

GRANTORS to the Diaz Refinery PRP Committee
Site Trust, et al v. EMPLOYERS NATIONAL
INSURANCE CORPORATION

94-27

884 S.W.2d 591

Supreme Court of Arkansas
Opinion delivered October 3, 1994

APPEAL & ERROR — PARTY NEVER MADE AN APPEARANCE IN THE APPEAL — MOTION TO ALLOW FILING OF AMICUS BRIEF AND TO APPEAR AT ORAL ARGUMENT DENIED. — Where the position of appellee was unknown due to the absence of a brief, the association's request to file an amicus brief on its behalf was denied; without an appearance by a party to an appeal in the form of a brief, participation by *amicus curiae* on behalf of that party is not appropriate; participation of *amicus curiae* is to support a party's position; Supreme Court Rule 4-6(b) is clear that *amicus curiae* shall not participate in oral argument.

Motion for Reconsideration of Motions to File Amicus Curiae Brief and to Participate in Oral Argument denied.

Mel Sayes, Richard Watts, and Terry Jakusz, for appellants.

Huckabay, Munson, Rowlett & Tilley, P.A., by: *Beverly A. Rowlett*, for appellee.

James E. Baine and Anderson, Kill, Olick & Oshinsky, by: *Eugene Anderson*, for amicus curiae.

PER CURIAM. Insurance Environmental Litigation Association (IELA) requests reconsideration of our denial of its motion to file an *amicus curiae* brief on behalf of Employers National Insurance Corporation, which is in receivership in Oklahoma pursuant to an order of the Federal District Court in Oklahoma. The State Insurance Commissioner in Oklahoma is the appointed receiver. No formal action has been taken by the Oklahoma Insurance Commissioner on behalf of Employers National or counsel for Employers National in this court other than to suggest an indefinite stay of the appeal. An indefinite stay of the appeal is not an appropriate resolution of the matter. Accordingly, the appeal is proceeding until settlement is reached or dismissal is warranted or some other means of disposing of the appeal is proposed.

[1] Without an appearance by a party to an appeal in the form of a brief, participation by *amicus curiae* on behalf of that party is not appropriate. Our rules contemplate participation of *amicus curiae* in support of a party's position. Ark. Sup. Ct. R. 4-6. The position of Employers National is unknown at this time due to the absence of a brief. Moreover, Supreme Court Rule 4-6(b) is clear that *amicus curiae* shall not participate in oral argument.

The motion for reconsideration is denied.

GLAZE, J., not participating.
