

**IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT**

No. 12-2621

GABRIEL JOSEPH CARRERA,
on behalf of himself and all others similarly situated,
Appellee,

v.

BAYER CORPORATION; BAYER HEALTHCARE, LLC,
Appellants.

Appeal from the United States District Court
for the District of New Jersey
D. Ct. Civil No. 2-08-cv-04716
(The Honorable Jose L. Linares)

**MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE
IN SUPPORT OF PETITION FOR REHEARING OR
REHEARING EN BANC**

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October 2, 2013

Counsel for Movant
Public Citizen, Inc.

CORPORATE DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 & 29(c)(1), amicus curiae Public Citizen, Inc. states that it has no parent corporation and that there is no publicly held corporation that owns 10% or more of Public Citizen, Inc.

Public Citizen, Inc. hereby moves for leave to file a brief as amicus curiae in support of plaintiff-appellee Carrera's petition for rehearing or rehearing en banc. All parties have consented to the filing of the amicus brief. A copy of the proposed brief is attached to this motion.

Founded in 1971, Public Citizen is a non-profit consumer advocacy organization with more than 300,000 members and supporters nationwide. Public Citizen advocates before Congress, administrative agencies, and the courts on a wide range of issues, and works for enactment and enforcement of laws protecting consumers, workers, and the public. Public Citizen often represents members' interests in litigation and as amicus curiae.

Public Citizen believes that class actions are an important tool for seeking justice where a defendant's wrongful conduct has harmed many people and resulted in injuries that are large in the aggregate, but not cost effective to redress individually. In that situation, a class action offers the best means for both individual redress and deterrence of wrongful conduct, while also serving the defendant's interest in achieving a binding resolution of the claims on a broad basis, consistent with due process. At the same time, Public Citizen has long recognized that class actions may be misused, to the detriment of absent class members. Public Citizen attorneys have, in many cases, represented class members whose rights have been compromised by

the improper certification of classes and the approval of settlements that are not in their interests or that have been entered in violation of due process rights, such as the right of absent class members to receive notice and to opt out. *See, e.g., In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315 (3d Cir. 2001); *In re General Motors Corp. Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768 (3d Cir. 1995).

The interests of both named and absent class members, defendants, the judiciary, and the public at large are best served by adherence to the principles incorporated in Federal Rule of Civil Procedure 23. Public Citizen has sought to advance this view by participating, either as counsel or amicus curiae, in many significant class actions, including *Amchem Products, Inc. v. Windsor*, 521 U.S. 591 (1997), *Devlin v. Scardelletti*, 536 U.S. 1 (2002), and *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541 (2011).

Public Citizen seeks leave to file an amicus curiae brief to highlight the critical significance of the panel's decision, as well as the flaws in its reasoning. Public Citizen is concerned that the panel decision represents an unprecedented expansion of an "ascertainability" requirement for class certification that is not founded in Rule 23 and that, if adopted as the law in the Third Circuit, will render the class-action device effectively unavailable in a case where the value of each class member's claim is small.

CONCLUSION

The motion for leave to file an amicus curiae brief in support of plaintiff-appellee Carrera's petition for rehearing should be granted.

October 2, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on October 2, 2013, a true and correct copy of the foregoing motion was served on all parties to this appeal, via CM/ECF, pursuant to Third Circuit Rule 25.1(b), because counsel for all parties are Filings Users who will be served electronically by the Notice of Docket Activity.

/s/
Allison M. Zieve

CERTIFICATE OF BAR MEMBERSHIP

I certify that Allison M. Zieve and Brian Wolfman, counsel for amicus curiae, are members of the Bar of this Court.

/s/
Allison M. Zieve

/s/
Brian Wolfman