

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

_____)	
VENANCIO AGUASANTA ARIAS,)	
<u>et al.</u> ,)	
)	
Plaintiffs,)	
)	Civil Action No. 01-1908 (RWR)
v.)	
)	Consolidated with Civil Action
DYNCORP, <u>et al.</u> ,)	No. 07-1042 (RWR) for case
)	management and discovery
Defendants.)	purposes
_____)	

MEMORANDUM ORDER

In their motion for leave to file an *amicus* brief, fourteen international environmental law professors and practitioners detail their interest in this case as researchers and writers as to "international environmental law and the international environmental principles that are part of customary international law," and as lawyers who work in the field. (Mot. at 1.) The movants claim to offer evidence contradicting the statement of the defendants' expert witness and demonstrating "that the obligation to prevent significant transboundary harm is a matter of customary law." (Id. at 1-2.) The defendants oppose the motion on the grounds that the proposed brief: 1) constitutes "an inappropriate attempt . . . to introduce expert opinion . . . without abiding by the deadlines for expert disclosures"¹ and

¹ The plaintiffs' expert designations were due on December 17, 2010; the defendants', on January 20, 2011. (Defs.' Opp'n at 3; see also October 1, 2010 Consent Notice at 1.)

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2) duplicates the plaintiffs' arguments. (See Defs.' Opp'n at 1-2.)

The motion may be granted if the brief "will assist the [court] by presenting ideas, arguments, theories, insights, facts or data that are not to be found in the parties' briefs." Commonwealth of the N. Mariana Islands v. United States, Civ. Action No. 08-1572 (PLF), 2009 WL 596986, at *1 (D.D.C. Mar. 6, 2009) (internal quotation marks and citation omitted). "Such briefs generally are not permitted where they present 'no unique information or perspective[,]' " id. (citation omitted), and when they "are akin to unsworn expert testimony." N.Y. v. Microsoft Corp., Civ. Action No. 98-1233 (CKK), 2002 WL 31628215, at *1 (D.D.C. Nov. 4, 2002) (denying amici leave to participate after 32-day trial, where they offered only factual information and did not address legal issues) (internal quotation marks and citation omitted). "[T]he fact, extent and manner" of *amicus* participation is left to the court's sound discretion. Cobell v. Norton, 246 F. Supp. 2d 59, 62 (D.D.C. 2003). Even "highly partisan" participants may be granted leave to file an *amicus* brief if it aids the Court in "reconcil[ing] . . . significant legal issues." Jin v. Ministry of State Sec., 557 F. Supp. 2d 131, 138 (D.D.C. 2008); see id. at 138 n.6. (See also Defs.' Opp'n at 10.)

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The movants complied with the requirement to attach the proposed brief to their filing, to state their interest in the case, and to explain "why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case." Neonatology Assocs., P.A. v. Comm'r of Internal Revenue, 293 F.3d 128, 130-31 (3rd Cir. 2002). They have detailed the distinctions between the proposed brief and the plaintiffs' filings. (Reply at 5-7.) Finally, they refute the DynCorps defendants' speculation that the movants' efforts to file an *amicus* brief mask the plaintiffs' attempt to "circumvent the Court's scheduling order[.]" (Reply at 3; Defs.' Opp'n at 5.) Even assuming that the brief is partisan (Defs.' Opp'n at 1 n.1), it may aid the court's resolution of the pending motions for summary judgment. See Nat'l Ass'n of Home Bldrs. v. U.S. Army Corps of Eng'rs., 519 F. Supp. 2d 89, 93 (D.D.C. 2007) ("Because the [*amicus curiae*] seeks to support the government's arguments[,]. . . the court may benefit from [the *amicus*'] input"). For example, the brief presents "legal analysis offered by legal scholars" as to whether customary international law displaces the defendants' proffered *lex specialis*: Article 14 of the 1988 U.N. Convention. (Reply at 4; compare also Defs.' Mot. for Summ. J. on the Pls.' Alien Tort Statute Claims at 38-39 with Reply at 6.) Cf. Microsoft Corp., 2002 WL 31628215, at *1

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(denying amici leave to participate for failure to address legal issues). Accordingly, it is hereby

ORDERED that the motion to file an *amicus* brief be, and hereby is, GRANTED. The Clerk shall docket the *Amicus Curiae* Brief that was submitted with the motion.

SIGNED this 21st day of November, 2011.

/s/
RICHARD W. ROBERTS
United States District Judge