

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1886

6 By: Sullivan

7 COMMITTEE SUBSTITUTE

8 An Act relating to tort reform; providing for
9 determination of attorney fees in class actions;
10 requiring plaintiffs to sign representation
11 agreements; providing method of calculating attorney
12 fees for class action cases; providing for judicial
13 discretion to modify the fee award; requiring
14 attorney fees to include noncash benefits in certain
15 circumstances; defining terms; establishing a statute
16 of repose for product liability actions; amending
17 Section 2, Chapter 368, O.S.L. 2004 (12 O.S. Supp.
18 2006, Section 130) and 12 O.S. 2001, Sections 134 and
19 137, which relate to venue; modifying venue for
20 certain actions; authorizing the court to decline to
21 exercise jurisdiction under the doctrine of forum non
22 conveniens; providing factors that the court shall
23 consider; providing that improper venue does not toll
24 statute of limitations; requiring each plaintiff to
establish venue in cases in which there are multiple
plaintiffs; providing for interlocutory appeal;
requiring certain affidavits in civil actions for
professional negligence; providing consequence for
noncompliance; providing for contents of written
opinion of qualified expert; providing for extensions
of time to file affidavits; requiring plaintiff to
provide certain information to defendant; providing
for dismissal of action for failure to comply;
amending 12 O.S. 2001, Sections 683 and 684, as
amended by Sections 3 and 4, Chapter 368, O.S.L. 2004
(12 O.S. Supp. 2005, Sections 683 and 684), which
relate to dismissal; modifying procedure for and
effect of dismissal without court order; amending
Section 7, Chapter 368, O.S.L. 2004 (12 O.S. Supp.
2005, Section 727.1), which relates to interest on

1 judgments; limiting applicability of prejudgment
2 interest to actions filed prior to a certain date;
3 amending 12 O.S. 2001, Section 832, which relates to
4 contribution; providing for contractual or statutory
5 right of indemnity; amending 12 O.S. 2001, Section
6 990.4, as last amended by Section 6, Chapter 1,
7 O.S.L. 2005 (12 O.S. Supp. 2005, Section 990.4),
8 which relates to stay of enforcement of judgments,
9 decrees and final orders; providing maximum amount
10 for bond; modifying court authority to lower amount
11 of bond; requiring the court to enter certain orders
12 to prevent dissipation or diversion; defining term;
13 amending 12 O.S. 2001, Section 993, which relates to
14 interlocutory appeals from certain orders; modifying
15 grounds for interlocutory appeals; providing standard
16 for making certain determination; requiring the
17 Supreme Court to make certain determination within
18 certain time; providing that action in the trial
19 court is stayed in certain circumstances; amending 12
20 O.S. 2001, Section 1101, which relates to offer of
21 judgment; clarifying language; amending 12 O.S. 2001,
22 Sections 2004, as amended by Section 7, Chapter 402,
23 O.S.L. 2002, 2008, 2009 and 2011, as amended by
24 Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp.
2005, Sections 2004 and 2011), which relate to the
Oklahoma Pleading Code; modifying time limit for
service; modifying monetary threshold for which
amount of damages is not specified; limiting the
amount of damages that may be recovered under certain
circumstances; modifying procedure for petition for
special damages; modifying definition; amending
Section 1, Chapter 370, O.S.L. 2004 (12 O.S. Supp.
2005, Section 2011.1), which relates to frivolous
claims or defenses; modifying definition; providing
for pretrial conferences; providing monetary
requirement; limiting amount of damages that may be
recovered; providing for certain remittance; amending
12 O.S. 2001, Section 2023, which relates to class
actions; requiring the court to hear and rule on
certain motions before making a determination on
certifying a class; providing effect of interlocutory
appeal in certain circumstances; requiring potential
class members to request inclusion in the class;
providing procedure for summary judgment; providing
that evidence of remarriage or social position of a
surviving spouse is admissible in wrongful death
actions; amending 12 O.S. 2001, Section 2702, which

1 relates to testimony by experts; providing
2 requirements for lay and expert testimony; providing
3 role of the court; providing for interpretation;
4 providing severability; providing cases to which
5 provisions apply; amending 12 O.S. 2001, Section
6 3226, as last amended by Section 3, Chapter 519,
7 O.S.L. 2004 (12 O.S. Supp. 2005, Section 3226), which
8 relates to discovery; eliminating requirement that a
9 party produce certain agreement; requiring certain
10 disclosures prior to discovery request; providing
11 legislative intent in construing the Consumer
12 Protection Act; amending 15 O.S. 2001, Sections 754
13 and 761.1, which relate to liability under the
14 Consumer Protection Act; modifying exclusions from
15 the Consumer Protection Act; requiring actual damages
16 incurred by person bringing private action; amending
17 23 O.S. 2001, Section 9.1, as amended by Section 1,
18 Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2005, Section
19 9.1), which relates to punitive damages; modifying
20 factors to be considered in awarding punitive
21 damages; requiring presentation of prima facie
22 evidence for punitive damages claims prior to certain
23 discovery; prohibiting punitive damages in product
24 liability actions under certain conditions; providing
restrictions and procedures for punitive damages in
medical liability actions; amending Section 18,
Chapter 368, O.S.L. 2004 (23 O.S. Supp. 2005, Section
15), which relates to joint and several liability;
modifying exceptions to severability; providing
exception; providing for reduction of damages if the
plaintiff has settled with one or more persons;
requiring certain written notice in medical liability
actions; amending 23 O.S. 2001, Section 61, which
relates to the measure of damages for the breach of
obligations not arising from contract; providing that
compensation from collateral sources shall be
admitted into evidence and may be deducted from
damages awarded; providing proof of certain losses
must be in the form of a net loss after reduction for
income tax payments or unpaid tax liability;
providing limits of liability for noneconomic damages
for certain actions; defining term; amending 47 O.S.
2001, Section 11-1112, as last amended by Section 1,
Chapter 361, O.S.L. 2005 (47 O.S. Supp. 2006, Section
11-1112), which relates to child passenger restraint
systems; eliminating prohibitions against
admissibility of certain evidence in civil actions;

1 amending 47 O.S. 2001, Section 12-420, which relates
2 to use of seat belts; making evidence of use or
3 nonuse of seat belts admissible evidence; amending 47
4 O.S. 2001, Section 230.30, which relates to liability
5 and cargo insurance or bond; providing when certain
6 actions may be maintained; prohibiting certain
7 actions; amending Sections 4 and 7, Chapter 390,
8 O.S.L. 2003 and Section 24, Chapter 368, O.S.L. 2004
9 (63 O.S. Supp. 2005, Sections 1-1708.1D, 1-1708.1G
10 and 1-1708.1I), which relate to the Affordable Access
11 to Health Care Act; requiring receipt of compensation
12 for injury be admitted into evidence for certain
13 purposes; limiting recovery for payment of medical
14 bills; removing courts right to make certain
15 determination; providing limits of liability in
16 certain civil actions against hospitals, hospital
17 systems and certain persons, with exceptions;
18 requiring written acknowledgment; limiting
19 applicability of prejudgment interest to medical
20 liability actions filed prior to a certain date;
21 mandating certain qualifications for expert
22 witnesses; modifying criteria for determining if an
23 expert is qualified to offer expert testimony;
24 defining terms; providing for payment of future
losses in medical liability actions; amending 63 O.S.
2001, Section 1-1709.1, as last amended by Section 2,
Chapter 558, O.S.L. 2004 (63 O.S. Supp. 2005, Section
1-1709.1), which relates to peer review information;
providing that certain information, recommendations
and actions are not subject to discovery; amending 76
O.S. 2001, Section 18, as amended by Section 4,
Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2006, Section
18), which relates to a statute of limitations for
certain actions; establishing a statute of repose for
certain actions; amending 76 O.S. 2001, Section 25,
which relates to professional review bodies;
providing that certain information is not subject to
discovery; prohibiting testimony by certain persons;
amending 76 O.S. 2001, Section 31 and Section 34,
Chapter 368, O.S.L. 2004 (76 O.S. Supp. 2005, Section
32), which relate to civil immunity for volunteers,
charitable organizations, not-for-profit corporations
and volunteer medical professionals; modifying
definition; expanding immunity for volunteer medical
professionals; creating the Common Sense Consumption
Act; providing short title; stating legislative
intent; defining terms; providing immunity from civil

1 liability for certain claims; providing exception;
2 providing pleading requirements; providing for stay
3 of discovery and other proceedings in certain
4 circumstances; providing scope of claims covered;
5 creating the Product Liability Act; providing short
6 title; defining terms; providing that a manufacturer
7 or seller shall not be liable for inherently unsafe
8 products; providing procedures and requirements in
9 actions alleging design defect; providing elements a
10 claimant must prove in certain actions against
11 manufacturers or sellers of firearms or ammunition;
12 limiting liability of nonmanufacturing sellers;
13 providing rebuttable presumption in actions relating
14 to pharmaceutical products; providing rebuttable
15 presumption concerning compliance with government
16 standards; defining term; making evidence regarding
17 measures taken after injury inadmissible; requiring
18 filing of certain affidavit and procedures therefor;
19 creating the Asbestos and Silica Claims Priorities
20 Act; providing legislative findings; stating
21 purposes; defining terms; providing elements of proof
22 and proceedings for asbestos or silica claims;
23 providing that certain evidence does not create a
24 presumption; providing that certain evidence is
inadmissible; providing for discovery; providing for
consolidation of claims; authorizing the court to
decline to exercise jurisdiction in certain
circumstances; providing for venue; providing a
statute of limitations; establishing two-disease
rule; providing scope of applicability of the
Asbestos and Silica Claims Priorities Act; providing
procedure and certain requirement for civil actions
for professional negligence; repealing Section 9,
Chapter 150, O.S.L. 2004 (12 O.S. Supp. 2006, Section
150), which relates to summons in medical liability
actions; repealing Section 8, Chapter 368, O.S.L.
2004 (12 O.S. Supp. 2005, Section 832.1), which
relates to indemnification product liability actions;
repealing 23 O.S. 2001, Section 103, which relates to
personal injury actions asserted in bad faith;
repealing Section 6, Chapter 390, O.S.L. 2003, as
amended by Section 21, Chapter 368, O.S.L. 2004, and
Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp.
2005, Sections 1-1708.1F and 1-1708.1F-1), which
relate to limits on noneconomic damages in medical
liability actions; providing for codification; and
providing an effective date.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 7.2 of Title 5, unless there is
4 created a duplication in numbering, reads as follows:

5 A. In class actions, if an award of attorney fees is available,
6 the trial court shall use the Lodestar Rule to calculate the amount
7 of fees to be awarded to class counsel. The court may increase or
8 decrease the fee award calculated by using the Lodestar method by no
9 more than three times based on specified factors in subsection C of
10 this section.

11 B. If any portion of the benefits recovered for the class are
12 in the form of coupons or other noncash common benefits, the
13 attorney fees awarded in the class action shall be in cash and
14 noncash amounts in the same proportion as the recovery for the
15 class.

16 C. As used in this section, "Lodestar Rule" means the number of
17 hours reasonably expended multiplied by the prevailing hourly rate
18 in the community and then adjusted for other factors. In arriving
19 at just compensation, the court shall consider the following
20 factors:

- 21 1. Time and labor required;
- 22 2. The novelty and difficulty of the case;
- 23 3. The skill required to perform the legal service properly;

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- 1 4. The preclusion of other employment by the attorney due to
- 2 acceptance of the case;
- 3 5. The customary fee;
- 4 6. Time limitations imposed by the client or the circumstances;
- 5 7. The amount in controversy and the results obtained;
- 6 8. The experience, reputation and ability of the attorney;
- 7 9. Whether or not the case is an undesirable case;
- 8 10. The nature and length of the professional relationship with
- 9 the client; and
- 10 11. Awards in similar cases, excluding settlements or agreed
- 11 upon judgments.

12 SECTION 2. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 95.1 of Title 12, unless there
14 is created a duplication in numbering, reads as follows:

15 A. As used in this section, "product liability action" means
16 any action against a manufacturer or seller for recovery of damages
17 or other relief for harm allegedly caused by a defective product,
18 whether the action is based in strict tort liability, strict
19 products liability, negligence, misrepresentation, breach of express
20 or implied warranty, or any other theory or combination of theories,
21 and whether the relief sought is recovery of damages or any other
22 legal or equitable relief, including, but not limited to, an action
23 for:

- 24 1. Injury or damage to or loss of real or personal property;

- 1 2. Personal injury;
- 2 3. Wrongful death;
- 3 4. Economic loss; or
- 4 5. Declaratory, injunctive, or other equitable relief.

5 B. Except as provided by subsections C, D and E of this
6 section, a plaintiff must commence a product liability action
7 against a manufacturer or seller of a product before the end of ten
8 (10) years after the date of the sale of the product by the
9 defendant.

10 C. If a manufacturer or seller expressly warrants in writing
11 that the product has a useful safe life of longer than ten (10)
12 years, a plaintiff must commence a product liability action against
13 that manufacturer or seller of the product before the end of the
14 number of years warranted after the date of the sale of the product
15 by that seller.

16 D. This section shall not apply to a product liability action
17 seeking damages for personal injury or wrongful death in which the
18 claimant alleges:

19 1. The plaintiff was exposed to the product that is the subject
20 of the action before the end of ten (10) years after the date the
21 product was first sold;

22 2. Exposure to the product caused a disease that is the basis
23 of the action; and
24

1 3. The symptoms of the disease did not, before the end of ten
2 (10) years after the date of the first sale of the product by the
3 defendant, manifest themselves to a degree and for a duration that
4 would put a reasonable person on notice that the person suffered
5 some injury.

6 E. This section shall not reduce a limitations period for a
7 cause of action described by subsection D of this section that
8 accrues before the end of the limitations period under this section.

9 F. This section shall not extend the limitations period within
10 which a products liability action involving the product may be
11 commenced under any other law.

12 G. This section applies only to the sale and not to the lease
13 of a product.

14 H. This section shall not apply to any claim to which the
15 General Aviation Revitalization Act of 1994 (Pub. L. No. 103-298,
16 108 Stat. 1552) (1994), 49 U.S.C., Section 40101 or its exceptions
17 are applicable.

18 SECTION 3. AMENDATORY Section 2, Chapter 368, O.S.L.
19 2004 (12 O.S. Supp. 2006, Section 130), is amended to read as
20 follows:

21 Section 130. The venue of civil actions for damages brought
22 pursuant to the Affordable Access to Health Care Act, Section 1-
23 1708.1A et seq. of Title 63 of the Oklahoma Statutes, shall be in a
24 county where the cause of action or any portion thereof arose, or in

1 any county in which any of the defendants reside, or in the case of
2 a corporation, in a county in which it is situated, or has its
3 principal office or place of business, ~~or in any county where a~~
4 ~~codefendant of such corporation may be sued.~~ Upon a finding of lack
5 of venue, the court shall transfer or dismiss the action; provided,
6 however, that if the court finds lack of venue and that a dismissal
7 would operate as a dismissal with prejudice, the court shall
8 transfer the action.

9 SECTION 4. AMENDATORY 12 O.S. 2001, Section 134, is
10 amended to read as follows:

11 Section 134. An action, other than one of those mentioned in
12 ~~first three sections of this article~~ Section 131, 132 or 133 of this
13 title, against a corporation created by the laws of this state, may
14 be brought in the county in which it is situated, or has its
15 principal office or place of business, or in which any of the
16 principal officers thereof may reside, ~~or be summoned,~~ or in the
17 county where the cause of action or some part thereof arose, ~~or in~~
18 ~~any county where a codefendant of such corporation created by the~~
19 ~~laws of this state may properly be sued.~~

20 SECTION 5. AMENDATORY 12 O.S. 2001, Section 137, is
21 amended to read as follows:

22 Section 137. A. In addition to the other counties in which an
23 action may be brought against a nonresident of this state, ~~or other~~
24 than a foreign corporation, such action may be brought in any county

1 in which there may be property of or debts owing to such defendant,
2 or where such defendant may be found, ~~or in any county where a~~
3 ~~codefendant may properly be sued, if.~~

4 B. An action may be brought against a foreign corporation in
5 the county in which the corporation has its principal office or
6 place of business or in which any of the principal officers thereof
7 reside, or where such company has a service agent.

8 C. If such defendant ~~be~~ is a foreign insurance company the
9 action may be brought in any county ~~where such cause of action, or~~
10 ~~any part thereof, arose, or where the plaintiff resides or where~~
11 such company has ~~an~~ its principal office or place of business or in
12 which any of the principal officers thereof reside, or where such
13 company has a service agent.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 140.1 of Title 12, unless there
16 is created a duplication in numbering, reads as follows:

17 A. If the court, upon motion by a party or on the court's own
18 motion, finds that, in the interest of justice and for the
19 convenience of the parties, a claim or action would be more properly
20 heard in another forum either in this state or outside this state,
21 the court shall decline to exercise jurisdiction under the doctrine
22 of forum non conveniens and shall stay or dismiss the claim or
23 action.

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1 B. In determining whether to grant a motion to stay or dismiss
2 an action pursuant to this section, the court shall consider:

3 1. Whether an alternate forum exists in which the claim or
4 action may be tried;

5 2. Whether the alternate forum provides an adequate remedy;

6 3. Whether maintenance of the claim in the court in which the
7 case is filed would work a substantial injustice to the moving
8 party;

9 4. Whether the alternate forum can exercise jurisdiction over
10 all the defendants properly joined in the claim of the plaintiff;

11 5. Whether the balance of the private interests of the parties
12 and the public interest of the state predominate in favor of the
13 claim or action being brought in an alternate forum; and

14 6. Whether the stay or dismissal would prevent unreasonable
15 duplication or proliferation of litigation.

16 SECTION 7. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 140.2 of Title 12, unless there
18 is created a duplication in numbering, reads as follows:

19 An action brought in a county in which venue does not lie does
20 not toll the statute of limitations.

21 SECTION 8. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 144 of Title 12, unless there is
23 created a duplication in numbering, reads as follows:

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1 A. In a suit in which there is more than one plaintiff, whether
2 the plaintiffs are included by joinder, by intervention, because the
3 lawsuit was begun by more than one plaintiff, or otherwise, each
4 plaintiff shall, independently of every other plaintiff, establish
5 proper venue. If a plaintiff cannot independently establish proper
6 venue, that plaintiff's part of the suit, including all of that
7 plaintiff's claims and causes of action, shall be transferred to a
8 county of proper venue or dismissed, as is appropriate, unless that
9 plaintiff, independently of every other plaintiff, establishes that:

10 1. Joinder of that plaintiff or intervention in the suit by
11 that plaintiff is proper under Oklahoma law and applicable court
12 rules;

13 2. Maintaining venue as to that plaintiff in the county of suit
14 does not unfairly prejudice another party to the suit;

15 3. There is an essential need to have that plaintiff's claim
16 tried in the county in which the suit is pending; and

17 4. The county in which the suit is pending is a fair and
18 convenient venue for that plaintiff and all persons against whom the
19 suit is brought.

20 B. An interlocutory appeal may be taken of a trial court's
21 determination under subsection A of this section that:

22 1. A plaintiff did or did not independently establish proper
23 venue; or

1 2. A plaintiff that did not independently establish proper
2 venue did or did not establish the items prescribed by paragraphs 1
3 through 4 of subsection A of this section.

4 C. The court of appeals shall:

5 1. Determine whether the trial court's order is proper, based
6 on an independent determination from the record and not under either
7 an abuse of discretion or substantial evidence standard; and

8 2. Render judgment not later than one hundred twenty (120) days
9 after the date the appeal is perfected.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 191 of Title 12, unless there is
12 created a duplication in numbering, reads as follows:

13 A. 1. In any civil action for professional negligence, except
14 as provided in subsection B of this section, the plaintiff shall
15 attach to the petition an affidavit attesting that:

16 a. the plaintiff has consulted and reviewed the facts of
17 the claim with a qualified expert,

18 b. the plaintiff has obtained a written opinion from a
19 qualified expert that clearly identifies the plaintiff
20 and includes the expert's determination that, based
21 upon a review of the pertinent records, facts or other
22 relevant material, a reasonable interpretation of the
23 facts supports a finding that the acts or omissions of
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1 the defendant against whom the action is brought
2 constituted professional negligence, and

3 c. on the basis of the qualified expert's review and
4 consultation, the plaintiff has concluded that the
5 claim is meritorious and based on good cause.

6 2. If the civil action for professional negligence is filed:

7 a. without an affidavit being attached to the petition,
8 as required in paragraph 1 of this subsection, and

9 b. no extension of time is subsequently granted by the
10 court, pursuant to subsection B of this section, the
11 court shall, upon motion of the defendant, dismiss the
12 action without prejudice to its refiling.

13 3. The written opinion from the qualified expert shall state
14 the acts or omissions of the defendant or defendants that the expert
15 then believes constituted professional negligence and shall include
16 reasons explaining why the acts or omissions constituted
17 professional negligence. The written opinion from the qualified
18 expert shall not be admissible at trial for any purpose nor shall
19 any inquiry be permitted with regard to the written opinion for any
20 purpose either in discovery or at trial.

21 B. 1. The court may, upon application of the plaintiff for
22 good cause shown, grant the plaintiff an extension of time, not
23 exceeding ninety (90) days after the date the petition is filed,
24 except for good cause shown, to file in the action an affidavit

1 attesting that the plaintiff has obtained a written opinion from a
2 qualified expert as described in paragraph 1 of subsection A of this
3 section.

4 2. If on the expiration of an extension period described in
5 paragraph 1 of this subsection, the plaintiff has failed to file in
6 the action an affidavit as described above, the court shall, upon
7 motion of the defendant, unless good cause is shown for such
8 failure, dismiss the action without prejudice to its refiling.

9 C. 1. Upon written request of any defendant in a civil action
10 for professional negligence, the plaintiff shall, within ten (10)
11 business days after receipt of such request, provide the defendant
12 with:

- 13 a. a copy of the written opinion of a qualified expert
14 mentioned in an affidavit filed pursuant to subsection
15 A or B of this section, and
- 16 b. an authorization from the plaintiff in a form that
17 complies with applicable state and federal laws,
18 including the Health Insurance Portability and
19 Accountability Act of 1996, for the release of any and
20 all medical records related to the plaintiff for a
21 period commencing five (5) years prior to the incident
22 that is at issue in the civil action for professional
23 negligence.

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1 2. If the plaintiff fails to comply with paragraph 1 of this
2 subsection, the court shall, upon motion of the defendant, unless
3 good cause is shown for such failure, dismiss the action without
4 prejudice to its refiling.

5 SECTION 10. AMENDATORY 12 O.S. 2001, Section 683, as
6 amended by Section 3, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
7 Section 683), is amended to read as follows:

8 Section 683. Except as provided in Section ~~5~~ 684 of this act
9 title, an action may be dismissed, without prejudice to a future
10 action:

11 1. By the plaintiff, before the final submission of the case to
12 the jury, or to the court, where the trial is by the court;

13 2. By the court, where the plaintiff fails to appear on the
14 trial;

15 3. By the court, for the want of necessary parties;

16 4. By the court, on the application of some of the defendants,
17 where there are others whom the plaintiff fails to prosecute with
18 diligence;

19 5. By the court, for disobedience by the plaintiff of an order
20 concerning the proceedings in the action; and

21 6. In all other cases, upon the trial of the action, the
22 decision must be upon the merits.

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1 SECTION 11. AMENDATORY 12 O.S. 2001, Section 684, as
2 amended by Section 4, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
3 Section 684), is amended to read as follows:

4 Section 684. A. ~~Except as provided in Section 5 of this act,~~
5 ~~an~~ An action may be dismissed ~~on the payment of costs and by the~~
6 plaintiff without an order of court by ~~the plaintiff~~ filing a notice
7 of dismissal at any time before ~~a petition of intervention or answer~~
8 ~~praying for affirmative relief against the plaintiff is filed in the~~
9 ~~action. A plaintiff may, at any time before the trial is commenced,~~
10 ~~on payment of the costs and without any order of court, dismiss the~~
11 ~~action after the filing of a petition of intervention or answer~~
12 ~~praying for affirmative relief, but such dismissal shall not~~
13 ~~prejudice the right of the intervenor or defendant to proceed with~~
14 ~~the action. Any defendant or intervenor may, in like manner,~~
15 ~~dismiss an action against the plaintiff, without an order of court,~~
16 ~~at any time before the trial is begun, on payment of the costs made~~
17 ~~on the claim filed by the defendant or intervenor. All parties to a~~
18 ~~civil action may at any time before trial, without an order of~~
19 ~~court, and on payment of costs, by agreement, dismiss the action.~~

20 B. ~~Such dismissal shall be in writing and signed by the party~~
21 ~~or the attorney for the party, and shall be filed with the clerk of~~
22 ~~the district court where the action is pending, who shall note the~~
23 ~~fact on the proper record: Provided, such dismissal shall be held to~~

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1 ~~be without prejudice, unless the words "with prejudice" be expressed~~
2 ~~therein.~~

3 ~~C. When an action is dismissed after a jury in the action is~~
4 ~~empanelled and the case is subsequently refiled, the court, at the~~
5 ~~conclusion of the subsequent action, may assess costs and attorney~~
6 ~~fees incurred in the previous action by the defendants subsequent to~~
7 ~~the jury being empanelled service by the adverse party of an answer~~
8 ~~or of a motion for summary judgment, whichever first occurs, or by~~
9 ~~filing a stipulation for dismissal signed by all parties who have~~
10 ~~appeared in the action; provided, if a plaintiff files a notice of~~
11 ~~dismissal after discovery has commenced, any such action shall not~~
12 ~~be dismissed without prejudice without the consent of the defendant.~~
13 ~~Unless otherwise stated in the notice of dismissal or stipulation,~~
14 ~~the dismissal is without prejudice, except that a notice of~~
15 ~~dismissal operates as an adjudication upon the merits when filed by~~
16 ~~a plaintiff who has once dismissed in any court of the United States~~
17 ~~or of any state an action based on or including the same claim.~~

18 B. Except as provided in subsection A of this section, an
19 action shall not be dismissed at the plaintiff's instance except
20 upon order of the court and upon such terms and conditions as the
21 court deems proper. If a counterclaim has been pleaded by a
22 defendant prior to the service upon the defendant of the plaintiff's
23 motion to dismiss, the action shall not be dismissed against the
24 defendant's objection unless the counterclaims can remain pending

1 for independent adjudication by the court. Unless otherwise
2 specified in the order, a dismissal under this paragraph is without
3 prejudice.

4 C. For failure of the plaintiff to prosecute or to comply with
5 the provisions of this section or any order of court, a defendant
6 may move for dismissal of an action or of any claim against the
7 defendant. Unless the court in its order for dismissal otherwise
8 specifies, a dismissal under this subsection and any dismissal not
9 provided for in this section, other than a dismissal for lack of
10 jurisdiction, for improper venue, or for failure to join a party,
11 operates as an adjudication upon the merits.

12 D. The provisions of this section apply to the dismissal of any
13 counterclaim, cross-claim, or third-party claim. A voluntary
14 dismissal by the claimant alone pursuant to subsection A of this
15 section shall be made before a responsive pleading is served or, if
16 there is none, before the introduction of evidence at the trial or
17 hearing.

18 If a plaintiff who has once dismissed an action in any court
19 commences an action based upon or including the same claim against
20 the same defendant, the court may make such order for the payment of
21 costs of the action previously dismissed as it may deem proper and
22 may stay the proceedings in the action until the plaintiff has
23 complied with the order. If an action is refiled and the plaintiff
24 does not comply with the time limits for service required by

1 subsection I of Section 2004 of this title, the action shall be
2 dismissed with prejudice.

3 SECTION 12. AMENDATORY Section 7, Chapter 368, O.S.L.
4 2004 (12 O.S. Supp. 2006, Section 727.1), is amended to read as
5 follows:

6 Section 727.1

7 POSTJUDGMENT INTEREST

8 A. 1. Except as otherwise provided by this section, all
9 judgments of courts of record, including costs and attorney fees
10 authorized by statute or otherwise and allowed by the court, shall
11 bear interest at a rate prescribed pursuant to this section.

12 2. Costs and attorney fees allowed by the court shall bear
13 interest from the earlier of the date the judgment or order is
14 pronounced, if expressly stated in the written judgment or order
15 awarding the costs and attorney fees, or the date the judgment or
16 order is filed with the court clerk.

17 B. Judgments, including costs and attorney fees authorized by
18 statute or otherwise and allowed by the court, against this state or
19 its political subdivisions, including counties, municipalities,
20 school districts, and public trusts of which this state or a
21 political subdivision of this state is a beneficiary, shall bear
22 interest during the term of judgment at a rate prescribed pursuant
23 to this section from the date of rendition. No judgment against
24 this state or its political subdivisions, including counties,

1 municipalities, school districts, and public trusts of which this
2 state or a political subdivision of this state is a beneficiary,
3 inclusive of postjudgment interest, shall exceed the total amount of
4 liability of the governmental entity pursuant to The Governmental
5 Tort Claims Act.

6 C. The postjudgment interest authorized by subsection A or
7 subsection B of this section shall accrue from the earlier of the
8 date the judgment is rendered as expressly stated in the judgment,
9 or the date the judgment is filed with the court clerk, and shall
10 initially accrue at the rate in effect for the calendar year during
11 which the judgment is rendered until the end of the calendar year in
12 which the judgment was rendered, or until the judgment is paid,
13 whichever first occurs. Beginning on January 1 of the next
14 succeeding calendar year until the end of that calendar year, or
15 until the judgment is paid, whichever first occurs, the judgment,
16 together with postjudgment interest previously accrued, shall bear
17 interest at the rate in effect for judgments rendered during that
18 calendar year as certified by the Administrative Director of the
19 Courts pursuant to subsection I of this section. For each
20 succeeding calendar year, or part of a calendar year, during which a
21 judgment remains unpaid, the judgment, together with postjudgment
22 interest previously accrued, shall bear interest at the rate in
23 effect for judgments rendered during that calendar year as certified
24 by the Administrative Director of the Courts pursuant to subsection

1 I of this section. A separate computation using the interest rate
2 in effect for judgments as provided by subsection I of this section
3 shall be made for each calendar year, or part of a calendar year,
4 during which the judgment remains unpaid in order to determine the
5 total amount of interest for which the judgment debtor is liable.
6 The postjudgment interest rate for each calendar year or part of a
7 calendar year a judgment remains unpaid shall be multiplied by the
8 original amount of the judgment, including any prejudgment interest,
9 together with postjudgment interest previously accrued. Interest
10 shall accrue on a judgment in the manner prescribed by this
11 subsection until the judgment is satisfied or released.

12 D. If a rate of interest is specified in a contract, the rate
13 specified shall apply and be stated in the journal entry of
14 judgment. The rate of interest shall not exceed the lawful rate for
15 that obligation. Postjudgment interest shall be calculated and
16 accrued in the same manner as prescribed in subsection C of this
17 section.

18 PREJUDGMENT INTEREST

19 E. Except as provided by subsection F of this section or
20 Section 1-1708.1G of Title 63 of the Oklahoma Statutes, in actions
21 filed before November 1, 2007, if a verdict for damages by reason of
22 personal injuries or injury to personal rights including, but not
23 limited to, injury resulting from bodily restraint, personal insult,
24 defamation, invasion of privacy, injury to personal relations, or

1 detriment due to an act or omission of another is accepted by the
2 trial court, the court in rendering judgment shall add interest on
3 the verdict at a rate prescribed pursuant to subsection I of this
4 section from the date the suit resulting in the judgment was
5 commenced to the earlier of the date the verdict is accepted by the
6 trial court as expressly stated in the judgment, or the date the
7 judgment is filed with the court clerk. The interest rate for
8 computation of prejudgment interest shall begin with the rate
9 prescribed by subsection I of this section which is in effect for
10 ~~the calendar year in which the suit resulting in the judgment is~~
11 ~~commenced. This rate shall be in effect until the end of the~~
12 ~~calendar year in which the suit resulting in judgment was filed or~~
13 ~~until the date judgment is filed, whichever first occurs. Beginning~~
14 ~~on January 1 of the next succeeding calendar year until the end of~~
15 ~~that calendar year, or until the date the judgment is filed,~~
16 ~~whichever first occurs, and for each succeeding calendar year~~
17 ~~thereafter, the prejudgment interest rate shall be the rate in~~
18 ~~effect for judgments rendered during each 2007 calendar year as~~
19 certified by the Administrative Director of the Courts pursuant to
20 subsection I of this section. After the computation of all
21 prejudgment interest has been completed, the total amount of
22 prejudgment interest shall be added to the amount of the judgment
23 rendered pursuant to the trial of the action, and the total amount
24 of the resulting judgment shall become the amount upon which

1 postjudgment interest is computed pursuant to subsection A of this
2 section.

3 F. If, for an action filed prior to November 1, 2007, a verdict
4 of the type described by subsection E of this section is rendered
5 against this state or its political subdivisions, including
6 counties, municipalities, school districts, and public trusts of
7 which this state or a political subdivision of this state is a
8 beneficiary, the judgment shall bear interest at the rate prescribed
9 pursuant to subsection I of this section from the date the suit was
10 commenced to the earlier of the date the verdict is accepted by the
11 trial court as expressly stated in the judgment or the date the
12 judgment is filed with the court clerk. The interest rate for
13 computation of prejudgment interest shall ~~begin with~~ be the rate
14 prescribed by subsection I of this section which is in effect for
15 the 2007 calendar year ~~in which the suit resulting in the judgment~~
16 ~~is commenced. This rate shall be in effect until the end of the~~
17 ~~calendar year in which the suit resulting in judgment was filed or~~
18 ~~until the date the judgment is rendered as expressly stated in the~~
19 ~~judgment, whichever first occurs. Beginning on January 1 of the~~
20 ~~next succeeding calendar year until the end of that calendar year,~~
21 ~~or until the date judgment is rendered, whichever first occurs, and~~
22 ~~for each succeeding calendar year thereafter, the prejudgment~~
23 ~~interest rate shall be the rate in effect for judgments rendered~~
24 ~~during each calendar year as certified by the Administrative~~

1 Director of the Courts pursuant to subsection I of this section.
2 After the computation of prejudgment interest has been completed,
3 the amount shall be added to the amount of the judgment rendered
4 pursuant to the trial of the action, and the total amount of the
5 resulting judgment shall become the amount upon which postjudgment
6 interest is computed pursuant to subsection B of this section. No
7 award of prejudgment interest against this state or its political
8 subdivisions, including counties, municipalities, school districts,
9 and public trusts of which this state or a political subdivision of
10 this state is a beneficiary, including the amount of the judgment
11 awarded pursuant to trial of the action, shall exceed the total
12 amount of liability of the governmental entity pursuant to The
13 Governmental Tort Claims Act.

14 G. If exemplary or punitive damages are awarded in an action
15 for personal injury or injury to personal rights including, but not
16 limited to, injury resulting from bodily restraint, personal insult,
17 defamation, invasion of privacy, injury to personal relations, or
18 detriment due to an act or omission of another, the interest on
19 that award shall begin to accrue from the earlier of the date the
20 judgment is rendered as expressly stated in the judgment, or the
21 date the judgment is filed with the court clerk.

22 H. If, for an action filed prior to November 1, 2007, a
23 judgment is rendered establishing the existence of a lien against
24 property and no rate of interest exists, the court shall allow

1 prejudgment interest at a rate prescribed pursuant to subsection I
2 of this section from the date the lien is filed to the date of
3 verdict.

4 I. For purposes of computing either postjudgment interest or
5 prejudgment interest as authorized by this section, interest shall
6 be the prime rate, as listed in the first edition of the Wall Street
7 Journal published for each calendar year and as certified to the
8 Administrative Director of the Courts by the State Treasurer on the
9 first regular business day following publication in January of each
10 year, plus two percent (2%).

11 J. For purposes of computing postjudgment interest, the
12 provisions of this section shall be applicable to all judgments of
13 the district courts rendered on or after January 1, 2005. Effective
14 January 1, 2005, the method for computing postjudgment interest
15 prescribed by this section shall be applicable to all judgments
16 remaining unpaid rendered prior to January 1, 2005.

17 K. For purposes of computing prejudgment interest, the
18 provisions of this section shall be applicable to all actions which
19 are filed in the district courts on or after January 1, 2005, and
20 prior to November 1, 2007, for which an award of prejudgment
21 interest is authorized by the provisions of this section.

22 Prejudgment interest shall not be applicable to any action filed on
23 or after November 1, 2007.

24

1 SECTION 13. AMENDATORY 12 O.S. 2001, Section 832, is
2 amended to read as follows:

3 Section 832. A. When two or more persons become jointly ~~or~~
4 ~~severally~~ liable in tort for the same injury to person or property
5 or for the same wrongful death, there is a right of contribution
6 among them even though judgment has not been recovered against all
7 or any of them except as provided in this section.

8 B. The right of contribution exists only in favor of a
9 tortfeasor who has paid more than ~~their~~ the tortfeasor's pro rata
10 share of the common liability, and the total recovery is limited to
11 the amount paid by the tortfeasor in excess of their pro rata share.
12 No tortfeasor is compelled to make contribution beyond ~~their~~ the
13 tortfeasor's pro rata share of the entire liability.

14 C. There is no right of contribution in favor of any tortfeasor
15 who has intentionally caused or contributed to the injury or
16 wrongful death.

17 D. A tortfeasor who enters into a settlement with a claimant is
18 not entitled to recover contribution from another tortfeasor whose
19 liability for the injury or wrongful death is not extinguished by
20 the settlement nor in respect to any amount paid in a settlement
21 which is in excess of what was reasonable.

22 E. A liability insurer which by payment has discharged, in full
23 or in part, the liability of a tortfeasor and has thereby discharged
24 in full its obligation as insurer, is subrogated to the tortfeasor's

1 right of contribution to the extent of the amount it has paid in
2 excess of the tortfeasor's pro rata share of the common liability.
3 This provision does not limit or impair any right of subrogation
4 arising from any other relationship.

5 F. This ~~act~~ section does not impair any contractual or
6 statutory right of indemnity under existing law. When one
7 tortfeasor is entitled to contractual or statutory indemnity from
8 another, the right of the indemnity obligee is for indemnity and not
9 contribution, and the indemnity obligor is not entitled to
10 contribution from the obligee for any portion of the indemnity
11 obligation.

12 G. This act shall not apply to breaches of trust or of other
13 fiduciary obligation.

14 H. When a release, covenant not to sue, or a similar agreement
15 is given in good faith to one of two or more persons liable in tort
16 for the same injury or the same wrongful death:

17 1. It does not discharge any other tortfeasor from liability
18 for the injury or wrongful death unless the other tortfeasor is
19 specifically named; but it reduces the claim against others to the
20 extent of any amount stipulated by the release or the covenant, or
21 in the amount of the consideration paid for it, whichever is
22 greater; and

23 2. It discharges the tortfeasor to whom it is given from all
24 liability for contribution to any other tortfeasor.

1 SECTION 14. AMENDATORY 12 O.S. 2001, Section 990.4, as
2 last amended by Section 6, Chapter 1, O.S.L. 2005 (12 O.S. Supp.
3 2006, Section 990.4), is amended to read as follows:

4 Section 990.4 A. Except as provided in subsection C of this
5 section, a party may obtain a stay of the enforcement of a judgment,
6 decree or final order:

- 7 1. While a post-trial motion is pending;
- 8 2. During the time in which an appeal may be commenced; or
- 9 3. While an appeal is pending.

10 Such stay may be obtained by filing with the court clerk a written
11 undertaking and the posting of a supersedeas bond or other security
12 as provided in this section. In the undertaking the appellant shall
13 agree to satisfy the judgment, decree or final order, and pay the
14 costs and interest on appeal, if it is affirmed. The undertaking
15 and supersedeas bond or security may be given at any time. The stay
16 is effective when the bond and the sufficiency of the sureties are
17 approved by the trial court or the security is deposited with the
18 court clerk. The enforcement of the judgment, decree or order shall
19 no longer be stayed, and the judgment, decree or order may be
20 enforced against any surety on the bond or other security:

- 21 1. If neither a post-trial motion nor a petition in error is
22 filed, and the time for appeal has expired;
- 23 2. If a post-trial motion is no longer pending, no petition in
24 error has been filed, and the time for appeal has expired; or

1 3. If an appeal is no longer pending.

2 B. The amount of the bond or other security shall be as
3 follows:

4 1. When the judgment, decree or final order is for payment of
5 money:

6 a. subject to the limitations hereinafter provided, the
7 bond shall be double the amount of the judgment,
8 decree or final order, unless the bond is executed or
9 guaranteed by a surety as hereinafter provided. ~~The~~
10 Subject to the limitations hereinafter provided, the
11 bond shall be for the amount of the judgment, decree
12 or order including costs and interest on appeal where
13 it is executed or guaranteed by an entity with
14 suretyship powers as provided by the laws of Oklahoma.
15 In no case shall the bond exceed Twenty-five Million
16 Dollars (\$25,000,000.00). If the party posting the
17 supersedeas bond is a small business within the terms
18 of Oklahoma law, the supersedeas bond shall not exceed
19 One Million Dollars (\$1,000,000.00) regardless of the
20 value of the judgment. On a showing by the judgment
21 debtor that the judgment debtor is likely to suffer
22 substantial economic harm if required to post bond in
23 the amount required by this paragraph, the court shall
24 balance the likely substantial economic harm to the

1 judgment debtor with the ability of the judgment
2 creditor to collect the judgment in the event the
3 judgment is affirmed on appeal and may lower the bond
4 accordingly. "Substantial economic harm" means
5 insolvency or creating a significant risk of
6 insolvency. ~~The court shall not lower a bond as
7 provided in this paragraph to the extent there is in
8 effect an insurance policy, or agreement under which a
9 third party is liable to satisfy part or all of the
10 judgment entered and such party is required to post
11 all or part of the bond. Upon lowering the bond as
12 provided in this paragraph, the court shall enter an
13 order enjoining a judgment debtor from dissipating or
14 transferring assets to avoid satisfaction of the
15 judgment, but the court shall not make any order that
16 interferes with the judgment debtor's use of assets in
17 the normal course of business If it is proved by a
18 preponderance of the evidence to a court that the
19 appellant for whom the bond has been limited pursuant
20 to this subparagraph is intentionally dissipating or
21 diverting assets outside of the ordinary course of its
22 business for the purpose of avoiding payment of the
23 judgment, the court shall enter such orders as are
24 necessary to prevent dissipation or diversion,~~

1 including, but not limited to, requiring that a bond
2 be posted equal to the full amount of security
3 required pursuant to this section. For the purposes
4 of this paragraph, dissipation of assets shall not
5 include expenditures, including payments to the owners
6 of a business, of the kind that the appellant made in
7 the regular course of business prior to the entry of
8 the judgment being appealed, and

9 b. instead of filing a supersedeas bond, the appellant
10 may obtain a stay by depositing cash with the court
11 clerk in the amount of the judgment or order plus an
12 amount that the court determines will cover costs and
13 interest on appeal. The court shall have discretion
14 to accept United States Treasury notes or general
15 obligation bonds of the State of Oklahoma in lieu of
16 cash. If the court accepts such notes or bonds, it
17 shall make appropriate orders for their safekeeping
18 and maintenance during the stay;

19 2. When the judgment, decree or final order directs execution
20 of a conveyance or other instrument, the amount of the bond shall be
21 determined by the court, but in no case shall the bond exceed
22 Twenty-five Million Dollars (\$25,000,000.00). Instead of posting a
23 supersedeas bond or other security, the appellant may execute the
24 conveyance or other instrument and deliver it to the clerk of the

1 court for deposit with a public or private entity for safekeeping,
2 as directed by the court in writing;

3 3. When the judgment, decree or final order directs the
4 delivery of possession of real or personal property, the bond shall
5 be in an amount, to be determined by the court, that will protect
6 the interests of the parties, but in no case shall the bond exceed
7 Twenty-five Million Dollars (\$25,000,000.00). The court may
8 consider the value of the use of the property, any waste that may be
9 committed on or to the property during the pendency of the stay, the
10 value of the property, and all costs. When the judgment, decree or
11 final order is for the sale of mortgaged premises and the payment of
12 a deficiency arising from the sale, the bond must also provide for
13 the payment of the deficiency;

14 4. When the judgment or final order directs the assignment or
15 delivery of documents, they may be placed in the custody of the
16 clerk of the court in which the judgment or order was rendered, for
17 deposit with a public or private entity for safekeeping during the
18 pendency of the stay, as directed by the court in writing, or the
19 bond shall be in such sum as may be prescribed by the court; or

20 5. In order to protect any monies payable to the Tobacco
21 Settlement Fund as set forth in Section 50 of Title 62 of the
22 Oklahoma Statutes, the bond in any action or litigation brought
23 under any legal theory involving a signatory, successor of a
24 signatory or an affiliate of a signatory to the Master Settlement

1 Agreement dated November 23, 1998, or a signatory, successor of a
2 signatory or an affiliate of a signatory to the Smokeless Tobacco
3 Master Settlement Agreement, also dated November 23, 1998, shall be
4 in an amount not to exceed one hundred percent (100%) of the
5 judgment, exclusive of interest and costs, or Twenty-five Million
6 Dollars (\$25,000,000.00), whichever is less. However, if it is
7 proved by a preponderance of the evidence that the appellant for
8 whom the bond has been limited pursuant to this paragraph is
9 intentionally dissipating or diverting assets outside of the
10 ordinary course of its business for the purpose of avoiding payment
11 of the judgment, the court shall enter such orders as are necessary
12 to prevent dissipation or diversion, including, but not limited to,
13 requiring that a bond be posted equal to the full amount of security
14 required pursuant to this section. For purposes of this paragraph,
15 "Master Settlement Agreement" shall have the same meaning as that
16 term is defined in paragraph 5 of Section 600.22 of Title 37 of the
17 Oklahoma Statutes, and "Smokeless Tobacco Master Settlement
18 Agreement" means the settlement agreement and related documents
19 entered into on November 23, 1998, by this state and leading United
20 States smokeless tobacco product manufacturers.

21 C. Subsections A and B of this section shall not apply in
22 actions involving temporary or permanent injunctions, actions for
23 divorce, separate maintenance, annulment, paternity, custody,
24 adoption, or termination of parental rights, or in juvenile matters,

1 post-decree matrimonial proceedings or habeas corpus proceedings.
2 The trial or appellate court, in its discretion, may stay the
3 enforcement of any provision in a judgment, decree or final order in
4 any of the types of actions or proceedings listed in this subsection
5 during the pendency of the appeal or while any post-trial motion is
6 pending upon such terms as to bond or otherwise as it considers
7 proper for the security of the rights of the parties. If a
8 temporary or permanent injunction is denied or dissolved, the trial
9 or appellate court, in its discretion, may restore or grant an
10 injunction during the pendency of the appeal and while any post-
11 trial motions are pending upon such terms as to bond or otherwise as
12 it considers proper for the security of the rights of the parties.

13 D. In any action not provided for in subsections A, B or C, the
14 court may stay the enforcement of any judgment, decree or final
15 order during the pendency of the appeal or while any post-trial
16 motion is pending upon such terms as to bond or otherwise as it
17 considers proper for the security of the rights of the parties.

18 E. The trial court shall have continuing jurisdiction during
19 the pendency of any post-trial motion and appeal to modify any order
20 it has entered regarding security or other conditions in connection
21 with a stay.

22 F. The execution of a supersedeas bond shall not be a condition
23 for the granting of a stay of judgment, decree or final order of any
24

1 judicial tribunal against any county, municipality, or other
2 political subdivision of the State of Oklahoma.

3 G. Executors, administrators and guardians who have given bond
4 in this state, with sureties, according to law, are not required to
5 provide a supersedeas bond if they are granted a stay of enforcement
6 of a judgment, decree or final order.

7 H. After an appeal has been decided, but before the mandate has
8 issued, a party whose trial court judgment has been affirmed, may
9 move the appellate court to order judgment on the bond or other
10 security in the amount of the judgment plus interest, appeals costs
11 and allowable appeal-related attorney fees. After mandate has
12 issued, a party who has posted a bond or other security may move for
13 exoneration of the bond or other security only in the trial court;
14 and all motions concerning the bond or other security must be
15 addressed to the trial court.

16 I. As used in this section, "legal equitable or any other form
17 of relief" means all forms of relief including without limitation
18 compensatory, special punitive, exemplary, or other damages,
19 injunctive relief, and any other form of relief.

20 SECTION 15. AMENDATORY 12 O.S. 2001, Section 993, is
21 amended to read as follows:

22 Section 993. A. When an order:

23 1. Discharges, vacates, or modifies or refuses to discharge,
24 vacate, or modify an attachment;

1 2. Denies a temporary or permanent injunction, grants a
2 temporary or permanent injunction except where granted at an ex
3 parte hearing, or discharges, vacates, or modifies or refuses to
4 discharge, vacate, or modify a temporary or permanent injunction;

5 3. Discharges, vacates, or modifies or refuses to discharge,
6 vacate, or modify a provisional remedy which affects the substantial
7 rights of a party;

8 4. Appoints a receiver except where the receiver was appointed
9 at an ex parte hearing, refuses to appoint a receiver, or vacates or
10 refuses to vacate the appointment of a receiver;

11 5. Directs the payment of money pendente lite except where
12 granted at an ex parte hearing, refuses to direct the payment of
13 money pendente lite, or vacates or refuses to vacate an order
14 directing the payment of money pendente lite;

15 6. Certifies or refuses to certify an action to be maintained
16 as a class action; ~~or~~

17 7. Denies a motion in a class action asserting lack of
18 jurisdiction because an agency of this state has exclusive or
19 primary jurisdiction of the action or a part of the action, or
20 asserting that a party has failed to exhaust administrative
21 remedies;

22 8. Determines whether or not a plaintiff has established proper
23 venue pursuant to Section 8 of this act; or

24 9. Grants a new trial or opens or vacates a judgment or order,

1 the party aggrieved thereby may appeal the order to the Supreme
2 Court without awaiting the final determination in said cause, by
3 filing the petition in error and the record on appeal with the
4 Supreme Court within thirty (30) days after the order prepared in
5 conformance with Section 696.3 of this title, is filed with the
6 court clerk. If the appellant did not prepare the order, and
7 Section 696.2 of this title required a copy of the order to be
8 mailed to the appellant, and the court records do not reflect the
9 mailing of a copy of the order to the appellant within three (3)
10 days, exclusive of weekends and holidays, after the filing of the
11 order, the petition in error may be filed within thirty (30) days
12 after the earliest date on which the court records show that a copy
13 of the order was mailed to the appellant. The Supreme Court may
14 extend the time for filing the record upon good cause shown.

15 B. If the order discharges or modifies an attachment or
16 temporary injunction and it becomes operative, the undertaking given
17 upon the allowance of an attachment or temporary injunction shall
18 stay the enforcement of said order and remain in full force until
19 final order of discharge shall take effect.

20 C. ~~Where~~ If a receiver shall be or has been appointed, upon the
21 appellant filing an appeal bond, with sufficient sureties, in such
22 sum as may have been required of the receiver by the court or a
23 judge thereof, conditioned for the due prosecution of the appeal and
24 the payment of all costs or damages that may accrue to the state or

1 any officer or person by reason thereof, the authority of the
2 receiver shall be suspended until the final determination of the
3 appeal, and if the receiver has taken possession of any property,
4 real or personal, it shall be returned and surrendered to the
5 appellant upon the filing and approval of the bonds.

6 D. If the order determines whether or not a plaintiff has
7 established proper venue pursuant to Section 8 of this act, the
8 Supreme Court shall determine whether the order of the trial court
9 is proper based on an independent determination of the record and
10 not under either an abuse of discretion or substantial evidence
11 standard and shall render judgment within one hundred twenty (120)
12 days after the date the appeal is perfected.

13 E. During the pendency of an appeal pursuant to paragraph 6, 7,
14 or 8 of subsection A of this section, the action in the trial court
15 shall be stayed in all respects.

16 SECTION 16. AMENDATORY 12 O.S. 2001, Section 1101, is
17 amended to read as follows:

18 Section 1101. The defendant, in an action for the recovery of
19 money only, may, at any time before the trial, serve upon the
20 plaintiff or ~~his~~ the attorney for the plaintiff an offer, in
21 writing, to allow judgment to be taken against ~~him~~ the defendant for
22 the sum specified therein. If the plaintiff ~~accept~~ accepts the
23 offer and ~~give~~ gives notice thereof to the defendant or ~~his~~ the
24 attorney for the defendant, within five (5) days after the offer was

1 served, the offer, and an affidavit that the notice of acceptance
2 was delivered within the time limited, may be filed by the
3 plaintiff, or the defendant may file the acceptance, with a copy of
4 the offer, verified by affidavit; and in either case, the offer and
5 acceptance shall be noted in the journal, and judgment shall be
6 rendered accordingly. If the notice of acceptance be not given in
7 the period limited, the offer shall be deemed withdrawn, and shall
8 not be given in evidence or mentioned on the trial. If the
9 plaintiff fails to obtain judgment for more than was offered by the
10 defendant, ~~he~~ the plaintiff shall pay the defendant's costs from the
11 time of the offer.

12 SECTION 17. AMENDATORY 12 O.S. 2001, Section 2004, as
13 amended by Section 7, Chapter 402, O.S.L. 2002 (12 O.S. Supp. 2006,
14 Section 2004), is amended to read as follows:

15 Section 2004.

16 PROCESS

17 A. SUMMONS: ISSUANCE. Upon filing of the petition, the clerk
18 shall forthwith issue a summons. Upon request of the plaintiff
19 separate or additional summons shall issue against any defendants.

20 B. SUMMONS: FORM.

21 1. The summons shall be signed by the clerk, be under the seal
22 of the court, contain the name of the court and the names of the
23 parties, be directed to the defendant, state the name and address of
24 the plaintiff's attorney, if any, otherwise, the plaintiff's

1 address, and the time within which these rules require the defendant
2 to appear and defend, and shall notify the defendant that in case of
3 failure to appear, judgment by default will be rendered against the
4 defendant for the relief demanded in the petition.

5 2. A judgment by default shall not be different in kind from or
6 exceed in amount that prayed for in either the demand for judgment
7 or in cases not sounding in contract in a notice which has been
8 given the party against whom default judgment is sought. Except as
9 to a party against whom a judgment is entered by default, every
10 final judgment shall grant the relief to which the party in whose
11 favor it is rendered is entitled, even if the party has not demanded
12 such relief in his or her pleadings.

13 C. BY WHOM SERVED: PERSON TO BE SERVED.

14 1. SERVICE BY PERSONAL DELIVERY.

15 a. At the election of the plaintiff, process, other than
16 a subpoena, shall be served by a sheriff or deputy
17 sheriff, a person licensed to make service of process
18 in civil cases, or a person specially appointed for
19 that purpose. The court shall freely make special
20 appointments to serve all process, other than a
21 subpoena, under this paragraph.

22 b. A summons to be served by the sheriff or deputy
23 sheriff shall be delivered to the sheriff by the court
24 clerk or an attorney of record for the plaintiff.

1 When a summons, subpoena, or other process is to be
2 served by the sheriff or deputy sheriff of another
3 county, the court clerk shall mail it, together with
4 his voucher for the fees collected for the service, to
5 the sheriff of that county. The sheriff shall deposit
6 the voucher in the Sheriff's Service Fee Account
7 created pursuant to Section 514.1 of Title 19 of the
8 Oklahoma Statutes. The sheriff or deputy sheriff
9 shall serve the process in the manner that other
10 process issued out of the court of the sheriff's own
11 county is served. A summons to be served by a person
12 licensed to make service of process in civil cases or
13 by a person specially appointed for that purpose shall
14 be delivered by an attorney of record for the
15 plaintiff to such person.

16 c. Service shall be made as follows:

17 (1) Upon an individual other than an infant who is
18 less than fifteen (15) years of age or an
19 incompetent person, by delivering a copy of the
20 summons and of the petition personally or by
21 leaving copies thereof at the person's dwelling
22 house or usual place of abode with some person
23 then residing therein who is fifteen (15) years
24 of age or older or by delivering a copy of the

1 summons and of the petition to an agent
2 authorized by appointment or by law to receive
3 service of process;

4 (2) Upon an infant who is less than fifteen (15)
5 years of age, by serving the summons and petition
6 personally and upon either of the infant's
7 parents or guardian, or if they cannot be found,
8 then upon the person having the care or control
9 of the infant or with whom the infant lives; and
10 upon an incompetent person by serving the summons
11 and petition personally and upon the incompetent
12 person's guardian;

13 (3) Upon a domestic or foreign corporation or upon a
14 partnership or other unincorporated association
15 which is subject to suit under a common name, by
16 delivering a copy of the summons and of the
17 petition to an officer, a managing or general
18 agent, or to any other agent authorized by
19 appointment or by law to receive service of
20 process and, if the agent is one authorized by
21 statute to receive service and the statute so
22 requires, by also mailing a copy to the
23 defendant;

1 (4) Upon the United States or an officer or agency
2 thereof in the manner specified by Federal Rule
3 of Civil Procedure 4;

4 (5) Upon a state, county, school district, public
5 trust or municipal corporation or other
6 governmental organization thereof subject to
7 suit, by delivering a copy of the summons and of
8 the petition to the officer or individual
9 designated by specific statute; however, if there
10 is no statute, then upon the chief executive
11 officer or a clerk, secretary, or other official
12 whose duty it is to maintain the official records
13 of the organization; and

14 (6) Upon an inmate incarcerated in an institution
15 under the jurisdiction and control of the
16 Department of Corrections, by delivering a copy
17 of the summons and of the petition to the warden
18 or superintendent or the designee of the warden
19 or superintendent of the institution where the
20 inmate is housed. It shall be the duty of the
21 receiving warden or superintendent or a designee
22 to promptly deliver the summons and petition to
23 the inmate named therein. The warden or
24 superintendent or his or her designee shall

1 reject service of process for any inmate who is
2 not actually present in said institution.

3 2. SERVICE BY MAIL.

4 a. At the election of the plaintiff, a summons and
5 petition may be served by mail by the plaintiff's
6 attorney, any person authorized to serve process
7 pursuant to subparagraph a of paragraph 1 of this
8 subsection, or by the court clerk upon a defendant of
9 any class referred to in division (1), (3), or (5) of
10 subparagraph c of paragraph 1 of this subsection.

11 Service by mail shall be effective on the date of
12 receipt or if refused, on the date of refusal of the
13 summons and petition by the defendant.

14 b. Service by mail shall be accomplished by mailing a
15 copy of the summons and petition by certified mail,
16 return receipt requested and delivery restricted to
17 the addressee. When there is more than one defendant,
18 the summons and a copy of the petition or order shall
19 be mailed in a separate envelope to each defendant.
20 If the summons is to be served by mail by the court
21 clerk, the court clerk shall enclose the summons and a
22 copy of the petition or order of the court to be
23 served in an envelope, prepared by the plaintiff,
24 addressed to the defendant, or to the resident service

1 agent if one has been appointed. The court clerk
2 shall prepay the postage and mail the envelope to the
3 defendant, or service agent, by certified mail, return
4 receipt requested and delivery restricted to the
5 addressee. The return receipt shall be prepared by
6 the plaintiff. Service by mail to a garnishee shall
7 be accomplished by mailing a copy of the summons and
8 notice by certified mail, return receipt requested,
9 and at the election of the judgment creditor by
10 restricted delivery, to the addressee.

11 c. Service by mail shall not be the basis for the entry
12 of a default or a judgment by default unless the
13 record contains a return receipt showing acceptance by
14 the defendant or a returned envelope showing refusal
15 of the process by the defendant. Acceptance or
16 refusal of service by mail by a person who is fifteen
17 (15) years of age or older who resides at the
18 defendant's dwelling house or usual place of abode
19 shall constitute acceptance or refusal by the party
20 addressed. In the case of an entity described in
21 division (3) of subparagraph c of paragraph 1 of this
22 subsection, acceptance or refusal by any officer or by
23 any employee of the registered office or principal
24 place of business who is authorized to or who

1 regularly receives certified mail shall constitute
2 acceptance or refusal by the party addressed. A
3 return receipt signed at such registered office or
4 principal place of business shall be presumed to have
5 been signed by an employee authorized to receive
6 certified mail. In the case of a state municipal
7 corporation, or other governmental organization
8 thereof subject to suit, acceptance or refusal by an
9 employee of the office of the officials specified in
10 division (5) of subparagraph c of paragraph 1 of this
11 subsection who is authorized to or who regularly
12 receives certified mail shall constitute acceptance or
13 refusal by the party addressed. If delivery of the
14 process is refused, upon the receipt of notice of such
15 refusal and at least ten (10) days before applying for
16 entry of default, the person elected by plaintiff
17 pursuant to subparagraph a of this paragraph to serve
18 the process shall mail to the defendant by first-class
19 mail a copy of the summons and petition and a notice
20 prepared by the plaintiff that despite such refusal
21 the case will proceed and that judgment by default
22 will be rendered against him unless he appears to
23 defend the suit. Any default or judgment by default
24 shall be set aside upon motion of the defendant in the

1 manner prescribed in Section 1031.1 of this title, or
2 upon petition of the defendant in the manner
3 prescribed in Section 1033 of this title if the
4 defendant demonstrates to the court that the return
5 receipt was signed or delivery was refused by an
6 unauthorized person. A petition shall be filed within
7 one (1) year after the defendant has notice of the
8 default or judgment by default but in no event more
9 than two (2) years after the filing of the judgment.

10 3. SERVICE BY PUBLICATION.

11 a. Service of summons upon a named defendant may be made
12 by publication when it is stated in the petition,
13 verified by the plaintiff or the plaintiff's attorney,
14 or in a separate affidavit by the plaintiff or the
15 plaintiff's attorney filed with the court, that with
16 due diligence service cannot be made upon the
17 defendant by any other method.

18 b. Service of summons upon the unknown successors of a
19 named defendant, a named decedent, or a dissolved
20 partnership, corporation, or other association may be
21 made by publication when it is stated in a petition,
22 verified by the plaintiff or the plaintiff's attorney,
23 or in a separate affidavit by the plaintiff or the
24 plaintiff's attorney filed with the court, that the

1 person who verified the petition or the affidavit does
2 not know and with due diligence cannot ascertain the
3 following:

- 4 (1) whether a person named as defendant is living or
5 dead, and, if dead, the names or whereabouts of
6 the person's successors, if any,
- 7 (2) the names or whereabouts of the unknown
8 successors, if any, of a named decedent,
- 9 (3) whether a partnership, corporation, or other
10 association named as a defendant continues to
11 have legal existence or not; or the names or
12 whereabouts of its officers or successors,
- 13 (4) whether any person designated in a record as a
14 trustee continues to be the trustee; or the names
15 or whereabouts of the successors of the trustee,
16 or
- 17 (5) the names or whereabouts of the owners or holders
18 of special assessment or improvement bonds, or
19 any other bonds, sewer warrants or tax bills.

20 c. Service pursuant to this paragraph shall be made by
21 publication of a notice, signed by the court clerk,
22 one (1) day a week for three (3) consecutive weeks in
23 a newspaper authorized by law to publish legal notices
24 which is published in the county where the petition is

1 filed. If no newspaper authorized by law to publish
2 legal notices is published in such county, the notice
3 shall be published in some such newspaper of general
4 circulation which is published in an adjoining county.
5 All named parties and their unknown successors who may
6 be served by publication may be included in one
7 notice. The notice shall state the court in which the
8 petition is filed and the names of the plaintiff and
9 the parties served by publication, and shall designate
10 the parties whose unknown successors are being served.
11 The notice shall also state that the named defendants
12 and their unknown successors have been sued and must
13 answer the petition on or before a time to be stated
14 (which shall not be less than forty-one (41) days from
15 the date of the first publication), or judgment, the
16 nature of which shall be stated, will be rendered
17 accordingly. If jurisdiction of the court is based on
18 property, any real property subject to the
19 jurisdiction of the court and any property or debts to
20 be attached or garnished must be described in the
21 notice.

22 (1) When the recovery of money is sought, it is not
23 necessary for the publication notice to state the
24 separate items involved, but the total amount

1 that is claimed must be stated. When interest is
2 claimed, it is not necessary to state the rate of
3 interest, the date from which interest is
4 claimed, or that interest is claimed until the
5 obligation is paid.

6 (2) It is not necessary for the publication notice to
7 state that the judgment will include recovery of
8 costs in order for a judgment following the
9 publication notice to include costs of suit.

10 (3) In an action to quiet title to real property, it
11 is not necessary for the publication notice to
12 state the nature of the claim or interest of
13 either party, and in describing the nature of the
14 judgment that will be rendered should the
15 defendant fail to answer, it is sufficient to
16 state that a decree quieting plaintiff's title to
17 the described property will be entered. It is
18 not necessary to state that a decree forever
19 barring the defendant from asserting any interest
20 in or to the property is sought or will be
21 entered if the defendant does not answer.

22 (4) In an action to foreclose a mortgage, it is
23 sufficient that the publication notice state that
24 if the defendant does not answer, the defendant's

1 interest in the property will be foreclosed. It
2 is not necessary to state that a judgment forever
3 barring the defendant from all right, title,
4 interest, estate, property and equity of
5 redemption in or to said property or any part
6 thereof is requested or will be entered if the
7 defendant does not answer.

8 d. Service by publication is complete when made in the
9 manner and for the time prescribed in subparagraph c
10 of this paragraph. Service by publication shall be
11 proved by the affidavit of any person having knowledge
12 of the publication. No default judgment may be
13 entered on such service until proof of service by
14 publication is filed with and approved by the court.

15 e. Before entry of a default judgment or order against a
16 party who has been served solely by publication under
17 this paragraph, the court shall conduct an inquiry to
18 determine whether the plaintiff, or someone acting in
19 his behalf, made a distinct and meaningful search of
20 all reasonably available sources to ascertain the
21 whereabouts of any named parties who have been served
22 solely by publication under this paragraph. Before
23 entry of a default judgment or order against the
24 unknown successors of a named defendant, a named

1 decedent, or a dissolved partnership, corporation or
2 association, the court shall conduct an inquiry to
3 ascertain whether the requirements described in
4 subparagraph b of this paragraph have been satisfied.

5 f. A party against whom a default judgment or order has
6 been rendered, without other service than by
7 publication in a newspaper, may, at any time within
8 three (3) years after the filing of the judgment or
9 order, have the judgment or order set aside in the
10 manner prescribed in Sections 1031.1 and 1033 of this
11 title. Before the judgment or order is set aside, the
12 applicant shall notify the adverse party of the
13 intention to make an application and shall file a full
14 answer to the petition, pay all costs if the court
15 requires them to be paid, and satisfy the court by
16 affidavit or other evidence that during the pendency
17 of the action the applicant had no actual notice
18 thereof in time to appear in court and make a defense.
19 The title to any property which is the subject of and
20 which passes to a purchaser in good faith by or in
21 consequence of the judgment or order to be opened
22 shall not be affected by any proceedings under this
23 subparagraph. Nor shall proceedings under this
24 subparagraph affect the title of any property sold

1 before judgment under an attachment. The adverse
2 party, on the hearing of an application to open a
3 judgment or order as provided by this subparagraph,
4 shall be allowed to present evidence to show that
5 during the pendency of the action the applicant had
6 notice thereof in time to appear in court and make a
7 defense.

8 g. The term "successors" includes all heirs, executors,
9 administrators, devisees, trustees, and assigns,
10 immediate and remote, of a named individual,
11 partnership, corporation, or association.

12 h. Service outside of the state does not give the court
13 in personal jurisdiction over a defendant who is not
14 subject to the jurisdiction of the courts of this
15 state or who has not, either in person or through an
16 agent, submitted to the jurisdiction of the courts of
17 this state.

18 4. SERVICE ON THE SECRETARY OF STATE.

19 a. Service of process on a domestic or foreign
20 corporation may be made by serving the Secretary of
21 State as the corporation's agent, if:

- 22 (1) there is no registered agent for the corporation
23 listed in the records of the Secretary of State;
24 or

1 (2) neither the registered agent nor an officer of
2 the corporation could be found at the registered
3 office of the corporation, when service of
4 process was attempted.

5 b. Before resorting to service on the Secretary of State
6 the plaintiff must have attempted service either in
7 person or by mail on the corporation at:

8 (1) the corporation's last-known address shown on the
9 records of the Franchise Tax Division of the
10 Oklahoma Tax Commission, if any is listed there;
11 and

12 (2) the corporation's last-known address shown on the
13 records of the Secretary of State, if any is
14 listed there; and

15 (3) the corporation's last address known to the
16 plaintiff.

17 If any of these addresses are the same, the plaintiff is
18 not required to attempt service more than once at any
19 address. The plaintiff shall furnish the Secretary of
20 State with a certified copy of the return or returns
21 showing the attempted service.

22 c. Service on the Secretary of State shall be made by
23 filing two (2) copies of the summons and petition with
24 the Secretary of State, notifying the Secretary of

1 State that service is being made pursuant to the
2 provisions of this paragraph, and paying the Secretary
3 of State the fee prescribed in paragraph 7 of Section
4 1142 of Title 18 of the Oklahoma Statutes, which fee
5 shall be taxed as part of the costs of the action,
6 suit or proceeding if the plaintiff shall prevail
7 therein. If a registered agent for the corporation is
8 listed in the records of the Secretary of State, the
9 plaintiff must also furnish a certified copy of the
10 return showing that service on the registered agent
11 has been attempted either in person or by mail, and
12 that neither the registered agent nor an officer of
13 the corporation could be found at the registered
14 office of the corporation.

15 d. Within three (3) working days after receiving the
16 summons and petition, the Secretary of State shall
17 send notice by letter, certified mail, return receipt
18 requested, directed to the corporation at its
19 registered office or the last-known address found in
20 the office of the Secretary of State, or if no address
21 is found there, to the corporation's last-known
22 address provided by the plaintiff. The notice shall
23 enclose a copy of the summons and petition and any
24 other papers served upon the Secretary of State. The

1 corporation shall not be required to serve its answer
2 until forty (40) days after service of the summons and
3 petition on the Secretary of State.

4 e. Before entry of a default judgment or order against a
5 corporation that has been served by serving the
6 Secretary of State as its agent under this paragraph,
7 the court shall determine whether the requirements of
8 this paragraph have been satisfied. A default
9 judgment or order against a corporation that has been
10 served only by service on the Secretary of State may
11 be set aside upon motion of the corporation in the
12 manner prescribed in Section 1031.1 of this title, or
13 upon petition of the corporation in the manner
14 prescribed in Section 1033 of this title, if the
15 corporation demonstrates to the court that it had no
16 actual notice of the action in time to appear and make
17 its defense. A petition shall be filed within one (1)
18 year after the corporation has notice of the default
19 judgment or order but in no event more than two (2)
20 years after the filing of the default judgment or
21 order.

22 f. The Secretary of State shall maintain an alphabetical
23 record of service setting forth the name of the
24 plaintiff and defendant, the title, docket number, and

1 nature of the proceeding in which the process has been
2 served upon the defendant, the fact that service has
3 been effected pursuant to the provisions of this
4 paragraph, the return date thereof, and the date when
5 the service was made. The Secretary of State shall
6 not be required to retain this information for a
7 period longer than five (5) years from receipt of the
8 service of process.

9 g. The provisions of this paragraph shall not apply to a
10 foreign insurance company doing business in this
11 state.

12 5. SERVICE BY ACKNOWLEDGMENT. An acknowledgment on the back of
13 the summons or the voluntary appearance of a defendant is equivalent
14 to service.

15 6. SERVICE BY OTHER METHODS. If service cannot be made by
16 personal delivery or by mail, a defendant of any class referred to
17 in division (1) or (3) of subparagraph c of paragraph 1 of this
18 subsection may be served as provided by court order in any manner
19 which is reasonably calculated to give the defendant actual notice
20 of the proceedings and an opportunity to be heard.

21 7. NO SERVICE BY PRISONER. No prisoner in any jail, Department
22 of Corrections facility, private prison, or parolee or probationer
23 under supervision of the Department of Corrections shall be
24

1 appointed by any court to serve process on any defendant, party or
2 witness.

3 D. SUMMONS AND PETITION. The summons and petition shall be
4 served together. The plaintiff shall furnish the person making
5 service with such copies as are necessary. The failure to serve a
6 copy of the petition with the summons is not a ground for dismissal
7 for insufficiency of service of process, but on motion of the party
8 served, the court may extend the time to answer or otherwise plead.

9 If a summons and petition are served by personal delivery, the
10 person serving the summons shall state on the copy that is left with
11 the person served the date that service is made. This provision is
12 not jurisdictional, but if the failure to comply with it prejudices
13 the party served, the court, on motion of the party served, may
14 extend the time to answer or otherwise plead.

15 E. SUMMONS: TERRITORIAL LIMITS OF EFFECTIVE SERVICE.

16 1. Service of the summons and petition may be made anywhere
17 within this state in the manner provided by subsection C of this
18 section.

19 2. When the exercise of jurisdiction is authorized by
20 subsection F of this section, service of the summons and petition
21 may be made outside this state:

22 a. by personal delivery in the manner prescribed for
23 service within this state,

24

- 1 b. in the manner prescribed by the law of the place in
2 which the service is made for service in that place in
3 an action in any of its courts of general
4 jurisdiction,
5 c. in the manner prescribed by paragraph 2 of subsection
6 C of this section,
7 d. as directed by the foreign authority in response to a
8 letter rogatory,
9 e. in the manner prescribed by paragraph 3 of subsection
10 C of this section only when permitted by subparagraphs
11 a and b of paragraph 3 of subsection C of this
12 section, or
13 f. as directed by the court.

14 3. Proof of service outside this state may be made in the
15 manner prescribed by subsection G of this section, the order
16 pursuant to which the service is made, or the law of the place in
17 which the service is made for proof of service in an action in any
18 of its courts of general jurisdiction.

19 4. Service outside this state may be made by an individual
20 permitted to make service of process under the law of this state or
21 under the law of the place in which the service is made or who is
22 designated to make service by a court of this state.

23 5. When subsection C of this section requires that in order to
24 effect service one or more designated individuals be served, service

1 outside this state under this section must be made upon the
2 designated individual or individuals.

3 6. a. A court of this state may order service upon any
4 person who is domiciled or can be found within this
5 state of any document issued in connection with a
6 proceeding in a tribunal outside this state. The
7 order may be made upon application of any interested
8 person or in response to a letter rogatory issued by a
9 tribunal outside this state and shall direct the
10 manner of service.

11 b. Service in connection with a proceeding in a tribunal
12 outside this state may be made within this state
13 without an order of court.

14 c. Service under this paragraph does not, of itself,
15 require the recognition or enforcement of an order,
16 judgment, or decree rendered outside this state.

17 F. ASSERTION OF JURISDICTION. A court of this state may
18 exercise jurisdiction on any basis consistent with the Constitution
19 of this state and the Constitution of the United States.

20 G. RETURN.

21 1. The person serving the process shall make proof of service
22 thereof to the court promptly and in any event within the time
23 during which the person served must respond to the process, but the
24

1 failure to make proof of service does not affect the validity of the
2 service.

3 2. When process has been served by a sheriff or deputy sheriff
4 and return thereof is filed in the office of the court clerk, a copy
5 of the return shall be sent by the court clerk to the plaintiff's
6 attorney within three (3) days after the return is filed. If
7 service is made by a person other than a sheriff, deputy sheriff, or
8 licensed process server, that person shall make affidavit thereof.
9 The return shall set forth the name of the person served and the
10 date, place, and method of service.

11 3. If service was by mail, the person mailing the summons and
12 petition shall endorse on the copy of the summons or order of the
13 court that is filed in the action the date and place of mailing and
14 the date when service was receipted or service was rejected, and
15 shall attach to the copy of the summons or order a copy of the
16 return receipt or returned envelope, if and when received, showing
17 whether the mailing was accepted, refused, or otherwise returned.
18 If the mailing was refused, the return shall also show the date and
19 place of any subsequent mailing pursuant to paragraph 2 of
20 subsection C of this section. When the summons and petition are
21 mailed by the court clerk, the court clerk shall notify the
22 plaintiff's attorney within three (3) days after receipt of the
23 returned card or envelope showing that the card or envelope has been
24 received.

1 H. AMENDMENT. At any time in its discretion and upon such
2 terms as it deems just, the court may allow any process or proof of
3 service thereof to be amended, unless it clearly appears that
4 material prejudice would result to the substantial rights of the
5 party against whom the process issued.

6 I. SUMMONS: TIME LIMIT FOR SERVICE. If service of process is
7 not made upon a defendant within ~~one hundred eighty (180)~~ one
8 hundred twenty (120) days after the filing of the petition and the
9 plaintiff cannot show good cause why such service was not made
10 within that period, the action ~~may~~ shall be dismissed as to that
11 defendant without prejudice ~~upon the court's own initiative with~~
12 ~~notice to the plaintiff or upon motion.~~ The action shall not be
13 dismissed ~~where~~ if a summons was served on the defendant within ~~one~~
14 ~~hundred eighty (180)~~ one hundred twenty (120) days after the filing
15 of the petition and a court later holds that the summons or its
16 service was invalid. After a court quashes a summons or its
17 service, a new summons may be served on the defendant within a time
18 specified by the judge. If the new summons is not served within the
19 specified time, the action shall be deemed to have been dismissed
20 without prejudice as to that defendant. This subsection shall not
21 apply with respect to a defendant who has been outside of this state
22 for ~~one hundred eighty (180)~~ one hundred twenty (120) days following
23 the filing of the petition.

24

1 SECTION 18. AMENDATORY 12 O.S. 2001, Section 2008, is
2 amended to read as follows:

3 Section 2008.

4 GENERAL RULES OF PLEADING

5 A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for
6 relief, whether an original claim, counterclaim, cross-claim or
7 third-party claim, shall contain:

8 1. A short and plain statement of the claim showing that the
9 pleader is entitled to relief; and

10 2. A demand for judgment for the relief to which he deems
11 himself entitled. Every pleading demanding relief for damages in
12 money in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
13 required for diversity jurisdiction pursuant to Section 1332 of
14 Title 28 of the United States Code shall, without demanding any
15 specific amount of money, set forth only that the amount sought as
16 damages is in excess of ~~Ten Thousand Dollars (\$10,000.00)~~ the amount
17 required for diversity jurisdiction pursuant to Section 1332 of
18 Title 28 of the United States Code, except in actions sounding in
19 contract. Every pleading demanding relief for damages in money in
20 an amount of ~~Ten Thousand Dollars (\$10,000.00)~~ that is required for
21 diversity jurisdiction pursuant to Section 1332 of Title 28 of the
22 United States Code or less shall specify the amount of such damages
23 sought to be recovered. If the amount of damages sought to be
24 recovered is the same as the amount required for diversity

1 jurisdiction pursuant to Section 1332 of Title 28 of the United
2 States Code or less, the amount of damages that may be recovered
3 shall not exceed the amount set forth in the pleadings.

4 Relief in the alternative or of several different types may be
5 demanded.

6 B. DEFENSES; FORM OF DENIALS. A party shall state in short and
7 plain terms his defenses to each claim asserted and shall admit or
8 deny the averments upon which the adverse party relies. If he is
9 without knowledge or information sufficient to form a belief as to
10 the truth of an averment, he shall so state and this statement has
11 the effect of a denial. Denials shall fairly meet the substance of
12 the averments denied. When a pleader intends in good faith to deny
13 only a part or a qualification of an averment, he shall specify so
14 much of it as is true and material and shall deny only the
15 remainder. Unless the pleader intends in good faith to controvert
16 all the averments of the preceding pleading, he may make his denials
17 as specific denials of designated averments or paragraphs or he may
18 generally deny all the averments except such designated averments or
19 paragraphs as he expressly admits; but, when he does so intend to
20 controvert all its averments, he may do so by general denial subject
21 to the obligations set forth in Section 2011 of this title.

22 C. AFFIRMATIVE DEFENSES. In pleading to a preceding pleading,
23 a party shall set forth affirmatively:

24 1. Accord and satisfaction;

- 1 2. Arbitration and award;
- 2 3. Assumption of risk;
- 3 4. Contributory negligence;
- 4 5. Discharge in bankruptcy;
- 5 6. Duress;
- 6 7. Estoppel;
- 7 8. Failure of consideration;
- 8 9. Fraud;
- 9 10. Illegality;
- 10 11. Injury by fellow servant;
- 11 12. Laches;
- 12 13. License;
- 13 14. Payment;
- 14 15. Release;
- 15 16. Res judicata;
- 16 17. Statute of frauds;
- 17 18. Statute of limitations;
- 18 19. Waiver; and
- 19 20. Any other matter constituting an avoidance or affirmative
- 20 defense.

21 When a party has mistakenly designated a defense as a
22 counterclaim or a counterclaim as a defense, the court on terms, if
23 justice so requires, shall treat the pleading as if there had been a
24 proper designation.

1 D. EFFECT OF FAILURE TO DENY. Averments in a pleading to which
2 a responsive pleading is required, other than those as to the amount
3 of damage, are admitted when not denied in the responsive pleading.
4 Averments in a pleading to which no responsive pleading is required
5 or permitted shall be taken as denied or avoided.

6 E. PLEADING TO BE CONCISE AND DIRECT; CONSISTENCY.

7 1. Each averment of a pleading shall be simple, concise, and
8 direct. No technical forms of pleadings or motions are required.

9 2. A party may set forth, and at trial rely on, two or more
10 statements of a claim or defense alternately or hypothetically,
11 either in one count or defense or in separate counts or defenses.
12 When two or more statements are made in the alternative and one of
13 them if made independently would be sufficient, the pleading is not
14 made insufficient by the insufficiency of one or more of the
15 alternative statements. A party may also state as many separate
16 claims or defenses as he has regardless of consistency and whether
17 based on legal or equitable grounds. All statements shall be made
18 subject to the obligations set forth in Section 2011 of this title.

19 F. CONSTRUCTION OF PLEADINGS. All pleadings shall be so
20 construed as to do substantial justice.

21 SECTION 19. AMENDATORY 12 O.S. 2001, Section 2009, is
22 amended to read as follows:

23 Section 2009.

24 PLEADING SPECIAL MATTERS

1 A. CAPACITY. It is not necessary to aver the capacity of a
2 party to sue or be sued or the authority of a party to sue or be
3 sued in a representative capacity or the legal existence of an
4 organized association of persons that is made a party. When a party
5 desires to raise an issue as to the legal existence of any party or
6 the capacity of any party to sue or be sued or the authority of a
7 party to sue or be sued in a representative capacity, he shall do so
8 by negative averment, which shall include such supporting
9 particulars as are peculiarly within the pleader's knowledge, and he
10 shall have the burden of proof on that issue.

11 B. FRAUD, MISTAKE, CONDITION OF THE MIND. In all averments of
12 fraud or mistake, the circumstances constituting fraud or mistake
13 shall be stated with particularity. Malice, intent, knowledge, and
14 other condition of mind of a person may be averred generally.

15 C. CONDITIONS PRECEDENT. In pleading the performance or
16 occurrence of conditions precedent, it is sufficient to aver
17 generally that all conditions precedent have been performed or have
18 occurred. A denial of performance or occurrence shall be made
19 specifically and with particularity.

20 D. OFFICIAL DOCUMENT OR ACT. In pleading an official document
21 or official act it is sufficient to aver that the document was
22 issued or the act done in compliance with law.

23 E. JUDGMENT. In pleading a judgment or decision of a domestic
24 or foreign court, judicial or quasi-judicial tribunal, or of a board

1 or officer, it is sufficient to aver the judgment or decision
2 without setting forth matter showing jurisdiction to render it.

3 F. TIME AND PLACE. For the purpose of testing the sufficiency
4 of a pleading, averments of time and place are material and shall be
5 considered like all other averments of material matter.

6 G. SPECIAL DAMAGE. When items of special damage are claimed,
7 their nature shall be specifically stated. In actions where
8 exemplary or punitive damages are sought, the petition shall ~~not~~
9 state a specific dollar amount for damages sought to be recovered
10 ~~but shall state whether the amount of damages sought to be recovered~~
11 ~~is in excess of or not in excess of Ten Thousand Dollars~~
12 ~~(\$10,000.00).~~ If the amount of damages sought to be recovered is in
13 excess of Ten Thousand Dollars (\$10,000.00) but less than the amount
14 required for diversity jurisdiction pursuant to Section 1332 of
15 Title 28 of the United States Code, the amount of damages that may
16 be recovered shall not exceed the amount set forth in the pleadings.
17 Unless a good faith based change in circumstances arises, the party
18 may seek, by application to the court prior to the pretrial order,
19 an amendment to change the amount plead for good cause. If the
20 amount sought exceeds the amount required to satisfy diversity
21 jurisdiction pursuant to Section 1332 of Title 28 of the United
22 States Code, the specific amount must be included in the petition.

23
24

1 SECTION 20. AMENDATORY 12 O.S. 2001, Section 2011, as
2 amended by Section 10, Chapter 368, O.S.L. 2004 (12 O.S. Supp. 2006,
3 Section 2011), is amended to read as follows:

4 Section 2011.

5 SIGNING OF PLEADINGS

6 A. SIGNATURE. Every pleading, written motion, and other paper
7 shall be signed by at least one attorney of record in his individual
8 name, whose Oklahoma Bar Association identification number shall be
9 stated, or, if the party is not represented by an attorney, shall be
10 signed by the party. Each paper shall state the address of the
11 signer and telephone number, if any. Except when otherwise
12 specifically provided by rule or statute, pleadings need not be
13 verified or accompanied by affidavit. An unsigned paper shall be
14 stricken unless the omission of the signature is corrected promptly
15 after being called to the attention of the attorney or party.

16 B. REPRESENTATIONS TO COURT. By presenting to the court,
17 whether by signing, filing, submitting, or later advocating, a
18 pleading, written motion, or other paper, an attorney or
19 unrepresented party is certifying that to the best of the person's
20 knowledge, information, and belief, formed after an inquiry
21 reasonable under the circumstances:

22 1. It is not being presented for any improper or frivolous
23 purpose, such as to harass or to cause unnecessary delay or needless
24 increase in the cost of litigation;

1 2. The claims, defenses and other legal contentions therein are
2 warranted by existing law or by a nonfrivolous argument for the
3 extension, modification, or reversal of existing law or the
4 establishment of new law;

5 3. The allegations and other factual contentions have
6 evidentiary support or, if specifically so identified, are likely to
7 have evidentiary support after a reasonable opportunity for further
8 investigation or discovery; and

9 4. The denials of factual contentions are warranted on the
10 evidence or, if specifically so identified, are reasonably based on
11 a lack of information or belief.

12 C. SANCTIONS. If, after notice and a reasonable opportunity to
13 respond, the court determines that subsection B of this section has
14 been violated, the court shall, subject to the conditions stated
15 below, impose an appropriate sanction upon the attorneys, law firms,
16 or parties that have violated subsection B of this section or are
17 responsible for the violation.

18 1. HOW INITIATED.

19 a. By Motion. A motion for sanctions under this rule
20 shall be made separately from other motions or
21 requests and shall describe the specific conduct
22 alleged to violate subsection B of this section. It
23 shall be served as provided in Section 2005 of this
24 title, but shall not be filed with or presented to the

1 court unless, within twenty-one (21) days after
2 service of the motion or such other period as the
3 court may prescribe, the challenged paper, claim,
4 defense, contention, allegation, or denial is not
5 withdrawn or appropriately corrected. If warranted,
6 the court may award to the party prevailing on the
7 motion the reasonable expenses and attorneys fees
8 incurred in presenting or opposing the motion. Absent
9 exceptional circumstances, a law firm shall be held
10 jointly responsible for violations committed by its
11 partners, associates, and employees.

12 b. On Court's Initiative. On its own initiative, the
13 court may enter an order describing the specific
14 conduct that appears to violate subsection B of this
15 section and directing an attorney, law firm, or party
16 to show cause why it has not violated subsection B of
17 this section with respect thereto.

18 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
19 violation of this section shall be limited to what is sufficient to
20 deter repetition of such conduct or comparable conduct by others
21 similarly situated. Subject to the limitations in subparagraphs a,
22 b and c of this paragraph, the sanction may consist of, or include,
23 directives of a nonmonetary nature, an order to pay a penalty into
24 court, or, if imposed on motion and warranted for effective

1 deterrence, an order directing payment to the movant of some or all
2 of the reasonable attorneys fees and other expenses incurred as a
3 direct result of the violation.

4 a. Monetary sanctions shall not be awarded against a
5 represented party for a violation of paragraph 2 of
6 subsection B of this section.

7 b. Monetary sanctions shall not be awarded on the court's
8 initiative unless the court issues its order to show
9 cause before a voluntary dismissal or settlement of
10 the claims made by or against the party which is, or
11 whose attorneys are, to be sanctioned.

12 c. Monetary sanctions shall be awarded for any violations
13 of paragraph 1 of subsection B of this section. The
14 sanctions shall consist of an order directing payment
15 of reasonable costs, including attorney fees, incurred
16 by the movant with respect to the conduct for which
17 the sanctions are imposed. In addition, the court may
18 impose any other sanctions authorized by this
19 paragraph.

20 3. ORDER. When imposing sanctions, the court shall describe
21 the conduct determined to constitute a violation of this section and
22 explain the basis for the sanction imposed.

23 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
24 to disclosures and discovery requests, responses, objections, and

1 motions that are subject to the provisions of Sections 3226 through
2 3237 of this title.

3 E. DEFINITION. As used in this section, "frivolous" means the
4 action or pleading was knowingly asserted in bad faith, ~~was~~
5 ~~unsupported by any credible evidence, was not grounded in fact, or~~
6 ~~was unwarranted by existing law or a good faith argument for the~~
7 ~~extension, modification, or reversal of existing law or the~~
8 ~~establishment of new law~~ or without any rational argument based in
9 law or fact to support the position of the litigant.

10 SECTION 21. AMENDATORY Section 1, Chapter 370, O.S.L.
11 2004 (12 O.S. Supp. 2005, Section 2011.1), is amended to read as
12 follows:

13 Section 2011.1 In any action not arising out of contract, the
14 court shall, upon granting a motion to dismiss an action or a motion
15 for summary judgment or subsequent to adjudication on the merits,
16 determine whether a claim or defense asserted in the action by a
17 nonprevailing party was frivolous. As used in this section,
18 "frivolous" means the action was knowingly asserted in bad faith,
19 ~~was unsupported by any credible evidence, was not grounded in fact,~~
20 ~~or was unwarranted by existing law or a good faith argument for the~~
21 ~~extension, modification, or reversal of existing law or the~~
22 ~~establishment of new law~~ or without any rational argument based in
23 law or fact to support the position of the litigant. Upon so
24 finding, the court shall enter a judgment ordering such

1 nonprevailing party to reimburse the prevailing party for reasonable
2 costs, including attorney fees, incurred with respect to such claim
3 or defense. In addition, the court may impose any sanction
4 authorized by Section 2011 of ~~Title 12 of the Oklahoma Statutes~~ this
5 title.

6 SECTION 22. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 2016.1 of Title 12, unless there
8 is created a duplication in numbering, reads as follows:

9 PRETRIAL CONFERENCE

10 A. PRETRIAL ORDER. After any pretrial conference, a pretrial
11 order shall be entered reciting the action taken. This order shall
12 control the subsequent course of action unless modified by
13 subsequent order. The order following a pretrial conference shall
14 be modified only to prevent manifest injustice.

15 B. COMPULSORY REQUIREMENTS. The pretrial order shall include,
16 among other things, a specific itemization of damages for each party
17 claiming monetary damages. The amount of damages that may be
18 recovered shall not exceed the amount set forth in the order. The
19 trial court shall, by written order, remit any amounts that exceed
20 the itemized amounts contained in the pretrial order.

21 SECTION 23. AMENDATORY 12 O.S. 2001, Section 2023, is
22 amended to read as follows:

23 Section 2023.

24 CLASS ACTIONS

1 A. PREREQUISITES TO A CLASS ACTION. One or more members of a
2 class may sue or be sued as representative parties on behalf of all
3 only if:

4 1. The class is so numerous that joinder of all members is
5 impracticable;

6 2. There are questions of law or fact common to the class;

7 3. The claims or defenses of the representative parties are
8 typical of the claims or defenses of the class; and

9 4. The representative parties will fairly and adequately
10 protect the interests of the class.

11 B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as
12 a class action if the prerequisites of subsection A of this section
13 are satisfied and in addition:

14 1. The prosecution of separate actions by or against individual
15 members of the class would create a risk of:

16 a. inconsistent or varying adjudications with respect to
17 individual members of the class which would establish
18 incompatible standards of conduct for the party
19 opposing the class, or

20 b. adjudications with respect to individual members of
21 the class which would as a practical matter be
22 dispositive of the interests of the other members not
23 parties to the adjudications or substantially impair
24 or impede their ability to protect their interests; or

1 2. The party opposing the class has acted or refused to act on
2 grounds generally applicable to the class, thereby making
3 appropriate final injunctive relief or corresponding declaratory
4 relief with respect to the class as a whole; or

5 3. The court finds that the questions of law or fact common to
6 the members of the class predominate over any questions affecting
7 only individual members, and that a class action is superior to
8 other available methods for the fair and efficient adjudication of
9 the controversy. The matters pertinent to the findings include:

10 a. the interest of members of the class in individually
11 controlling the prosecution or defense of separate
12 actions,

13 b. the extent and nature of any litigation concerning the
14 controversy already commenced by or against members of
15 the class,

16 c. the desirability or undesirability of concentrating
17 the litigation of the claims in the particular forum,
18 and

19 d. the difficulties likely to be encountered in the
20 management of a class action.

21 C. CLASS ACTIONS INVOLVING JURISDICTION OF STATE AGENCY; STATE
22 AGENCY WITH EXCLUSIVE OR PRIMARY JURISDICTION.

23 Before hearing or deciding a motion to certify a class action,
24 the court shall hear and rule on all pending motions asserting lack

1 of jurisdiction because an agency of this state has exclusive or
2 primary jurisdiction of the action or a part of the action, or
3 asserting that a party has failed to exhaust administrative
4 remedies. The ruling of the court shall be reflected in a written
5 order. If a motion provided for in this subsection is denied and a
6 class is subsequently certified, a person may obtain appellate
7 review of the order denying the motion as part of an appeal of the
8 order certifying the class action.

9 D. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
10 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
11 ACTIONS.

12 1. As soon as practicable after the commencement of an action
13 brought as a class action, the court shall determine by order
14 whether it is to be so maintained. An order under this subsection
15 may be conditional, and may be altered or amended before the
16 decision on the merits.

17 2. In any class action maintained under paragraph 3 of
18 subsection B of this section, the court shall direct to the
19 potential members of the class the best notice practicable under the
20 circumstances, including individual notice to all potential members
21 who can be identified through reasonable effort. The notice shall
22 advise each potential member that:

23

24

- 1 a. the court will ~~exclude him from~~ include the potential
2 member in the class only if he the potential member so
3 requests by a specified date,
- 4 b. the judgment, whether favorable or not, will include
5 all only members who ~~do not request exclusion~~ have
6 advised the court by the specified date, that they
7 desire to be included in the class, and
- 8 c. any member who ~~does not request exclusion~~ requests
9 inclusion may, ~~if he desires,~~ enter an appearance
10 through ~~his~~ counsel.

11 ~~Where~~ If the class contains more than five hundred (500)
12 potential members who can be identified through reasonable effort,
13 it shall not be necessary to direct individual notice to more than
14 five hundred (500) potential members, but the potential members to
15 whom individual notice is not directed shall be given notice in such
16 manner as the court shall direct, which may include publishing
17 notice in newspapers, magazines, trade journals or other
18 publications, posting it in appropriate places, and taking other
19 steps that are reasonably calculated to bring the notice to the
20 attention of such members, provided that the cost of giving such
21 notice shall be reasonable in view of the amounts that may be
22 recovered by the class ~~members who are being notified.~~ ~~Members~~
23 Potential members to whom individual notice was not directed may
24 request ~~exclusion from~~ inclusion in the class at any time before the

1 issue of liability is determined, ~~and~~; provided, commencing an
2 individual action before the issue of liability is determined in the
3 class action shall ~~be the equivalent of requesting~~ result in
4 exclusion from the class.

5 3. The judgment in an action maintained as a class action under
6 paragraphs 1 or 2 of subsection B of this section, whether or not
7 favorable to the class, shall include and describe those whom the
8 court finds to be members of the class. The judgment in an action
9 maintained as a class action under paragraph 3 of subsection B of
10 this section, whether or not favorable to the class, shall include
11 and specify or describe those to whom the notice provided in
12 paragraph 2 of this subsection ~~C of this section~~ was directed, and
13 who have ~~not~~ requested ~~exclusion~~ inclusion, and whom the court finds
14 to be members of the class.

15 4. When appropriate:

- 16 a. an action may be brought or maintained as a class
- 17 action with respect to particular issues, or
- 18 b. a class may be divided into subclasses and each
- 19 subclass treated as a class.

20 The provisions of this section shall then be construed and applied
21 accordingly.

22 ~~D.~~ E. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions
23 to which this section applies, the court may make appropriate
24 orders:

1 1. Determining the course of proceedings or prescribing
2 measures to prevent undue repetition or complication in the
3 presentation of evidence or argument;

4 2. Requiring, for the protection of the members of the class or
5 otherwise for the fair conduct of the action, that notice be given
6 in such manner as the court may direct to some or all of the members
7 of any step in the action, or of the proposed extent of the
8 judgment, or of the opportunity of members to signify whether they
9 consider the representation fair and adequate, to intervene and
10 present claims or defenses, or otherwise to come into the action;

11 3. Imposing conditions on the representative parties or on
12 intervenors;

13 4. Requiring that the pleadings be amended to eliminate
14 therefrom allegations as to representation of absent persons, and
15 that the action proceed accordingly; and

16 5. Dealing with similar procedural matters.

17 The orders may be combined with an order under Section ~~16~~ 2016 of
18 this ~~act~~ title and may be altered or amended as may be desirable
19 from time to time.

20 ~~E.~~ F. DISMISSAL OR COMPROMISE. A class action shall not be
21 dismissed or compromised without the approval of the court, and
22 notice of the proposed dismissal or compromise shall be given to all
23 members of the class in such manner as the court directs.

1 SECTION 24. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 2056 of Title 12, unless there
3 is created a duplication in numbering, reads as follows:

4 A. FOR CLAIMANT. A party seeking to recover upon a claim,
5 counterclaim, or cross-claim or to obtain a declaratory judgment may
6 move, at any time after the expiration of twenty (20) days from the
7 commencement of the action or after service of a motion for summary
8 judgment by the adverse party, with or without supporting affidavits
9 for a summary judgment in the party's favor upon all or any part
10 thereof.

11 B. FOR DEFENDING PARTY. A party against whom a claim,
12 counterclaim, or cross-claim is asserted or a declaratory judgment
13 is sought may move, at any time, with or without supporting
14 affidavits for a summary judgment in the party's favor as to all or
15 any part thereof.

16 C. MOTIONS AND PROCEEDINGS THEREON. The motion shall be served
17 at least ten (10) days before the time fixed for the hearing. The
18 adverse party prior to the day of hearing may serve opposing
19 affidavits. The judgment sought shall be rendered forthwith if the
20 pleadings, depositions, answers to interrogatories, and admissions
21 on file, together with the affidavits, if any, show that there is no
22 genuine issue as to any material fact and that the moving party is
23 entitled to a judgment as a matter of law. A summary judgment,
24 interlocutory in character, may be rendered on the issue of

1 liability alone although there is a genuine issue as to the amount
2 of damages.

3 D. NOT FULLY ADJUDICATED ON MOTION. If, on motion under this
4 section, judgment is not rendered upon the whole case or for all the
5 relief asked and a trial is necessary, the court at the hearing of
6 the motion, by examining the pleadings and the evidence before it
7 and by interrogating counsel, shall ascertain, if practicable, what
8 material facts exist without substantial controversy and what
9 material facts are actually and in good faith controverted. It
10 shall make thereupon an order specifying the facts that appear
11 without substantial controversy, including the extent to which the
12 amount of damages or other relief is not in controversy, and
13 directing such further proceedings in the action as are just. Upon
14 the trial of the action, the facts so specified shall be deemed
15 established, and the trial shall be conducted accordingly.

16 E. FORM OF AFFIDAVITS; FURTHER TESTIMONY; DEFENSE REQUIRED.
17 Supporting and opposing affidavits shall be made on personal
18 knowledge, shall set forth such facts as would be admissible in
19 evidence, and shall show affirmatively that the affiant is competent
20 to testify to the matters stated therein. Sworn or certified copies
21 of all papers or parts thereof referred to in an affidavit shall be
22 attached thereto or served therewith. The court may permit
23 affidavits to be supplemented or opposed by depositions, answers to
24 interrogatories, or further affidavits. When a motion for summary

1 judgment is made and supported as provided in this section, a party
2 may not rest upon the mere allegations or denials of the party's
3 pleading, but the party's response, by affidavits or as otherwise
4 provided in this section, must set forth specific facts showing that
5 there is a genuine issue for trial or no genuine issue for trial, as
6 appropriate. The adverse party has the burden of producing evidence
7 on any issue raised in the motion on which the adverse party would
8 have the burden of persuasion at trial. If the adverse party does
9 not so respond, summary judgment, if otherwise appropriate
10 hereunder, shall be entered against the adverse party.

11 F. WHEN AFFIDAVITS ARE UNAVAILABLE. Should it appear from the
12 affidavits of a party opposing the motion that the party cannot for
13 reasons stated present by affidavit facts essential to justify the
14 party's opposition, the court may refuse the application for
15 judgment or may order a continuance to permit affidavits to be
16 obtained or depositions to be taken or discovery to be had or may
17 make such other order as is just. Upon request of a party opposing
18 a motion for summary judgment, the court shall allow a reasonable
19 amount of time to conclude discovery sufficient to allow the party
20 to adequately respond to the motion for summary judgment.

21 G. AFFIDAVITS MADE IN BAD FAITH. Should it appear to the
22 satisfaction of the court at any time that any of the affidavits
23 presented pursuant to this section are presented in bad faith or
24 solely for the purpose of delay, the court shall forthwith order the

1 party employing them to pay to the other party the amount of the
2 reasonable expenses which the filing of the affidavits caused the
3 other party to incur, including reasonable attorney fees, and any
4 offending party or attorney may be adjudged guilty of contempt.

5 H. STANDARD OF PROOF. Summary judgment shall be granted in
6 favor of a party only if there is no genuine issue as to any
7 material fact and that the moving party is entitled to a judgment as
8 a matter of law. If a standard of proof beyond a preponderance of
9 the evidence applies at trial, the heightened standard shall not be
10 taken into account by the court in ruling on a motion for summary
11 judgment.

12 I. APPEALS. An order denying summary judgment, summary
13 disposition of issues, or partial summary adjudication will be
14 appealable as part of any appeal from an appealable order or
15 judgment which is later rendered in the case.

16 J. SUPERSESSION. The provisions of this section supersede any
17 court rules otherwise applicable to the subject matter of this
18 section.

19 SECTION 25. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 2413 of Title 12, unless there
21 is created a duplication in numbering, reads as follows:

22 In an action to recover damages for injuries resulting in death,
23 evidence of the remarriage or social situation of the surviving
24 spouse of the decedent is admissible.

1 SECTION 26. AMENDATORY 12 O.S. 2001, Section 2702, is
2 amended to read as follows:

3 Section 2702. A. OPINION TESTIMONY BY LAY WITNESSES. If the
4 witness is not testifying as an expert, the witness' testimony in
5 the form of opinions or inferences is limited to those opinions of
6 inferences which are:

- 7 1. Rationally based on the perception of the witness;
- 8 2. Helpful to a clear understanding of the witness' testimony
9 or the determination of a fact in issue; and
- 10 3. Not based on scientific, technical, or other specialized
11 knowledge within the scope of subsection B of this section.

12 B. TESTIMONY BY EXPERTS. If scientific, technical or other
13 specialized knowledge will assist the trier of fact to understand
14 the evidence or to determine a fact in issue, a witness qualified as
15 an expert by knowledge, skill, experience, training or education may
16 testify in the form of an opinion or otherwise, if:

- 17 1. The testimony is based upon sufficient facts or data;
- 18 2. The testimony is the product of reliable principles and
19 methods; and
- 20 3. The witness has applied the principles and methods reliably
21 to the facts of the case.

22 C. BASES OF EXPERT OPINION TESTIMONY. The facts or data in the
23 particular case upon which an expert bases an opinion or inference
24 may be those perceived by or made known to the expert at or

1 before the hearing. If of a type reasonably relied upon by experts
2 in the particular field in forming opinions or inferences upon the
3 subject, the facts or data need not be admissible in evidence in
4 order for the opinion or inference to be admitted. Facts or data
5 that are otherwise inadmissible shall not be disclosed to the jury
6 by the proponent of the opinion or inference unless the court
7 determines that their probative value in assisting the jury to
8 evaluate the expert's opinion substantially outweighs their
9 prejudicial effect.

10 D. BARS TO EXPERT TESTIMONY.

11 1. A witness qualified as an expert by knowledge, skill,
12 experience, training, or education may only offer expert testimony
13 with respect to a particular field in which the expert is qualified.

14 2. An expert witness may receive a reasonable and customary fee
15 for the rendering of professional services, provided that the
16 testimony of an expert witness shall not be admitted if any such
17 compensation is contingent on the outcome of any claim or case with
18 respect to which the testimony is being offered.

19 E. MANDATORY PRETRIAL HEARING. If the witness is testifying as
20 an expert, then upon motion of a party, the court shall hold a
21 pretrial hearing to determine whether the witness qualifies as an
22 expert and whether the expert's testimony satisfies the requirements
23 of subsections B, C and D of this section. The court shall allow
24 sufficient time for a hearing and shall rule on the qualifications

1 of the witness to testify as an expert and whether or not the
2 testimony satisfies the requirements of subsections B, C and D of
3 this section. Such hearing and ruling shall be completed no later
4 than the final pretrial hearing. The trial court's ruling shall set
5 forth the findings of fact and conclusions of law upon which the
6 order to admit or exclude expert evidence is based.

7 F. MANDATORY PRETRIAL DISCLOSURE OF EXPERT TESTIMONY.

8 1. Whether or not any party elects to request a pretrial
9 hearing contemplated in subsection E of this section, all parties
10 shall disclose to other parties the identity of any person who may
11 be used at trial to present expert evidence.

12 2. Except as otherwise stipulated or directed by the court,
13 this disclosure shall, with respect to a witness who is retained or
14 specially employed to provide expert testimony in the case or whose
15 duties as an employee of the party regularly involve giving expert
16 testimony, be accompanied by a written report prepared and signed by
17 the witness. The report shall contain a complete statement of all
18 opinions to be expressed and the basis and reasons therefor; the
19 data or other information considered by the witness in forming the
20 opinions; any exhibits to be used as a summary of or support for the
21 opinions; the qualifications of the witness, including a list of all
22 publications authored by the witness within the preceding ten (10)
23 years; the compensation to be paid for the study and testimony; and
24 a listing of any other cases in which the witness has testified as

1 an expert at trial or by deposition within the preceding four (4)
2 years.

3 3. These disclosures shall be made at the times and in the
4 sequence directed by the court. In the absence of other directions
5 from the court or stipulation by the parties, the disclosures shall
6 be made at least ninety (90) days before the trial date or the date
7 the case is to be ready for trial or, if the evidence is intended
8 solely to contradict or rebut evidence on the same subject matter
9 identified by another party under paragraph 2 of this subsection,
10 within thirty (30) days after the disclosure made by the other
11 party.

12 4. A party may depose any person who has been identified as an
13 expert whose opinions may be presented at trial. If a report from
14 the expert is required under paragraph 2 of this subsection, the
15 deposition shall not be conducted until after the report is
16 provided.

17 G. INTERPRETATION. In interpreting and applying this section,
18 the courts of this state shall follow the opinions of the Supreme
19 Court of the United States in Daubert v. Merrell Dow
20 Pharmaceuticals, Inc., 509 U.S. 579 (1993), General Electric Co. v.
21 Joiner, 522 U.S. 136 (1997), Kuhmo Tire Co. Ltd. v. Carmichael, 526
22 U.S. 137 (1999), Weisgram v. Marley, 528 U.S. 440 (2000), and their
23 progeny; moreover, the courts of this state may draw from other
24 precedents binding in the federal courts of this state applying the

1 standard announced by the Supreme Court of the United States in the
2 foregoing cases.

3 H. INTERLOCUTORY APPEAL. Interlocutory appeal of a ruling on
4 the admissibility of expert evidence shall be available at the
5 discretion of the appellate court. In deciding whether to grant the
6 interlocutory appeal, the court shall consider whether:

7 1. The ruling involved any challenge to the constitutionality
8 of this section;

9 2. The ruling will help prove or disprove criminal liability;
10 or

11 3. The ruling will help establish civil liability at or above
12 Seventy-five Thousand Dollars (\$75,000.00), where the testimony
13 could be outcome-determinative for establishing liability or
14 determining damages. Neither a party's failure to seek
15 interlocutory appeal or an appellate court's decision to deny a
16 motion for interlocutory appeal shall waive a party's right to
17 appeal a ruling on the admissibility of expert evidence after an
18 entry of judgment in the case.

19 I. STANDARD OF REVIEW.

20 1. As the proper construction of the expert evidence
21 admissibility framework prescribed by this section is a question of
22 law, the courts of appeals shall apply a de novo standard of review
23 in determining whether the trial court fully applied the proper
24 legal standard in considering the admissibility of expert evidence.

1 2. As the application of this section to determine the
2 admissibility of expert testimony is a question of fact, the courts
3 of appeals shall apply an abuse of discretion standard in
4 determining whether the trial court properly admitted or excluded
5 particular expert evidence.

6 J. SEVERABILITY CLAUSE. The provisions of this section are
7 severable. If any portion of this section is declared
8 unconstitutional or the application of any part of this section to
9 any person or circumstance is held invalid, the remaining portions
10 of the section and their applicability to any person or circumstance
11 shall remain valid and enforceable.

12 K. EFFECTIVE DATE. This section shall apply to all actions
13 commenced on or after November 1, 2007, and to all pending actions
14 in which trial has not been scheduled or in which trial has been
15 scheduled after February 1, 2008.

16 SECTION 27. AMENDATORY 12 O.S. 2001, Section 3226, as
17 last amended by Section 3, Chapter 519, O.S.L. 2004 (12 O.S. Supp.
18 2006, Section 3226), is amended to read as follows:

19 Section 3226. A. DISCOVERY METHODS. Parties may obtain
20 discovery by one or more of the following methods: Depositions upon
21 oral examination or written questions; written interrogatories;
22 production of documents or things or permission to enter upon land
23 or other property, for inspection and other purposes; physical and
24 mental examinations; and requests for admission. Unless the court

1 orders otherwise under this section, the frequency of use of these
2 methods is not limited.

3 B. DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by
4 order of the court in accordance with the Oklahoma Discovery Code,
5 the scope of discovery is as follows:

6 1. IN GENERAL. Parties may obtain discovery regarding any
7 matter, not privileged, which is relevant to the subject matter
8 involved in the pending action, whether it relates to the claim or
9 defense of the party seeking discovery or to the claim or defense of
10 any other party, including the existence, description, nature,
11 custody, condition and location of any books, documents or other
12 tangible things and the identity and location of persons having
13 knowledge of any discoverable matter. It is not a ground for
14 objection that the information sought will be inadmissible at the
15 trial if the information sought appears reasonably calculated to
16 lead to the discovery of admissible evidence. ~~A party shall produce~~
17 ~~upon request pursuant to Section 3234 of this title, any insurance~~
18 ~~agreement under which any person carrying on an insurance business~~
19 ~~may be liable to satisfy part or all of a judgment which may be~~
20 ~~entered in the action or to indemnify or reimburse for payments made~~
21 ~~to satisfy the judgment. Information concerning the insurance~~
22 ~~agreement is not by reason of disclosure admissible in evidence at~~
23 ~~trial. For purposes of this section, an application for insurance~~
24 ~~shall not be treated as a part of an insurance agreement.~~

1 2. INITIAL DISCLOSURES.

2 a. Except in categories of proceedings specified in
3 subparagraph b of this paragraph, or to the extent
4 otherwise stipulated or directed by order, a party,
5 without awaiting a discovery request, must provide to
6 other parties a computation of any category of damages
7 claimed by the disclosing party, making available for
8 inspection and copying the documents or other
9 evidentiary material, not privileged or protected from
10 disclosure, on which such computation is based,
11 including materials bearing on the nature and extent
12 of injuries suffered.

13 b. The following categories of proceedings are exempt
14 from initial disclosure under subparagraph a of this
15 paragraph:

- 16 (1) an action for review on an administrative record,
17 (2) a petition for habeas corpus or other proceeding
18 to challenge a criminal conviction or sentence,
19 (3) an action brought without counsel by a person in
20 custody of the United States, a state, or a state
21 subdivision,
22 (4) an action to enforce or quash an administrative
23 summons or subpoena,

- 1 (5) an action by the United States to recover benefit
2 payments,
3 (6) an action by the United States to collect on a
4 student loan guaranteed by the United States,
5 (7) a proceeding ancillary to proceedings in other
6 courts, and
7 (8) an action to enforce an arbitration award.

8 3. TIME FOR DISCLOSURES. These disclosures must be made at or
9 within fourteen (14) days after the discovery conference provided
10 for in subsection F of this section unless a different time is set
11 by stipulation or court order, or unless a party objects during the
12 conference that initial disclosures are not appropriate in the
13 circumstances of the action and states the objection in the
14 discovery plan. In ruling on the object, the court must determine
15 what disclosures, if any, are to be made and set the time for
16 disclosure. Any party first served or otherwise joined after the
17 discovery conference must make these disclosures within thirty (30)
18 days after being served or joined unless a different time is set by
19 stipulation or court order. A party must make its initial
20 disclosures based on the information then reasonably available to it
21 and is not excused from making its disclosures because it has not
22 fully completed its investigation of the case or because it
23 challenges the sufficiency of another party's disclosures or because
24 another party has not made its disclosures.

1 4. TRIAL PREPARATION: MATERIALS. Subject to the provisions of
2 paragraph 3 5 of this subsection, discovery may be obtained of
3 documents and tangible things otherwise discoverable under paragraph
4 1 of this subsection and prepared in anticipation of litigation or
5 for trial by or for another party or by or for the representative of
6 that other party, including his attorney, consultant, surety,
7 indemnitor, only upon a showing that the party seeking discovery has
8 substantial need of the materials in the preparation of his case and
9 that he is unable, without undue hardship, to obtain the substantial
10 equivalent of the materials by other means. In ordering discovery
11 of such materials when the required showing has been made, the court
12 shall protect against disclosure of the mental impressions,
13 conclusions, opinions or legal theories of an attorney or other
14 representative of a party concerning the litigation.

15 A party may obtain, without the required showing provided for in
16 this paragraph, a statement concerning the action or its subject
17 matter previously made by that party. Upon request, a person not a
18 party may obtain without the required showing a statement concerning
19 the action or its subject matter previously made by that person. If
20 the request is refused, the person may move for a court order. The
21 provisions of paragraph 4 of subsection A of Section 3237 of this
22 title apply to the award of expenses incurred in relation to the
23 motion. For purposes of this paragraph, a statement previously made
24 is:

- 1 a. A written statement signed or otherwise adopted or
2 approved by the person making it, or
3 b. A stenographic, mechanical, electrical, or other
4 recording, or a transcription thereof, which
5 substantially recites an oral statement by the person
6 making it and contemporaneously recorded.

7 ~~3.~~ 5. TRIAL PREPARATION: EXPERTS.

- 8 a. Discovery of facts known and opinions held by experts,
9 otherwise discoverable under the provisions of
10 paragraph 1 of this subsection and acquired or
11 developed in anticipation of litigation or for trial,
12 may be obtained only as follows:

13 (1) A party may, through interrogatories, require any
14 other party to identify each person whom that
15 other party expects to call as an expert witness
16 at trial and give the address at which that
17 expert witness may be located.

18 (2) After disclosure of the names and addresses of
19 the expert witnesses, the other party expects to
20 call as witnesses, the party, who has requested
21 disclosure, may depose any such expert witnesses
22 subject to scope of this section. Prior to
23 taking the deposition the party must give notice
24 as required in subsections A and C of Section

1 3230 of this title. If any documents are
2 provided to such disclosed expert witnesses, the
3 documents shall not be protected from disclosure
4 by privilege or work product protection and they
5 may be obtained through discovery.

6 (3) In addition to taking the depositions of expert
7 witnesses the party may, through interrogatories,
8 require the party who expects to call the expert
9 witnesses to state the subject matter on which
10 each expert witness is expected to testify; the
11 substance of the facts and opinions to which the
12 expert is expected to testify and a summary of
13 the grounds for each opinion; the qualifications
14 of each expert witness, including a list of all
15 publications authored by the expert witness
16 within the preceding ten (10) years; the
17 compensation to be paid to the expert witness for
18 the testimony and preparation for the testimony;
19 and a listing of any other cases in which the
20 expert witness has testified as an expert at
21 trial or by deposition within the preceding four
22 (4) years. An interrogatory seeking the
23 information specified above shall be treated as a
24 single interrogatory for purposes of the

1 limitation on the number of interrogatories in
2 Section 3233 of this title.

3 b. A party may discover facts known or opinions held by
4 an expert who has been retained or specially employed
5 by another party in anticipation of litigation or
6 preparation for trial and who is not expected to be
7 called as a witness at trial, only upon motion, when
8 the court may order discovery as provided in Section
9 3235 of this title or upon a showing of exceptional
10 circumstances under which it is impracticable for the
11 party seeking discovery to obtain facts or opinions on
12 the same subject by any other means.

13 c. Unless manifest injustice would result:

14 (1) The court shall require that the party seeking
15 discovery pay the expert a reasonable fee for
16 time spent in responding to discovery under
17 division (2) of subparagraph a of this paragraph
18 and subparagraph b of this paragraph.

19 (2) The court shall require that the party seeking
20 discovery with respect to discovery obtained
21 under subparagraph b of this paragraph, pay the
22 other party a fair portion of the fees and
23 expenses reasonably incurred by the latter party
24 in obtaining facts and opinions from the expert.

1 ~~4-~~ 6. CLAIMS OF PRIVILEGE OR PROTECTION OF TRIAL PREPARATION
2 MATERIALS. When a party withholds information otherwise
3 discoverable under the Oklahoma Discovery Code by claiming that it
4 is privileged or subject to protection as trial preparation
5 material, the party shall make the claim expressly and shall
6 describe the nature of the documents, communications, or things not
7 produced or disclosed in a manner that, without revealing
8 information itself privileged or protected, will enable other
9 parties to assess the applicability of the privilege or protection.

10 C. PROTECTIVE ORDERS.

11 1. Upon motion by a party or by the person from whom discovery
12 is sought, accompanied by a certification that the movant has in
13 good faith conferred or attempted to confer, either in person or by
14 telephone, with other affected parties in an effort to resolve the
15 dispute without court action, and for good cause shown, the court in
16 which the action is pending or on matters relating to a deposition,
17 the district court in the county where the deposition is to be taken
18 may enter any order which justice requires to protect a party or
19 person from annoyance, harassment, embarrassment, oppression or
20 undue delay, burden or expense, including one or more of the
21 following:

22 a. that the discovery not be had,

23

24

- 1 b. that the discovery may be had only on specified terms
2 and conditions, including a designation of the time or
3 place,
4 c. that the discovery may be had only by a method of
5 discovery other than that selected by the party
6 seeking discovery,
7 d. that certain matters not be inquired into, or that the
8 scope of the disclosure or discovery be limited to
9 certain matters,
10 e. that discovery be conducted with no one present except
11 persons designated by the court,
12 f. that a deposition after being sealed be opened only by
13 order of the court,
14 g. that a trade secret or other confidential research,
15 development or commercial information not be disclosed
16 or be disclosed only in a designated way, and
17 h. that the parties simultaneously file specified
18 documents or information enclosed in sealed envelopes
19 to be opened as directed by the court;

20 2. If the motion for a protective order is denied in whole or
21 in part, the court may, on such terms and conditions as are just,
22 order that any party or person provide or permit discovery. The
23 provisions of paragraph 4 of subsection A of Section 3237 of this
24 title apply to the award of expenses incurred in relation to the

1 motion. Any protective order of the court which has the effect of
2 removing any material obtained by discovery from the public record
3 shall contain the following:

4 a. a statement that the court has determined it is
5 necessary in the interests of justice to remove the
6 material from the public record,

7 b. specific identification of the material which is to be
8 removed or withdrawn from the public record, or which
9 is to be filed but not placed in the public record,
10 and

11 c. a requirement that any party obtaining a protective
12 order place the protected material in a sealed manila
13 envelope clearly marked with the caption and case
14 number and is clearly marked with the word
15 "CONFIDENTIAL", and stating the date the order was
16 entered and the name of the judge entering the order;

17 3. No protective order entered after the filing and
18 microfilming of documents of any kind shall be construed to require
19 the microfilm record of such filing to be amended in any fashion;

20 4. The party or counsel which has received the protective order
21 shall be responsible for promptly presenting the order to
22 appropriate court clerk personnel for appropriate action;

23

24

1 5. All documents produced or testimony given under a protective
2 order shall be retained in the office of counsel until required by
3 the court to be filed in the case;

4 6. Counsel for the respective parties shall be responsible for
5 informing witnesses, as necessary, of the contents of the protective
6 order; and

7 7. When a case is filed in which a party intends to seek a
8 protective order removing material from the public record, the
9 plaintiff(s) and defendant(s) shall be initially designated on the
10 petition under pseudonym such as "John or Jane Doe", or "Roe", and
11 the petition shall clearly indicate that the party designations are
12 fictitious. The party seeking confidentiality or other order
13 removing the case, in whole or in part, from the public record,
14 shall immediately present application to the court, seeking
15 instructions for the conduct of the case, including confidentiality
16 of the records.

17 D. SEQUENCE AND TIMING OF DISCOVERY. Unless the court upon
18 motion, for the convenience of parties and witnesses and in the
19 interests of justice, orders otherwise, methods of discovery may be
20 used in any sequence. The fact that a party is conducting
21 discovery, whether by deposition or otherwise, shall not operate to
22 delay discovery by any other party.

23 E. SUPPLEMENTATION OF RESPONSES. A party who has responded to
24 a request for discovery with a response that was complete when it

1 was made is under no duty to supplement the response to include
2 information thereafter acquired, except as follows:

3 1. A party is under a duty seasonably to supplement the
4 response with respect to any question directly addressed to:

5 a. the identity and location of persons having knowledge
6 of discoverable matters, and

7 b. the identity of each person expected to be called as
8 an expert witness at trial, the subject matter on
9 which the person is expected to testify, and the
10 substance of the testimony of the person.

11 2. A party is under a duty seasonably to amend a prior response
12 to an interrogatory, request for production, or request for
13 admission if the party obtains information upon the basis of which:

14 a. (i) the party knows that the response was incorrect
15 in some material respect when made, or

16 (ii) the party knows that the response, which was
17 correct when made, is no longer true in some
18 material respect; and

19 b. the additional or corrective information has not
20 otherwise been made known to the other parties during
21 the discovery process or in writing.

22 3. A duty to supplement responses may be imposed by order of
23 the court, agreement of the parties, or at any time prior to trial
24 through new requests for supplementation of prior responses.

1 F. DISCOVERY CONFERENCE. At any time after commencement of an
2 action, the court may direct the attorneys for the parties to appear
3 for a conference on the subject of discovery. The court shall do so
4 upon motion by the attorney for any party if the motion includes:

- 5 1. A statement of the issues as they then appear;
- 6 2. A proposed plan and schedule of discovery;
- 7 3. Any limitations proposed to be placed on discovery;
- 8 4. Any other proposed orders with respect to discovery; and
- 9 5. A statement showing that the attorney making the motion has
10 made a reasonable effort to reach agreement with opposing attorneys
11 on the matters set forth in the motion.

12 Each party and his attorney are under a duty to participate in
13 good faith in the framing of a discovery plan if a plan is proposed
14 by the attorney for any party. Notice of the motion shall be served
15 on all parties. Objections or additions to matters set forth in the
16 motion shall be served not later than ten (10) days after service of
17 the motion.

18 Following the discovery conference, the court shall enter an
19 order tentatively identifying the issues for discovery purposes,
20 establishing a plan and schedule for discovery, setting limitations
21 on discovery, if any; and determining such other matters, including
22 the allocation of expenses, as are necessary for the proper
23 management of discovery in the action. In preparing the plan for
24 discovery the court shall protect the parties from excessive or

1 abusive use of discovery. An order shall be altered or amended
2 whenever justice so requires.

3 Subject to the right of a party who properly moves for a
4 discovery conference to prompt convening of the conference, the
5 court may combine the discovery conference with a pretrial
6 conference.

7 G. SIGNING OF DISCOVERY REQUESTS, RESPONSES AND OBJECTIONS.

8 Every request for discovery, response or objection thereto made by a
9 party represented by an attorney shall be signed by at least one of
10 his attorneys of record in his individual name whose address shall
11 be stated. A party who is not represented by an attorney shall sign
12 the request, response or objection and state his address. The
13 signature of the attorney or party constitutes a certification that
14 he has read the request, response or objection, and that it is:

15 1. To the best of his knowledge, information and belief formed
16 after a reasonable inquiry consistent with the Oklahoma Discovery
17 Code and warranted by existing law or a good faith argument for the
18 extension, modification or reversal of existing law;

19 2. Interposed in good faith and not primarily to cause delay or
20 for any other improper purpose; and

21 3. Not unreasonable or unduly burdensome or expensive, given
22 the nature and complexity of the case, the discovery already had in
23 the case, the amount in controversy, and other values at stake in
24

1 the litigation. If a request, response or objection is not signed,
2 it shall be deemed ineffective.

3 If a certification is made in violation of the provisions of
4 this subsection, the court, upon motion or upon its own initiative,
5 shall impose upon the person who made the certification, the party
6 on whose behalf the request, response or objection is made, or both,
7 an appropriate sanction, which may include an order to pay to the
8 amount of the reasonable expenses occasioned thereby, including a
9 reasonable attorney fee.

10 SECTION 28. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 751A of Title 15, unless there
12 is created a duplication in numbering, reads as follows:

13 It is the intent of the Legislature that in construing the
14 Consumer Protection Act, courts shall be guided by the policies of
15 the Federal Trade Commission and interpretations given by the
16 Federal Trade Commission and the federal courts to Section 5(a)(1)
17 of the Federal Trade Commission Act, 15 U.S.C., Section 45(a)(1), as
18 from time to time amended.

19 SECTION 29. AMENDATORY 15 O.S. 2001, Section 754, is
20 amended to read as follows:

21 Section 754. Nothing in ~~this act~~ the Consumer Protection Act
22 shall apply to:

23 1. Publishers, broadcasters, printers, or other persons insofar
24 as an unlawful practice as defined in Section ~~3~~ 753 of this ~~act~~

1 title involves information that has been disseminated or reproduced
2 on behalf of others without knowledge that it is an unlawful
3 practice;

4 2. Actions or transactions otherwise permitted or regulated
5 ~~under laws administered by the Federal Trade Commission,~~ the
6 Corporation Commission, or any other regulatory body or officer
7 acting under statutory authority of this state or the United States,
8 or to acts done by retailers or other persons acting in good faith
9 on the basis of information or matter supplied by others and without
10 knowledge of the deceptive character of such information or matter;
11 and

12 3. Claims seeking damages for conduct that results in bodily
13 injury, death, or damage to property other than the property that is
14 the subject of the practice claimed to be a violation of the
15 Consumer Protection Act.

16 SECTION 30. AMENDATORY 15 O.S. 2001, Section 761.1, is
17 amended to read as follows:

18 Section 761.1 A. The commission of any act or practice
19 declared to be a violation of the Consumer Protection Act shall
20 render the violator liable to the aggrieved consumer who suffers an
21 ascertainable loss of money or property, real or personal, as a
22 result of the violation for the payment of actual damages sustained
23 by the customer and costs of litigation including reasonable
24 ~~attorney's~~ attorney fees, and the aggrieved consumer shall have a

1 private right of action for actual damages, including but not
2 limited to, costs and attorney's attorney fees. Actual damages
3 shall be measured by the consumer's out-of-pocket loss, which is an
4 amount of money equal to the difference between the amount paid by
5 the consumer for the goods or service and the actual market value of
6 the goods or service that the consumer actually received. In any
7 private action for damages for a violation of the Consumer
8 Protection Act the court shall, subsequent to adjudication on the
9 merits and upon motion of the prevailing party, determine whether a
10 claim or defense asserted in the action by a nonprevailing party was
11 asserted in bad faith, was not well grounded in fact, or was
12 unwarranted by existing law or a good faith argument for the
13 extension, modification, or reversal of existing law. Upon so
14 finding, the court shall enter a judgment ordering such
15 nonprevailing party to reimburse the prevailing party an amount not
16 to exceed Ten Thousand Dollars (\$10,000.00) for reasonable costs,
17 including attorney's attorney fees, incurred with respect to such
18 claim or defense.

19 B. In order to recover damages in an action for a violation of
20 the Consumer Protection Act, a person shall be required to prove
21 that the person reasonably relied to that person's detriment upon
22 the practice alleged to be a violation of the Consumer Protection
23 Act, and that the damages were proximately caused by the practice
24 alleged to be a violation of the Consumer Protection Act.

1 C. The commission of any act or practice declared to be a
2 violation of the Consumer Protection Act, if such act or practice is
3 also found to be unconscionable, shall render the violator liable to
4 the aggrieved customer for the payment of a civil penalty,
5 recoverable in an individual action only, in a sum set by the court
6 of not more than Two Thousand Dollars (\$2,000.00) for each
7 violation. In determining whether an act or practice is
8 unconscionable, the following circumstances shall be taken into
9 consideration by the court: (1) whether the violator knowingly or
10 with reason to know, took advantage of a consumer reasonably unable
11 to protect his or her interests because of his or her age, physical
12 infirmity, ignorance, illiteracy, inability to understand the
13 language of an agreement or similar factor; (2) whether, at the time
14 the consumer transaction was entered into, the violator knew or had
15 reason to know that price grossly exceeded the price at which
16 similar property or services were readily obtainable in similar
17 transactions by like consumers; (3) whether, at the time the
18 consumer transaction was entered into, the violator knew or had
19 reason to know that there was no reasonable probability of payment
20 of the obligation in full by the consumer; (4) whether the violator
21 knew or had reason to know that the transaction he or she induced
22 the consumer to enter into was excessively one-sided in favor of the
23 violator.

24

1 ~~C.~~ D. Any person who is found to be in violation of the
2 Oklahoma Consumer Protection Act in a civil action or who willfully
3 violates the terms of any injunction or court order issued pursuant
4 to the Consumer Protection Act shall forfeit and pay a civil penalty
5 of not more than Ten Thousand Dollars (\$10,000.00) per violation, in
6 addition to other penalties that may be imposed by the court, as the
7 court shall deem necessary and proper. For the purposes of this
8 section, the district court issuing an injunction shall retain
9 jurisdiction, and in such cases, the Attorney General, acting in the
10 name of the state, or a district attorney may petition for recovery
11 of civil penalties.

12 ~~D.~~ E. In administering and pursuing actions under this act, the
13 Attorney General and a district attorney are authorized to sue for
14 and collect reasonable expenses, ~~attorney's~~ attorney fees, and
15 investigation fees as determined by the court. Civil penalties or
16 contempt penalties sued for and recovered by the Attorney General or
17 a district attorney shall be used for the furtherance of their
18 duties and activities under the Consumer Protection Act.

19 ~~E.~~ F. In addition to other penalties imposed by the Oklahoma
20 Consumer Protection Act, any person convicted in a criminal
21 proceeding of violating the Oklahoma Consumer Protection Act shall
22 be guilty of a misdemeanor for the first offense and upon conviction
23 thereof shall be subject to a fine not to exceed One Thousand
24 Dollars (\$1,000.00), or imprisonment in the county jail for not more

1 than one (1) year, or both such fine and imprisonment. If the value
2 of the money, property or valuable thing referred to in this section
3 is Five Hundred Dollars (\$500.00) or more or if the conviction is
4 for a second or subsequent violation of the provisions of the
5 Oklahoma Consumer Protection Act, any person convicted pursuant to
6 this subsection shall be deemed guilty of a felony and shall be
7 subject to imprisonment in the State Penitentiary, for not more than
8 ten (10) years, or a fine not to exceed Five Thousand Dollars
9 (\$5,000.00), or both such fine and imprisonment.

10 SECTION 31. AMENDATORY 23 O.S. 2001, Section 9.1, as
11 amended by Section 1, Chapter 462, O.S.L. 2002 (23 O.S. Supp. 2006,
12 Section 9.1), is amended to read as follows:

13 Section 9.1 A. ~~In~~ Except as provided in Section 33 of this
14 act, in an action for the breach of an obligation not arising from
15 contract, the jury, in addition to actual damages, may, subject to
16 the provisions and limitations in subsections B, C and, D, E and G
17 of this section, award punitive damages for the sake of example and
18 by way of punishing the defendant based upon the following factors:

19 1. The seriousness of the hazard to the public arising from the
20 defendant's misconduct and any harm likely to result or harm that
21 has actually occurred due to the misconduct;

22 2. The profitability of the misconduct to the defendant;

23 3. The duration and frequency of the misconduct and any
24 concealment of it;

1 4. The degree of the defendant's awareness of the hazard and of
2 its excessiveness;

3 5. The attitude and conduct of the defendant upon discovery of
4 the misconduct or hazard;

5 6. In the case of a defendant which is a corporation or other
6 entity, the number and level of employees involved in causing or
7 concealing the misconduct; and

8 7. The financial condition of the defendant.

9 B. Category I. Where the jury finds by clear and convincing
10 evidence that:

11 1. The defendant has been guilty of reckless disregard for the
12 rights of others; or

13 2. An insurer has recklessly disregarded its duty to deal
14 fairly and act in good faith with its insured; the jury, in a
15 separate proceeding conducted after the jury has made such finding
16 and awarded actual damages, may award punitive damages in an amount
17 not to exceed the greater of:

18 a. One Hundred Thousand Dollars (\$100,000.00), or

19 b. the amount of the actual damages awarded.

20 Any award of punitive damages under this subsection awarded in any
21 manner other than as required in this subsection shall be void and
22 reversible error.

23 C. Category II. Where the jury finds by clear and convincing
24 evidence that:

1 1. The defendant has acted intentionally and with malice
2 towards others; or

3 2. An insurer has intentionally and with malice breached its
4 duty to deal fairly and act in good faith with its insured;
5 the jury, in a separate proceeding conducted after the jury has made
6 such finding and awarded actual damages, may award punitive damages
7 in an amount not to exceed the greatest of:

8 a. Five Hundred Thousand Dollars (\$500,000.00),

9 b. twice the amount of actual damages awarded, or

10 c. the increased financial benefit derived by the
11 defendant or insurer as a direct result of the conduct
12 causing the injury to the plaintiff and other persons
13 or entities.

14 The trial court shall reduce any award for punitive damages awarded
15 pursuant to the provisions of subparagraph c of this paragraph by
16 the amount it finds the defendant or insurer has previously paid as
17 a result of all punitive damage verdicts entered in any court of
18 this state for the same conduct by the defendant or insurer. Any
19 award of punitive damages under this subsection awarded in any
20 manner other than as required in this subsection shall be void and
21 reversible error.

22 D. Category III. Where the jury finds by clear and convincing
23 evidence that:

24

1 1. The defendant has acted intentionally and with malice
2 towards others; or

3 2. An insurer has intentionally and with malice breached its
4 duty to deal fairly and act in good faith with its insured; and the
5 court finds, on the record and out of the presence of the jury, that
6 there is evidence beyond a reasonable doubt that the defendant or
7 insurer acted intentionally and with malice and engaged in conduct
8 life-threatening to humans,
9 the jury, in a separate proceeding conducted after the jury has made
10 such finding and awarded actual damages, may award punitive damages
11 in any amount the jury deems appropriate, without regard to the
12 limitations set forth in subsections B and C of this section. Any
13 award of punitive damages under this subsection awarded in any
14 manner other than as required in this subsection shall be void and
15 reversible error.

16 E. In any civil action in which an entitlement to punitive
17 damages shall have been established, no award of punitive damages
18 shall exceed Two Million Dollars (\$2,000,000.00).

19 F. In a claim for punitive damages, a plaintiff shall present
20 prima facie evidence for the punitive damages claim before
21 conducting discovery regarding the financial assets or financial
22 condition of the defendant. The limitation on the amount of
23 punitive damages imposed by subsection E of this section shall not
24

1 be disclosed to the jury, but shall be applied by the court to any
2 punitive damages verdict.

3 G. In determining the amount, if any, of punitive damages to be
4 awarded under either subsection B, C or D of this section, the jury
5 shall make the award based upon the factors set forth in subsection
6 A of this section.

7 F. H. 1. In a case involving injury or harm allegedly caused
8 by a product, the manufacturer, distributor or seller of the product
9 shall not be subject to exemplary or punitive damages if, at the
10 time the product left the control of the manufacturer, distributor
11 or seller, the product or the aspect, component, warning or absence
12 of warning contained in or accompanying the product that allegedly
13 caused the injury or harm either:

14 a. was in material compliance with statute or with the
15 standards, rules, regulations, requirements or
16 specifications of a federal or state agency
17 responsible for regulating, evaluating or approving
18 the project, or

19 b. was approved by a federal or state agency responsible
20 for regulating, evaluating or approving the product.

21 2. This subsection shall not apply if it is proven by clear and
22 convincing evidence that the defendant at any time before the event
23 that allegedly caused the injury:

24

1 a. intentionally withheld or intentionally misrepresented
2 information which it was required at any time to
3 submit to the agency and the withholding or
4 misrepresentation of such information was causally
5 related to the injury or harm alleged, or

6 b. made an illegal payment to an official or employee of
7 the federal or state government for the purpose of
8 securing or maintaining approval of the product.

9 3. This subsection shall apply to every case pending on or
10 after November 1, 2007, regardless of when the case was filed.

11 I. The provisions of this section are severable, and if any
12 part or provision thereof shall be held void, the decision of the
13 court shall not affect or impair any of the remaining parts or
14 provisions thereof.

15 ~~G. This~~ J. The provisions of this section, except subsections
16 E, F and H of this section, shall apply to all civil actions filed
17 after the effective date of this act August 25, 1995.

18 K. The provisions of subsections E, F and H of this section
19 shall apply to all civil actions filed on or after November 1, 2007.

20 SECTION 32. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 9.2 of Title 23, unless there is
22 created a duplication in numbering, reads as follows:

23 A. In a medical liability action, the jury may only award
24 punitive damages, in addition to actual damages, if the jury finds

1 by clear and convincing evidence that the defendant has been guilty
2 of intentional or impaired conduct.

3 B. The jury must award punitive damages in a separate
4 proceeding conducted after the jury has made the finding required by
5 subsection A of this section and awarded actual damages in a medical
6 liability action.

7 C. The provisions of this section shall apply to all medical
8 liability actions that accrue on or after November 1, 2007.

9 SECTION 33. AMENDATORY Section 18, Chapter 368, O.S.L.
10 2004 (23 O.S. Supp. 2006, Section 15), is amended to read as
11 follows:

12 Section 15. A. Except as provided in ~~subsections~~ subsection B
13 ~~and C~~ of this section, in any civil action based on fault and not
14 arising out of contract, the liability for damages caused by two or
15 more persons shall be several only and a joint tortfeasor shall be
16 liable only for the amount of damages allocated to that tortfeasor.

17 B. ~~A defendant shall be jointly and severally liable for the~~
18 ~~damages recoverable by the plaintiff if the percentage of~~
19 ~~responsibility attributed to the defendant with respect to a cause~~
20 ~~of action is greater than fifty percent (50%).~~

21 C. ~~If at the time the incident which gave rise to the cause of~~
22 ~~action occurred, any the joint tortfeasors acted with willful and~~
23 ~~wanton conduct or with reckless disregard of the consequences of the~~
24 ~~conduct and such conduct in concert in committing a felony that~~

1 proximately caused the damages legally recoverable by the plaintiff
2 and the defendants were convicted of the felony, the liability for
3 damages shall be joint and several.

4 ~~D. This section shall not apply to actions brought by the state
5 or a political subdivision of the state or any action in which no
6 comparative negligence is found to be attributable to the plaintiff.~~

7 ~~E. C.~~ The provisions of this section shall apply to all civil
8 actions based on fault and not arising out of contract that accrue
9 on or after November 1, ~~2004~~ 2007.

10 SECTION 34. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 16 of Title 23, unless there is
12 created a duplication in numbering, reads as follows:

13 A. If the plaintiff has settled with one or more persons, the
14 court shall reduce the amount of damages to be recovered by the
15 plaintiff with respect to a cause of action by a percentage equal to
16 the percentage of responsibility of each settling person.

17 B. If the plaintiff in a medical liability action has settled
18 with one or more persons, the court shall reduce the amount of
19 damages to be recovered by the plaintiff with respect to a cause of
20 action by an amount equal to one of the following, as elected by the
21 defendant:

- 22 1. The sum of the dollar amounts of all settlements; or
- 23 2. A percentage equal to each settling person's percentage of
24 responsibility as found by the trier of fact.

1 C. In every medical liability action, the plaintiff shall,
2 within sixty (60) days after the commencement of the action, serve
3 written notice to the defendant(s) of any amount paid or payable as
4 a medical benefit pursuant to any health, sickness, or accident
5 insurance or plan, which provides health benefits, or any contract
6 or agreement of any group, organization, partnership, or corporation
7 to provide, pay for, or reimburse the cost of medical, hospital,
8 dental, or other health care services, and shall file a copy thereof
9 with the court or arbitrator.

10 D. An election made under subsection B of this section shall be
11 made by any defendant filing a written election before the issues of
12 the action are submitted to the trier of fact and when made, shall
13 be binding on all defendants. If no defendant makes this election
14 or if conflicting elections are made, all defendants are considered
15 to have elected the option provided for in paragraph 1 of subsection
16 B of this section.

17 SECTION 35. AMENDATORY 23 O.S. 2001, Section 61, is
18 amended to read as follows:

19 Section 61. A. For the breach of an obligation not arising
20 from contract, the measure of damages, except where otherwise
21 expressly provided by ~~this chapter~~ law, is the amount which will
22 compensate for all detriment proximately caused thereby, whether it
23 could have been anticipated or not.

24

1 B. For the breach of an obligation not arising from contract,
2 if the plaintiff receives compensation or is to receive compensation
3 in the future for the injuries or harm that gave rise to the cause
4 of action from a source wholly independent of the defendant, such
5 fact shall be admitted into evidence and the amount may be deducted
6 from the amount of damages that the plaintiff recovers from the
7 defendant.

8 SECTION 36. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 61.2 of Title 23, unless there
10 is created a duplication in numbering, reads as follows:

11 A. If any plaintiff seeks recovery for loss of earnings, loss
12 of earning capacity, loss of contributions of a pecuniary value, or
13 loss of inheritance, evidence to prove the loss must be presented in
14 the form of a net loss after reduction for income tax payments or
15 unpaid tax liability pursuant to any state or federal income tax
16 law.

17 B. The court shall instruct the jury as to whether any recovery
18 sought by the plaintiff is subject to federal or state income taxes.

19 SECTION 37. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 61.3 of Title 23, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Except as provided in subsection B of this section, in any
23 action not arising out of contract, the amount of noneconomic
24 damages awarded shall not exceed Three Hundred Thousand Dollars

1 (\$300,000.00), regardless of the number of parties against whom the
2 action is brought or the number of actions brought with respect to
3 the personal injury.

4 B. As used in this section, "noneconomic damages" means all
5 subjective, nonmonetary losses including, but not limited to, pain,
6 suffering, inconvenience, mental anguish, emotional distress, loss
7 of society and companionship, loss of consortium, injury to
8 reputation and humiliation; provided, however, noneconomic damages
9 do not include exemplary damages, as provided for in Section 9.1 of
10 Title 23 of the Oklahoma Statutes.

11 C. Nothing in this section shall apply to an action brought for
12 wrongful death.

13 D. The provisions of this section shall apply only to actions
14 that accrue on or after November 1, 2007.

15 SECTION 38. AMENDATORY 47 O.S. 2001, Section 11-1112, as
16 last amended by Section 1, Chapter 361, O.S.L. 2005 (47 O.S. Supp.
17 2006, Section 11-1112), is amended to read as follows:

18 Section 11-1112. A. Every driver, when transporting a child
19 under six (6) years of age in a motor vehicle operated on the
20 roadways, streets, or highways of this state, shall provide for the
21 protection of said child by properly using a child passenger
22 restraint system. For purposes of this section and Section 11-1113
23 of this title, "child passenger restraint system" means an infant or
24

1 child passenger restraint system which meets the federal standards
2 as set by 49 C.F.R., Section 571.213.

3 B. Children at least six (6) years of age but younger than
4 thirteen (13) years of age shall be protected by use of a child
5 passenger restraint system or a seat belt.

6 C. The provisions of this section shall not apply to:

7 1. The driver of a school bus, taxicab, moped, motorcycle, or
8 other motor vehicle not required to be equipped with safety belts
9 pursuant to state or federal laws;

10 2. The driver of an ambulance or emergency vehicle;

11 3. The driver of a vehicle in which all of the seat belts are
12 in use;

13 4. The transportation of children who for medical reasons are
14 unable to be placed in such devices; or

15 5. The transportation of a child who weighs more than forty
16 (40) pounds and who is being transported in the back seat of a
17 vehicle while wearing only a lap safety belt when the back seat of
18 the vehicle is not equipped with combination lap and shoulder safety
19 belts, or when the combination lap and shoulder safety belts in the
20 back seat are being used by other children who weigh more than forty
21 (40) pounds. Provided, however, for purposes of this paragraph,
22 back seat shall include all seats located behind the front seat of a
23 vehicle operated by a licensed child care facility or church.

24 Provided further, there shall be a rebuttable presumption that a

1 child has met the weight requirements of this paragraph if at the
2 request of any law enforcement officer, the licensed child care
3 facility or church provides the officer with a written statement
4 verified by the parent or legal guardian that the child weighs more
5 than forty (40) pounds.

6 D. A law enforcement officer is hereby authorized to stop a
7 vehicle if it appears that the driver of the vehicle has violated
8 the provisions of this section and to give an oral warning to said
9 driver. The warning shall advise the driver of the possible danger
10 to children resulting from the failure to install or use a child
11 passenger restraint system or seat belts in the motor vehicle.

12 ~~E. A violation of the provisions of this section shall not be~~
13 ~~admissible as evidence in any civil action or proceeding for~~
14 ~~damages.~~

15 ~~F. In any action brought by or on behalf of an infant for~~
16 ~~personal injuries or wrongful death sustained in a motor vehicle~~
17 ~~collision, the failure of any person to have the infant properly~~
18 ~~restrained in accordance with the provisions of this section shall~~
19 ~~not be used in aggravation or mitigation of damages.~~

20 ~~G.~~ Any person convicted of violating subsection A or B of this
21 section shall be punished by a fine of Fifty Dollars (\$50.00) and
22 shall pay all court costs thereof. Revenue from such fine shall be
23 apportioned to the Department of Public Safety Revolving Fund and
24 used by the Oklahoma Highway Safety Office to promote the use of

1 child passenger restraint systems as provided in Section 11-1113 of
2 this title. This fine shall be suspended and the court costs
3 limited to a maximum of Fifteen Dollars (\$15.00) in the case of the
4 first offense upon proof of purchase or acquisition by loan of a
5 child passenger restraint system. Provided, the Department of
6 Public Safety shall not assess points to the driving record of any
7 person convicted of a violation of this section.

8 SECTION 39. AMENDATORY 47 O.S. 2001, Section 12-420, as
9 amended by Section 13, Chapter 50, O.S.L. 2005 (47 O.S. Supp. 2006,
10 Section 12-420), is amended to read as follows:

11 Section 12-420. ~~Nothing in Sections 12-416 through 12-420 of~~
12 ~~this title shall~~ Any violation of the Oklahoma Mandatory Seat Belt
13 Use Act may be used in any civil proceeding in this state and the
14 use or nonuse of seat belts shall ~~not be submitted into~~ permitted as
15 evidence in any civil suit in Oklahoma.

16 SECTION 40. AMENDATORY 47 O.S. 2001, Section 230.30, is
17 amended to read as follows:

18 Section 230.30 A. No license shall be issued by the
19 Corporation Commission to any carrier until after the carrier shall
20 have filed with the Commission a liability insurance policy or bond
21 covering public liability and property damage, issued by some
22 insurance or bonding company or insurance carrier authorized
23 pursuant to this section and which has complied with all of the
24 requirements of the Commission, which bond or policy shall be

1 approved by the Commission, and shall be in a sum and amount as
2 fixed by a proper order of the Commission; and the liability and
3 property damage insurance policy or bond shall bind the obligor
4 thereunder to make compensation for injuries to, or death of,
5 persons, and loss or damage to property, resulting from the
6 operation of any carrier for which the carrier is legally liable. A
7 copy of the policy or bond shall be filed with the Commission, and,
8 after judgment against the carrier for any damage, the injured party
9 may maintain an action upon the policy or bond to recover the same,
10 and shall be a proper party to maintain such action only after a
11 final judgment against the carrier has been entered by the court;
12 provided, in a civil action against a motor carrier operating in
13 this state, there shall be no direct action allowed against the
14 insurer required by this statute. In no instance shall an insurance
15 or bonding company or insurance carrier authorized pursuant to this
16 section be sued in a civil action by a third party before a final
17 judgment against the carrier has been entered by the court.

18 B. Every motor carrier shall file with the Commission a cargo
19 insurance policy or bond covering any goods or property being
20 transported, issued by some insurance or bonding company or
21 insurance carrier authorized as set forth below, and which has
22 complied with all of the requirements of the Commission, which bond
23 or policy shall be approved by the Commission, and shall be in a sum
24 and amount as fixed by a proper order of the Commission. The cargo

1 insurance must be filed with the Commission prior to a license being
2 issued by the Commission, unless the motor carrier has been exempted
3 from this requirement.

4 Intrastate motor carriers of sand, rock, gravel, asphaltic
5 mixtures or other similar road building materials shall not be
6 required to file cargo insurance and shall be required to maintain
7 liability insurance limits of Three Hundred Fifty Thousand Dollars
8 (\$350,000.00) combined single limit.

9 No carrier, whose principal place of business is in Oklahoma,
10 shall conduct any operations in this state unless the operations are
11 covered by a valid primary bond or insurance policy issued by a
12 provider authorized or approved by the State Insurance Commissioner.
13 No carrier shall conduct any operations in this state unless the
14 operations are covered by a valid bond or insurance policy issued by
15 a provider authorized and approved by a National Association of
16 Insurance Commissioners and certified by the State Insurance
17 Commission.

18 C. Each carrier shall maintain on file, in full force, all
19 insurance required by the laws of this state and the rules of the
20 Commission during the operation of the carrier and that the failure
21 for any cause to maintain the coverage in full force and effect
22 shall immediately, without any notice from the Commission, suspend
23 the rights of the carrier to operate until proper insurance is
24 provided. Any carrier suspended for failure to maintain proper

1 insurance shall have a reasonable time, not exceeding sixty (60)
2 days, to have its license reactivated, and to provide proper
3 insurance upon showing:

4 1. No operation during the period in which it did not have
5 insurance; and

6 2. Furnishing of proper insurance coverage.

7 D. Any carrier who fails to reactivate its license within sixty
8 (60) days after the suspension, as above provided, shall have the
9 license canceled, by operation of law, without any notice from the
10 Commission. No license so canceled shall be reinstated or otherwise
11 made operative except that the Commission may reinstate the license
12 of a carrier upon proper showing that the carrier was actually
13 covered by proper insurance during the suspension or cancellation
14 period, and that failure to file with the Commission was not due to
15 the negligence of the carrier. Any carrier desiring to file for
16 reinstatement of its license shall do so within ninety (90) days of
17 its cancellation by law.

18 E. The Commission shall, in its discretion, permit the filing
19 of certificates of insurance coverage or such form as may be
20 prescribed by the Commission, in lieu of copies of insurance
21 policies or bonds, with the proviso that if the certificates are
22 authorized the insurance company or carrier so filing it, upon
23 request of the Commission, will, at any time, furnish an
24 authenticated copy of the policy which the certificate represents,

1 and further provided that thirty (30) days prior to effective
2 cancellation or termination of the policy of insurance for any
3 cause, the insurer shall so notify the Commission in writing of the
4 facts or as deemed necessary by the Commission.

5 SECTION 41. AMENDATORY Section 4, Chapter 390, O.S.L.
6 2003 (63 O.S. Supp. 2006, Section 1-1708.1D), is amended to read as
7 follows:

8 Section 1-1708.1D A. In any medical liability action, if the
9 plaintiff receives compensation or is to receive compensation in the
10 future for the injuries or harm that gave rise to the cause of
11 action from a source wholly independent of the defendant, such fact
12 shall be admitted into evidence and the amount may be deducted from
13 the amount of damages that the plaintiff recovers from the
14 defendant.

15 B. In every medical liability action, the court shall admit
16 evidence of payments of medical bills made to the injured party,
17 ~~unless the court makes the finding described in paragraph B of this~~
18 ~~section.~~ Recovery for payment of medical bills shall be limited to
19 the amount actually paid, not the amount billed. In case of
20 unreimbursed care, payment shall be paid according to Medicare
21 reimbursement rates at the time care was provided.

22 ~~B. In any medical liability action, upon application of a~~
23 ~~party, the court shall make a determination whether amounts claimed~~
24 ~~by a health care provider to be a payment of medical bills from a~~

1 ~~collateral source is subject to subrogation or other right of~~
2 ~~recovery. If the court makes a determination that any such payment~~
3 ~~is subject to subrogation or other right of recovery, evidence of~~
4 ~~the payment from the collateral source and subject to subrogation or~~
5 ~~other right of recovery shall not be admitted.~~

6 SECTION 42. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1-1708.1F-2 of Title 63, unless
8 there is created a duplication in numbering, reads as follows:

9 A. Except as provided in subsection B of this section, in any
10 civil action brought against a hospital or hospital system, or its
11 employees, officers, directors, or volunteers, for damages based on
12 an act or omission by the hospital or hospital system, or its
13 employees, officers, directors, or volunteers, the liability of the
14 hospital or hospital system is limited to money damages in a maximum
15 amount of Five Hundred Thousand Dollars (\$500,000.00) for any act or
16 omission resulting in damage or injury to a patient if the patient
17 or, if the patient is a minor or is otherwise legally incompetent,
18 the person responsible for the patient, signs a written statement
19 that acknowledges:

20 1. That the hospital is providing care that is not administered
21 for or in expectation of compensation; and

22 2. The limitations on the recovery of damages from the hospital
23 in exchange for receiving the health care services.

24

1 B. This section shall not apply to wrongful death actions or to
2 an act or omission that is the result of gross negligence or willful
3 or wanton misconduct.

4 SECTION 43. AMENDATORY Section 7, Chapter 390, O.S.L.
5 2003 (63 O.S. Supp. 2005, Section 1-1708.1G), is amended to read as
6 follows:

7 Section 1-1708.1G Notwithstanding the provisions of Section 727
8 of Title 12 of the Oklahoma Statutes or any other provision of the
9 Oklahoma Statutes to the contrary, prejudgment interest in a medical
10 liability action shall be determined using a rate equal to the
11 average United States Treasury Bill rate of the preceding calendar
12 year as certified to the Administrative Director of the Courts by
13 the State Treasurer on the first regular business day in January of
14 each year. Prejudgment interest shall be applicable only to actions
15 filed prior to November 1, 2007.

16 SECTION 44. AMENDATORY Section 24, Chapter 368, O.S.L.
17 2004 (63 O.S. Supp. 2005, Section 1-1708.1I), is amended to read as
18 follows:

19 Section 1-1708.1I A. To be qualified to offer expert testimony
20 on the issue of whether a defendant health care provider departed
21 from accepted standards of health care, a witness must be currently
22 practicing health care in the field of health care services relevant
23 to the claim or must have been practicing in that field at the time
24 the claim was filed.

1 B. The court shall apply the criteria specified in subsection ~~B~~
2 C of this section and in Section 2702 of Title 12 of the Oklahoma
3 Statutes in determining whether an expert is qualified to offer
4 expert testimony on the issue of whether the defendant health care
5 provider departed from accepted standards of health care but may
6 depart from those criteria if, under the circumstances, the court
7 determines that there is good reason to admit the expert's
8 testimony. The court shall state on the record the reason for
9 admitting the testimony if the court departs from the criteria.

10 ~~B.~~ C. In determining whether a witness is qualified on the
11 basis of training or experience, the court shall consider whether,
12 at the time the claim arose or at the time the testimony is given,
13 the witness:

14 ~~1. Is licensed to practice medicine~~ is certified by a licensing
15 agency of one or more states of the United States or a national
16 professional certifying agency, or has other substantial training or
17 experience, in ~~any~~ the area of health care relevant to the claim,
18 ~~and~~

19 ~~2. Is actively practicing or retired from practicing health~~
20 ~~care in any area of health care services relevant to the claim.~~

21 ~~C.~~ D. This section shall not prevent a health care provider who
22 is a defendant, or an employee of the defendant health care
23 provider, from qualifying as an expert.

24

1 SECTION 45. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-1708.1J of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. As used in this section:

5 1. "Future damages" means damages that are incurred after the
6 date of judgment for:

- 7 a. medical, health care, or custodial care services,
- 8 b. physical pain and mental anguish, disfigurement, or
9 physical impairment,
- 10 c. loss of consortium, companionship, or society, or
- 11 d. loss of earnings;

12 2. "Future loss of earnings" means the following losses
13 incurred after the date of the judgment:

- 14 a. loss of income, wages, or earning capacity and other
15 pecuniary losses, and
- 16 b. loss of inheritance; and

17 3. "Periodic payments" means the payment of money or its
18 equivalent to the recipient of future damages at defined intervals.

19 B. This section applies only to a medical liability action
20 against a health care provider in which the present value of the
21 award of future damages, as determined by the court, equals or
22 exceeds One Hundred Thousand Dollars (\$100,000.00).

23 C. The court shall order that medical, health care, or
24 custodial services awarded in a medical liability action be paid in

1 periodic payments rather than by a lump-sum payment subject to
2 supervision by the court, unless both parties agree to a lump-sum
3 payment of all or part of the award.

4 D. At the request of a defendant health care provider or a
5 plaintiff, the court may order that future damages other than
6 medical, health care, or custodial services awarded in a health care
7 liability claim be paid in whole or in part in periodic payments
8 rather than by a lump-sum payment subject to supervision by the
9 court.

10 E. The court shall make a specific finding of the dollar amount
11 of periodic payments that will compensate the plaintiff for the
12 future damages.

13 F. The court shall specify in its judgment ordering the payment
14 of future damages by periodic payments the:

- 15 1. Recipient of the payments;
- 16 2. Dollar amount of the payments;
- 17 3. Interval between payments; and
- 18 4. Number of payments or the period of time over which payments
19 must be made.

20 G. The entry of an order for the payment of future damages by
21 periodic payments constitutes a release of the health care liability
22 claim filed by the plaintiff.

23 H. As a condition to authorizing periodic payments of future
24 damages, the court shall require a defendant who is not adequately

1 insured to provide evidence of financial responsibility in an amount
2 adequate to assure full payment of damages awarded by the judgment.

3 I. The judgment shall provide for payments to be funded by:

4 1. An annuity contract issued by a company licensed to do
5 business as an insurance company, including an assignment within the
6 meaning of Section 130, Internal Revenue Code of 1986, as amended;

7 2. An obligation of the United States;

8 3. Applicable and collectible liability insurance from one or
9 more qualified insurers; or

10 4. Any other satisfactory form of funding approved by the
11 court.

12 J. On termination of periodic payments of future damages, the
13 court shall order the return of the security, or as much as remains,
14 to the defendant.

15 K. On the death of the recipient, money damages awarded for
16 loss of future earnings shall continue to be paid to the estate of
17 the recipient of the award without reduction. Periodic payments,
18 other than future loss of earnings, terminate on the death of the
19 recipient. If the recipient of periodic payments dies before all
20 payments required by the judgment are paid, the court may modify the
21 judgment to award and apportion the unpaid damages for future loss
22 of earnings in an appropriate manner. Following the satisfaction or
23 termination of any obligations specified in the judgment for
24 periodic payments, any obligation of the defendant health care

1 provider to make further payments ends and any security given
2 reverts to the defendant.

3 L. For purposes of computing the award of attorney fees when
4 the plaintiff is awarded a recovery that will be paid in periodic
5 payments, the court shall place a total value on the payments based
6 on the plaintiff's projected life expectancy and reduce the amount
7 to present value.

8 SECTION 46. AMENDATORY 63 O.S. 2001, Section 1-1709.1,
9 as last amended by Section 2, Chapter 558, O.S.L. 2004 (63 O.S.
10 Supp. 2006, Section 1-1709.1), is amended to read as follows:

11 Section 1-1709.1 A. As used in this section:

12 1. "Credentialing or recredentialing data" means:

- 13 a. the application submitted by a health care
14 professional requesting appointment or reappointment
15 to the medical staff of a health care facility or
16 requesting clinical privileges or other permission to
17 provide health care services at a health care
18 facility,
- 19 b. any information submitted by the health care
20 professional in support of such application,
- 21 c. any information, unless otherwise privileged, obtained
22 by the health care facility during the credentialing
23 or recredentialing process regarding such application,
24 and

1 d. the decision made by the health care facility
2 regarding such application;

3 2. "Credentialing or recredentialing process" means any
4 process, program or proceeding utilized by a health care facility to
5 assess, review, study or evaluate the credentials of a health care
6 professional;

7 3. "Health care facility" means:

8 a. any hospital or related institution offering or
9 providing health care services under a license issued
10 pursuant to Section 1-706 of this title,

11 b. any ambulatory surgical center offering or providing
12 health care services under a license issued pursuant
13 to Section 2660 of this title, and

14 c. the clinical practices of accredited allopathic and
15 osteopathic state medical schools;

16 4. "Health care professional" means any person authorized to
17 practice allopathic medicine and surgery, osteopathic medicine,
18 podiatric medicine, optometry, chiropractic, psychology, dentistry
19 or a dental specialty under a license issued pursuant to Title 59 of
20 the Oklahoma Statutes;

21 5. "Peer review information" means all records, documents and
22 other information generated during the course of a peer review
23 process, including any reports, statements, memoranda,
24

1 correspondence, record of proceedings, materials, opinions,
2 findings, conclusions and recommendations, but does not include:

- 3 a. the medical records of a patient whose health care in
4 a health care facility is being reviewed,
- 5 b. incident reports and other like documents regarding
6 health care services being reviewed, regardless of how
7 the reports or documents are titled or captioned,
- 8 c. the identity of any individuals who have personal
9 knowledge regarding the facts and circumstances
10 surrounding the patient's health care in the health
11 care facility,
- 12 d. factual statements regarding the patient's health care
13 in the health care facility from any individuals who
14 have personal knowledge regarding the facts and
15 circumstances surrounding the patient's health care,
16 which factual statements were generated outside the
17 peer review process,
- 18 e. the identity of all documents and raw data previously
19 created elsewhere and considered during the peer
20 review process,
- 21 f. copies of all documents and raw data previously
22 created elsewhere and considered during the peer
23 review process, whether available elsewhere or not, or
24

1 g. credentialing or recredentialing data regarding the
2 health care professional who provided the health care
3 services being reviewed or who is the subject of a
4 credentialing or recredentialing process; and

5 6. "Peer review process" means any process, program or
6 proceeding, including a credentialing or recredentialing process,
7 utilized by a health care facility or county medical society to
8 assess, review, study or evaluate the credentials, competence,
9 professional conduct or health care services of a health care
10 professional.

11 B. 1. Peer review information shall be private, confidential
12 and privileged+

13 a- except that a health care facility or county medical
14 society shall be permitted to provide relevant peer
15 review information to the state agency or board which
16 licensed the health care professional who provided the
17 health care services being reviewed in a peer review
18 process or who is the subject of a credentialing or
19 recredentialing process, with notice to the health
20 care professional, and

21 b- ~~except as provided in subsections C and D of this~~
22 ~~section.~~

23 2. Nothing in this section shall be construed to abrogate,
24 alter or affect any provision in the Oklahoma Statutes which

1 provides that information regarding liability insurance of a health
2 care facility or health care professional is not discoverable or
3 admissible.

4 C. In any civil action in which a patient or patient's legal
5 representative has alleged that the patient has suffered injuries
6 resulting from negligence by a health care professional in providing
7 health care services to the patient in a health care facility,
8 factual statements, presented during a peer review process utilized
9 by such health care facility, regarding the patient's health care in
10 the health care facility from individuals who have personal
11 knowledge of the facts and circumstances surrounding the patient's
12 health care shall not be subject to discovery, ~~pursuant to the~~
13 ~~Oklahoma Discovery Code, upon an affirmative showing that such~~
14 ~~statements are not otherwise available in any other manner.~~

15 D. ~~1.~~ In any civil action in which a patient or patient's
16 legal representative has alleged:

17 a. ~~that~~

18 1. That the patient has suffered injuries resulting from
19 negligence by a health care professional in providing health care
20 services to the patient in a health care facility~~;~~ or

21 b. ~~that~~

22 2. That the health care facility was independently negligent as
23 a result of permitting the health care professional to provide
24 health care services to the patient in the health care facility,

1 the recommendations made and action taken as a result of any peer
2 review process utilized by such health care facility regarding the
3 health care professional prior to the date of the alleged negligence
4 shall not be subject to discovery pursuant to the Oklahoma Discovery
5 Code.

6 ~~2. Any information discovered pursuant to this subsection :~~

7 ~~a. shall not be admissible as evidence until a judge or~~
8 ~~jury has found the health care professional to have~~
9 ~~been negligent in providing health care services to~~
10 ~~the patient in such health care facility, and~~

11 ~~b. shall not at any time include the identity or means by~~
12 ~~which to ascertain the identity of any other patient~~
13 ~~or health care professional.~~

14 E. No person involved in a peer review process may be permitted
15 or required to testify regarding the peer review process in any
16 civil proceeding or disclose by responses to written discovery
17 requests any peer review information.

18 SECTION 47. AMENDATORY 76 O.S. 2001, Section 18, as
19 amended by Section 4, Chapter 462, O.S.L. 2002 (76 O.S. Supp. 2006,
20 Section 18), is amended to read as follows:

21 Section 18. ~~An~~ A. Subject to the provisions of subsection B of
22 this section, an action for damages for injury or death against any
23 physician, health care provider or hospital licensed under the laws
24 of this state, whether based in tort, breach of contract or

1 otherwise, arising out of patient care, shall be brought within two
2 (2) years of the date the plaintiff knew or should have known,
3 through the exercise of reasonable diligence, of the existence of
4 the death, injury or condition complained of; provided, however, the
5 minority or incompetency when the cause of action arises will extend
6 said period of limitation.

7 B. Any action for damages for injury or death against any
8 physician, health care provider, or hospital licensed under the laws
9 of this state, based in tort and arising out of patient care, shall
10 be brought within eight (8) years after the date of the act or
11 omission that gives rise to the claim. This subsection is intended
12 as a statute of repose and all actions which are not brought within
13 eight (8) years after the act or omission giving rise to the claim
14 are time barred. The provisions of this subsection do not extend
15 the statute of limitations provided for in subsection A of this
16 section.

17 SECTION 48. AMENDATORY 76 O.S. 2001, Section 25, is
18 amended to read as follows:

19 Section 25. A. A professional review body, members and staff
20 of such professional review body and persons who contract with such
21 professional review body shall not be liable in any way in damages
22 under any law of this state with respect to a professional review
23 action taken in good faith by such professional review body.

24

1 B. Peer review information shall be private, confidential and
2 privileged except that a peer review body shall be permitted to
3 provide relevant peer review information to a state agency or board
4 which licensed the professional whose competence and performance is
5 being reviewed in a peer review process or who is the subject of a
6 credentialing or recredentialing process. Notice that the
7 information is being provided to a state agency or board shall be
8 given to the professional.

9 C. In any civil action in which a plaintiff or legal
10 representative of a plaintiff has alleged that the plaintiff has
11 suffered injuries resulting from the negligence of the professional
12 in providing professional services to the plaintiff, factual
13 statements presented during a peer review process shall not be
14 subject to discovery.

15 D. In any civil action in which a plaintiff or legal
16 representative of a plaintiff has alleged that the plaintiff has
17 suffered injuries resulting from the negligence of the professional
18 in providing professional services to the plaintiff, the
19 recommendations made and action taken as a result of any peer review
20 process shall not be subject to discovery.

21 E. No person involved in a peer review process may be permitted
22 or required to testify regarding the peer review process in any
23 civil proceeding or disclose by responses to written discovery
24 requests any peer review information.

1 SECTION 49. AMENDATORY 76 O.S. 2001, Section 31, is
2 amended to read as follows:

3 Section 31. A. Any volunteer shall be immune from liability in
4 a civil action on the basis of any act or omission of the volunteer
5 resulting in damage or injury if:

6 1. The volunteer was acting in good faith and within the scope
7 of the volunteer's official functions and duties for a charitable
8 organization or not-for-profit corporation; and

9 2. The damage or injury was not caused by gross negligence or
10 willful and wanton misconduct by the volunteer.

11 B. In any civil action against a charitable organization or
12 not-for-profit corporation for damages based upon the conduct of a
13 volunteer, the doctrine of respondeat superior shall apply,
14 notwithstanding the immunity granted to the volunteer in subsection
15 A of this section.

16 C. Any person who, in good faith and without compensation, or
17 expectation of compensation, donates or loans emergency service
18 equipment to a volunteer shall not be liable for damages resulting
19 from the use of such equipment by the volunteer, except when the
20 donor of the equipment knew or should have known that the equipment
21 was dangerous or faulty in a way which could result in bodily
22 injury, death or damage to property.

23 D. Definitions.
24

1 1. For the purposes of this section, the term "volunteer" means
2 a person who enters into a service or undertaking of the person's
3 free will without compensation or expectation of compensation in
4 money or other thing of value in order to provide a service, care,
5 assistance, advice, or other benefit ~~where the person does not offer~~
6 ~~that type of service, care, assistance, advice or other benefit for~~
7 ~~sale to the public~~; provided, being legally entitled to receive
8 compensation for the service or undertaking performed shall not
9 preclude a person from being considered a volunteer.

10 2. For the purposes of this section, the term "charitable
11 organization" means any benevolent, philanthropic, patriotic,
12 eleemosynary, educational, social, civic, recreational, religious
13 group or association or any other person performing or purporting to
14 perform acts beneficial to the public.

15 3. For the purposes of this section, the term "not-for-profit
16 corporation" means a corporation formed for a purpose not involving
17 pecuniary gain to its shareholders or members, paying no dividends
18 or other pecuniary remuneration, directly or indirectly, to its
19 shareholders or members as such, and having no capital stock.

20 E. The provisions of this section shall not affect the
21 liability that any person may have which arises from the operation
22 of a motor vehicle, watercraft, or aircraft in rendering the
23 service, care, assistance, advice or other benefit as a volunteer.
24

1 F. The immunity from civil liability provided for by this
2 section shall extend only to the actions taken by a person rendering
3 the service, care, assistance, advice, or other benefit as a
4 volunteer, and does not confer any immunity to any person for
5 actions taken by the volunteer prior to or after the rendering of
6 the service, care, assistance, advice, or other benefit as a
7 volunteer.

8 G. This section shall apply to all civil actions filed after
9 the effective date of this act.

10 SECTION 50. AMENDATORY Section 34, Chapter 368, O.S.L.
11 2004 (76 O.S. Supp. 2006, Section 32), is amended to read as
12 follows:

13 Section 32. A. This section shall be known and may be cited as
14 the "Volunteer Medical Professional Services Immunity Act".

15 B. Any volunteer medical professional shall be immune from
16 liability in a civil action on the basis of any act or omission of
17 the volunteer medical professional resulting in damage or injury if:

18 1. The volunteer medical professional services were provided ~~at~~
19 ~~a free clinic where neither the professional nor the clinic receives~~
20 without any kind of compensation being paid for any the treatment
21 ~~provided at the clinic;~~

22 2. The volunteer medical professional was acting in good faith
23 and, if licensed, the services provided were within the scope of the
24 license of the volunteer medical professional;

1 3. The volunteer medical professional commits the act or
2 omission in the course of providing professional services;

3 4. The damage or injury was not caused by gross negligence or
4 willful and wanton misconduct by the volunteer medical professional;
5 and

6 5. Before the volunteer medical professional provides
7 professional medical services, the volunteer medical professional
8 and the person receiving the services or, if that person is a minor
9 or otherwise legally incapacitated, the person's parent,
10 conservator, legal guardian, or other person with legal
11 responsibility for the care of the person or animal signs a written
12 statement that acknowledges:

13 a. that the volunteer medical professional providing
14 professional medical services has no expectation of
15 and will receive no compensation of any kind for
16 providing the professional medical services, and

17 b. an understanding of the limitations on the recovery of
18 damages from the volunteer medical professional in
19 exchange for receiving free professional medical
20 services.

21 C. In the event the volunteer medical professional refers the
22 patient covered by this section to another volunteer medical
23 professional for additional treatment, the referred volunteer
24

1 medical professional shall be subject to the provisions of this
2 section if:

3 1. The referred volunteer medical professional provides
4 services without receiving any compensation for the treatment;

5 2. The referred volunteer medical professional was acting in
6 good faith and, if licensed, the services provided were within the
7 scope of the license of the referred volunteer medical professional;

8 3. The referred volunteer medical professional commits the act
9 or omission in the course of providing professional services;

10 4. The damage or injury was not caused by gross negligence or
11 willful and wanton misconduct by the referred volunteer medical
12 professional; and

13 5. Before the referred volunteer medical professional provides
14 professional services, the referred volunteer medical professional
15 and the person receiving the services or, if that person is a minor
16 or otherwise legally incapacitated, the person's parent,
17 conservator, legal guardian, or other person with legal
18 responsibility for the care of the person or animal signs a written
19 statement that acknowledges:

20 a. that the referred volunteer medical professional
21 providing professional medical services has no
22 expectation of and will receive no compensation of any
23 kind for providing the professional medical services,
24 and

1 b. an understanding of the limitations on the recovery of
2 damages from the volunteer medical professional in
3 exchange for receiving free professional medical
4 services.

5 D. The provisions of this section shall not affect the
6 liability that any person may have which arises from the operation
7 of a motor vehicle, watercraft, or aircraft in rendering the
8 service, care, assistance, advice or other benefit as a volunteer
9 medical professional.

10 E. The immunity from civil liability provided by this section
11 shall extend only to the actions taken by a person rendering the
12 service, care, assistance, advice or other benefit as a volunteer
13 medical professional, and does not confer any immunity to any person
14 for actions taken by the volunteer medical professional prior to or
15 after the rendering of the service, care, assistance, advice or
16 other benefit as a volunteer medical professional.

17 F. For the purpose of this section, the term "volunteer medical
18 professional" and "referred volunteer medical professional" means a
19 person who voluntarily provides professional medical services
20 without compensation or expectation of compensation of any kind. A
21 volunteer medical professional or a referred volunteer medical
22 professional shall include the following licensed professionals:

- 23 1. Physician;
- 24 2. Physician's assistant;

- 1 3. Registered nurse;
- 2 4. Advanced nurse practitioner or vocational nurse;
- 3 5. Pharmacist;
- 4 6. Podiatrist;
- 5 7. Dentist or dental hygienist; ~~or~~
- 6 8. Optometrist;
- 7 9. Veterinarian; or
- 8 10. Registered veterinarian technician.

9 A volunteer medical professional shall be engaged in the active
10 practice of a medical professional or retired from a medical
11 profession, if still eligible to provide medical professional
12 services within this state.

13 G. Any person participating in a Medical or Veterinary Reserve
14 Corps and assisting with emergency management, emergency operations,
15 or hazard mitigation in response to any emergency, man-made
16 disaster, or natural disaster, or participating in public health
17 initiatives endorsed by a city, county, or state health department
18 or agricultural departments in the State of Oklahoma, shall not be
19 liable for civil damages on the basis of any act or omission, if:

20 1. The person was acting in good faith and within the scope of
21 the official duties and functions of the Medical or Veterinary
22 Reserve Corps; and

23 2. The acts or omissions were not caused from gross, willful,
24 or wanton acts of negligence.

1 H. This section shall apply to all civil actions, including
2 civil actions against veterinarians, registered veterinary
3 technicians, or Veterinary Reserve Corps filed on or after November
4 1, ~~2004~~ 2007.

5 SECTION 51. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 33 of Title 76, unless there is
7 created a duplication in numbering, reads as follows:

8 Sections 51 through 54 of this act shall be known and may be
9 cited as the "Common Sense Consumption Act".

10 SECTION 52. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 34 of Title 76, unless there is
12 created a duplication in numbering, reads as follows:

13 The intent of the Common Sense Consumption Act is to prevent
14 frivolous lawsuits against manufacturers, packers, distributors,
15 carriers, holders, sellers, marketers or advertisers of food
16 products that comply with applicable statutory and regulatory
17 requirements.

18 SECTION 53. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 35 of Title 76, unless there is
20 created a duplication in numbering, reads as follows:

21 As used in the Common Sense Consumption Act:

22 1. "Claim" means any claim by or on behalf of a natural person,
23 as well as any derivative or other claim arising therefrom asserted
24 by or on behalf of any other individual, corporation, company,

1 association, firm, partnership, society, joint-stock company, or any
2 other entity, including any governmental entity or governmental
3 officer, or private attorney;

4 2. "Generally known condition allegedly caused by or allegedly
5 likely to result from long-term consumption" means a condition
6 generally known to result or to likely result from the cumulative
7 effect of consumption, and not from a single instance of
8 consumption; and

9 3. "Knowing and willful" violation means that:

10 a. the conduct constituting the violation was committed
11 with the intent to deceive or injure consumers or with
12 actual knowledge that such conduct was injurious to
13 consumers, and

14 b. the conduct constituting the violation was not
15 required by regulations, orders, rules or other
16 pronouncement of, or any statute administered by, a
17 federal, state, or local government agency.

18 SECTION 54. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 36 of Title 76, unless there is
20 created a duplication in numbering, reads as follows:

21 A. Except as provided in subsection B of this section, a
22 manufacturer, packer, distributor, carrier, holder, seller, marketer
23 or advertiser of a food, as defined in Section 201(f) of the federal
24 Food, Drug and Cosmetic Act (21 U.S.C., Section 321(f)), or an

1 association of one or more such entities, shall not be subject to
2 civil liability arising under any law of this state, including all
3 statutes, regulations, rules, common law, public policies, court or
4 administrative decisions or decrees, or other state action having
5 the effect of law, for any claim arising out of weight gain,
6 obesity, a health condition associated with weight gain or obesity,
7 or other generally known condition allegedly caused by or allegedly
8 likely to result from long-term consumption of food.

9 B. Subsection A of this section shall not preclude civil
10 liability if the claim of weight gain, obesity, health condition
11 associated with weight gain or obesity, or other generally known
12 condition allegedly caused by or allegedly likely to result from
13 long-term consumption of food is based on:

14 1. A material violation of an adulteration or misbranding
15 requirement prescribed by statute or regulation of this state or the
16 United States of America and the claimed injury was proximately
17 caused by such violation; or

18 2. Any other material violation of federal or state law
19 applicable to the manufacturing, marketing, distribution,
20 advertising, labeling, or sale of food; provided, that such
21 violation is knowing and willful, and the claimed injury was
22 proximately caused by such violation.

23 C. In any action exempted under paragraph 1 of subsection B of
24 this section, the complaint initiating such action shall state with

1 particularity the following: the statute, regulation or other law
2 of this state or of the United States that was allegedly violated;
3 the facts that are alleged to constitute a material violation of
4 such statute or regulation; and the facts alleged to demonstrate
5 that such violation proximately caused actual injury to the
6 plaintiff. In any action exempted under paragraph 2 of subsection B
7 of this section, in addition to the foregoing pleading requirements,
8 the complaint initiating such action shall state with particularity
9 facts sufficient to support a reasonable inference that the
10 violation was with intent to deceive or injure consumers or with the
11 actual knowledge that such violation was injurious to consumers.
12 For purposes of applying the Common Sense Consumption Act, the
13 foregoing pleading requirements are hereby deemed part of the
14 substantive law of this state and not merely in the nature of
15 procedural provisions.

16 D. In any action exempted under subsection B of this section,
17 all discovery and other proceedings shall be stayed during the
18 pendency of any motion to dismiss unless the court finds upon the
19 motion of any party that particularized discovery is necessary to
20 preserve evidence or to prevent undue prejudice to that party.
21 During the pendency of any stay of discovery pursuant to this
22 subsection, unless otherwise ordered by the court, any party to the
23 action with actual notice of the allegations contained in the
24 complaint shall treat all documents, data compilations, including

1 electronically recorded or stored data, and tangible objects that
2 are in the custody or control of such party and that are relevant to
3 the allegations, as if they were the subject of a continuing request
4 for production of documents from an opposing party under Section
5 3234 of Title 12 of the Oklahoma Statutes.

6 E. The provisions of the Common Sense Consumption Act shall
7 apply to all covered claims pending on November 1, 2007, and all
8 claims filed thereafter, regardless of when the claim arose.

9 SECTION 55. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 101 of Title 76, unless there is
11 created a duplication in numbering, reads as follows:

12 Sections 55 through 64 of this act shall be known and may be
13 cited as the "Product Liability Act".

14 SECTION 56. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 102 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 In the Product Liability Act:

18 1. "Claimant" means a party seeking relief, including a
19 plaintiff, counterclaimant, or cross-claimant;

20 2. "Product liability action" means any action against a
21 manufacturer or seller for recovery of damages arising out of
22 personal injury, death, or property damage allegedly caused by a
23 defective product whether the action is based in strict tort
24 liability, strict products liability, negligence, misrepresentation,

1 breach of express or implied warranty, or any other theory or
2 combination of theories;

3 3. "Seller" means a person who is engaged in the business of
4 distributing or otherwise placing, for any commercial purpose, in
5 the stream of commerce for use or consumption a product or any
6 component part thereof; and

7 4. "Manufacturer" means a person who is a designer, formulator,
8 constructor, rebuilder, fabricator, producer, compounder, processor,
9 or assembler of any product or any component part thereof and who
10 places the product or any component part thereof in the stream of
11 commerce.

12 SECTION 57. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 103 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

15 A. In a product liability action, a manufacturer or seller
16 shall not be liable if:

17 1. The product is inherently unsafe and the product is known to
18 be unsafe by the ordinary consumer who consumes the product with the
19 ordinary knowledge common to the community; and

20 2. The product is a common consumer product intended for
21 personal consumption.

22 B. For purposes of this section, the term "product liability
23 action" does not include an action based on manufacturing defect or
24 breach of an express warranty.

1 SECTION 58. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 104 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 A. In a product liability action in which a claimant alleges a
5 design defect, the burden is on the claimant to prove by a
6 preponderance of the evidence that:

- 7 1. There was a safer alternative design; and
- 8 2. The defect was a producing cause of the personal injury,
9 property damage, or death for which the claimant seeks recovery.

10 B. In this section, "safer alternative design" means a product
11 design other than the one actually used that in reasonable
12 probability:

- 13 1. Would have prevented or significantly reduced the risk of
14 the claimant's personal injury, property damage, or death without
15 substantially impairing the product's utility; and
- 16 2. Was economically and technologically feasible at the time
17 the product left the control of the manufacturer or seller by the
18 application of existing or reasonably achievable scientific
19 knowledge.

20 C. This section does not supersede or modify any statute,
21 regulation, or other law of this state or of the United States that
22 relates to liability for, or to relief in the form of, abatement of
23 nuisance, civil penalties, cleanup costs, cost recovery, an
24

1 injunction, or restitution that arises from contamination or
2 pollution of the environment.

3 D. This section does not apply to:

- 4 1. A cause of action based on a toxic or environmental tort; or
- 5 2. A drug or device, as those terms are defined in the federal
6 Food, Drug, and Cosmetic Act (21 U.S.C., Section 321).

7 E. This section is not declarative, by implication or
8 otherwise, of the common law with respect to any product and shall
9 not be construed to restrict the courts of this state in developing
10 the common law with respect to any product which is not subject to
11 this section.

12 SECTION 59. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 105 of Title 76, unless there is
14 created a duplication in numbering, reads as follows:

15 A. In a product liability action brought against a manufacturer
16 or seller of a firearm or ammunition that alleges a design defect in
17 the firearm or ammunition, the burden is on the claimant to prove,
18 in addition to any other elements that the claimant must prove,
19 that:

- 20 1. The actual design of the firearm or ammunition was
21 defective, causing the firearm or ammunition not to function in a
22 manner reasonably expected by an ordinary consumer of firearms or
23 ammunition; and

24

1 2. The defective design was a proximate cause of the personal
2 injury, property damage, or death.

3 B. The claimant may not prove the existence of the defective
4 design by a comparison or weighing of the benefits of the firearm or
5 ammunition against the risk of personal injury, property damage, or
6 death posed by its potential to cause such injury, damage, or death
7 when discharged.

8 SECTION 60. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 106 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

11 A seller that did not manufacture a product is not liable for
12 harm caused to the claimant by that product unless the claimant
13 proves:

14 1. That the seller participated in the design of the product;

15 2. That the seller altered or modified the product and the
16 claimant's harm resulted from that alteration or modification;

17 3. That the seller installed the product, or had the product
18 installed, on another product and the claimant's harm resulted from
19 the product's installation onto the assembled product;

20 4. That:

21 a. the seller exercised substantial control over the
22 content of a warning or instruction that accompanied
23 the product,

24 b. the warning or instruction was inadequate, and

1 c. the claimant's harm resulted from the inadequacy of
2 the warning or instruction;

3 5. That:

4 a. the seller made an express factual representation
5 about an aspect of the product,

6 b. the representation was incorrect,

7 c. the claimant relied on the representation in obtaining
8 or using the product, and

9 d. if the aspect of the product had been as represented,
10 the claimant would not have been harmed by the product
11 or would not have suffered the same degree of harm;

12 6. That:

13 a. the seller actually knew of a defect to the product at
14 the time the seller supplied the product, and

15 b. the claimant's harm resulted from the defect; or

16 7. That the manufacturer of the product is:

17 a. insolvent, or

18 b. not subject to the jurisdiction of the court.

19 SECTION 61. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 107 of Title 76, unless there is
21 created a duplication in numbering, reads as follows:

22 A. In a product liability action alleging that an injury was
23 caused by a failure to provide adequate warnings or information with
24 regard to a pharmaceutical product, there is a rebuttable

1 presumption that the defendant or defendants, including a health
2 care provider, manufacturer, distributor, and prescriber, are not
3 liable with respect to the allegations involving failure to provide
4 adequate warnings or information if:

5 1. The warnings or information that accompanied the product in
6 its distribution were those approved by the United States Food and
7 Drug Administration for a product approved under the federal Food,
8 Drug, and Cosmetic Act (21 U.S.C., Section 301 et seq.), as amended,
9 or Section 351, Public Health Service Act (43 U.S.C., Section 262),
10 as amended; or

11 2. The warnings provided were those stated in monographs
12 developed by the United States Food and Drug Administration for
13 pharmaceutical products that may be distributed without an approved
14 new drug application.

15 B. The claimant may only rebut the presumption provided for in
16 subsection A of this section as to each defendant by establishing
17 that:

18 1. The defendant, before or after premarket approval or
19 licensing of the product, withheld from or misrepresented to the
20 United States Food and Drug Administration required information that
21 was material and relevant to the performance of the product and was
22 causally related to the claimant's injury;

23 2. The pharmaceutical product as sold or prescribed in the
24 United States by the defendant after the effective date of an order

1 of the United States Food and Drug Administration to remove the
2 product from the market or to withdraw its approval of the product;

- 3 3. a. The defendant recommended, promoted, or advertised the
4 pharmaceutical product for an indication not approved
5 by the United States Food and Drug Administration,
6 b. The product was used as recommended, promoted, or
7 advertised, and
8 c. The claimant's injury was causally related to the
9 recommended, promoted, or advertised use of the
10 product;

- 11 4. a. The defendant prescribed the pharmaceutical product
12 for an indication not approved by the United States
13 Food and Drug Administration, and
14 b. The product was used as prescribed, and
15 c. The claimant's injury was causally related to the
16 prescribed use of the product; or

17 5. The defendant, before or after premarket approval or
18 licensing of the product, engaged in conduct that would constitute a
19 violation of 18 U.S.C., Section 201 and that conduct caused the
20 warnings or instructions approved for the product by the United
21 States Food and Drug Administration to be inadequate.

22 SECTION 62. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 108 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 A. In a product liability action brought against a product
2 manufacturer or seller, there is a rebuttable presumption that the
3 product manufacturer or seller is not liable for any injury to a
4 claimant caused by some aspect of the formulation, labeling, or
5 design of a product if the product manufacturer or seller
6 establishes that the formula, labeling, or design for the product
7 complied with mandatory safety standards or regulations adopted and
8 promulgated by the federal government, or an agency of the federal
9 government, that were applicable to the product at the time of
10 manufacture and that governed the product risk that allegedly caused
11 harm.

12 B. The claimant may rebut the presumption in subsection A of
13 this section by establishing that:

14 1. The mandatory federal safety standards or regulations
15 applicable to the product were inadequate to protect the public from
16 unreasonable risks of injury or damage; or

17 2. The manufacturer, before or after marketing the product,
18 withheld or misrepresented information or material relevant to the
19 federal government's or agency's determination of adequacy of the
20 safety standards or regulations at issue in the action.

21 C. In a product liability action brought against a product
22 manufacturer or seller, there is a rebuttable presumption that the
23 product manufacturer or seller is not liable for any injury to a
24 claimant allegedly caused by some aspect of the formulation,

1 labeling, or design of a product if the product manufacturer or
2 seller establishes that the product was subject to premarket
3 licensing or approval by the federal government, or an agency of the
4 federal government, that the manufacturer complied with all of the
5 government's or agency's procedures and requirements with respect to
6 premarket licensing or approval, and that after full consideration
7 of the product's risks and benefits the product was approved or
8 licensed for sale by the government or agency. The claimant may
9 rebut this presumption by establishing that:

10 1. The standards or procedures used in the particular premarket
11 approval or licensing process were inadequate to protect the public
12 from unreasonable risks of injury or damage; or

13 2. The manufacturer, before or after premarket approval or
14 licensing of the product, withheld from or misrepresented to the
15 government or agency information that was material and relevant to
16 the performance of the product and was causally related to the
17 claimant's injury.

18 D. This section does not extend to manufacturing flaws or
19 defects even though the product manufacturer has complied with all
20 quality control and manufacturing practices mandated by the federal
21 government or an agency of the federal government.

22 E. This section does not extend to products covered by Section
23 54 of this act.

24

1 SECTION 63. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 109 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 In a product liability action, if measures are taken which, if
5 taken previously, would have made an event less likely to occur,
6 evidence of the subsequent measures is not admissible to prove a
7 defect in a product, negligence, or culpable conduct in connection
8 with the event. In a product liability action brought under any
9 theory or doctrine, if the feasibility of a design or change in
10 warnings is not controverted, then a subsequent design change or
11 change in warnings shall not be admissible into evidence. This
12 section shall not require the exclusion of evidence of subsequent
13 measures when offered for another purpose such as proving ownership,
14 control, or impeachment.

15 SECTION 64. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 110 of Title 76, unless there is
17 created a duplication in numbering, reads as follows:

18 A. In any product liability action in which the plaintiff seeks
19 damages for bodily injuries or death, the attorney for the plaintiff
20 or the plaintiff, if the plaintiff is proceeding pro se, shall file
21 an affidavit, attached to the original and all copies of the
22 complaint, declaring one of the following:

23 1. That the plaintiff or attorney has consulted and reviewed
24 the facts of the case with a qualified expert, as defined in

1 subsection C of this section, who has determined in a written
2 report, after examination of the product or a review of literature
3 pertaining to the product, that:

4 a. in any action based on strict tort liability, the
5 product contained specific identifiable defects having
6 a potential for injury beyond that which would be
7 contemplated by the ordinary user of the product and
8 was unreasonably dangerous and in a defective
9 condition when it left the control of the
10 manufacturer, or

11 b. in any other action, those acts or omissions would
12 give rise to fault, and

13 c. in any action based on any theory or doctrine, the
14 defective condition of the product or other fault was
15 a proximate cause of the plaintiff's injury; or

16 2. That the plaintiff or attorney was unable to obtain a
17 consultation required by paragraph 1 of this subsection because a
18 statute of limitations would impair the action and the consultation
19 required could not be obtained before the expiration of the statute
20 of limitations. If an affidavit is executed pursuant to this
21 paragraph, the affidavit required by this subsection shall be filed
22 within ninety (90) days after the filing of the complaint. The
23 defendant shall be excused from answering or otherwise pleading
24 until thirty (30) days after being served with an affidavit required

1 by this subsection. No plaintiff shall be afforded the ninety-day
2 extension of time provided by this paragraph if the plaintiff has
3 voluntarily dismissed an action and has subsequently commenced a new
4 action.

5 B. If the defective condition referred to in the written report
6 required by paragraph 1 of subsection A of this section is based on
7 a design defect, the plaintiff or attorney shall further state that
8 the qualified expert has identified in the written report either:

9 1. A feasible alternative design that existed at the time the
10 product left the control of the manufacturer; or

11 2. An applicable government or industry standard to which the
12 product did not conform.

13 C. A "qualified expert", for the purposes of this section,
14 means someone who possesses scientific, technical, or other
15 specialized knowledge regarding the product at issue or similar
16 products and who is qualified to prepare the report required by this
17 section.

18 D. A copy of the written report required by this section shall
19 be attached to the original and all copies of the complaint.

20 E. The failure to file an affidavit required by this section
21 shall be grounds for dismissal.

22 F. This section shall apply to any cause of action filed on or
23 after November 1, 2007.

24

1 SECTION 65. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 71 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 Sections 65 through 71 of this act shall be known and may be
5 cited as the "Asbestos and Silica Claims Priorities Act."

6 SECTION 66. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 72 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

9 A. FINDINGS. The Legislature finds that:

10 1. Asbestos is a mineral that was widely used prior to the mid-
11 1970s for insulation, fireproofing, and other purposes;

12 2. Many American workers were exposed to asbestos, especially
13 during World War II;

14 3. Long-term exposure to asbestos has been associated with
15 mesothelioma and lung cancer, as well as nonmalignant conditions,
16 such as asbestosis, pleural plaques, and diffuse bilateral pleural
17 thickening;

18 4. The United States Supreme Court has said that this country
19 is experiencing an "asbestos-litigation crisis";

20 5. Reports indicate that up to ninety percent (90%) of asbestos
21 claims are filed by individuals who allege that they have been
22 exposed to asbestos, but who suffer no demonstrable asbestos-related
23 impairment. Lawyer-sponsored x-ray screenings of workers at
24

1 occupational locations are used to amass large numbers of claimants,
2 the vast majority of whom are unimpaired;

3 6. The costs of compensating unimpaired claimants and
4 litigating their claims jeopardizes the ability of defendants to
5 compensate people with cancer and other serious diseases; threatens
6 the savings, retirement benefits, and jobs of current and retired
7 employees; and adversely affects the communities in which the
8 defendants operate;

9 7. At least seventy-eight companies have declared bankruptcy
10 due to the burden of asbestos litigation. The rate of asbestos-
11 driven bankruptcies has accelerated. Between 2000 and 2004, there
12 were more asbestos-related bankruptcy filings than in either of the
13 prior two decades;

14 8. Bankruptcies have led plaintiffs and their lawyers to expand
15 their search for solvent peripheral defendants. The number of
16 asbestos defendants now includes over eight thousand five hundred
17 companies, affecting many small- and medium-size companies in
18 industries that cover eighty-five percent (85%) of the United States
19 economy;

20 9. Efforts to address asbestos litigation may increase the
21 number of silica-related filings;

22 10. Silica is a naturally occurring mineral and is the second
23 most common constituent of the earth's crust. Crystalline silica in
24 the form of quartz is present in sand, gravel, soil, and rocks;

1 11. Silica-related illnesses, including silicosis, can develop
2 from the prolonged inhalation of respirable silica dust. Silicosis
3 was widely recognized as an occupational disease many years ago;

4 12. Silica claims, like asbestos claims, often involve
5 individuals with no demonstrable impairment. Claimants frequently
6 are identified through the use of interstate, for-profit, screening
7 companies;

8 13. Silica screening processes have been found subject to
9 substantial abuse and potential fraud in federal silica litigation
10 (In re Silica Prods. Liab. Litig. (MDL No. 1553), 398 F. Supp. 2d
11 563 (S.D. Tex. 2005));

12 14. Concerns about statutes of limitations may prompt
13 unimpaired asbestos and silica claimants to bring lawsuits
14 prematurely to protect against losing their ability to assert a
15 claim in the future should they develop an impairing condition;

16 15. Sound public policy requires that the claims of persons
17 with no present physical impairment from asbestos or silica exposure
18 be deferred to give priority to physically impaired claimants, and
19 to safeguard the jobs, benefits, and savings of workers in affected
20 companies; and

21 16. Claimant consolidations, joinders, and similar procedures
22 used by some courts to deal with the mass of asbestos and silica
23 cases can undermine the appropriate functioning of the court system,
24 deny due process to plaintiffs and defendants, and further encourage

1 the filing of thousands of cases by persons who are not sick and
2 likely will never develop an impairing condition caused by exposure
3 to asbestos or silica.

4 B. PURPOSES. The purposes of the Asbestos and Silica Claims
5 Priorities Act are to:

6 1. Give priority to current claimants who can demonstrate an
7 asbestos-related or silica-related impairment based on reasonable,
8 objective medical criteria;

9 2. Toll the running of statutes of limitations for persons who
10 have been exposed to asbestos or to silica, but who have no present
11 asbestos-related or silica-related impairment; and

12 3. Enhance the ability of the courts to supervise and control
13 asbestos and silica litigation.

14 SECTION 67. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 72 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 As used in the Asbestos and Silica Claims Priorities Act, the
18 term:

19 1. "AMA Guides to the Evaluation of Permanent Impairment" means
20 the American Medical Association's "Guides to the Evaluation of
21 Permanent Impairment" in effect at the time of the performance of
22 any examination or test on the exposed person required under the
23 Asbestos and Silica Claims Priorities Act;

24

1 2. "Asbestos" means chrysotile, amosite, crocidolite, tremolite
2 asbestos, anthophyllite asbestos, actinolite asbestos, winchite,
3 richterite, asbestiform amphibole minerals, and any of these
4 minerals that have been chemically treated or altered, including all
5 minerals defined as asbestos in 29 C.F.R. 1910 at the time an
6 asbestos claim is made;

7 3. "Asbestos claim" means any claim for damages, losses,
8 indemnification, contribution, or other relief of whatever nature
9 arising out of, based on, or in any way related to the alleged
10 health effects associated with the inhalation or ingestion of
11 asbestos, including:

- 12 a. loss of consortium,
- 13 b. personal injury or death,
- 14 c. mental or emotional injury,
- 15 d. risk or fear of disease or other injury,
- 16 e. the costs of medical monitoring or surveillance, to
17 the extent such claims are recognized under state law,
18 or
- 19 f. any claim made by or on behalf of any person exposed
20 to asbestos, or a representative, spouse, parent,
21 child, or other relative of the exposed person.

22 The term "asbestos claim" does not include a claim for compensatory
23 benefits pursuant to a workers' compensation law or a veterans'
24 benefits program;

1 4. "Asbestosis" means bilateral diffuse interstitial fibrosis
2 of the lungs caused by inhalation of asbestos;

3 5. "Board-certified internist" means a qualified physician:

4 a. who is certified by the American Board of Internal
5 Medicine, and

6 b. whose certification was current at the time of:

7 (1) the performance of any examination, and

8 (2) rendition of any report required under the
9 Asbestos and Silica Claims Priorities Act;

10 6. "Board-certified occupational medicine specialist" means a
11 qualified physician:

12 a. who is certified in the subspecialty of occupational
13 medicine by the American Board of Preventive Medicine,
14 and

15 b. whose certification was current at the time of:

16 (1) the performance of any examination, and

17 (2) rendition of any report required under the
18 Asbestos and Silica Claims Priorities Act;

19 7. "Board-certified pathologist" means a qualified physician:

20 a. who holds primary certification in anatomic pathology
21 or combined anatomic or clinical pathology from the
22 American Board of Pathology,

23 b. whose professional practice is principally in the
24 field of pathology and involves regular evaluation of

1 pathology materials obtained from surgical or
2 postmortem specimens, and

3 c. whose certification was current at the time of:

4 (1) any slide or tissue examination, and

5 (2) rendition of any report required under the
6 Asbestos and Silica Claims Priorities Act;

7 8. "Board-certified pulmonologist" means a qualified physician:

8 a. who is certified in the subspecialty of pulmonary
9 medicine by the American Board of Internal Medicine,
10 and

11 b. whose certification was current at the time of:

12 (1) the performance of any examination, and

13 (2) rendition of any report required under the
14 Asbestos and Silica Claims Priorities Act;

15 9. "Certified B-reader" means a person who has successfully
16 passed the B-reader certification examination for x-ray
17 interpretation sponsored by the National Institute for Occupational
18 Safety and Health, and whose certification was current at the time
19 of any readings required under the Asbestos and Silica Claims
20 Priorities Act;

21 10. "Chest x-rays" means radiographic films taken in accordance
22 with all applicable state and federal standards and in the
23 posterior-anterior view;

24

1 11. "Claimant" means any party asserting an asbestos or silica
2 claim, including a plaintiff, counterclaimant, cross-claimant, or
3 third-party plaintiff; if a claim is brought through or on behalf of
4 an estate, the term includes the claimant's decedent; if a claim is
5 brought through or on behalf of a minor or incompetent, the term
6 includes the claimant's parent or guardian;

7 12. "DLCO" means diffusing capacity of the lung for carbon
8 monoxide, which is the measurement of carbon monoxide transfer from
9 inspired gas to pulmonary capillary blood;

10 13. "Exposed person" means a person whose claimed exposure to
11 respirable asbestos or respirable silica is the basis for an
12 asbestos or silica claim;

13 14. "FEV-1" means forced expiratory volume in the first second,
14 which is the maximal volume of air expelled in one (1) second during
15 performance of simple spirometric tests;

16 15. "FVC" means forced vital capacity, which is the maximal
17 volume of air expired with maximum effort from a position of full
18 inspiration;

19 16. "ILO scale" means the system for the classification of
20 chest x-rays set forth in the International Labor Office's
21 "Guidelines for the Use of ILO International Classification of
22 Radiographs of Pneumoconioses" in effect at the time of the
23 performance of any examination or test on the exposed person
24 required under the Asbestos and Silica Claims Priorities Act;

1 17. "Pathological evidence of asbestosis" means pathological
2 asbestosis graded 1(B) or higher under the criteria published in the
3 "Asbestos-Associated Diseases", Special Issue of the Archives of
4 Pathological and Laboratory Medicine, Vol. 106, No. 11, Appendix 3
5 (Oct. 8, 1982);

6 18. "Pathological evidence of silicosis" mean demonstration of
7 classic silicotic nodules exceeding one (1) centimeter in diameter
8 as set forth in 112 "Archives of Pathology & Laboratory Medicine"
9 673-720 (1988);

10 19. "Predicted lower limit of normal" means the calculated
11 standard convention lying at the fifth percentile, below the upper
12 ninety-five percent (95%) of the reference population, based on age,
13 height, and gender, according to the recommendations of the American
14 Thoracic Society as referenced in the AMA's "Guides to the
15 Evaluation of Permanent Impairment";

16 20. "Qualified physician" means a licensed, Board-certified
17 internist, occupational medicine specialist, pathologist or
18 pulmonologist:

- 19 a. who has personally conducted a physical examination of
20 the exposed person, or in the case of a Board-
21 certified pathologist, has examined tissue samples or
22 pathological slides of the exposed person, or if the
23 exposed person is deceased, based upon a detailed
24 review of the medical records and existing tissue

1 samples and pathological slides of the deceased
2 person,

3 b. who is treating or treated the exposed person and has
4 or had a doctor-patient relationship with the exposed
5 person at the time of the physical examination, or in
6 the case of a Board-certified pathologist, has
7 examined tissue samples or pathological slides of the
8 exposed person at the request of such treating
9 physician,

10 c. who receives or received payment for the exposed
11 person's diagnosis, examination, and treatment from
12 the exposed person or claimant or from the exposed
13 person's health maintenance organization or other
14 medical provider, and such payment is not subject to
15 reimbursement by or on behalf of anyone providing
16 legal services to the claimant, and

17 d. whose diagnosing, examining, testing, screening or
18 treating of the exposed person was not, directly or
19 indirectly, premised upon and did not require the
20 exposed person or claimant to retain the legal
21 services of an attorney or law firm;

22 21. "Radiological evidence of asbestosis" means an ILO quality
23 1 or 2 chest x-ray read by a certified B-reader as showing,
24

1 according to the ILO scale, bilateral small irregular opacities (s,
2 t, or u) graded 1/1 or higher;

3 22. "Radiological evidence of diffuse bilateral pleural
4 thickening" means an ILO quality 1 or 2 chest x-ray read by a
5 certified B-reader as showing, according to the ILO scale, diffuse
6 bilateral pleural thickening graded b2 or higher including blunting
7 of the costophrenic angle;

8 23. "Radiological evidence of silicosis" means an ILO quality 1
9 or 2 chest x-ray read by a certified B-reader as showing, according
10 to the ILO scale, either:

- 11 a. bilateral predominantly nodular opacities (p, q, or r)
12 occurring primarily in the upper lung fields, graded
13 1/1 or higher, or
- 14 b. A-, B-, or C-sized opacities representing complicated
15 silicosis (also known as progressive massive
16 fibrosis);

17 24. "Silica" means a respirable crystalline form of the
18 naturally occurring mineral form of silicon dioxide, including
19 quartz, cristobalite, and tridymite;

20 25. "Silica claim" means any claim for damages, losses,
21 indemnification, contribution, or other relief of whatever nature
22 arising out of, based on, or in any way related to the alleged
23 health effects associated with the inhalation of silica, including:

- 24 a. loss of consortium,

- 1 b. personal injury or death,
- 2 c. mental or emotional injury,
- 3 d. risk or fear of disease or other injury,
- 4 e. the costs of medical monitoring or surveillance, to
- 5 the extent such claims are recognized under state law,
- 6 or
- 7 f. any claim made by or on behalf of any person exposed
- 8 to silica, or a representative, spouse, parent, child,
- 9 or other relative of the exposed person.

10 The term "silica claim" does not include a claim for compensatory
11 benefits pursuant to a workers' compensation law or a veterans'
12 benefits program;

13 26. "Silicosis" means fibrosis of the lung produced by
14 inhalation of silica, including acute silicosis, accelerated
15 silicosis, and chronic silicosis;

16 27. "Substantial contributing factor":

17 a. in the context of an asbestos claim, means that:

18 (1) the claimant must identify:

19 (a) the specific asbestos product to which the
20 exposed person was exposed or the specific
21 premises at which the exposed person was
22 exposed,

23 (b) the location and duration of such exposure,
24 and

- 1 (c) the specific circumstances of such exposure,
2 (2) such exposure:
3 (a) was more than incidental contact with the
4 product and location, and
5 (b) took place on a regular basis over an
6 extended period of time in physical
7 proximity to the exposed person,
8 (3) the exposed person inhaled respirable asbestos
9 fibers in sufficient quantities to be capable of
10 causing harm, and
11 (4) a qualified physician has determined with a
12 reasonable degree of medical certainty that the
13 exposed person's impairment would not have
14 occurred but for the specific asbestos exposure,
15 and

16 b. in the context of a silica claim, means that:

- 17 (1) the claimant must identify:
18 (a) the specific silica product to which the
19 exposed person was exposed,
20 (b) the location and duration of such exposure,
21 and
22 (c) the specific circumstances of such exposure,
23 (2) such exposure:
24

1 (a) was more than incidental contact with the
2 product and location, and

3 (b) took place on a regular basis over an
4 extended period of time in physical
5 proximity to the exposed person,

6 (3) the exposed person inhaled respirable silica
7 particles in sufficient quantities to be capable
8 of causing harm, and

9 (4) a qualified physician has determined with a
10 reasonable degree of medical certainty that the
11 exposed person's impairment would not have
12 occurred but for the specific silica exposure;

13 28. "Supporting test results" means copies of the B-reading,
14 pulmonary function tests (including printouts of the flow volume
15 loops, volume time curves, DLCO graphs, and data for all trials and
16 all other elements required to demonstrate compliance with the
17 equipment, quality, interpretation and reporting standards set forth
18 herein) lung volume tests, reports of x-ray examinations, diagnostic
19 imaging of the chest, pathology reports, and all other tests
20 reviewed by the diagnosing, qualified physician in reaching the
21 physician's conclusions;

22 29. "Total lung capacity" means the volume of gas contained in
23 the lungs at the end of a maximal inspiration;

1 30. "Veterans' benefits program" means a program for benefits
2 in connection with military service administered by the Veterans'
3 Administration under Title 38, U.S.C.; and

4 31. "Workers' compensation law":

5 a. means a law respecting a program administered by a
6 state or the United States to provide compensatory
7 benefits, funded by a responsible employer or its
8 insurance carrier, for occupational diseases or
9 injuries or for disability or death caused by
10 occupational diseases or injuries,

11 b. includes the Longshore and Harbor Workers'
12 Compensation Act (33 U.S.C., Section 901 et seq.) and
13 the Federal Employees' Compensation Act (Chap. 81 of
14 Title 5, U.S.C.), and

15 c. does not include:

16 (1) the Act of April 22, 1908, commonly known as the
17 Federal Employers' Liability Act (45 U.S.C.,
18 Section 51 et seq.), or

19 (2) any claim for exemplary or punitive damages by an
20 employee, estate, heir, representative or any
21 other person or entity against the employer of an
22 exposed person arising out of or related to
23 asbestos-related injury or silica-related injury.
24

1 SECTION 68. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 73 of Title 76, unless there is
3 created a duplication in numbering, reads as follows:

4 A. IMPAIRMENT ESSENTIAL ELEMENT OF CLAIM. To bring or maintain
5 an asbestos or silica claim, an exposed person must have a physical
6 impairment and present prima facie evidence that exposure to
7 asbestos or silica was a substantial contributing factor to that
8 impairment. The prima facie showing shall be made as to each
9 defendant against whom a claimant alleges an asbestos or silica
10 claim.

11 B. PRELIMINARY PROCEEDINGS.

12 1. FILING OF REPORT. The plaintiff in any civil action
13 alleging an asbestos or silica claim shall file together with the
14 complaint or other initial pleading a written report and supporting
15 test results constituting prima facie evidence of the claimant's
16 asbestos-related or silica-related impairment meeting the
17 requirements of this section. The written report shall be prepared
18 by the diagnosing, qualified physician and shall not be prepared by
19 a lawyer or person working for or on behalf of any lawyer or law
20 firm.

21 2. TIMING. For any asbestos or silica claim pending on the
22 effective date of the Asbestos and Silica Claims Priorities Act, the
23 claimant shall file the written report and supporting test results
24 described in paragraph 1 of this subsection not later than one

1 hundred eighty (180) days after the effective date of the Asbestos
2 and Silica Claims Priorities Act or not later than sixty (60) days
3 prior to the commencement of trial, whichever occurs first.

4 3. DEFENDANT'S RIGHT TO CHALLENGE. The defendant shall be
5 afforded a reasonable opportunity to challenge the adequacy of the
6 proffered prima facie evidence of impairment.

7 4. DISMISSAL. The claim shall be dismissed without prejudice
8 upon a finding of failure to make the required prima facie showing.

9 C. NEW CLAIM REQUIRED INFORMATION.

10 1. IN GENERAL. All asbestos claims and silica claims filed in
11 this state on or after the effective date of the Asbestos and Silica
12 Claims Priorities Act shall include a sworn information form
13 containing all of the following:

- 14 a. the claimant's name, address, date of birth, social
15 security number, and marital status,
- 16 b. the exposed person's name, last-known address, date of
17 birth, social security number, and marital status,
- 18 c. if the claimant alleges exposure to asbestos or silica
19 through another person, the name, address, date of
20 birth, social security number, marital status, for
21 each person by which claimant alleges exposure
22 (hereafter the "index person") and the claimant's
23 relationship to each such person,

1 d. for each alleged exposure of the exposed person and
2 for each index person:

3 (1) the specific location and manner of each such
4 exposure,

5 (2) the beginning and ending dates of each such
6 exposure, and

7 (3) the identity of the manufacturer of the specific
8 asbestos or silica product to which the exposed
9 person or index person was exposed or the
10 specific premises at which the exposed person or
11 index person was exposed,

12 e. the occupation and name of the employer of the exposed
13 person at the time of each alleged exposure,

14 f. the identity of the defendant or defendants against
15 whom the claimant asserts a claim,

16 g. the specific disease related to asbestos or silica
17 claimed to exist, and

18 h. any:

19 (1) supporting documentation of the condition claimed
20 to exist, and

21 (2) documentation to support the claimant or index
22 person's identification of the asbestos or silica
23 product to which such person was exposed or the
24 specific premises at which the person was exposed.

1 2. INDIVIDUAL REQUIREMENTS. All asbestos claims and silica
2 claims along with sworn information forms must be individually
3 filed. No claims on behalf of a group or class of persons shall be
4 permitted.

5 D. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR NONMALIGNANT
6 ASBESTOS CLAIMS.

7 1. IN GENERAL. No person shall bring or maintain an asbestos
8 claim related to an alleged nonmalignant asbestos-related condition
9 in the absence of a prima facie showing of physical impairment of
10 the exposed person for which asbestos exposure is a substantial
11 contributing factor.

12 2. PRIMA FACIE SHOWING. The prima facie showing under
13 paragraph 1 of this subsection shall be made as to each defendant
14 and include a detailed narrative medical report and diagnosis by a
15 qualified physician that includes all of the following:

16 a. evidence verifying that the diagnosing, qualified
17 physician has taken a detailed occupational, exposure,
18 medical, and smoking history from the exposed person
19 or, if that person is deceased, from a person who is
20 knowledgeable regarding such history,

21 b. evidence sufficient to demonstrate that at least
22 fifteen (15) years have elapsed between the exposed
23 person's first exposure to asbestos and the date of
24 diagnosis,

- 1 c. a determination by the diagnosing, qualified
2 physician, on the basis of a personal medical
3 examination and pulmonary function testing of the
4 exposed person (or, if the exposed person is deceased,
5 based upon the person's medical records) that the
6 claimant has (or deceased person had) a permanent
7 respiratory impairment rating of at least Class 2 as
8 defined by and evaluated pursuant to the AMA's "Guides
9 to the Evaluation of Permanent Impairment",
- 10 d. evidence verifying that the exposed person has
11 asbestosis or diffuse bilateral pleural thickening,
12 based at a minimum on radiological or pathological
13 evidence of asbestosis or radiological evidence of
14 diffuse bilateral pleural thickening,
- 15 e. a determination by the diagnosing, qualified physician
16 that asbestosis or diffuse bilateral pleural
17 thickening, rather than chronic obstructive pulmonary
18 disease, is a substantial contributing factor to the
19 exposed person's physical impairment, based at a
20 minimum on a determination that the exposed person
21 has:
- 22 (1) forced vital capacity below the predicted lower
23 limit of normal and FEV1/FVC ratio (using actual
24

1 values) at or above the predicted lower limit of
2 normal, or

3 (2) total lung capacity, by plethysmography or timed
4 gas dilution, below the predicted lower limit of
5 normal, and

6 f. verification that the diagnosing, qualified physician
7 has concluded that the exposed person's impairment was
8 not more probably the result of causes other than
9 asbestos exposure as revealed by the exposed person's
10 occupational, exposure, medical, and smoking history.
11 A conclusion which states that the impairment is
12 consistent or compatible with asbestos exposure or
13 asbestos-related disease does not meet the
14 requirements of this paragraph.

15 E. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED CANCER OTHER THAN
16 MESOTHELIOMA.

17 1. IN GENERAL. No person shall bring or maintain an asbestos
18 claim related to an alleged asbestos-related cancer, other than
19 mesothelioma, in the absence of a prima facie showing of a primary
20 cancer for which exposure to asbestos was a substantial contributing
21 factor.

22 2. PRIMA FACIE SHOWING. The prima facie showing under
23 paragraph 1 of this subsection shall be made as to each defendant
24

1 and include a detailed narrative medical report and diagnosis by a
2 qualified physician that includes all of the following:

- 3 a. evidence verifying that the diagnosing, qualified
4 physician has taken a detailed occupational, exposure,
5 medical, and smoking history from the exposed person
6 or, if that person is deceased, from a person who is
7 knowledgeable regarding such history,
- 8 b. evidence sufficient to demonstrate that at least
9 fifteen (15) years have elapsed between the exposed
10 person's first exposure to asbestos and the date of
11 diagnosis,
- 12 c. evidence verifying that the exposed person has
13 asbestosis, based at a minimum on radiological or
14 pathological evidence of asbestosis, and
- 15 d. the diagnosing, qualified physician has concluded that
16 the claimant's cancer was not more probably the result
17 of causes other than asbestos exposure as revealed by
18 the exposed person's occupational, exposure, medical,
19 and smoking history. A conclusion which states that
20 the cancer is consistent or compatible with asbestos
21 exposure or asbestos-related disease does not meet the
22 requirements of this paragraph.

23 F. PRIMA FACIE EVIDENCE OF ASBESTOS-RELATED MESOTHELIOMA.
24

1 1. IN GENERAL. No person shall bring or maintain an asbestos
2 claim related to alleged mesothelioma in the absence of a prima
3 facie showing of an asbestos-related malignant tumor with a primary
4 site of origin in the pleura, the peritoneum, or pericardium.

5 2. PRIMA FACIE SHOWING. The prima facie showing under
6 paragraph 1 of this subsection shall be made as to each defendant
7 and include a detailed narrative medical report by a qualified
8 Board-certified pathologist certifying the diagnosis of mesothelioma
9 and a report by a qualified physician certifying that:

10 a. exposure to asbestos was a substantial contributing
11 factor to the diagnosed mesothelioma, and

12 b. the mesothelioma was not more probably the result of
13 causes other than asbestos exposure as revealed by the
14 exposed person's occupational, exposure, medical, and
15 smoking history.

16 G. PRIMA FACIE EVIDENCE OF PHYSICAL IMPAIRMENT FOR SILICA
17 CLAIMS.

18 1. IN GENERAL. No person shall bring or maintain a silica
19 claim related to an alleged silica-related condition, other than a
20 silica-related cancer, in the absence of a prima facie showing of
21 physical impairment as a result of a medical condition for which
22 exposure to silica was a substantial contributing factor.

23 2. PRIMA FACIE SHOWING. The prima facie showing under
24 paragraph 1 of this subsection shall be made as to each defendant

1 and include a detailed narrative medical report and diagnosis by a
2 qualified physician that includes all of the following:

- 3 a. evidence verifying that the diagnosing, qualified
4 physician has taken a detailed occupational, exposure,
5 medical, and smoking history from the exposed person
6 or, if that person is deceased, from a person who is
7 knowledgeable regarding such history,
- 8 b. evidence verifying that the exposed person has
9 silicosis, based at a minimum on radiological or
10 pathological evidence of silicosis, or acute
11 silicosis,
- 12 c. evidence verifying there has been a sufficient latency
13 period for the applicable type of silicosis,
- 14 d. a determination by the diagnosing, qualified
15 physician, on the basis of a personal medical
16 examination and pulmonary function testing of the
17 exposed person (or, if the exposed person is deceased,
18 based upon the person's medical records) that the
19 claimant has (or deceased person had) a permanent
20 respiratory impairment rating of at least Class 2 as
21 defined by and evaluated pursuant to the AMA's "Guides
22 to the Evaluation of Permanent Impairment", and
- 23 e. verification that the diagnosing, qualified physician
24 has concluded that the exposed person's impairment was

1 not more probably the result of causes other than
2 silica exposure as revealed by the exposed person's
3 occupational, exposure, medical, and smoking history.
4 A conclusion which states that the impairment is
5 consistent or compatible with silica exposure or
6 silica-related disease does not meet the requirements
7 of this paragraph.

8 H. PRIMA FACIE EVIDENCE OF SILICA-RELATED CANCER.

9 1. IN GENERAL. No person shall bring or maintain a silica
10 claim related to an alleged silica-related cancer in the absence of
11 a prima facie showing of a primary cancer for which exposure to
12 silica was a substantial contributing factor.

13 2. PRIMA FACIE. The prima facie showing Under paragraph 1 of
14 this subsection shall be made as to each defendant and include a
15 detailed narrative medical report and diagnosis by a qualified
16 physician that includes all of the following:

- 17 a. evidence verifying that the diagnosing, qualified
18 physician has taken a detailed occupational, exposure,
19 medical, and smoking history from the exposed person
20 or, if that person is deceased, from a person who is
21 knowledgeable regarding such history,
22 b. evidence verifying that the exposed person has
23 silicosis, based at a minimum on radiological or
24 pathological evidence of silicosis,

1 c. evidence sufficient to demonstrate that at least
2 fifteen (15) years have elapsed between the exposed
3 person's first exposure to silica and the date of
4 diagnosis, and

5 d. verification that the diagnosing, qualified physician
6 has concluded that the claimant's cancer was not more
7 probably the result of causes other than silica
8 exposure as revealed by the exposed person's
9 occupational, exposure, medical, and smoking history.
10 A conclusion which states that the cancer is
11 consistent or compatible with silica exposure or
12 silica-related disease does not meet the requirements
13 of this paragraph.

14 I. COMPLIANCE WITH TECHNICAL STANDARDS. Evidence relating to
15 physical impairment under this section, including pulmonary function
16 testing and diffusing studies, shall:

17 1. Comply with the quality controls, equipment requirements,
18 methods of calibration and techniques set forth in the AMA's "Guides
19 to the Evaluation of Permanent Impairment" and all standards set
20 forth in the "Official Statements of the American Thoracic Society"
21 which are in effect on the date of any examination or pulmonary
22 function testing of the exposed person required by the Asbestos and
23 Silica Claims Priorities Act;

1 2. Not be obtained and may not be based on testing or
2 examinations that violate any law, regulation, licensing
3 requirement, or medical code of practice of the state in which the
4 examination, test, or screening was conducted, or of this state; and

5 3. Not be obtained under the condition that the claimant
6 retains the legal services of the attorney or law firm sponsoring
7 the examination, test, or screening.

8 SECTION 69. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 74 of Title 76, unless there is
10 created a duplication in numbering, reads as follows:

11 A. NO PRESUMPTION AT TRIAL. Evidence relating to the prima
12 facie showings required under the Asbestos and Silica Claims
13 Priorities Act shall not create any presumption that the claimant
14 has an asbestos- or silica-related injury or impairment, and shall
15 not be conclusive as to the liability of any defendant.

16 B. ADMISSIBILITY OF EVIDENCE. No evidence shall be offered at
17 trial, and the jury shall not be informed of:

18 1. The grant or denial of a motion to dismiss an asbestos or
19 silica claim under the provisions of the Asbestos and Silica Claims
20 Priorities Act; or

21 2. The provisions of the Asbestos and Silica Claims Priorities
22 Act with respect to what constitutes a prima facie showing of
23 asbestos- or silica-related impairment.

24

1 C. DISCOVERY. Until such time as the trial court enters an
2 order determining that the claimant has established prima facie
3 evidence of impairment, no asbestos or silica claim shall be subject
4 to discovery, except discovery related to establishing or
5 challenging the prima facie evidence or by order of the trial court
6 upon motion of one of the parties and for good cause shown.

7 D. CONSOLIDATION.

8 1. A court may consolidate for trial any number and type of
9 asbestos or silica claims with the consent of all the parties. In
10 the absence of such consent, the court may consolidate for trial
11 only asbestos claims or silica claims relating to the exposed person
12 and members of the household of the exposed person.

13 2. No class action or any other form of mass aggregation claim
14 filing relating to more than one exposed person, except claims
15 relating to the exposed person and members of his or her household,
16 shall be permitted for asbestos or silica claims.

17 3. The provisions of this section do not preclude consolidation
18 of cases by court order for pretrial or discovery purposes.

19 E. FORUM NON CONVENIENS.

20 1. As to any asbestos or silica claim filed on or after the
21 date of enactment of the Asbestos and Silica Claims Priorities Act,
22 or that is pending on the date of enactment of the Asbestos and
23 Silica Claims Priorities Act but that has not commenced trial or any
24 new trial or retrial following motion, appeal, or otherwise with the

1 presentation of evidence to the trier of fact prior to the date of
2 enactment of the Asbestos and Silica Claims Priorities Act, if the
3 court in which the asbestos or silica claim is pending, on written
4 motion of a party, finds that in the interest of justice and for the
5 convenience of the parties a claim or action to which the Asbestos
6 and Silica Claims Priorities Act applies would be more properly
7 heard in a forum outside this state, the court shall decline to
8 exercise jurisdiction under the doctrine of forum non conveniens and
9 shall stay or dismiss the claim or action. In determining whether
10 to grant a motion to stay or dismiss an action under the doctrine of
11 forum non conveniens, the court shall consider whether:

- 12 a. an alternate forum exists in which the claim or action
13 may be tried,
- 14 b. the alternate forum provides an adequate remedy,
- 15 c. maintenance of the claim or action in the courts of
16 this state would work a substantial injustice to the
17 moving party,
- 18 d. the alternate forum, as a result of the submission of
19 the parties or otherwise, can exercise jurisdiction
20 over all the defendants properly joined to the
21 plaintiff's claim,
- 22 e. the balance of the private interests of the parties
23 and the public interest of the state predominate in
24

1 favor of the claim or action being brought in an
2 alternate forum, and

3 f. the stay or dismissal would not result in unreasonable
4 duplication or proliferation of litigation.

5 2. A trial court may not abate or dismiss a claim under this
6 paragraph until the defendant files with the court or with the clerk
7 of the court a written stipulation that, with respect to a new
8 action on the claim commenced by the plaintiff, the defendant waives
9 the right to assert a statute of limitations defense in all other
10 states of the United States in which the claim was not barred by
11 limitations at the time the claim was filed in this state as
12 necessary to effect a tolling of the limitations periods in those
13 states beginning on the date the action originally was filed and
14 ending on the date the claim is dismissed or an abatement period of
15 one (1) year ends. The court may not abate or dismiss a claim under
16 this paragraph until the defendant files with the court or with the
17 clerk of the court a written stipulation that, with respect to a new
18 action on the claim commenced by the plaintiff in another state of
19 the United States, the claimant may elect that the claimant and the
20 defendant may rely on responses to discovery already provided under
21 the rules of civil procedure of this state, plus any additional
22 discovery that may be conducted under the rules of civil procedure
23 in another state, or use responses to discovery already provided and
24

1 conduct additional discovery as permitted under the rules of civil
2 procedure in the other state.

3 F. VENUE.

4 1. An asbestos or silica claim filed after the November 1,
5 2007, shall be filed in this state only in the county where:

6 a. the claimant resided for a period Of at least one
7 hundred eighty (180) consecutive days immediately
8 prior to filing suit, or

9 b. the exposed person had the most substantial cumulative
10 exposure to asbestos for an asbestos claim or to
11 silica for a silica claim, and that such exposure was
12 a substantial contributing factor to the asbestos- or
13 silica-related impairment on which the claim is based.

14 2. With respect to asbestos or silica claims pending as of
15 November 1, 2007, and in which the trial, or any new trial or
16 retrial following motion, appeal, or otherwise, commences with the
17 presentation of evidence to the trier of fact on or after November
18 1, 2007, any claim as to which venue would not have been proper if
19 the claim originally had been brought in accordance with paragraph 1
20 of this subsection shall be transferred within ninety (90) days
21 after November 1, 2007, to the district court in the county in which
22 either:

23 a. the claimant was domiciled at the time the asbestos or
24 silica claim originally was filed, or

- 1 b. the exposed person had the most substantial cumulative
2 exposure to asbestos for an asbestos claim or to
3 silica for a silica claim, and that such exposure was
4 a substantial contributing factor to the asbestos- or
5 silica-related impairment on which the claim is based.

6 SECTION 70. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 75 of Title 76, unless there is
8 created a duplication in numbering, reads as follows:

9 A. STATUTE OF LIMITATIONS.

10 1. With respect to an asbestos or silica claim not barred by
11 limitations in this state as of November 1, 2007, a claimant's cause
12 of action shall not accrue, nor shall the running of limitations
13 commence, prior to the earlier of the date:

14 a. the exposed person received a medical diagnosis of an
15 asbestos-related impairment or silica-related
16 impairment,

17 b. the exposed person discovered facts that would have
18 led a reasonable person to obtain a medical diagnosis
19 with respect to the existence of an asbestos-related
20 impairment or silica-related impairment, or

21 c. the date of death of the exposed person having an
22 asbestos-related or silica-related impairment.

23 2. Nothing in this section shall be construed to revive or
24 extend limitations with respect to any claim for asbestos-related

1 impairment or silica-related impairment that was otherwise time-
2 barred as a matter of applicable state law as of the date the
3 Asbestos and Silica Claims Priorities Act is enacted.

4 3. Nothing in this section shall be construed so as to
5 adversely affect, impair, limit, modify or nullify any settlement or
6 other agreements with respect to an asbestos or silica claim entered
7 into prior to the date of enactment of the Asbestos and Silica
8 Claims Priorities Act.

9 B. TWO-DISEASE RULE. An asbestos or silica claim arising out
10 of a nonmalignant condition shall be a distinct cause of action from
11 a claim for an asbestos-related or silica-related cancer. No
12 damages shall be awarded for fear or increased risk of future
13 disease in any civil action asserting an asbestos or silica claim.

14 SECTION 71. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 76 of Title 76, unless there is
16 created a duplication in numbering, reads as follows:

17 The Asbestos and Silica Claims Priorities Act applies to all
18 asbestos or silica claims filed on or after November 1, 2007. The
19 Asbestos and Silica Claims Priorities Act also applies to any
20 pending asbestos or silica claim in which trial has not commenced as
21 of November 1, 2007.

22 SECTION 72. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 111 of Title 76, unless there is
24 created a duplication in numbering, reads as follows:

1 A. 1. In any civil action for professional negligence, except
2 as provided in subsection B of this section, the plaintiff shall
3 attach to the petition an affidavit attesting that:

4 a. the plaintiff has consulted and reviewed the facts of
5 the claim with a qualified expert,

6 b. the plaintiff has obtained a written opinion from a
7 qualified expert that clearly identifies the plaintiff
8 and includes the expert's determination that, based
9 upon a review of the available medical records, facts
10 or other relevant material, a reasonable
11 interpretation of the facts supports a finding that
12 the acts or omissions of the defendant against whom
13 the action is brought constituted professional
14 negligence, and

15 c. on the basis of the qualified expert's review and
16 consultation, the plaintiff has concluded that the
17 claim is meritorious and based on good cause.

18 2. If the civil action for professional negligence is filed:

19 a. without an affidavit being attached to the petition,
20 as required in paragraph 1 of this subsection, and

21 b. no extension of time is subsequently granted by the
22 court pursuant to subsection B of this section,

23 the court shall, upon motion of the defendant, dismiss the action
24 without prejudice to its refiling.

1 3. The written opinion from the qualified expert shall state
2 the acts or omissions of the defendant or defendants that the expert
3 then believes constituted professional negligence and shall include
4 reasons explaining why the acts or omissions constituted
5 professional negligence. The written opinion from the qualified
6 expert shall not be admissible at trial for any purpose nor shall
7 any inquiry be permitted with regard to the written opinion for any
8 purpose either in discovery or at trial.

9 B. 1. The court may, upon application of the plaintiff for
10 good cause shown, grant the plaintiff an extension of time, not
11 exceeding ninety (90) days after the date the petition is filed,
12 except for good cause shown, to file in the action an affidavit
13 attesting that the plaintiff has obtained a written opinion from a
14 qualified expert as described in paragraph 1 of subsection A of this
15 section.

16 2. If on the expiration of an extension period described in
17 paragraph 1 of this subsection, the plaintiff has failed to file in
18 the action an affidavit as described above, the court shall, upon
19 motion of the defendant, unless good cause is shown for such
20 failure, dismiss the action without prejudice to its refiling.

21 C. 1. Upon written request of any defendant in a civil action
22 for professional negligence, the plaintiff shall, within ten (10)
23 business days after receipt of such request, provide the defendant
24 with:

- 1 a. a copy of the written opinion of a qualified expert
2 mentioned in an affidavit filed pursuant to subsection
3 A or B of this section, and
4 b. an authorization from the plaintiff in a form that
5 complies with applicable state and federal laws,
6 including the Health Insurance Portability and
7 Accountability Act of 1996, for the release of any and
8 all medical records related to the plaintiff for a
9 period commencing five (5) years prior to the incident
10 that is at issue in the civil action for professional
11 negligence.

12 2. If the plaintiff fails to comply with paragraph 1 of this
13 subsection, the court shall, upon motion of the defendant, unless
14 good cause is shown for such failure, dismiss the action without
15 prejudice to its refiling.

16 SECTION 73. REPEALER Section 9, Chapter 390, O.S.L. 2003
17 (12 O.S. Supp. 2006, Section 150), is hereby repealed.

18 SECTION 74. REPEALER Section 8, Chapter 368, O.S.L. 2004
19 (12 O.S. Supp. 2006, Section 832.1), is hereby repealed.

20 SECTION 75. REPEALER 23 O.S. 2001, Section 103, is
21 hereby repealed.

22 SECTION 76. REPEALER Section 6, Chapter 390, O.S.L.
23 2003, as amended by Section 21, Chapter 368, O.S.L. 2004, and
24

1 Section 22, Chapter 368, O.S.L. 2004 (63 O.S. Supp. 2006, Sections
2 1-1708.1F and 1-1708.1F-1), are hereby repealed.

3 SECTION 77. This act shall become effective November 1, 2007.
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