

**IN THE SUPREME COURT
STATE OF GEORGIA**

FIRST ACCEPTANCE INSURANCE)
COMPANY OF GEORGIA, INC.,)
))
Petitioner,)
))
vs.)
))
ROBERT W. HUGHES, JR., as)
Administrator of the Estate of)
Ronald Nathaniel Jackson,)
))
Respondent.)

Case No.: S18C0517

**RESPONDENT’S MOTION TO STRIKE AMICUS CURIAE BRIEF
OF THE GEORGIA DEFENSE LAWYERS ASSOCIATION**

Respondent, ROBERT W. HUGHES, JR., as Administrator of the Estate of Ronald Nathaniel Jackson, hereby moves to strike from the record the *Amicus Curiae Brief of the Georgia Defense Lawyers Association* (“GDLA”), and in support thereof states:

1. Respondent now moves to strike GDLA’s *Amicus Curiae Brief* because it seeks to interject additional legal issues into this proceeding that were not raised by Petitioner, First Acceptance Insurance Company, in its *Petition for Writ of Certiorari*.

2. As this Court has repeatedly explained,

The function of an amicus curiae ‘is to call the court's attention to law or facts or circumstances in a matter then before it that may otherwise

escape its consideration ... He has no control over the litigation and no right to institute any proceedings therein, **he must accept the case before the court with the issues made by the parties.**'

Fulton Cty. v. Bartenfeld, 257 Ga. 766, 770, 363 S.E.2d 555, 560 (1988) (quoting Vill. of N. Atlanta v. Cook, 219 Ga. 316, 322, 133 S.E.2d 585, 589 (1963)) (emphasis added). For that reason, amicus curiae are prohibited from raising additional issues not “properly raised by a party to [the] proceeding.” Fulton Cty. v. Bartenfeld, 257 Ga. 766, 770, 363 S.E.2d 555, 560 (1988).

3. Thus, this Court cannot consider issues raised by amicus curiae which were not raised in the petitioner’s enumerations of error. See id. (concluding that issue raised only by amicus curiae was “not properly before [the court] for appellate review” and declining to consider that issue); State v. Crossen, 328 Ga. App. 198, 203, 761 S.E.2d 596, 601 n.2 (2014) (noting that amicus briefs must be “limited to issues properly raised by the parties” and declining to consider issue raised by amicus curiae on that basis); Honkan v. Honkan, 283 Ga. App. 522, 524, 642 S.E.2d 154, 156 (2007) (same); Shaver v. Aetna Fin. Co., 148 Ga. App. 740, 740, 252 S.E.2d 684, 685 (1979) (“However, this issue was not raised by the appellants in their enumerations of error. Thus, even assuming that the issues involved in this case are of such importance as to warrant further elucidation by an amicus curiae, we cannot consider this attempted expansion of the original appeal.”).

4. Here, First Acceptance raised two issues in its enumerations of error: (1) that the Court of Appeals erred by finding genuine issues of material fact as to whether First Acceptance was presented with an opportunity to settle the Hong claim, and (2) that the Court of Appeals erred by finding genuine issues of material fact as to whether First Acceptance had a “legitimate opportunity to settle” within a 30-day deadline for response.¹

¹ More specifically, the enumerations of error stated:

(1) The Georgia Court of Appeals erred by finding there were genuine issues of material fact as to whether the June 2nd Letters presented Acceptance with an opportunity to settle only the Hong claim, when:

- a. The June 2nd letters demanded the full per-accident policy limit for both of the Stevens Claimants; and
- b. Acceptance had already agreed to share some of those limits with a third claimant who had previously sent a settlement demand;

Further, the Court of Appeals assumed that Acceptance had an opportunity to settle just the Hong claim, despite the absence of such an offer in the letter.

(2) The Georgia Court of Appeals erred by finding there were genuine issues of material fact as to whether the June 2nd Letters included a legitimate opportunity to settle with a 30-day deadline for response, when Mr. Stevens' letters provided Acceptance with its choice of two options:

- a. Payment of the full policy limits along with a response to a statutory request for insurance information, which necessarily had a 60-day deadline; or
- b. Participation in a global mediation, which was the option Acceptance had already offered, with no deadline; when Mr. Stevens withdrew the offer (pursuant to his secret and incorrect interpretation of the deadline) before the 60-day deadline had passed.

Petition for Writ of Certiorari, p.10.

5. However, the amicus brief does not seek to address either of those issues. Instead, it argues that the Court of Appeals erred by treating the interpretation of a settlement offer as a question of fact. First Acceptance did not raise any such argument in its enumerations of error or the remainder of its *Petition*, instead focusing its entire argument on whether the “opportunity to settle” presented by the June 2, 2009 letters was “legitimate” and sufficient to trigger extra-contractual liability.

6. Therefore, “even assuming that the issues involved in this case are of such importance as to warrant further elucidation by an amicus curiae,” and they are not, the Court “cannot consider this attempted expansion of the original appeal.” *Shaver v. Aetna Fin. Co.*, 148 Ga. App. 740, 740, 252 S.E.2d 684, 685 (1979). Accordingly, GDLA’s amicus curiae brief should be stricken.

WHEREFORE, Respondent respectfully requests that the Court strike GDLA’s amicus curiae brief from the record or, at a minimum, decline to consider any of the argument raised therein.

Respectfully submitted this 8th day of February, by:

/s/ Brent Steinberg
BRANDON G. CATHEY
Georgia Bar No. 076210
BRENT G. STEINBERG
Georgia Bar No. 119678
SWOPE, RODANTE P.A.
1234 East Fifth Avenue
Tampa, FL 33605

Tel: (813) 273-0017
Fax: (813) 233-3678
Team2eservice@swopelaw.com
eservice@swopelaw.com

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused to be served a true and correct copy of the foregoing upon counsel of record by placing a copy of same in the U.S. mail in an envelope with adequate postage thereon and addressed to:

J. Stephen Berry
J. Randolph Evans
Robin N. Johnson
Dentons US LLP
303 Peachtree Street, N.E., Suite 5300
Atlanta, GA 30308

David M. Atkinson
Jonathan J. Kandel
Swift, Currie, Mcghee & Hiers, LLP
1355 Peachtree Street, N.E.
The Peachtree, Suite 300
Atlanta, GA 30309

The Georgia Defense Lawyers Association
P.O. Box 191074
Atlanta, GA 31119-1074

This 8th day of February, 2017.

SWOPE, RODANTE P.A.

/s/ Brent Steinberg
BRENT G. STEINBERG
Georgia Bar No. 119678