

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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