

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

United States of America,

Plaintiff,

v.

Assa Abloy AB,  
Spectrum Brands Holdings, Inc.,

Defendants.

Civil Action No. 22-CV-2791-ABJ

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF AND  
MEMORANDUM OF LAW IN SUPPORT THEREOF**

The *amici* law professors listed in **Exhibit B** to the Declaration of Jennifer E. Sturiale (“Sturiale Declaration”) request leave to file a brief relating to the issue of the parties’ relative evidentiary burdens in litigation to enforce Section 7 of the Clayton Act.<sup>1</sup>

**INTEREST OF *AMICI CURIAE***

*Amici* are professors with expertise in antitrust law. *Amici* have no personal interest in the outcome of this case and support neither party with respect to the ultimate merits of the case. They share a professional interest in seeing antitrust law develop in a manner that protects consumers and competition.

*Amici* have written and taught antitrust law. Because of their experience with antitrust law and specifically with the issues raised by this case, *amici* are uniquely positioned to provide the Court with a deeper and thoroughly reasoned perspective—one that reflects the broader

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<sup>1</sup> *Amici* state, as contemplated by the analogous Fed. R. App. P. Rule 29(a)(4)(D), that no party or party’s counsel authored this brief in whole or in part, or contributed money that was intended to fund preparing or submitting this brief. No person other than *amici* or their counsel contributed money that was intended to fund preparing or submitting this brief.

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Clerk, U.S. District & Bankruptcy  
Court for the District of Columbia

public interest beyond the interests of the parties in this case—on how the parties’ relative evidentiary burdens in Clayton Act Section 7 litigation can protect consumers and competition.

### **ARGUMENT**

The Court should *grant* amici leave to file a brief relating to the issue of the relevant evidentiary burdens because *amici* have expertise specifically related to this issue and therefore can uniquely provide the court with useful information. “District courts have inherent authority to appoint or deny amici which is derived from Rule 29 of the Federal Rules of Appellate Procedure.” *Jin v. Ministry of State Sec.*, 557 F. Supp. 2d 131, 136 (D.D.C. 2008). “An *amicus* brief should normally be allowed when . . . the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Id.* at 137 (citation omitted). It is appropriate for the Court to grant leave to appear as an *amicus curiae* in cases that involve matters of public interest. *See* 4 Am. Jur. 2d *Amicus Curiae* § 3.

The proposed *amici* brief is useful. It will assist the Court in addressing the parties’ relative burdens of production, which is at issue in this case, because *amici* offer independent expertise and fresh perspective on the legal and policy issues raised by this case. *Amici* collectively have published numerous scholarly articles about antitrust law, including an article on the specific issue before the court regarding the parties’ relative burdens. *See, e.g.*, Steven C. Salop & Jennifer E. Sturiale, *Fixing “Litigating the Fix,”* 85 *Antitrust L.J.* \_\_\_ (forthcoming 2023), available [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4255883](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4255883), and attached as **Exhibit E** to the Sturiale Declaration.

The proposed brief is timely and will not cause any delay.

The government has advised that they do not object to *amici*’s motion. Defendants, however, have advised us that they object on the grounds that “the Court has not invited such briefs and other potentially interested third parties have been given no notice or opportunity to share their own views with the Court about these issues.” Dec. 29, 2022 email from David I. Gelfand to Steven C. Salop, attached as **Exhibit C** to the Sturiale Declaration. Of course,

whether this Court may allow *amici* to file a brief does not turn on whether the Court has invited such *amici* or whether the Court has given notice to other third parties, as Local Rule 7(o) specifically contemplates third parties “*mov[ing] for leave to file an amicus brief*” on their own volition, without such invitation or notice. Local R. Civ. Proc. 7(o) (emphasis added).

For the foregoing reasons, *amici* request that the Court grant leave to file a brief relating to the issue of the parties’ respective evidentiary burdens.

/s/ Jennifer E. Sturiale

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