

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 3161

By: Blackwell

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5
6 AS INTRODUCED

7 An Act relating to mineral owners; amending 12 O.S.
8 2001, Section 2023, which relates to class actions;
9 providing for maintenance of a class action by
10 mineral owners in certain circumstances; and
11 providing an effective date.

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

13 SECTION 1. AMENDATORY 12 O.S. 2001, Section 2023, is
14 amended to read as follows:

15 Section 2023.

16 CLASS ACTIONS

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

20 1. The class is so numerous that joinder of all members is
21 impracticable;

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

23 3. The claims or defenses of the representative parties are
24 typical of the claims or defenses of the class; and

1 4. The representative parties will fairly and adequately
2 protect the interests of the class.

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

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

8 a. inconsistent or varying adjudications with respect to
9 individual members of the class which would establish
10 incompatible standards of conduct for the party
11 opposing the class, or

12 b. adjudications with respect to individual members of
13 the class which would as a practical matter be
14 dispositive of the interests of the other members not
15 parties to the adjudications or substantially impair
16 or impede ~~their~~ the ability of the other members not
17 parties to the adjudications to protect their
18 interests; or

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

23 3. The court finds that the questions of law or fact common to
24 the members of the class predominate over any questions affecting

1 only individual members, and that a class action is superior to
2 other available methods for the fair and efficient adjudication of
3 the controversy. The matters pertinent to the findings include:

4 a. the interest of members of the class in individually
5 controlling the prosecution or defense of separate
6 actions,

7 b. the extent and nature of any litigation concerning the
8 controversy already commenced by or against members of
9 the class,

10 c. the desirability or undesirability of concentrating
11 the litigation of the claims in the particular forum,
12 and

13 d. the difficulties likely to be encountered in the
14 management of a class action.

15 C. DETERMINATION BY ORDER WHETHER CLASS ACTION TO BE
16 MAINTAINED; NOTICE; JUDGMENT; ACTIONS CONDUCTED PARTIALLY AS CLASS
17 ACTIONS.

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

23 2. In any class action maintained under paragraph 3 of
24 subsection B of this section, the court shall direct to the members

1 of the class the best notice practicable under the circumstances,
2 including individual notice to all members who can be identified
3 through reasonable effort. The notice shall advise each member
4 that:

- 5 a. the court will exclude ~~him~~ that member from the class
6 if ~~he~~ that member so requests by a specified date,
- 7 b. the judgment, whether favorable or not, will include
8 all members who do not request exclusion, and
- 9 c. any member who does not request exclusion may, if ~~he~~
10 that member desires, enter an appearance through ~~his~~
11 counsel of that member.

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

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

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

14 4. When appropriate:

15 a. an action may be brought or maintained as a class
16 action with respect to particular issues, provided,
17 however, that an action arising out of contract or
18 lease, brought by mineral owners shall be maintained
19 as a class action if the prerequisites of subsections
20 A and B of this section are met, or

21 b. a class may be divided into subclasses and each
22 subclass treated as a class.

23 The provisions of this section shall then be construed and applied
24 accordingly.

1 D. ORDERS IN CONDUCT OF ACTIONS. In the conduct of actions to
2 which this section applies, the court may make appropriate orders:

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

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

13 3. Imposing conditions on the representative parties or on
14 intervenors;

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

18 5. Dealing with similar procedural matters.

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

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

3 SECTION 2. This act shall become effective November 1, 2008.

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