

LIBERTY INSURANCE CORP. and LM
INSURANCE CORP.,

Plaintiffs-Cross-Petitioners,

vs.

TECHDAN, L.L.C., EXTERIOR
ERECTING SERVICES, INC.,
DANIEL FISHER, ROBERT DUNLAP,
and CAROL JUNZ,

Defendant-Petitioners.

SUPREME COURT OF NEW JERSEY

Supreme Court

Docket No. 086219

Appellate Division A-3510-18

Docket Nos. A-3524-18

**BRIEF IN SUPPORT OF THE MOTION FOR LEAVE OF THE COALITION
AGAINST INSURANCE FRAUD TO APPEAR AS AMICUS CURIAE**

Peri & Stewart, L.L.C.
271 Route 46 West, Suite 201C
Fairfield, NJ 07004
(973) 521-7426
mmalia@peristewart.com

McGill and Hall, L.L.C.
708 10th Ave. 2nd Fl
P.O. Box 150
Belmar, New Jersey 07719
(732) 419-9000
th@mcgillhall.com

Attorneys for the Coalition Against Insurance Fraud

On the Brief: Michael A. Malia, Esq. (N.J. Bar Id. No. 019492000)
Thomas Hall, Esq. (N.J. Bar Id. No. 02309-1991)

Dated: November 5, 2021

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Combined Procedural History and Statement of Facts

Amicus Curiae the Coalition Against Insurance Fraud (“Coalition”) relies upon the Procedural History and Statement of Facts submitted by the Plaintiffs-Cross-Petitioners.

Legal Argument

GIVEN THE INTEREST OF THE PROPOSED AMICUS, LEAVE TO APPEAR PURSUANT TO RULE 1:13-9 SHOULD BE GRANTED

The Coalition is the nation’s only alliance uniting all groups against insurance fraud. Formed in 1993, the Coalition comprises 244 member organizations consisting of consumer advocates, insurers, regulators, legislators, state and local law enforcement officials, and other interested parties. The Coalition’s goals are to: (1) combat all forms of insurance fraud, (2) reduce costs for consumers, and (3) promote fairness and integrity in the insurance system. To this end, the Coalition has played an active role in advocating for laws, regulations, and policies that help detect, prevent, deter, and prosecute insurance fraud. See Certification of the Coalition’s Executive Director, Matthew J. Smith, Esq., ¶¶2-4.

The Coalition has participated as amicus curiae addressing insurance fraud issues in the following courts: the Pennsylvania Supreme Court; the New York Court of Appeals; the Illinois Supreme Court; the Supreme Court of Washington State; the Florida Supreme Court; the Supreme Court of Texas; the Supreme Court of Kentucky;

the California Supreme Court; the Supreme Court of West Virginia; the Massachusetts Supreme Court; and the Supreme Court of Ohio. Id. ¶5. The question before this Court invokes the Coalition's core interests of combatting insurance fraud, reducing costs for consumers, and promoting integrity in the insurance system. Id. ¶7. The Coalition seeks to address the following question: whether Comparative Negligence Act apportionment or joint and several liability should apply to New Jersey Insurance Fraud Prevention Act damages. Id. ¶6. The question the Coalition seeks to address, should this amicus request be granted, is an issue that will arise on a regular and consistent basis in the State of New Jersey. Id. ¶8.

In this case, the Appellate Division's erroneous application of the New Jersey Comparative Negligence Act, N.J.S.A. §2A:15-5.1, et seq. ("CNA") to damages for liability under the New Jersey Insurance Fraud Prevention Act, N.J.S.A. §17:33A-1, et seq. ("IFPA") would substantially impede restitution and damages under the IFPA, thereby gutting a powerful tool for combatting all forms of insurance fraud. As a result, the Coalition's interests in the outcome of this case are substantial. Any limitation on the ability to seek and obtain insurance fraud restitution would have a chilling effect, inevitably passed on to consumers and policyholders, who would see an increase in premiums, undermining one of the IFPA's primary goals.

R. 1:13-9(e) provides, in pertinent part, that:

Amicus who has not been granted leave to appear may file a motion for leave to appear in connection with a petition for certification...provided that the motion is accompanied by the proposed amicus curiae brief...motions for leave to appear as an amicus curiae in the Supreme Court in connection with a petition for certification...shall be filed on or before the day on which the last brief is due from any party.

The Coalition has not yet been granted leave to appear and its merits brief is submitted herewith. Also in accordance with R. 1:13-9(a), this motion states with specificity the identity of the applicant, the issue intended to be addressed, the nature of the public interest therein and the nature of the applicant's special interest, involvement or expertise in respect thereof. As provided in the Rule, the court is to grant the motion if it is satisfied under all the circumstances that: the motion is timely; the applicant's participation will assist in the resolution of an issue of public importance; and no party to the litigation will be unduly prejudiced thereby.

Addressing R. 1:13-9(a)'s three circumstances, first, this Motion is timely as it was filed before the day on which the last brief is due from any party pursuant to R. 1:13-9(e).

Second, the Coalition's participation will assist in the resolution of an issue of public importance. The Coalition's proposed brief, limited to the issue of whether the Appellate Division erred by applying CNA allocation to IFPA damage awards addresses three serious concerns: 1) that the decision below upends

almost seventy years of common law jurisprudence holding that those engaging in concerted acts that cause harm to another are subject to joint and several liability; 2) that the decision below is in derogation of the IFPA's explicit statutory purpose expressed in N.J.S.A. §17:33A-2 of eliminating insurance fraud, promoting the restitution of fraudulently obtained benefits and reducing consumers' insurance premiums; and 3) that the Appellate Division overlooked a number of practical problems caused by its decision, which will have a chilling effect on the insurance industry's ability to pursue cases under the IFPA, again contrary to the Legislature's expressed intent. Third, because the Coalition's brief is timely filed and certification has not been granted, no party will be unduly prejudiced.

Conclusion

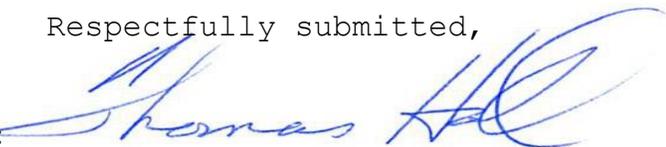
For the reasons set forth herein, amicus curiae Coalition respectfully requests that the Court grant its motion for leave to appear, grant Plaintiffs' cross-petition for certification and reverse the Appellate Division's erroneous decision requiring damages resulting from IFPA concerted violations to be allocated pursuant to the CNA.

Respectfully submitted,

By: 

Michael A. Malia, Esquire

Respectfully submitted,

By: 

Thomas Hall, Esquire