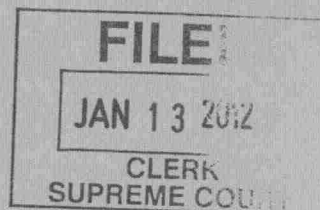


SUPREME COURT OF KENTUCKY
CASE NO. 2010-SC-000827-D
COURT OF APPEALS CASE NO. 2008-CA-1248



AIG DOMESTIC CLAIMS, INC.,
and NATIONAL UNION FIRE
INS., CO.,

APPELLANTS

VS:

APPEAL FROM PIKE CIRCUIT COURT
HON. EDDY COLEMAN, JUDGE
ACTION NO. 06-CI-00231

TAMMY TUSSEY, PIKE COUNTY
BOARD OF EDUCATION and
EDDIE McCOY

APPELLEES

BRIEF FOR APPELLEE, TAMMY TUSSEY

LAWRENCE R. WEBSTER
P.O. DRAWER 712
PIKEVILLE, KENTUCKY 41502
606 437-4029
ATTORNEY FOR APPELLEE,
TAMMY TUSSEY

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing Brief for Appellee, Tammy Tussey was duly mailed, postage prepaid, to: Clerk, Supreme Court of Kentucky, State Capitol, Room 235, 700 Capitol Avenue, Frankfort, Kentucky 40601; Clerk, Court of Appeals, 360 Democrat Drive, Frankfort, Kentucky 40601; Hon. Robert S. Walker, Frost Brown Todd, LLC, 250 West Main Street, Suite 2800, Lexington, Ky., 40507, Attorney for Appellants; Hon. Neal Smith, Smith, Atkins & Thompson, PLLC, P.O. Box 1079, Pikeville, Kentucky 41502, Hon. Robert L. Chenoweth, Chenoweth law Office, 121 Bridge Street, Frankfort, Ky., 40601, Attorneys for Appellees, Board of Education and Eddie McCoy and to the Hon. Eddy Coleman, Judge Pike Circuit Court, Hall of Justice Bldg., Pikeville, Kentucky 41501. This is to further certify that the record on appeal was not withdrawn from the Pike Circuit Court Clerk's Office. This the 10 day of January, 2012.

LAWRENCE R. WEBSTER

STATEMENT CONCERNING ORAL ARGUMENT

Oral argument is not considered necessary.

COUNTERSTATEMENT OF POINTS AND AUTHORITIES

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COUNTERSTATEMENT OF THE CASE

Tammy Tussey accepts the Appellant's Statement of the Case but would adopt any Counterstatement made by fellow Appellees, the real parties in interest.

FIRST ARGUMENT

THERE IS A PUBLIC POLICY OBJECTIVE OF COMPENSATING TORT VICTIMS WHICH MILITATES IN FAVOR OF THE KENTUCKY COURT ADOPTING THE "MODERN TREND," AND REQUIRING INSURORS WHO HAVE NOT BEEN PREJUDICED BY UNTIMELY NOTICE TO COVER CLAIMS.

The other parties to this case will adequately argue the technical insurance issues in this case. The only argument that Tammy Tussey could make in her behalf in addition to that is the public policy objective of compensating tort victims.

In Alcazar v. Hayes, 983 S.W. 2d 845 (10 Sup. Ct., 1988) the Tennessee Supreme Court adopting what was called the modern trend assigned the public policy objective of compensating tort victims as one of the public policy justifications to support the "modern trend," and said that it would be inequitable for an insurer that has not been prejudiced by delay of notice to reap the benefits flowing from the forfeiture of the insurance policy. That case quoted Appleman on Insurance §4.30 (2d Ed 1996) and went on to explore the modern trend with respect to notice provisions:

In recent years a "modern trend" has developed, and the vast majority of jurisdictions now consider where the insurer has been prejudiced by the insured's untimely notice. Although these courts have enumerated various public

policy justifications to support this shift, a review of these cases indicates that three rationales are particularly persuasive: (1) the adhesive nature of insurance contracts; (2) the public policy objective of compensating tort victims; and (3) the inequity of the insurer receiving a windfall due to a technicality, *id.*, Alcazar at 849.

Tammy Tussey, the tort victim in this case cannot control when a school board chooses to report her claim. Her need for insurance coverage in this case is a matter of public policy which should be considered by this Court in its decision.

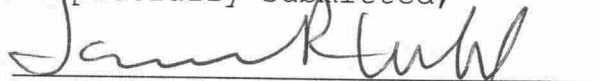
ADOPTION OF ARGUMENTS OF OTHER APPELLEES

Tammy Tussey adopts such legal arguments as may be made by qualified counsel for her co-appellees, Pike County Board of Education and/or Eddie, McCoy.

CONCLUSION

The Court of Appeals' decision finding coverage in this case is consistent with the "modern trend," and should be the position taken by this Court.

Respectfully submitted,



LAWRENCE R. WEBSTER
P.O. DRAWER 712
PIKEVILLE, KENTUCKY 41502
ATTORNEY FOR APPELLEE,
TAMMY TUSSEY