

Insurance Institute of Kentucky (“IIK”)

Memorandum

To: Those Interested in Submitting an Application for an Amicus Curiae Brief

From: IIK Standing Committee on Amicus Curiae Briefs

Subject: Application Form

This memorandum contains the application form to be used when requesting that IIK file an amicus curiae brief.

APPLICATION FORM

Please complete the following application form and submit it to the Executive Director, Mark Treesh, by e-mail attachment. If expedited consideration is necessary, please briefly explain this in the cover e-mail. For questions and information, please contact Mr. Treesh by e-mail or by telephone at xxx-xxx-xxxx.

- Submitting Entity.** List the entity(ies) submitting the application, with the name, telephone number and e-mail address of at least one contact person for each entity. **Ronald L. Green, Green Chesnut & Hughes PLLC, 201 East Main Street, Suite 800, Lexington, KY 40507, rgreen@gcandh.com.**
- Current Caption of Case.** Give the complete caption of the case and attach copies or links to any briefs that have been filed, including where applicable, the petition for writ of certiorari and the response. **Crystal Lee Mosley et al v. Arch Specialty Fire Insurance Company and National Union Fire Insurance Company, copy of Court of Appeals opinion attached. Briefs and motions are attached.**
- Caption in the Court Below.** Give the complete caption of the case from which the appeal is taken, and attach a copy of the opinion or order. **Crystal Lee Mosley et al v. Arch Specialty Fire Insurance Company and National Union Fire Insurance Company, the appeal was taken from Harlan Circuit Court action number 2011-CI-00349. A copy of the order granting judgment on the pleadings is attached to the motion for review.**
- Related Cases.** List, by complete captions, any known related cases that are also pending before the court. **None known.**
- Amicus Due Date.** State the date by which the proposed IIK amicus brief must be filed. **December 2, 2019.**

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6. **Question(s) Presented.** State the full question(s) presented. The motion describes the issues as follows:
 1. What is the standard to maintain a third party bad faith action?
 2. Is mediation conduct admissible in a bad faith action?
7. **Position to be Asserted.** Briefly state the position to be asserted in the proposed brief. The primary position of the amicus brief would be to support the authority to dismiss a bad faith claim early if the Complaint does not state a claim. We will also likely urge the Court to require factual allegations to survive a motion to dismiss as opposed to conclusory recitations of the statute. Generally, the brief will continue to urge limiting such claims in accordance with prior bad faith amicus briefs filed by IIKY.
8. **Summary of Facts.** Briefly state the facts of the case that are relevant to the position to be asserted. The bad faith claim was predicated on the manner in which the two insurers and their insureds conducted the defense and in particular settlement negotiations. The defense allegedly insisted on global settlement discussions while Movant says he wanted to settle claims separately. Also, Movant claims that the bad faith claims were dismissed before he could engage in discovery. Liability was disputed and the insureds of the two insurers did in fact settle at different times.
9. **Why IIK Should Participate.** Briefly state why IIK participation as an amicus is important and how its participation would assist the court in reaching its decision. Involvement in this case is consistent with and a continuation of the efforts IIKY have made in seeking to influence the scope of the tort of bad faith in Kentucky, particularly in third party claims.
10. **Disclose of Personal/Professional Interest in Case.** List each individual or organization participating in the decision to submit the application who has or had any personal or professional interest in the case, and the bases for that interest. The Applicant is an attorney that practices in the bad faith defense area, as well as insurance defense generally. Counsel does have a case pending a decision on review presently. The issues are not directly similar but a positive ruling in this case could insure to the benefit of the insurer in that case. Applicant is also a member of IIKY and is on the amicus committee.
11. **Drafters.** Give the names, firm connections and contact information of those who have agreed to draft the proposed brief whom you believe have the necessary expertise to draft the brief. Ronald L. Green, Green Chesnut & Hughes, PLLC, 201 East Main Street, Suite 800, Lexington, Kentucky 40507, (859) 303-5707, rgreen@gcandh.com

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12. **Submission of Application.** Please submit the completed application and all attachment to Mark Treesh, Executive Director, by email at mark@iiky.com