



action under the Oklahoma Pleading Code. In support of this Motion, ABC shows the Court as follows:

1. On February 5, 2004, John A. Fleming and Howard Richey filed their “Motion to Certify Third-Party Plaintiff Class and Brief in Support” (the “Motion”; attached hereto as Exhibit “A”). Movants are not and have never been parties to this action, yet they filed their Motion as “Third Party Plaintiffs.”

2. Section 2014 of the Oklahoma Pleading Code allows a defendant to cause a third party claim to be served upon a person who is not a party to the action and who may be liable to the defendant for all or part of the plaintiff’s claims against the defendant. *See* 12 O.S. § 2014(A).<sup>1</sup> In this case, the Plaintiff is the Oklahoma Department of Securities, and one of the defendants is ABC. Neither of the Movants is a defendant nor have they ever been joined as parties in this action in any capacity. Accordingly, Movants have no procedural standing to assert a third-party claim in this case.

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<sup>1</sup>“At any time after commencement of the action a defending party, as a third-party plaintiff, may cause a summons and petition to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him or who is liable to him on a claim arising out of the transaction or occurrence that is the subject matter of a claim that is asserted against him.” 12 O.S. § 2014(A).

3. Section 2014 does not confer standing on individuals not already defendants to the litigation to unilaterally inject themselves into the case. In this instance, any claims alleged by Movants are direct claims against ABC rather than third-party claims and must be so pled in a separate action. Their claims do not arise from claims asserted against them by the Department of Securities. That is the very essence of a third party claim.

4. Even if Movants had the right to assert a third-party claim, they have not complied with the prerequisites of Section 2014 for filing a third-party petition. Pursuant to Section 2014(A), a defendant/third-party plaintiff must obtain leave of Court upon motion and notice to all parties to file a third-party petition if more than ten days have passed since the defendant filed his answer to the plaintiff's petition. Movants have not filed a third party petition nor have they even bothered, for that matter to issue and serve summons on ABC. They have also not sought leave from this Court to assert a third-party claim. Rather, without any notice to the parties or leave from the Court, Movants have presented a motion for class certification in an action, to which they are not parties, that has been pending for almost five years.

5. Movants are not parties to this litigation and have no right to assert a claim or motion of any nature to the Court for consideration. Without leave of the

Court, and without notice to the parties, they have attempted to inject themselves into this litigation. Accordingly, Movants' motion should be stricken by the Court.

6. By filing this Motion to Strike, ABC does not waive any defense which it may assert in response to a properly filed petition by Movants, nor or any defense or response it may raise to the motion for certification should this Court find the motion is properly before it in this action.

### CONCLUSION

For the foregoing reasons, ABC hereby requests that this Court strike Plaintiff's Motion to Certify Third-Party Plaintiff Class and Brief in Support.



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**CERTIFICATE OF MAILING**

The undersigned hereby certifies that on the 20 day of February, 2004, a true and correct copy of the above and foregoing was mailed by regular U.S. Mail, postage prepaid, to the following:

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