IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RUDOLPH A. KARLO, MARK K. MCLURE, WILLIAM S. CUNNINGHAM, JEFFREY MARIETTI, DAVID MEIXELSBERGER, BENJAMIN D. THOMPSON and RICHARD CSUKAS, on behalf of themselves and all others similarly situated, ¹))) 2:10-cv-1283))
Plaintiffs,)
vs.)
PITTSBURGH GLASS WORKS, LLC,)
)
Defendant.)

MEMORANDUM ORDER OF COURT

Pending before the Court is the MOTION OF PROFESSOR SANDRA SPERINO TO FILE BRIEF AMICUS CURIE IN SUPPORT OF PLAINTIFFS WITH RESPECT TO PGW'S MOTION FOR DECERTIFICATION (ECF No. 295) filed by counsel for Plaintiffs apparently on her behalf.² Defendant Pittsburgh Glass Works, LLC ("PGW") filed a response in opposition (ECF No. 296). Accordingly, the motion is ripe for disposition.

Professor Sandra Sperino seeks leave to appear amicus curie "because her academic expertise in the 'subgrouping' issue in disparate impact claims under the ADEA positions her to

^{1.} A review of the filings in this case indicates that some of the named Plaintiffs may have settled their claims with PGW. The Minute Entry for proceedings before Judge Arthur J. Schwab filed on May 8, 2013 states that the "[p]arties have reached a settlement as to two of the parties: Benjamin D. Thompson and Ron Wickwire. Stipulation for dismissal to be filed tomorrow for those individuals." ECF No. 266. No such stipulation was filed on May 9, 2013. Plaintiffs' renewed motion for leave to file a second amended complaint filed on July 15, 2013 similarly notes that "[t]he amendments also remove allegations relating to Plaintiffs whose claims have been settled: two representative Plaintiffs—Ben Thompson and Richard Czukas and four opt in Plaintiffs . . . and it is anticipated that all six settling Plaintiffs will be voluntarily dismissed from the action very shortly." ECF No. 299 at 2. That stipulation also remains outstanding. Accordingly, the Court will amend the caption to reflect those apparent dismissals once stipulations have been filed of record.

^{2.} Plaintiffs note that "[s]hould this Motion be granted, [they] will move to admit Professor Sperino pro hac vice." ECF No. 295 at 1, n.1. Local Civil Rule 83.2 no longer requires that pro hac vice motions be submitted by a member of the bar of the Western District of Pennsylvania; the Amended Rule, which became effective February 1, 2103, now requires that all pro hac vice motions be made by the attorney seeking to be admitted. LCvR 83.2(B).

assist with the Court's understanding of the subgrouping issue, which is complex and has not yet been addressed by the Third Circuit Court of Appeals." ECF No. 295 at 1. Sperino is an Associate Professor at the University of Cincinnati College of Law where she teaches Civil Procedure and Employment Law and has authored numerous articles in the employment law field which have been published in numerous Law Reviews. *Id.* Relevant here, Sperino is the author of *The Sky Remains Intact: Why Allowing Subgroup Evidence Is Consistent with the Age Discrimination in Employment Act*, 90 MARQ. L. REV. 227 (2006), which United States District Judge Nora Barry Fischer relied upon at the conditional certification stage in this case. *See Karlo v. Pittsburgh Glass Works, LLC*, 880 F. Supp. 2d 629, 641 (W.D. Pa. 2012) ("[T]he Court finds highly persuasive the reasoning presented in Professor Sperino's article, referenced above.").

Not surprisingly, PGW submits that the Court should deny the motion. PGW argues that Sperino does not have a special interest in the case, will not be helpful to the Court, and is being offered solely as an advocate for Plaintiffs arguing for a change in the law to allow their putative class. PGW instead proposes that "if Plaintiffs believe that Professor Sperino has the wordsmithing ability to successfully argue for a change in the law, she is free to join Plaintiffs' legal team and write a brief adhering to the Court's page limitations." ECF No. 296 at 2. Alternatively, PGW requests that the Court permit other organizations (e.g., chambers of commerce) to appear *amicus curiae* should the instant motion be granted.

"The extent, if any, to which an *amicus curiae* should be permitted to participate in a pending action is solely within the broad discretion of the district court." *Waste Mgmt. of PA, Inc. v. City of York*, 162 F.R.D. 34, 36 (M.D. Pa. 1995). The United States Court of Appeals for the Third Circuit has noted that "permitting persons to appear . . . as friends of the court . . . may be advisable where third parties can contribute to the court's understanding" of the matter in question. *Harris v. Pernsley*, 820 F.2d 592, 603 (3d Cir. 1987). At the trial level, where issues

of fact as well as law predominate, the aid of amicus curiae may be less appropriate than at the

appellate level, where such participation has become standard procedure. United States v.

Alkaabi, 223 F. Supp. 2d 583, 592 n.16 (D.N.J. 2002).

Generally, a district court grants amicus curiae status where: (i) the petitioner has a

special interest in the case; (ii) the petitioner's interest is not represented competently or at all in

the case; (iii) the proffered information is timely and useful; and (iv) the petitioner is not partial

to a particular outcome in the case. Liberty Resources, Inc. v. Phila. Hous. Auth., 395 F. Supp.2d

206, 209 (E.D. Pa. 2005).

Considering these factors, the Court finds and rules that they weigh against permitting the

proposed amicus curie brief. The moving parties have identified no "special interest" of Sperino

and the interests of petitioner (presumably to aid the Court's understanding of the subgrouping

issue under the ADEA) is being competently represented by able counsel. To the extent that

Sperino's brief on ADEA subgrouping would be useful, the Court already has the benefit of her

published law review article which addresses this issue. The Court expresses no opinion on

whether petitioner is partial to a particular outcome in the case. Therefore, the motion is

DENIED.

The Court also hereby **RESCHEDULES** the hearing/oral argument set for Thursday,

August 15, 2013 at 10:00 AM to Wednesday, August 28, 2013 at 9:00 AM. Should the Court

find that expert testimony is necessary, the parties will be advised accordingly and provided with

appropriate notice.

SO ORDERED this 5th day of August, 2013.

BY THE COURT:

s/Terrence F. McVerry United States District Judge

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