STATE OF OKLAHOMA

2nd Session of the 54th Legislature (2014)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 3300 By: Osborn

COMMITTEE SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2011, Section 2023, as last amended by Section 5, Chapter 10, 1st Extraordinary Session, O.S.L. 2013, which relates to class action lawsuits; modifying procedure for determination of whether class action may be maintained; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 2011, Section 2023, as last amended by Section 5, Chapter 10, 1st Extraordinary Session, O.S.L. 2013, is amended to read as follows:

Section 2023.

CLASS ACTIONS

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

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

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

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

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

B. CLASS ACTIONS MAINTAINABLE. An action may be maintained as a class action if the prerequisites of subsection A of this section are satisfied, if the petition in the class action contains factual allegations sufficient to demonstrate a plausible claim for relief and:

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

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

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

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

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

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

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

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

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

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

1. As soon as practicable after the commencement of an action brought as a class action, the court shall ~~determine by order whether it is to be so maintained~~ <u>perform a rigorous analysis to determine whether the prerequisites of subsections A and B of this section are satisfied such that the action may be maintained. The</u>

court's determination shall be made by order and shall be consistent with decisions of the United States Supreme Court interpreting the provisions of Federal Rule of Civil Procedure 23. An order entered on or after November 1, 2011, that certifies a class action shall define the class and the class claims, issues or defenses, and shall appoint class counsel under subsection F of this section. An order under this subsection may be conditional, and may be altered or amended before the decision on the merits.

2. The order described in paragraph 1 of this subsection shall be subject to a de novo standard of review by any appellate court reviewing the order. While the appeal of the order on class certification is pending, the trial court shall retain sufficient jurisdiction over the case to consider and implement a settlement of the action should one be reached between the parties and discovery as to the class claims shall be stayed pending resolution of the appeal.

3. For any class certified under paragraph 1 or 2 of subsection B of this section, the court may direct appropriate notice to the class.

4. In any class action maintained under paragraph 3 of subsection B of this section, the court shall direct to the members of the class the best notice practicable under the circumstances, including individual notice to all members who can be identified

through reasonable effort. The notice shall clearly and concisely state in plain, easily understood language:

a. the nature of the action,

b. the definition of the class certified,

c. the class claims, issues or defenses,

d. that a class member may enter an appearance through an attorney if the member so desires,

e. that the court will exclude the member from the class if the member so requests by a specified date,

f. that the judgment, whether favorable or not, will include all members who do not request exclusion, and

g. that any member who does not request exclusion may, if the member desires, enter an appearance through counsel.

Members to whom individual notice is not directed shall be given notice in such manner as the court shall direct, which may include publishing notice in newspapers, magazines, trade journals or other publications, posting it in appropriate places, and taking other steps that are reasonably calculated to bring the notice to the attention of such members, provided that the cost of giving such notice shall be reasonable in view of the amounts that may be recovered by the class members who are being notified. Members to whom individual notice was not directed may request exclusion from the class at any time before the issue of liability is determined,

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

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

6. When appropriate:

a. an action may be brought or maintained as a class action with respect to particular issues, or

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

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

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

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

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

3. For actions filed after November 1, 2011, class membership shall be limited, unless otherwise agreed to by the defendant, only to individuals or entities who are:

a. residents of this state, or

b. nonresidents of this state who:

(1) own an interest in property located in this state where the property is relevant to the class action, or

(2) have a significant portion of the nonresident's cause of action arising from conduct occurring within the state;

4. Requiring, for the sole purpose of class notice upon certification of a class, that parties to the action provide such

names and addresses of potential members of the class as they possess, subject to an appropriate protective order;

5. Imposing conditions on the representative parties or on intervenors;

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

7. Dealing with similar procedural matters.

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

E. DISMISSAL OR COMPROMISE. The claims, issues or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court's approval. For motions filed after November 1, 2011, the following procedures apply to a proposed settlement, voluntary dismissal, or compromise:

1. The court shall direct notice in a reasonable manner to all class members who would be bound by the proposal;

2. If the proposal would bind class members, the court may approve it only after a hearing and on finding that it is fair, reasonable and adequate;

3. The parties seeking approval shall file a statement identifying any agreement made in connection with the proposal;

4. If the class action was previously certified under paragraph 3 of subsection B of this section, the court may refuse to approve a settlement unless it affords a new opportunity to request exclusion to individual class members who had an earlier opportunity to request exclusion but did not do so; and

5. Any class member may object to the proposal if it requires court approval under this subsection.

F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a court that certifies a class shall appoint class counsel. In appointing class counsel after November 1, 2011, the court:

a. shall consider:

(1) the work counsel has done in identifying or investigating potential claims in the action,

(2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action,

(3) counsel's knowledge of the applicable law, and

(4) the resources that counsel will commit to representing the class,

b. may consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class,

c. may order potential class counsel to provide information on any subject pertinent to the

appointment and to propose terms for attorney fees or nontaxable costs,

d. may include in the appointing order provisions about the award of attorney fees or nontaxable costs, and

e. may make further orders in connection with the appointment.

2. When one applicant seeks appointment as class counsel, the court may appoint that applicant only if the applicant is adequate under paragraphs 1 and 4 of this subsection. If more than one adequate applicant seeks appointment, the court shall appoint the applicant best able to represent the interests of the class.

3. The court may designate interim counsel to act on behalf of a putative class before determining whether to certify the action as a class action.

4. Class counsel shall fairly and adequately represent the interests of the class.

G. ATTORNEY FEES AND NONTAXABLE COSTS. 1. In a certified class action, the court may award reasonable attorney fees and nontaxable costs that are authorized by law or by the parties' agreement.

2. A claim for an award shall be made by motion, subject to the provisions of this subsection, at a time set by the court. Notice of the motion shall be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner.

3. A class member, or a party from whom payment is sought, may object to the motion.

4. In considering a motion for attorney fees filed after the effective date of this act:

a. the court shall conduct an evidentiary hearing to determine a fair and reasonable fee for class counsel,

b. the court shall act in a fiduciary capacity on behalf of the class in making such determination,

c. the court may appoint an attorney to represent the class upon the request by any members of the class in a hearing on the issue of the amount of attorney fees or the court may refer the matter to a referee pursuant to Section 613 et seq. of this title,

d. if the court appoints an attorney to represent the class for the fee hearing pursuant to subparagraph c of this paragraph or refers the matter to a referee, the attorney or referee shall be independent of the attorney or attorneys seeking attorney fees in the class action, and said independent attorney or referee shall be awarded reasonable fees by the court on an hourly basis out of the proceeds awarded to the class,

e. in arriving at a fair and reasonable fee for class counsel, the court shall consider the following factors:

(1) time and labor required,

(2) the novelty and difficulty of the questions presented by the litigation,

(3) the skill required to perform the legal service properly,

(4) the preclusion of other employment by the attorney due to acceptance of the case,

(5) the customary fee,

(6) whether the fee is fixed or contingent,

(7) time limitations imposed by the client or the circumstances,

(8) the amount in controversy and the results obtained,

(9) the experience, reputation and ability of the attorney,

(10) whether or not the case is an undesirable case,

(11) the nature and length of the professional relationship with the client,

(12) awards in similar causes, and

(13) the risk of recovery in the litigation, and

f. if any portion of the benefits recovered for the class in an action maintained pursuant to paragraph 3 of subsection B of this section are in the form of coupons, discounts on future goods or services or

other similar types of noncash common benefits, the attorney fees awarded in the class action shall be in cash and noncash amounts in the same proportion as the recovery for the class.

SECTION 2. This act shall become effective November 1, 2014.

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