

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SCOTTSDALE INSURANCE COMPANY,))
)
Plaintiff,)
)
v.)
)
ADVENT, INC., ET AL.,)
)
Defendants.)
_____)

Case No.: C 10-01342 PVT

**ORDER GRANTING PETITION FOR
APPOINTMENT OF *GUARDIAN AD
LITEM***

[Docket No. 11]

Sherry Lynn Kielty petitions to be appointed *guardian ad litem* for her brother, defendant Jerry Kielty, in the above-captioned action. Jerry Kielty was rendered mentally and physically disabled as a result of significant injuries he incurred at a construction site on or about August 22, 2008. He has filed certain claims related to those injuries in state court. (“underlying action”). And Sherry Lynn Kielty has been appointed as *guardian ad litem* for Jerry Kielty in the underlying action.

Pursuant to Civ. L.R. 7-1(b), the petition is taken under submission and the hearing scheduled to be held on July 27, 2010 is vacated. Having reviewed the papers and considered the arguments of counsel,

1 IT IS HEREBY ORDERED that Sherry Lynn Kielty’s petition is granted.¹

2 Rule 17(c) states:

3 The following representatives may sue or defend on behalf of a minor or an incompetent person:

- 4 (A) a general guardian;
- 5 (B) a committee;
- 6 (C) a conservator; or
- 7 (D) a like fiduciary.

8 Fed. R. Civ. P. 17. *See, e.g., Estate of Ricardo Escobedo, et al. v. City of Redwood City, et al.*, 2006
9 WL 571354 *7 (N.D. Cal.).

10 Jerry Kielty fell approximately 20 feet in a stairway shaft at a construction site located in
11 Milpitas, California. Complaint for Declaratory Relief at 6. (“Complaint”). He sustained serious
12 and significant injuries. “Jerry is mentally and physically disabled following an August 22, 2008
13 traumatic injury to his body, including, *inter alia*, injuries to his brain and spinal cord; Jerry’s
14 disabilities include substantial limitations to his cognitive abilities, including, *inter alia*, trouble with
15 executive functions, severe impairment of verbal fluency, difficulty sustaining attention, and deficits
16 in short-term and long term memory.” Petition at 2. Sherry Kielty has been appointed the *guardian*
17 *ad litem* for Jerry Kielty in the underlying action. *Id.* He has no other guardian or conservator of his
18 estate. Petition at 2. Moreover, Jerry Kielty is represented by the San Jose law firm, McManis
19 Faulker. Petition at 1.

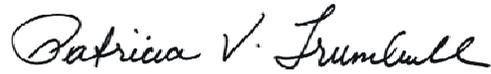
20 In the above-captioned action, plaintiff Scottsdale Insurance Company has sought
21 declaratory relief regarding, *inter alia*, the scope of its (and other insurers’) duties to defend and
22 indemnify other insureds in the underlying action. (“Scottsdale”). Scottsdale insured a
23 subcontractor named Pacific Structures, which performed certain structural concrete work at the
24 construction site. Here, Sherry Kielty is *guardian ad litem* for her brother in the underlying action
25 and she consents to her appointment in the above-captioned action. She does not appear to have any
26 conflict of interest and does not appear to have a stake in the claims. Moreover, no objections have
27

28 ¹ The holding of this court is limited to the facts and particular circumstances underlying
the present petition.

1 been made regarding her proposed appointment and ability to represent her brother's best interests.
2 "[T]he Court's discretion allows[s] for the appointment of a different guardian if any doubts exist
3 regarding the *guardian ad litem's* intentions or qualifications." *Estate of Ricardo Escobedo, et al. v.*
4 *City of Redwood City, et al., supra*, 2006 WL 571354 at *7. Accordingly, Sherry Kielty is appointed
5 *guardian ad litem* for her brother, Jerry Kielty, who is named as a defendant in the above-captioned
6 action.

7 IT IS SO ORDERED.

8 Dated: July 1, 2010



9 PATRICIA V. TRUMBULL
United States Magistrate Judge

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28