

1 STATE OF OKLAHOMA

2 1st Extraordinary Session of the 54th Legislature (2013)

3 HOUSE BILL 1013

By: Shannon of the House

4 and

5 Bingman and Sykes of the  
6 Senate

7  
8  
9 AS INTRODUCED

10 An Act relating to class action procedure; repealing  
11 Section 9, Chapter 228, O.S.L. 2009, which relates to  
appeals from certain orders and Section 16, Chapter  
12 228, O.S.L. 2009, which relates to class actions;  
amending 12 O.S. 2011, Section 993, which relates to  
13 appeals from certain orders; modifying grounds for  
interlocutory orders; amending 12 O.S. 2011, Section  
14 993, as amended by Section 3 of this act, which  
relates to appeals from certain orders; modifying  
15 grounds for interlocutory orders; amending 12 O.S.  
2011, Section 2023, which relates to class actions;  
16 modifying notice requirements; removing class  
membership requirements; modifying procedure for  
17 dismissal or compromise; eliminating selection  
procedure for class counsel; eliminating  
18 authorization and procedure for attorney fees and  
nontaxable costs; amending 12 O.S. 2011, Section  
19 2023, as amended by Section 5 of this act; modifying  
procedure for certification of a class action;  
20 providing requirements for orders entered after  
certain date certifying class action; providing for  
21 review of orders; providing for trial court  
jurisdiction over class action cases; providing for  
22 notice for class action cases; modifying notice  
requirements; limiting class membership; requiring  
23 court approval for proposed settlement, voluntary  
dismissal or compromise in class actions; providing  
24 procedures and requirements for motions filed after  
certain date; providing procedure for appointment of

1 class counsel; providing factors to be considered in  
2 appointment of class counsel; authorizing certain  
3 orders by the court regarding class counsel;  
4 providing for interim counsel; providing for award of  
5 attorney fees and nontaxable costs in class actions;  
6 providing procedure and requirements for claims for  
7 award of attorney fees and costs; providing factors  
8 to be considered in motions filed after certain date;  
9 providing for appointment of counsel or referral of  
10 issue of referee; providing requirements for  
11 appointed attorney; providing factor to be considered  
12 in determining fair and reasonable fee; providing for  
13 noncash payments in certain circumstances; providing  
14 for construction of act; providing for  
15 noncodification; and declaring an emergency.

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

SECTION 1. REPEALER Sections 9 and 16, Chapter 228,  
O.S.L. 2009, are hereby repealed.

SECTION 2. AMENDATORY 12 O.S. 2011, Section 993, is  
amended to read as follows:

Section 993. A. When an order:

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

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

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

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

7 5. Directs the payment of money pendente lite except where  
8 granted at an ex parte hearing, refuses to direct the payment of  
9 money pendente lite, or vacates or refuses to vacate an order  
10 directing the payment of money pendente lite;

11 6. Certifies or refuses to certify an action to be maintained  
12 as a class action; or

13 ~~7. Denies a motion in a class action asserting lack of~~  
14 ~~jurisdiction because an agency of this state has exclusive or~~  
15 ~~primary jurisdiction of the action or a part of the action, or~~  
16 ~~asserting that a party has failed to exhaust administrative~~  
17 ~~remedies, but only if the class is subsequently certified and only~~  
18 ~~as part of the appeal of the order certifying the class action; or~~

19 ~~8.~~ Grants a new trial or opens or vacates a judgment or order,  
20 the party aggrieved thereby may appeal the order to the Supreme  
21 Court without awaiting the final determination in said cause, by  
22 filing the petition in error and the record on appeal with the  
23 Supreme Court within thirty (30) days after the order prepared in  
24 conformance with Section 696.3 of this title, is filed with the

1 court clerk. If the appellant did not prepare the order, and  
2 Section 696.2 of this title required a copy of the order to be  
3 mailed to the appellant, and the court records do not reflect the  
4 mailing of a copy of the order to the appellant within three (3)  
5 days, exclusive of weekends and holidays, after the filing of the  
6 order, the petition in error may be filed within thirty (30) days  
7 after the earliest date on which the court records show that a copy  
8 of the order was mailed to the appellant. The Supreme Court may  
9 extend the time for filing the record upon good cause shown.

10 B. If the order discharges or modifies an attachment or  
11 temporary injunction and it becomes operative, the undertaking given  
12 upon the allowance of an attachment or temporary injunction shall  
13 stay the enforcement of said order and remain in full force until  
14 final order of discharge shall take effect.

15 C. ~~If~~ Where a receiver shall be or has been appointed, upon the  
16 appellant filing an appeal bond, with sufficient sureties, in such  
17 sum as may have been required of the receiver by the court or a  
18 judge thereof, conditioned for the due prosecution of the appeal and  
19 the payment of all costs or damages that may accrue to the state or  
20 any officer or person by reason thereof, the authority of the  
21 receiver shall be suspended until the final determination of the  
22 appeal, and if the receiver has taken possession of any property,  
23 real or personal, it shall be returned and surrendered to the  
24 appellant upon the filing and approval of the bonds.

1 SECTION 3. AMENDATORY 12 O.S. 2011, Section 993, as  
2 amended by Section 2 of this act, is amended to read as follows:

3 Section 993. A. When an order:

4 1. Discharges, vacates, or modifies or refuses to discharge,  
5 vacate, or modify an attachment;

6 2. Denies a temporary or permanent injunction, grants a  
7 temporary or permanent injunction except where granted at an ex  
8 parte hearing, or discharges, vacates, or modifies or refuses to  
9 discharge, vacate, or modify a temporary or permanent injunction;

10 3. Discharges, vacates, or modifies or refuses to discharge,  
11 vacate, or modify a provisional remedy which affects the substantial  
12 rights of a party;

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

16 5. Directs the payment of money pendente lite except where  
17 granted at an ex parte hearing, refuses to direct the payment of  
18 money pendente lite, or vacates or refuses to vacate an order  
19 directing the payment of money pendente lite;

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

22 7. Denies a motion in a class action asserting lack of  
23 jurisdiction because an agency of this state has exclusive or  
24 primary jurisdiction of the action or a part of the action, or

1 asserting that a party has failed to exhaust administrative  
2 remedies, but only if the class is subsequently certified and only  
3 as part of the appeal of the order certifying the class action; or

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

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

24

1 C. ~~Where~~ If a receiver shall be or has been appointed, upon the  
2 appellant filing an appeal bond, with sufficient sureties, in such  
3 sum as may have been required of the receiver by the court or a  
4 judge thereof, conditioned for the due prosecution of the appeal and  
5 the payment of all costs or damages that may accrue to the state or  
6 any officer or person by reason thereof, the authority of the  
7 receiver shall be suspended until the final determination of the  
8 appeal, and if the receiver has taken possession of any property,  
9 real or personal, it shall be returned and surrendered to the  
10 appellant upon the filing and approval of the bonds.

11 SECTION 4. AMENDATORY 12 O.S. 2011, Section 2023, is  
12 amended to read as follows:

13 Section 2023.

14 CLASS ACTIONS

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

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

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

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

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

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

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 ability to protect their interests; or

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

21 3. The court finds that the questions of law or fact common to  
22 the members of the class predominate over any questions affecting  
23 only individual members, and that a class action is superior to  
24

1 other available methods for the fair and efficient adjudication of  
2 the controversy. The matters pertinent to the findings include:

- 3 a. the interest of members of the class in individually  
4 controlling the prosecution or defense of separate  
5 actions,
- 6 b. the extent and nature of any litigation concerning the  
7 controversy already commenced by or against members of  
8 the class,
- 9 c. the desirability or undesirability of concentrating  
10 the litigation of the claims in the particular forum,  
11 and
- 12 d. the difficulties likely to be encountered in the  
13 management of a class action.

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

17 1. As soon as practicable after the commencement of an action  
18 brought as a class action, the court shall determine by order  
19 whether it is to be so maintained. ~~An order entered on or after~~  
20 ~~November 1, 2009, that certifies a class action shall define the~~  
21 ~~class and the class claims, issues or defenses, and shall appoint~~  
22 ~~class counsel under subsection F of this section.~~ An order under  
23 this subsection may be conditional, and may be altered or amended  
24 before the decision on the merits.

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

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

12       4. In any class action maintained under paragraph 3 of  
13 subsection B of this section, the court shall direct to the members  
14 of the class the best notice practicable under the circumstances,  
15 including individual notice to all members who can be identified  
16 through reasonable effort. The notice shall ~~clearly and concisely~~  
17 ~~state in plain, easily understood language~~ advise each member that:

- 18       a. ~~the nature of the action,~~
- 19       b. ~~the definition of the class certified,~~
- 20       c. ~~the class claims, issues or defenses,~~
- 21       d. ~~that a class member may enter an appearance through an~~  
22         ~~attorney if the member so desires,~~
- 23       e. ~~that~~ the court will exclude the member from the class  
24         if the member so requests by a specified date,

1           ~~f.~~    that

2           b.    the judgment, whether favorable or not, will include  
3                    all members who do not request exclusion, and

4           ~~g.~~    that

5           c.    any member who does not request exclusion may, if the  
6                    member desires, enter an appearance through counsel.

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

23           ~~5.~~ 3. The judgment in an action maintained as a class action  
24 under ~~paragraph~~ paragraphs 1 or 2 of subsection B of this section,

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

9 ~~6.~~ 4. When appropriate:

- 10 a. an action may be brought or maintained as a class  
11 action with respect to particular issues, or  
12 b. a class may be divided into subclasses and each  
13 subclass treated as a class.

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

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

- 18 1. Determining the course of proceedings or prescribing  
19 measures to prevent undue repetition or complication in the  
20 presentation of evidence or argument;  
21 2. Requiring, for the protection of the members of the class or  
22 otherwise for the fair conduct of the action, that notice be given  
23 in such manner as the court may direct to some or all of the members  
24 of any step in the action, or of the proposed extent of the

1 judgment, or of the opportunity of members to signify whether they  
2 consider the representation fair and adequate, to intervene and  
3 present claims or defenses, or otherwise to come into the action;

4 ~~3. For actions filed after November 1, 2009, class membership~~  
5 ~~shall be limited, unless otherwise agreed to by the defendant, only~~  
6 ~~to individuals or entities who are:~~

7 a. ~~residents of this state, or~~

8 b. ~~nonresidents of this state who:~~

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

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

15 ~~4. Requiring, for the sole purpose of class notice upon~~  
16 ~~certification of a class, that parties to the action provide such~~  
17 ~~names and addresses of potential members of the class as they~~  
18 ~~possess, subject to an appropriate protective order;~~

19 ~~5. Imposing conditions on the representative parties or on~~  
20 ~~intervenors;~~

21 ~~6. 4. Requiring that the pleadings be amended to eliminate~~  
22 ~~therefrom allegations as to representation of absent persons, and~~  
23 ~~that the action proceed accordingly; and~~

24 ~~7. 5. Dealing with similar procedural matters.~~

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

4 E. DISMISSAL OR COMPROMISE. ~~The claims, issues or defenses of~~  
5 ~~a certified class may be settled, voluntarily dismissed, or~~  
6 ~~compromised only with the court's approval. For motions filed after~~  
7 ~~November 1, 2009, the following procedures apply to a proposed~~  
8 ~~settlement, voluntary dismissal, or compromise:~~

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

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

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

16 4. ~~If the class action was previously certified under paragraph~~  
17 ~~3 of subsection B of this section, the court may refuse to approve a~~  
18 ~~settlement unless it affords a new opportunity to request exclusion~~  
19 ~~to individual class members who had an earlier opportunity to~~  
20 ~~request exclusion but did not do so; and~~

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

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24

1 ~~F. CLASS COUNSEL. 1. Unless a statute provides otherwise, a~~  
2 ~~court that certifies a class shall appoint class counsel. In~~  
3 ~~appointing class counsel after November 1, 2009, the court:~~

4 ~~a. shall consider:~~

5 ~~(1) the work counsel has done in identifying or~~

6 ~~investigating potential claims in the action,~~

7 ~~(2) counsel's experience in handling class actions,~~

8 ~~other complex litigation, and the types of claims~~

9 ~~asserted in the action,~~

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

11 ~~(4) the resources that counsel will commit to~~

12 ~~representing the class,~~

13 ~~b. may consider any other matter pertinent to counsel's~~

14 ~~ability to fairly and adequately represent the~~

15 ~~interests of the class,~~

16 ~~c. may order potential class counsel to provide~~

17 ~~information on any subject pertinent to the~~

18 ~~appointment and to propose terms for attorney fees or~~

19 ~~nontaxable costs,~~

20 ~~d. may include in the appointing order provisions about~~

21 ~~the award of attorney fees or nontaxable costs, and~~

22 ~~e. may make further orders in connection with the~~

23 ~~appointment,~~

24

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

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

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

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

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

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

21       ~~4. In considering a motion for attorney fees filed after~~  
22 ~~November 1, 2009:~~

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

- 1           ~~b. the court shall act in a fiduciary capacity on behalf~~  
2           ~~of the class in making such determination,~~
- 3           ~~e. the court may appoint an attorney to represent the~~  
4           ~~class upon the request by any members of the class in~~  
5           ~~a hearing on the issue of the amount of attorney fees~~  
6           ~~or the court may refer the matter to a referee~~  
7           ~~pursuant to Section 613 et seq. of this title,~~
- 8           ~~d. if the court appoints an attorney to represent the~~  
9           ~~class for the fee hearing pursuant to subparagraph e~~  
10           ~~of this paragraph or refers the matter to a referee,~~  
11           ~~the attorney or referee shall be independent of the~~  
12           ~~attorney or attorneys seeking attorney fees in the~~  
13           ~~class action, and said independent attorney or referee~~  
14           ~~shall be awarded reasonable fees by the court on an~~  
15           ~~hourly basis out of the proceeds awarded to the class,~~
- 16           ~~e. in arriving at a fair and reasonable fee for class~~  
17           ~~counsel, the court shall consider the following~~  
18           ~~factors:~~
- 19           ~~(1) time and labor required,~~
- 20           ~~(2) the novelty and difficulty of the questions~~  
21           ~~presented by the litigation,~~
- 22           ~~(3) the skill required to perform the legal service~~  
23           ~~properly,~~
- 24

- ~~(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. A class action shall not be dismissed or compromised without the approval of the~~



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

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

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

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

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

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

- 1 c. the desirability or undesirability of concentrating  
2 the litigation of the claims in the particular forum,  
3 and  
4 d. the difficulties likely to be encountered in the  
5 management of a class action.

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

9 1. As soon as practicable after the commencement of an action  
10 brought as a class action, the court shall determine by order  
11 whether it is to be so maintained. An order entered on or after  
12 November 1, 2011, that certifies a class action shall define the  
13 class and the class claims, issues or defenses, and shall appoint  
14 class counsel under subsection F of this section. An order under  
15 this subsection may be conditional, and may be altered or amended  
16 before the decision on the merits.

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

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

4        4. In any class action maintained under paragraph 3 of  
5 subsection B of this section, the court shall direct to the members  
6 of the class the best notice practicable under the circumstances,  
7 including individual notice to all members who can be identified  
8 through reasonable effort. The notice shall ~~advise each member that~~  
9 clearly and concisely state in plain, easily understood language:

10            a. the nature of the action,

11            b. the definition of the class certified,

12            c. the class claims, issues or defenses,

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

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

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

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

22        ~~Where the class contains more than five hundred (500) members~~  
23 ~~who can be identified through reasonable effort, it shall not be~~  
24 ~~necessary to direct individual notice to more than five hundred~~

1 ~~(500) members, but the members~~ Members to whom individual notice is  
2 not directed shall be given notice in such manner as the court shall  
3 direct, which may include publishing notice in newspapers,  
4 magazines, trade journals or other publications, posting it in  
5 appropriate places, and taking other steps that are reasonably  
6 calculated to bring the notice to the attention of such members,  
7 provided that the cost of giving such notice shall be reasonable in  
8 view of the amounts that may be recovered by the class members who  
9 are being notified. Members to whom individual notice was not  
10 directed may request exclusion from the class at any time before the  
11 issue of liability is determined, and commencing an individual  
12 action before the issue of liability is determined shall be the  
13 equivalent of requesting exclusion from the class.

14 ~~3.~~ 5. The judgment in an action maintained as a class action  
15 under ~~paragraphs~~ paragraph 1 or 2 of subsection B of this section,  
16 whether or not favorable to the class, shall include and describe  
17 those whom the court finds to be members of the class. The judgment  
18 in an action maintained as a class action under paragraph 3 of  
19 subsection B of this section, whether or not favorable to the class,  
20 shall include and specify or describe those to whom the notice  
21 provided in paragraph ~~2~~ 4 of this subsection ~~C of this section~~ was  
22 directed, and who have not requested exclusion, and whom the court  
23 finds to be members of the class.

24 ~~4.~~ 6. When appropriate:

- 1 a. an action may be brought or maintained as a class  
2 action with respect to particular issues, or  
3 b. a class may be divided into subclasses and each  
4 subclass treated as a class.

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

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

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

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

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

22 a. residents of this state, or

23 b. nonresidents of this state who:  
24

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

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

7           4. Requiring, for the sole purpose of class notice upon  
8 certification of a class, that parties to the action provide such  
9 names and addresses of potential members of the class as they  
10 possess, subject to an appropriate protective order;

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

13           ~~4.~~ 6. 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.~~ 7. 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. 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. The~~  
24 claims, issues or defenses of a certified class may be settled,

1 voluntarily dismissed, or compromised only with the court's  
2 approval. For motions filed after November 1, 2011, the following  
3 procedures apply to a proposed settlement, voluntary dismissal, or  
4 compromise:

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

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

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

12 4. If the class action was previously certified under paragraph  
13 3 of subsection B of this section, the court may refuse to approve a  
14 settlement unless it affords a new opportunity to request exclusion  
15 to individual class members who had an earlier opportunity to  
16 request exclusion but did not do so; and

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

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

22 a. shall consider:

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

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

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

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

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

10       c. may order potential class counsel to provide  
11       information on any subject pertinent to the  
12       appointment and to propose terms for attorney fees or  
13       nontaxable costs,

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

16       e. may make further orders in connection with the  
17       appointment;

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

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

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

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

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

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

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

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

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

22           c. the court may appoint an attorney to represent the  
23           class upon the request by any members of the class in  
24           a hearing on the issue of the amount of attorney fees

1 or the court may refer the matter to a referee  
2 pursuant to Section 613 et seq. of this title,

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

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

14 (1) time and labor required,

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

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

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

21 (5) the customary fee,

22 (6) whether the fee is fixed or contingent,

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

- 1           (8) the amount in controversy and the results
- 2           obtained,
- 3           (9) the experience, reputation and ability of the
- 4           attorney,
- 5           (10) whether or not the case is an undesirable case,
- 6           (11) the nature and length of the professional
- 7           relationship with the client,
- 8           (12) awards in similar causes, and
- 9           (13) the risk of recovery in the litigation, and

10       f. if any portion of the benefits recovered for the class  
11       in an action maintained pursuant to paragraph 3 of  
12       subsection B of this section are in the form of  
13       coupons, discounts on future goods or services or  
14       other similar types of noncash common benefits, the  
15       attorney fees awarded in the class action shall be in  
16       cash and noncash amounts in the same proportion as the  
17       recovery for the class.

18       SECTION 6.       NEW LAW       A new section of law not to be

19       codified in the Oklahoma Statutes reads as follows:

20       The amendatory provisions contained in Sections 2 and 4 of this act  
21       conform the statute to the holding in *Douglas v. Cox Retirement*  
22       *Properties, Inc.*, 2013 OK 37, 302 P.2d 789 (Okla. 2013). The  
23       amendatory provisions contained in Sections 3 and 5 of this act  
24       conform the statute to the amendatory provisions of Enrolled House

1 Bill No. 1603 of the 1st Session of the 52nd Oklahoma Legislature,  
2 c. 228, O.S.L. 2009.

3 SECTION 7. It being immediately necessary for the preservation  
4 of the public peace, health and safety, an emergency is hereby  
5 declared to exist, by reason whereof this act shall take effect and  
6 be in full force from and after its passage and approval.

7

8 54-1EX-50019 SD 08/30/13

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