

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ARBUTUS BIOPHARMA CORPORATION)
and GENEVANT SCIENCES GmbH,)

Plaintiffs,)

v.)

C.A. No. 22-252 (MSG)

MODERNA, INC. and MODERNATX, INC.)

Defendants.)

MODERNA, INC. and MODERNATX, INC.,)

Counterclaim-Plaintiffs,)

v.)

ARBUTUS BIOPHARMA CORPORATION)
and GENEVANT SCIENCES GmbH,)

Counterclaim-Defendants.)

**DEFENDANTS' OPPOSITION TO MOTIONS FOR LEAVE
TO FILE BRIEFS AS AMICUS CURIAE (D.I. 56 AND 61)**

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¹ Unless otherwise indicated, internal quotation marks and citations have been omitted from quoted material.

Rules

Federal Rule of Appellate Procedure 292

I. INTRODUCTION

Since the Government's submission of a Statement of Interest, this case has garnered the interest of several groups and two motions seeking to enter this litigation as friends of the Court. However, both attempts fail to offer the type of information or guidance that can properly be introduced into a case through the vehicle of *amicus curiae*. These attempts should be denied.

II. NATURE AND STAGE OF THE PROCEEDINGS

On February 28, 2022, Plaintiffs filed this action against Moderna. On May 6, 2022, Moderna filed a partial motion to dismiss based on § 1498 (D.I. 16). Briefing on the motion was completed June 24, 2022, and the Court issued its decision on Moderna's partial motion on November 2, 2022 (D.I. 31). On February 14, 2023, the Government filed a Statement of Interest, confirming the applicability of § 1498(a) (D.I. 49). A conference with the Court was held on February 16, 2023, at the conclusion of which the Court ordered simultaneous letters regarding the impact of the Government's Statement of Interest (D.I. 51). Subsequently, on March 2 and 6, 2023, two groups filed motions for leave to appear as *amici curiae*. D.I. 56; D.I. 61.

III. SUMMARY OF ARGUMENT

The proposed *amicus* briefs fail to meet the standards set by the Third Circuit for granting *amicus* status because the proposed *amici* have no particularized interests that are not already competently represented in the matter and fail to provide information that would be useful to resolving the pending dispute. For at least these reasons, the Court should exercise its discretion to deny the motions for leave. In the alternative, should the Court permit the proposed *amici* to file their briefs, the Court should grant Moderna leave to respond substantively to the proposed *amici*'s arguments.

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