."[126] The Oklahoma Supreme Court has held that if an employer provides property to be used by employees it is considered the employer's premises.[127] This exception was explained by the Oklahoma Supreme Court in *Turner v. B Sew Inn*:[128]

> The reason for this exception is that, for workers' compensation purposes, the course of employment does not begin and end with the actual work a claimant was hired to do. It also covers the period between entering the employer's premises a reasonable time before beginning any actual work and leaving within a reasonable time after the day's work is done.[129]

The problem with these types of holdings is that the legislature reformed the Oklahoma workers' compensation laws and therefore changed its

121. *Bober*, 2016 OK 78, ¶¶ 1, 3–4, 378 P.3d at 566–67 (Winchester, J., dissenting).
122. *See* Burke, *supra* note 1, at 411 (citing *Bober*, 2016 OK 78, ¶ 1, 378 P.3d at 565 (Colbert, J., concurring)).
123. *See Brown*, 2017 OK 13, ¶¶ 19–21, 24–26, 391 P.3d at 117–19.
124. *Bober*, 2016 OK 78, ¶ 11, 378 P.3d at 565.
125. Burke, *supra* note 1, at 411.
126. *Id.* at 369.
127. *See id.* at 370.
128. 2000 OK 97, 18 P.3d 1070.
129. Burke, *supra* note 1, at 370 (quoting Turner v. B Sew Inn, 2000 OK 97, ¶ 15, 18 P.3d 1070, 1074).

own intent about the law.[130] However, the Oklahoma Supreme Court has gone against that intent in favor of broad coverage case law.

In *Bober*, Justice Colbert correctly concurred to voice his "concern in the majority's continued sidestepping of constitutional challenges properly raised before [the Oklahoma Supreme] Court . . . . But, rather than keeping with the assurance made in *Coates v. Fallin*, and our fundamental responsibility to support and obey the Constitution, this Court continues to dodge the inevitable."[131] The *Brown* case further shows that Oklahoma courts have "sidestepped constitutional challenges using statutory interpretation to rule in favor of the injured worker, a procedure that [has been] looked upon unfavorably by concurring judges or justices."[132]

Consequently, the Court's failure to address constitutional claims in *Brown* will only delay the inevitable constitutional attacks on the AWCA.[133] The Oklahoma Supreme Court's opinion does not provide guidance on how lower courts should analyze the constitutional claims like those raised in *Brown*.[134] Lower courts could apply the holding in *Brown* to require a stricter statutory analysis to avoid constitutional claims, but this analysis is more confusing when the legislative intent is almost exactly opposite of a court's statutory interpretation like *Bober*.[135] This will undoubtedly need clarification in the future.[136] The number of constitutional claims against the AWCA will likely continue to increase, and the Court will eventually have to decide a constitutional claim against the AWCA.[137]

IV. CONCLUSION

The Oklahoma Supreme Court indicated that it would address constitutional claims against the AWCA on an as-applied basis in

130. *See id*. at 392–93.

131. Bober v. Okla. State Univ., 2016 OK 78, ¶¶ 1–3, 378 P.3d 562, 565–66 (Colbert, J., concurring).

132. Burke, *supra* note 1, at 411.

133. *See id.*

134. *See* Brown v. Claims Mgmt. Res. Inc., 2017 OK 13, ¶ 26, 391 P.3d 111, 119.

135. *See generally Bober*, 2016 OK 78, ¶ 11, 378 P.3d at 565 ("Despite the Legislature's attempt to create a bright-line rule, cases of this nature have always been, and will continue to be highly dependent on the specific facts of each case.").

136. *See id.* ¶¶ 1–3, 378 P.3d at 565–66 (Colbert, J., concurring) ("[T]his Court continues to dodge the inevitable.").

137. *See id.*; Burke, *supra* note 1, at 410–11.

Coates.[138] In *Bober*, the Court declined to rule on the constitutional issues[139] and disregarded the legislative intent in favor of a statutory interpretation to find for the employee.[140] In *Brown,* the Court again did the same.[141] The constitutional claims against the AWCA still remain unclear.

In *Brown*, the Oklahoma Supreme Court failed to address constitutional claims against the AWCA.[142] Constitutional claims will continue to rise, and the Court will one day have to inevitably address whether the AWCA is against the Oklahoma Constitution.[143] Hopefully, *Brown* is one step closer to that decision.

138. Burke, *supra* note 1, at 403 (citing Coates v. Fallin, 2013 OK 108, ¶ 3, 316 P.3d 924, 925); *see also Bober*, 2016 OK 78, ¶ 2, 378 P.3d at 565 (Colbert, J., concurring).

139. *Bober*, 2016 OK 78, ¶¶ 1–3, 316 P.3d at 565–66 (Colbert, J., concurring).

140. *Id.* ¶¶ 1–4, 378 P.3d at 566–67 (Winchester, J., dissenting).

141. *See* Brown v. Claims Mgmt. Res. Inc., 2017 OK 13, ¶¶ 12–26, 391 P.3d 111, 115–19.

142. *Id.* ¶ 26, 391 P.3d at 119.

143. *See* Burke, *supra* note 1, at 411.