

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
GOVERNMENT OF BERMUDA	)	
	)	
Plaintiff,	)	
	)	C.A. No. 17-10242-IT
v.	)	
	)	
LAHEY CLINIC, INC. (a.k.a LAHEY	)	
HOSPITAL & MEDICAL CENTER,	)	
BURLINGTON), and LAHEY CLINIC	)	
HOSPITAL, INC.,	)	
	)	
Defendants.	)	
_____	)	

**MOTION BY *AMICI CURIAE*, ELEVEN CURRENT AND FORMER LEGISLATORS
FROM BERMUDA, FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF IN SUPPORT
OF DEFENDANTS' MOTION TO DISMISS**

William Alexander Scott, Wayne Furbert, Kim Swan, Michael Scott, Zane Desilva, Kim Wilson, Mark Pettingill, Shawn Crockwell, Walter Roban, David Burt, and Dr. Ewart Brown (collectively, "*Amici*"), respectfully move for leave to submit the attached *amici curiae* brief in support of Defendants Lahey Clinic, Inc.'s, and Lahey Clinic Hospital, Inc.'s ("Lahey") motion to dismiss. Defendants' counsel assents to this motion and Plaintiff Government of Bermuda's ("Plaintiff") counsel has not yet indicated assent or opposition. A copy of the proposed brief has been submitted with this motion.

I. Statement of Interest

Amici are eleven current and former members of the Bermuda government, who include five former Ministers of Health, two former Premiers, three former Attorneys General, and the current leader and deputy leader of the Progressive Labour Party, Bermuda's Opposition Party. This is a case of great importance in Bermuda because the lawsuit targets a major healthcare

provider in the country and a former influential leader. The *Amici* have a shared interest in offering the Court the social, historical and political context essential to a just assessment of the legal arguments offered both in support of and in opposition to the pending motion to dismiss. The *Amici* are uniquely situated to offer this important context as some of the *Amici* served in their government positions from 1998 to 2010, the relevant time period for the relationship between Lahey, Dr. Brown, and his clinics. Specifically, in the brief, the *Amici* use readily ascertainable news articles to highlight the information concerning the Lahey-Brown relationship that was known to the public during the relevant time period. In addition, the *Amici* describe the Bermudian parliamentary system, the history of politics and the role of the Attorney General in Bermuda. The *Amici's* view is that the Plaintiff's complaint is time-barred and that the lawsuit is plainly politically motivated.

II. The District Court Has Authority to Accept An Amicus Brief.

Amicus curiae briefs can supply the Court with useful background and contextual information, even when adjudicating legal questions on a motion to dismiss. See, e.g., Gallo v. Essex Cty. Sheriff's Dep't, No. 10-10260-DPW, 2011 U.S. Dist. LEXIS 30837, at *20 n.7 (D. Mass. Mar. 24, 2011) (ruling on a motion to dismiss based on sovereign immunity, and acknowledging "very thoughtful amicus submissions were quite helpful in putting the immediate controversy in its larger context."). Although "no procedural rule provides for filing of amicus briefs in federal district court, courts have inherent authority and discretion to appoint *amici*." Bos. Gas Co. v. Century Indem. Co., No. 02-12062-RWZ, 2006 U.S. Dist. LEXIS 41133, at *4 n.1 (D. Mass. June 21, 2006), vacated on other grounds, 588 F.3d 20 (1st Cir. 2009). There is no requirement that *amici* be disinterested. See, e.g., Animal Prot. Inst. v. Martin, No. CV-06-128-B-W, 2007 U.S. Dist. LEXIS 13378, at *9 (D. Me. Feb. 23, 2007) (allowing participation as *amici* over objection by

another party, and before any motions were filed, and noting “[s]ince a self-acknowledged interest group has initiated this proceeding, it is only proper to counterbalance its advocacy with the advocacy of opposing interest groups.”).

In this case, *Amici*’s arguments are relevant at the motion-to-dismiss stage because the information presented in the brief concerning the public knowledge of the Lahey-Brown relationship has bearing on whether the statute of limitations on Plaintiff’s Racketeer Influenced and Corrupt Organizations (“RICO”) claim has expired. In addition, while *amicus curiae* briefs are not common at the motion-to-dismiss stage, this is not a typical case. In this case, a foreign government is suing a U.S. healthcare provider in United States District Court with most of the conduct having occurred in Bermuda. The *Amici* can shed light on the historical, social and political backdrop to the case and thereby, assist the Court in understanding the Complaint’s allegations in context.

The *Amici*’s brief is also timely. The Court has not yet set a date for oral argument on the motion to dismiss and therefore, the brief may still provide useful information for the Court’s determination of the motion. It is within the Court’s discretion to accept the *amicus curiae* brief at this time. Although the applicable appellate rule, Fed. R. App. P. 29(a)(6), requires that an *amicus curiae* brief be filed within 7 days of the moving brief, there are no such time limitations in the district court. In this instance, this brief is being submitted after the parties’ briefing as it was the arguments presented in the Plaintiff’s and Lahey’s briefs that revealed that the *amicus curiae* brief could be very helpful to the Court.

In addition, the brief is succinct. Although the local rules do not provide any guidance as to the length of an *amicus curiae* brief in the district court, Fed. R. App. P. 29(a)(5) requires a brief to be no longer than one-half of the maximum length allowed for the principal brief. Accordingly,

based on Local Rule 7.1(b)(4), which requires that parties' briefs be limited to twenty pages, *Amici* have limited the brief to ten pages.

For these reasons, *Amici* request that the Court grant this motion and accept the attached *amici curiae* brief for filing.

May 15, 2017

Respectfully submitted,

COUNSEL FOR *AMICI CURIAE*,

By: /s/ Giselle J. Joffre

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CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1

I, Giselle J. Joffre, hereby certify that on May 15, 2017, counsel for *Amici Curiae* conferred with counsel for the Plaintiff, who were not in a position to assent or oppose given the need to consult with their client. I further certify that on May 15, 2017, counsel for *Amici Curiae* conferred with counsel for Defendants, who assented to the filing of this motion.

/s/ Giselle J. Joffre

Attorney for *Amici Curiae*

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the CM/ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 15th day of May 2017.

/s/ Giselle J. Joffre

Attorney for *Amici Curiae*