

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN**

MARY HALEY et al.,

Plaintiffs,

vs.

KOLBE & KOLBE MILLWORK CO.,
INC. et al.,

Defendant,

Case No. 14-cv-99

and

FIREMAN'S FUND INSURANCE
COMPANY and UNITED STATES FIRE
INSURANCE COMPANY, et al.

Intervenors.

**UNITED STATES FIRE INSURANCE COMPANY'S
DOCKETING STATEMENT**

U.S. Fire Insurance Company ("U.S. Fire") respectfully submits this Docketing Statement pursuant to Circuit Rule 3(c)(1) of the United States Court of Appeals for the Seventh Circuit ("Seventh Circuit").

I. DISTRICT COURT JURISDICTION

Plaintiffs filed the above-captioned matter as a class action against Defendant Kolbe & Kolbe Millwork Co, Inc. ("Kolbe") pursuant to Federal Rule of Civil Procedure 23. U.S. Fire and Fireman's Fund Insurance Company ("Fireman's Fund") were granted leave to intervene in the action pursuant to Federal Rule of Civil Procedure 24 and requested declaratory relief by the terms and provisions of Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201

and 2202. The United States District Court for the Western District of Wisconsin (“District Court”) has original jurisdiction because the parties meet the diversity requirements of § 1332(d)(2):

- Plaintiffs Mary Haley and Michael Haley are citizens of Michigan
- Plaintiffs Annie Buinewicz and Brian Buinewicz are citizens of Pennsylvania.
- Plaintiffs Leslie Banks and James Hal Banks are citizens of Florida.
- Plaintiffs Susan Senyk and Christian Senyk are citizens of Pennsylvania.
- Plaintiffs Terrance McIver and Jean Ann McIver are citizens of Michigan.
- Plaintiffs Gary Samuels and Patricia Groom are citizens of New Hampshire.
- Plaintiffs Matthew Deller and Marie Deller are citizens of Ohio.
- Plaintiff Marie Lohr is a citizen of Wisconsin.
- Kolbe is a Wisconsin corporation with its principal place of business in Wausau, Wisconsin; it is a citizen of Wisconsin.
- Fireman’s Fund is a California corporation with its principal place of business in Novato, California; it is a citizen of California.
- U.S. Fire is a Delaware corporation, with its principal place of business in New Jersey; it is a citizen of New Jersey.

Plaintiffs alleged that the amount in controversy, exclusive of interest and costs, exceeds \$5,000,000.

II. APPELLATE COURT JURISDICTION

The District Court found that neither Fireman’s Fund nor U.S. Fire had a duty to defend Kolbe in this case, and directed the clerk of court to enter judgment for U.S. Fire and Fireman’s Fund on August 25, 2016. *See* Dkt. 567. In the District Court’s order, it ruled that U.S. Fire was not entitled to reimbursement of defense costs. *See id.* It did not address U.S. Fire’s challenge to the reasonableness of defense costs which the District Court deemed “premature to resolve” in its

April 1, 2016 Opinion and Order (ECF No. 213). The clerk of court entered final judgment for U.S. Fire and Fireman's Fund on August 29, 2016. *See* Judgment (Dkt. 568).

Kolbe and Fireman's Fund filed Notices of Appeal with the District Court on September 28, 2016. U.S. Fire timely filed a Notice of Cross-Appeal on October 11, 2016. The Seventh Circuit has jurisdiction over this appeal pursuant to 28 U.S.C. §§ 1291 and 1294.

III. FINAL ADJUDICATION

A final appealable judgment was entered by the District Court in accordance with Rule 58(a) on August 29, 2016. This is a civil appeal as a matter of right pursuant to Federal Rule of Appellate Procedure 3(a) and Circuit Rule 3(a).

IV. PRIOR OR RELATED APPELLATE PROCEEDINGS

There is an appeal regarding the class certification decision by the District Court in this case pending before the Seventh Circuit (USCA Case Number 16-3192).

This is a cross-appeal to Kolbe's September 28, 2016 appeal regarding insurance coverage issues. Kolbe's appeal and Fireman Fund's cross-appeal are currently pending before the Seventh Circuit (USCA Case Numbers 16-3562 and 16-3563).

V. ADDITIONAL REQUIREMENT OF CIRCUIT RULE 3(c)(1)

This is a civil case that does not involve any criminal convictions, and this case does not involve a collateral attack on a criminal conviction. This case has not been designated by the district court as satisfying the criteria of 28 U.S.C. §1915(g). None of the parties to the litigation appear in an official capacity.

Dated: October 11, 2016

Respectfully submitted,

SHOOK, HARDY & BACON L.L.P.

By: /s/ David E. Schoenfeld

David E. Schoenfeld
Riley C. Mendoza
SHOOK, HARDY & BACON L.L.P.
111 South Wacker Drive
Chicago, Illinois 60606
Telephone: 312.704.7700
Facsimile: 312.558.1195
dschoenfeld@shb.com
rmendoza@shb.com

*Attorneys for Intervenor United States Fire
Insurance Company*