

**UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**

BRUCE MERRICK., *et al.*,

Plaintiff-Appellees,

v.

DIAGEO AMERICAS SUPPLY, INC.,

Defendant-Appellant,

On Appeal from the United States District Court
for the Western District of Kentucky (No. 3:12-cv-00334)

**MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED
STATES OF AMERICA, THE NATIONAL ASSOCIATION OF
MANUFACTURERS, AND THE AMERICAN FUEL & PETROCHEMICAL
MANUFACTURERS FOR LEAVE TO FILE AMICI CURIAE BRIEF IN
SUPPORT OF DEFENDANT-APPELLANT**

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December 3, 2014

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DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

Pursuant to Federal Rules of Appellate Procedure 26.1(a) and 29(c)(1), and Sixth Circuit Rule 26.1, *amici curiae* the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the American Fuel & Petrochemical Manufacturers make the following disclosure:

1. Is said party a subsidiary or affiliate of a publicly owned corporation?

If yes, list below the identity of the parent corporation or affiliate and the relationship between it and the named party:

No.

2. Is there a publicly owned corporation, not a party to the appeal, that has a financial interest in the outcome? If yes, list the identity of such corporation and the nature of the financial interest:

No.

MOTION FOR LEAVE TO FILE

Pursuant to Federal Rule of Appellate Procedure 29(b), the Chamber of Commerce of the United States of America, the National Association of Manufacturers, and the American Fuel & Petrochemical Manufacturers respectfully move for leave to file the attached *amici curiae* brief. Counsel for the *amici* have consulted with counsel for other parties concerning this motion, and have been advised that defendant-appellant consents to the filing of the attached *amici* brief and that plaintiff-appellees oppose the filing.

Leave to file should be granted because *amici* and their members have a strong interest in the issue presented by this case. Fed. R. App. P. 29(b)(1). The district court held that the Clean Air Act does not preempt state common law tort claims by private property owners against local sources of air pollution even if the claims seek to impose emissions standards or restrictions different than those authorized pursuant to the Act. This decision, if allowed to stand, would encourage litigants across the circuit to use the nearly limitless range of liability theories available under state common law to try to impose their own preferred emission restrictions on any local source of emissions, as litigants in prior cases have done. *E.g., Native Vill. of Kivalina v. ExxonMobil Corp.*, 696 F.3d 849 (9th Cir. 2012) (nuisance, negligence, conspiracy). This would directly and negatively impact *amici*'s membership, exposing regulated businesses to tort liability for

emissions that fully comply with their permits, and would seriously undermine the certainty and predictability in the law for which *amici* consistently advocate.

A brief from *amici* is, moreover, “desirable” and “relevant to the disposition of the case.” Fed. R. App. P. 29(b)(2). The brief of *amici* will address the issue presented from a broader perspective than that of the parties, with a focus on the problems posed by common law tort litigation of this type for businesses nationwide. It will also explain in greater detail the background of the Clean Air Act and relevant regulations, and their relationship to claims such as those presented here. Such a brief therefore will, in *amici*’s view, offer a unique and important perspective on the issue presented and provide significant value to the Court in resolving this case.

CONCLUSION

For all of these reasons, the motion for leave to file an *amici* brief in support of defendant-appellant should be granted.

Dated: December 3, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of December, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

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