

Guidelines for IADC Amicus Curiae Briefs

The IADC is dedicated to the impartial and efficient administration of justice, equal opportunity in the legal profession, the rule of law and the continual improvement of the civil justice system. The IADC supports a legal system in which plaintiffs are fairly compensated for wrongfully caused harm, defendants can defend themselves without unreasonable cost, culpable defendants are subject to liability for appropriate damages, and non-culpable defendants are exonerated.

Within that system, the IADC is committed to representing the legal interests of corporate defendants. To that end, the IADC regularly files amicus briefs in appellate courts across the United States. The Amicus Curiae Committee has the initial responsibility for determining the cases in which the IADC should participate. The following guidelines assist the committee with that decision-making:

- I. **IADC Member Request:** The IADC Amicus Curiae Committee will consider a request for an amicus brief only when submitted by an IADC member. A member can request IADC participation in a case irrespective of whether the member is involved in the case. If another IADC member has an adverse interest in the case, the IADC will consider the potential conflict among IADC members in deciding whether to provide amicus curiae support. Regardless, the views expressed in the amicus curiae brief will be those of the IADC as an institution, and not any member.
- II. **Appellate Courts:** As a general rule, the IADC will typically consider providing amicus curiae support in cases pending only in the United States Supreme Court, a state supreme court, or the federal circuit courts of appeal. In cases where the court has discretionary jurisdiction and the Committee is being asked to urge the court to grant review, the Amicus Curiae Committee may use different or additional considerations than when requested to submit a brief solely on the merits after the court has granted review. The IADC will consider providing amicus curiae support in state intermediate appellate courts only in exceptional cases.
- III. **Factors to be Considered.** The IADC will review requests for amicus curiae support on a case-by-case basis. The Committee will be guided by the following nonexclusive factors:
 - A. Is the issue presented important and common to corporate defendants and/or the defense bar?

- B. Is the position the IADC is being asked to take in the amicus curiae brief consistent with the IADC's principles and would it advance the interests of the IADC?
- C. What perspective can the IADC bring to the case and how does that complement the briefs of the parties and other potential amicus briefs?
- D. Does the issue raise the risk of conflict within the business community?
- E. Does the party seeking support have member(s) in the IADC?
- F. Does the IADC have resources available to support the brief?
- G. Would the IADC's position seek to make a broad, clear and concrete impact on the area of law in question?
- H. If the IADC is asked to support a petition for certiorari or state-court discretionary review, would further review be in the best interests of corporate defendants and/or the defense bar? Also, do the facts of the case make it a good or bad vehicle for raising the issue?
- I. Which other business, trade or advocacy groups have been approached about or are considering filing an amicus brief in support of the position that IADC will be taking? Also, are amicus briefs expected in opposition and, if so, by whom?
- J. Does the IADC have sufficient time to consider the proposal and, if approved, write the brief before the amicus deadline?
- K. Would the proposed amicus brief enhance the IADC's reputation as a trusted and well-respected "friend of the court"?

IV. **Case Review Procedures:** Upon receipt of an IADC member's request for amicus curiae support, the Committee shall timely review the briefs and other relevant material. The Committee will vote on whether the IADC should provide amicus curiae support, with the majority determining the recommendation of the Committee. If the Committee votes to file an amicus curiae brief, it will present that recommendation to the Board of Directors. The Board of Directors will make the final determination as to whether to approve that recommendation.

- V. Preparation of the Brief: If the IADC decides to participate as an amicus, the Committee chair will appoint counsel to draft the brief.
- VI. Committee Appointments: Members of the IADC Amicus Curiae Committee are appointed by the President of the IADC. Members of the Committee must agree to write one brief per year if requested to do so while serving on the Committee.

*Approved by the IADC Board of Directors December 20, 2018