

§ 12.38 Motion for Involuntary Dismissal

IN THE (SUPREME COURT)(COURT OF APPEALS) OF THE STATE OF KANSAS

[Insert Name],

Plaintiff-Appellant,

vs.

[Insert Appellate Court Case Number]

[Insert Name],

Defendants-Appellees.

MOTION FOR INVOLUNTARY DISMISSAL

[Insert name] asks the Court to dismiss this appeal without prejudice so the parties can obtain a district court order certifying this case is a controlling question of law.

1. *Background.* James Doe commenced an action against John Doe and ABC, Inc., claiming that John Doe committed tortious acts and demanding compensation for his injury and damages.
2. *Authority.* Supreme Court Rule 4.01 and K.S.A. 60-2102(c).
3. *Reasons.* Defendant, John Doe, notified his insurance carrier and demanded the insurance carrier, under the terms of its policy, provide a defense and pay any lawful claims.
4. Plaintiff agreed to provide a defense and then commenced a declaratory judgment action requesting the trial court to interpret a policy of insurance issued to the defendant, John Doe.
5. Plaintiff in this action attempted to discover facts in controversy in the underlying tort suit between James Roe and John Doe and further requested the trial court in this declaratory judgment action to construe the underlying facts and interpret the subject insurance policy.

6. The trial court entered an order staying this action until the facts in the underlying tort action were determined or until the underlying tort action was concluded based upon the legal principle enunciated in *State Farm Fire & Casualty Company v. Finney*, 244 Kan. 545, 770 P.2d 460 (1989); *State Farm Fire & Casualty Company v. T.G.B., Inc.*, 760 F. Supp. 178 (D. Kan. 1991); and *U.S. Fidelity and Guaranty Co. v. Continental Insurance Company*, 216 Kan. 5, 531 Pac. 9 (1975).
7. The plaintiff appeals from the Stay Order which is not a final Order, and the plaintiff did not secure an Order from the district judge under K.S.A. 60-2102(c) to enable the Court of Appeals to exercise its discretion whether or not to permit the appeal herein. Accordingly, plaintiff's appeal is premature.

Attorney's Signature

/s/ _____

Attorney's Name (typed or printed)

Kansas Attorney Registration Number

Address

Telephone Number

Fax Number

E-mail Address

Name of the Party Represented

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Motion for Involuntary Dismissal was sent by [Insert Method] on [Insert Date] to:

[Insert names and addresses of those on whom service is made.]

/s/ _____

Attorney's Name and Registration Number