

15-455-cv

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DELAMA GEORGES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DESILUS GEORGES AND ALL OTHERS SIMILARLY SITUATED, ALIUS JOSEPH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MARIE-CLAUDE LEFEUVE AND ALL OTHERS SIMILARLY SITUATED, LISETTE PAUL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRITZNEL PAUL AND ALL OTHERS SIMILARLY SITUATED, FELICIA PAULE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, JEAN RONY SILFORT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

UNITED NATIONS, UNITED NATIONS STABILIZATION MISSION IN HAITI, EDMOND MULET, FORMER UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS STABILIZATION MISSION IN HAITI, BAN KI-MOON, SECRETARY-GENERAL OF THE UNITED NATIONS,

Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of New York

**BRIEF OF HAITIAN-AMERICAN ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PLAINTIFFS-APPELLANTS AND SUPPORTING
REVERSAL**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1, the *Amici* make the following disclosure:

1. Is the party a publicly held corporation or other publicly held entity?

NO.

2. Is the party a parent, subsidiary, or affiliate of, or a trade association representing, a publicly held corporation, or other publicly held entity?

NO.

3. Is there any other publicly held corporation, or other publicly held entity, that has a direct financial interest in the outcome of the litigation?

NO.

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INTEREST OF THE AMICI CURIAE

*Amici*¹ are civil society organizations representing Haitian-Americans in the United States, some of whose family members were afflicted by the cholera outbreak that is the basis of the current lawsuit.² Together, *Amici* possess first-hand knowledge of the Haitian-American community and current conditions in Haiti. *Amici* have a strong interest in ensuring that victims of the cholera epidemic are provided access to justice, and submit this brief in support of Plaintiffs-Appellants' position that Defendants-Appellees may not benefit from immunity when Defendants-Appellees have refused to abide by their obligations to provide victims of their wrongdoing with a mode of settlement.

Amici wish to emphasize how important it is that Plaintiffs be accorded a prompt day in court for the United Nations (UN) to answer the serious allegations of recklessness and gross negligence contained in the Complaint. *See* Pls.' App. A-15-81.

¹ The Plaintiff-Appellants have consented to the participation of *Amici* in this case. Because the Defendants-Appellees have not appeared in this case, their consent could not be requested pursuant to Fed. R. App. P. 29 and Local Rule 29.1. *Amici Curiae* represent that no party or party's counsel authored this Brief in whole or in part. No party or party's counsel contributed money that funded the preparation or submission of this Brief. No person other than *Amici* and their counsel contributed money that funded the preparation and submission of this Brief.

² A complete list of *amici* is set forth in an addendum to this brief.

SUMMARY OF ARGUMENT

Amici respectfully urge this Court to grant Plaintiffs' appeal and to reverse the decision of the U.S. District Court for the Southern District of New York (SDNY), so that the court may decide Plaintiffs' case on its merits. *Amici* support the legal arguments presented in Plaintiffs' brief in favor of reversal. As members and family members of the population affected by the United Nations' (UN) wrongdoing, *Amici* wholeheartedly request that this Court also take into consideration in deciding this appeal, the serious toll that Haiti's *first-ever* cholera outbreak has caused on Haitian society, life, and individuals.

It is particularly important to note that the epidemic has *significantly worsened in 2015* with the number of new cases and deaths reportedly jumping by 300%, as documented in Argument I of this brief and as reported by countless major news outlets worldwide as recently as June 2, 2015. In effect, the lower court's decision denies the opportunity for relief to the more than 700,000 individuals who have already been affected by this outbreak and blocks recovery of any kind by plaintiffs who will inevitably be added to this class as the crisis expands, claiming the health and lives of countless more Haitians and Haitian-Americans. In addition, a decision granting the UN immunity for its tortious conduct in this case would cement the perception held by many Haitians that the UN is allowed to operate beyond the bounds of the law, standards that the U.S. and

the UN themselves have both argued must be applied stringently to Haitian government agencies and political leaders.

Amici argue that it is within this Court's purview to grant Plaintiffs their day in court, during which the UN would simply be required to respond to the serious allegations contained in Plaintiffs' Complaint. *See* Pls.' App. A-15-81. *Amici* present three supporting reasons for reversing and remanding the incorrect lower court decision:

- (1) The harm from the cholera epidemic is ongoing and worsening, and upholding the District Court's dismissal will result in extreme injustice;
- (2) The UN should not be rewarded with immunity when it not only breached its obligations to settle claims out of court, but also has consistently acted with bad faith;
- (3) The importance of showing the Haitian people and their diaspora that, in spite of Haiti's dependence on external assistance, the UN will be held to account in court pursuant to the very rule-of-law principle it declares a priority for its mission in Haiti.

ARGUMENT

I. PLAINTIFFS' NEED FOR A REMEDY IS PARTICULARLY GREAT IN LIGHT OF THE ONGOING AND WORSENING EPIDEMIC THAT THE UN HAS FAILED TO ADDRESS.

A. The October 2010 cholera outbreak is the worst in recent world history.

The first recorded case of cholera in Haiti, registered in October 2010, began an epidemic in the country that has become “the worst cholera outbreak in recent [world] history” according to the U.S. Centers for Disease Control. Ctr. for Disease Control & Prevention, *Cholera in Haiti: One Year Later* (Oct. 25, 2011), http://www.cdc.gov/haiticholera/haiti_cholera.htm [hereinafer “CDC Report”].

Prior to that first case, cholera—an illness spread through untreated, contaminated sewage—had never been recorded in Haiti. Pls.’ App. A-16-A-17. According to a December 23, 2013 report by the Pan-American Health Organization and World Health Organization, “[i]n Haiti, since the beginning of the epidemic (October 2010) and until [epidemiological week] 48 of 2013, there have been **693,875 cholera** cases, of which **387,820 were hospitalized (55.9 %)** and **8,482 died.**”

Pan-Am. Health Org. & World Health Org., *Epidemiological Update: Cholera 1* (Dec. 23, 2013), *available at*

http://www.paho.org/hq/index.php?option=com_docman&task=doc_view&gid=23900+&Itemid=999999&lang=en. These numbers proved to be the tip of the

iceberg, as recorded cases continued in 2014 and more recently, skyrocketed in the first half of 2015. Official records now confirm that “[m]ore than 8,800 people have died from cholera and 736,000 Haitians have been infected since the outbreak that expert studies have shown was brought to the island by Nepalese troops.”

Agence France Presse, *UN Struggles to Stem New Rise in Haiti Cholera Cases* (May 7, 2015), <http://news.yahoo.com/un-struggles-stem-rise-haiti-cholera-cases-213217357.html>.

As explained in greater detail in Argument II of this brief, UN-appointed experts have concurred that UN peacekeepers arriving from Nepal, a country where cholera is endemic, were responsible for carrying the disease to previously uncontaminated Haiti. Randal C. Archibold & Somini Sengupta, *UN Struggles to Stem Haiti Cholera Epidemic*, N.Y. Times (April 19, 2014) available at <http://www.nytimes.com/2014/04/20/world/americas/un-struggles-to-stem-haiti-cholera-epidemic.html> (“Forensic studies, including one ordered by the United Nations, have concluded that the bacteria found in Haiti is an Asian strain common in Nepal, where hundreds of United Nations peacekeepers in Haiti came from.”). Untreated fecal matter from an encampment of Nepalese UN troops drained into Haiti’s principal river system, which tens of thousands of Haitians rely on as their primary source of water for drinking, bathing, and fishing, causing the first recorded victim of cholera in Haiti and contaminating hundreds of thousands more. Donald G. McNeil, Jr., *Haitian Cholera Epidemic Traced to First Known Victim*, N.Y. Times (Jan. 9, 2012), available at <http://www.nytimes.com/2012/01/10/health/haitian-cholera-epidemic-traced-to-first-known-victim.html>. In a country where many have to drive or walk long

distances to access medical services, or have no medical facilities available to them at all, a catastrophe quickly unfolded. UN activity and continued refusal to take responsibility for this crisis caused further spread of the disease. *See* Pls.’ App. A-84-86. As recently as January 2014, news reports confirmed that in “villages near the UN base . . . many are still getting infected from cholera-infested water.” *Cholera Crisis in Haiti, Four Years after the Earthquake*, Channel 4 News (Jan 10, 2014) <http://www.channel4.com/news/haiti-cholera-disaster-un-earthquake>.

a) Since January 2015, the cholera epidemic has drastically worsened

The urgency of Haiti’s cholera crisis has worsened significantly since the District Court’s dismissal on January 9, 2015: the UN itself reported that the “number of Haitians infected by cholera has risen more than 300 percent in the past year as early rains, poor sanitation, and a lack of funding means the impoverished Caribbean nation struggles to stem the disease.” Anastasia Moloney, *Haiti Struggles to Stem Cholera as Rains Come Early*, Business Insider (May 29, 2015) <http://www.businessinsider.com/r-haiti-struggles-to-stem-cholera-as-rains-come-early-2015-5>.

From January to April this year alone, before the official rainy season even began,³ an additional **14,226 Haitians** were infected with cholera: a 306% increase in infections from the same period in 2014. *Id.* The capital of Port-au-Prince has been the hardest hit recently, indicating significant geographical spread of the disease, which was previously most severe farther north and inland. *Id.* Officials expect the toll of infected individuals to climb even higher during the upcoming rainy season months of June, October, and November. Agence France Presse , *supra.*

The UN reported that the rate of infections has “moved from a thousand new cases a month to almost a thousand a week.” *Id.* Pedro Medrano, the UN Coordinator for the Response to Cholera in Haiti, predicts **more than 50,000 new cases this year**, compared to 28,000 last year. As recently as June 2, 2015, Partners in Health documented the particularly alarming spike in cholera cases seen in 2015. See Renée Montagne, *Haiti Sees Spike in Cholera Cases 4 Years after Outbreak Began*, NPR Morning Ed. (June 2, 2015), <http://www.npr.org/2015/06/02/411406390/haiti-sees-spike-in-cholera-cases-4-years-after-the-outbreak-began>. Sadly, the CDC has accurately predicted that

³ The rainy season in Haiti typically runs from April through June and October through November. Nat’l Oceanic & Atmospheric Admin., *Climate Risks in Haiti*, Climate.gov. (Mar. 5, 2010), <http://www.climate.gov/news-features/features/climate-risks-haiti>.

“experience from past cholera outbreaks around the world suggests that Haiti may have ongoing cholera transmission *for years to come*.” See CDC Report.

To close this chapter in its already marred history, the country and its people are left to fend for themselves or depend on the good will of the UN, the very entity that caused this catastrophe in the first place and which has not responded justly. The UN continues to deny responsibility for this diagnosis and the duty to mitigate harm through private claim settlements that accompanies that responsibility. This is despite the fact that the UN-caused Haiti cholera outbreak has spread outside the country since this lawsuit was filed. Haiti’s cholera spread to Mexico, which became the third country – along with the Dominican Republic and Cuba – to experience an outbreak caused by Haiti’s, with cases also reported in the United States. Richard Knox, *Haitian Cholera Strain Spreads to Mexico*, NPR: Morning Ed. (Oct. 23, 2013)

<http://www.npr.org/blogs/health/2013/10/23/239803890/haitian-cholera-strain-spreads-to-mainland-with-mexico-outbreak>.

Considering the continuing, far-reaching damages resulting from the UN’s unaccounted-for negligence and recklessness, affirming the SDNY’s decision would exacerbate the public health crisis in Haiti and neighboring countries by denying Plaintiffs’ day in court and by allowing the infectious spread of cholera to continue adding new victims. By reversing the SDNY’s decision and remanding to that court for consideration of the

merits of this case, this Court would rightly express the urgency of bringing the matters in dispute to light.

B. Victims and their families suffer significant physical, emotional, and economic hardship.

The physical, emotional, and economic toll cholera takes on individual Haitians suffering from the disease and their family members are particularly punishing in Haiti, where extreme poverty is commonplace and medical services are inaccessible. Once cholera is contracted, the affected individual develops symptoms including vomiting and “profuse, watery, high volume diarrhea that is rapidly dehydrating.” Joia Mukherjee, *Cholera in Haiti: Another Disease of Poverty in a Traumatized Land*, Partners in Health (Oct.22, 2010)

<http://www.pih.org/blog/cholera-in-haiti-another-disease-of-poverty-in-a-traumatized-land>. Without the replacement of the liquids lost, patients go into shock, coma, and can die of dehydration within hours. Doctors Without Borders, *For Haitians, Cholera Remains a Major Public Health Problem* (Oct.23, 2012) <http://www.doctorswithoutborders.org/news-stories/field-news/haitians-cholera-remains-major-public-health-problem>.

For many Haitians who live hours and a long walk, motorbike, or car ride away from a health facility, realizing that they have contracted cholera could mean facing a death sentence, unless they are able to receive difficult to access and often out of reach medical care. While the spread of the disease could be prevented

substantially by washing one's hands with soap and water frequently, many Haitians are simply not in a financial position to protect themselves in this way. *See Montagne, supra.* (stating that many Haitians have to “choose to buy soap or buy food” for their families on a daily basis.). Individual Haitians, 78% of whom live on \$2 a day and 54% of whom live on \$1 a day, are simply not in a financial position to protect themselves from disease. Institut Haïtien de Statistique et D'Informatique (2001), available at <http://haitipartners.org/about-us/haiti-statistics/>. Without the money to buy the products needed to protect themselves and without access to regular sanitation systems, uninfected Haitians are at risk for contracting this illness.

Apart from the physical hardships suffered by individuals inflicted with this disease, Plaintiffs' complaint alleges ongoing deleterious effects for victims of cholera and their families, including 1) economic hardship, 2) severe emotional distress, and 3) inability to work. Pls.' App. A-59-66. The family of the deceased Fritznel Paul provides one example of how catastrophic this situation can be for a family. *Id.* at A-59-60. Upon Fritznel's passing, the family “incurred debt to pay for Fritznel's funeral and medical expenses.” Pls. App. A-60. As a direct result of expenses incurred from Fritznel's fatal illness, his family was forced to sell his car to repay some of the debt incurred and had to pull Fritznel's eleven-year-old daughter out of school due to their inability to pay her tuition. *Id.* For Plaintiff

Felicia Paule, “[c]holera has affected every aspect of life She continues to have nightmares about suffering from cholera, has difficulties sleeping, and has lost interest in the activities that she used to enjoy prior to contracting cholera. . . . She is no longer able to work as she did prior to contracting cholera, thereby causing economic hardship including making it difficult to pay for her daughters’ schooling [and] has had to divert scarce funds from other basic needs to purchase treated water.” *Id.* at A-64-65. The number of people affected in this way is tremendous, considering that over 736,000 people have been diagnosed and over 8,800 have perished from cholera in Haiti. Agence France Presse, *supra*.

Amici urge this Court to grant Plaintiffs the opportunity to hold the UN accountable for the ongoing tragedy in Haiti, which, by all accounts, would not exist if not for the negligent activities of the UN.

II. THE UN IS NOT ENTITLED TO IMMUNITY WHEN IT NOT ONLY BREACHED ITS OBLIGATIONS TO PROVIDE REMEDIES, BUT ALSO ACTED WITH BAD FAITH.

Plaintiffs’ Complaint details a pattern of UN behavior to mislead the public and avoid responsibility for the cholera outbreak in Haiti. This Court should not allow the UN to continue this evasion by dismissing the case and allowing the UN to operate with impunity.

Extensive evidence from genetic and epidemiological studies, including one commissioned by the UN, demonstrates that cholera was introduced to Haiti when soldiers of the UN Stabilization Mission in Haiti (MINUSTAH) discharged untreated human waste into a tributary of Haiti's largest river system. Pls.' App. A-45-54; Daniele Lantagne et al., *The Cholera Epidemic in Haiti: Where and How Did It Begin?* *Current Topics in Microbiology & Immunology* § 5 (2013). Yet the UN released a false statement on October 26, 2010, 12 days after the first documented case of cholera, incorrectly and misleadingly claiming that its septic tanks on its base conformed with both US and international standards. Pls.' App. A-38-39. Far from managing waste in a manner "consistent with international standards," MINUSTAH was shown by multiple news organizations to have allowed fecal matter in wastewater to flow into the Meille tributary system. *Id.*; see also, e.g., Jonathan M. Katz, *The Big Truck That Went By: How the World Came to Save Haiti and Left Behind a Disaster* (2013); Deborah Sontag, *In Haiti, Global Failures on a Cholera Epidemic*, N.Y. TIMES (Mar. 31, 2012) ("Even four months later, the United Nations' own experts, examining the base's supposedly improved sanitation, discovered haphazard piping"), available at http://www.nytimes.com/2012/04/01/world/americas/haitis-cholera-outraced-the-experts-and-tainted-the-un.html?pagewanted=all&_r=0.

Two days later, the UN issued a false statement that all Nepalese soldiers deployed to Haiti underwent necessary medical testing and none tested positive for cholera when, in fact, none of the soldiers had been tested for cholera. Pls.’ App. A-41-42 (noting that the Chief Medical Office of the Nepalese Army stated that “no MINUSTAH soldiers from Nepal had been tested for cholera”). At a press conference, the official MINUSTAH spokesperson asserted – falsely, as he later admitted – that no UN soldiers had “the illness.” *Id.* At the same time, the UN did not permit independent examination of the soldiers during the 14-day period when infected individuals typically shed cholera bacteria. *Id.* at A-43. In addition, MINUSTAH released clean water sample results based on unreliable testing protocols. *Id.* at A-43-44.

The UN, on the other hand, has reportedly admitted in private conversation the peacekeepers role in the Cholera outbreak: “In private conversations with U.N. officials, there seems to be a grudging acceptance—and even more pervasive sense of shame—that the peacekeepers were responsible for the massive epidemic, which not only caused tremendous loss of life but set back the Haitian economy and civil society that so many at the U.N. have pledged to help build.” Jonathan M. Katz, *The U.N. Caused Haiti's Cholera Epidemic. Now the Obama Administration Is Fighting the Victims: The death toll is nearly double the Ebola outbreak.* New

Republic (Oct. 24, 2014), <http://www.newrepublic.com/article/119976/haiti-cholera-case-begins-us-defends-un-against-victims>.

Despite all the evidence pointing to the Defendants as the source of the cholera outbreak in Haiti, the UN knowingly and deliberately kept misleading the stakeholders with its statements by ignoring the facts. These false statements and barriers to investigation created the misimpression that the cholera may have originated differently from arrival with the Nepalese soldiers. Pls.' App. A-44. Fears arose that crops from regions affected by the cholera outbreak were a source of the disease. *Id.* Farmers abandoned many of their crops, including “a significant portion of the rice harvest in Northwestern Haiti,” and consumers shied away from purchasing such foodstuffs. *Id.*

Yet the UN's misleading continued. On or about December 15, 2010, the organization's Under-Secretary-General for Peacekeeping Operations repeated that “all soldiers had tested negative for the strain.” *Id.* at A-45.

It was only on or about January 6, 2011, that the UN announced that a panel of international experts would investigate the source of cholera in Haiti, a decision about which the Under-Secretary-General for Coordination of Humanitarian Affairs admitted a week later: “[I]n retrospect, maybe we should have had the [panel] much sooner.” *Id.* at A-46-47. Despite the panel's conclusive findings and extensive recommendations, in May 2013 a report by Physicians for Haiti found

that the UN had not implemented “any of the changes in its medical or sanitation protocols recommended [by its own panel of experts].” *Id.* at A-51.

The UN has on an ongoing basis showed bad faith in the manner the cholera case has been handled. Plaintiffs’ initial attempt to serve the UN occurred on October 10, 2013. *See* Pls.’ App. A-84-86. Extrapolating from the 2013 infection figures, in the four and a half months that the UN had evaded service before this filing, more than 22,500 new cases of cholera and 162 deaths occurred. As time passed it has also become evident the UN has no real intention to provide any kind of remedies to the cholera victims and their families who are still mourning their lost next-of-kin. This Court should not reward the defendants’ bad faith acts by cloaking them with immunity, under the doctrine of unclean hands, it is a bedrock principle that a party is barred from obtaining relief from a court after engaging in unconscionable conduct or acting in bad faith in relation to the subject matter of a litigation. *Keystone Driller Co. v. General Excavator Co.*, 290 U.S. 240, 244 (1933); *Goldstein v. Delgratia Mining Corp.*, 176 F.R.D. 454, 458 (S.D.N.Y. 1997); *see also Craig v. Bank of New York*, 169 F. Supp. 2d 202, 210 (S.D.N.Y. 2001) (unclean hands bars breach of contract claims).

Defendants UN and MINUSTAH act not only as tortfeasors in this case, but also as sole and final adjudicator of their own misconduct. They fail to hold themselves to the principles they broadly claim to espouse and to the language of

the treaties they have negotiated. Their actions thus rise to the level of unconscionable behavior, and, under the doctrine of unclean hands, this Court should refuse to afford them immunity from suit and service of process.

Human rights advocates within and outside the UN have called on the organization to honor the cholera victims' right to access justice. As the *New York Times* Editorial Board has noted, "[t]here is no denying that the United Nations has failed to face up to its role in a continuing tragedy." Editorial, *Haiti's Imported Disaster*, N.Y. TIMES, Oct. 12, 2013, available at http://www.nytimes.com/2013/10/13/opinion/sunday/haitis-imported-disaster.html?_r=0. Yet the UN refuses to accept responsibility for either the outbreak or its subsequent actions, or to provide victims with a mechanism to redress their harms. The organization's assertion of immunity from this suit is another manifestation of its shirking of responsibility for the cholera outbreak, one which this Court should deny in light of the UN's breach of its obligations to respond to victims' claims outside of court.

III. THE UN SHOULD BE REQUIRED TO ABIDE BY THE SAME RULE-OF-LAW PRINCIPLES THAT IT ESPOUSES AS CENTRAL TO ITS MISSION IN HAITI, WHICH SHOULD NOT PERMIT IT TO BYPASS RESPONDING TO PLAINTIFFS' CLAIMS.

As noted above, the UN's mission in Haiti has had as a priority objective furthering Haiti's "rule of law . . . infrastructure." U.N. Secretary-General, Report

on the United Nations Stabilization Mission in Haiti, U.N. Doc. S/2012/678, at 8 (Aug. 31, 2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/473/15/PDF/N1247315.pdf>. The UN laudably works to improve developing countries' legal processes, stating in its *Rule of Law Indicators* that measurements of judicial performance should include "whether the judicial system meets its responsibilities in an efficient and timely manner." UN Department of Peacekeeping Operations & Office of the High Commissioner for Human Rights, *Rule of Law Indicators: Implementation Guide and Project Tools 7* (2011), available at http://www.un.org/en/events/peacekeepersday/2011/publications/un_rule_of_law_indicators.pdf. As *Amici* include bar associations and legal professionals, they are well aware of the vital importance of rule-of-law initiatives. The UN's handling of its legal responsibilities arising out of the cholera outbreak, however, has not approached this standard of "efficient and timely" adjudication; this Court should therefore act to prevent the organization from further delaying a full airing of Plaintiffs' claims.

The Status of Forces Agreement (SOFA) that governs the UN's operations in Haiti requires that harms arising out of MINUSTAH's operations which cannot be resolved informally are to be heard and settled through a standing claims commission. Agreement between the United Nations and the Government of Haiti

Concerning the Status of the United Nations Operations in Haiti, U.N.-Haiti, ¶¶ 54-55, July 9, 2004, 2271 U.N.T.S. 235 (“Third-party claims for . . . personal injury, illness or death arising from or directly attributed to MINUSTAH, . . . which cannot be settled through the internal procedures of the United Nations shall be settled . . . by a standing claims commission to be established for that purpose.”). Yet the UN has refused to establish a standing claims commission or any other claims settlement mechanism in Haiti. *See* Transnational Development Clinic, Yale Law School et al., *Peacekeeping Without Accountability: The United Nations’ Responsibility for the Haitian Cholera Epidemic* 27 (2013).

In November 2011, 5,000 cholera victims sought to resolve their claims against the UN through the dispute resolution mechanism expressly provided for by the SOFA. They filed a petition with the UN seeking access to a standing claims commission and remedies in the form of: 1) investment in water and sanitation infrastructure; 2) fair compensation for their losses; and 3) a public acceptance of responsibility for the cholera outbreak. *See* Pls.’ App. A-55. The UN’s response to the epidemic and, more specifically, to the victims’ efforts to resolve their claims out of court, has been wholly inadequate.

In February 2013, the UN rejected the victims’ petition in a terse letter that stated the claims “would necessarily include a review of political and policy matters [and were a]ccordingly . . . not receivable.” *Id.* The victims responded in

May 2013, explaining that the UN is, in fact, legally obligated to accept the claims and that there is no legal basis for a “political” or “policy” exception to that obligation. *Id.* at A-55-56. They also requested mediation or an in-person meeting with UN officials. *Id.* In July 2013, the UN denied those requests, repeating the assertion from its previous letter that the claims were not receivable. *Id.* at A-56.

In a recent report, researchers from Yale Law School found that “the UN’s ongoing unwillingness to hold itself accountable to victims violates its legal obligations under international law.” *Peacekeeping Without Accountability, supra* at 4. The UN’s position on the issue has undermined its moral credibility and drawn worldwide criticism from prominent media outlets, international legal scholars, UN officials, and members of the U.S. Congress. More than 100 members of Congress have expressed concern about the UN’s response to cholera in various letters to the UN, the U.S. Mission to the UN, and the U.S. State Department. *See e.g.*, Letter from Rep. Maxine Waters et al. to Secretary-General Ban Ki-Moon (May 30, 2013), *available at* <http://waters.house.gov/news/documentsingle.aspx?DocumentID=336057>; Letter from Rep. John Conyers to U.S. Ambassador to the United Nations Susan Rice, July 17, 2012, *available at* <http://conyers.house.gov/index.cfm/press-releases?ID=11e98fff-5056-be00-4743-1c189ec648d7>; Letter from Rep.

Christopher Smith and Rep. Albio Sires to Secretary of State Hillary Clinton (on file with *Amici*).

Despite these persistent calls for justice from public officers and the media, combined with the indisputable continuing suffering of cholera victims and their families, the UN has chosen to delay these proceedings by engaging in tactics of process-serving evasion and to wholly evade accountability by asserting immunity. *See* Pls.' App. A-82-A-117. While the UN's hypocrisy is not a ground for reversal on its own, *Amici* respectfully urge the Court to consider not only Plaintiffs' strong legal arguments, but also the implications of rewarding the UN's bad faith act and denying the victims their day in court.

CONCLUSION

Amici respectfully urge the Court to reverse the District Court's ruling and to remand the case to proceed forward on its merits. This will allow Plaintiffs access to justice and will not unduly expose the UN to the threat of litigation, as the UN would simply need to comply with its promise under the Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 16, to provide a dispute mechanism to settle private law claims similar to those of plaintiffs in the present case.

The UN's stalling and evasion are unworthy of the organization and worsen the suffering of Plaintiffs and their families. The scale of suffering – the sheer

number of cases – is staggering, but the cholera outbreak’s damage must also be measured qualitatively. Dr. Charles Patrick Almazor, from Port-au-Prince, Haiti, is director of clinical services for Zanmi Lasante. He was one of the doctors who saw the first cholera patients in St. Marc, and described his experience:

“The patients—the lucky ones who were taken to a clinic—were transported by family and community members on traditional stretchers, a straw mat on an iron bed supported by two thick sticks and carried by four men. Our patients’ eyes were sunken into their skulls, their skin as parched as the dry season. Because of their appearance, they were referred to as *zombi lage*, fleeing zombies. Patients of all ages laid on their cots, throwing up what they hardly found to eat, since for most of them food is a scarce resource.” Charles Patrick Almazor, *Reflecting on the Cholera Outbreak in Haiti, Three Years Later*, Partners in Health (Oct. 18, 2013), <http://www.pih.org/blog/reflecting-on-the-cholera-outbreak-in-haiti-three-years-later>.

Amici and the directly-impacted constituents they represent request this Court to reverse the erroneous and unjust decision of the lower court granting the UN immunity despite the UN’s breach of its treaty obligations, so as to ensure that Plaintiffs expeditiously have their day in court.

Dated: June 3, 2015

Respectfully submitted,

/s/ Emmanuel Coffy

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Counsel for Amici Curiae

LIST OF AMICI CURIAE

Fanm Ayisyen Nan Miyami, Inc. (FANM) / Haitian Women of Miami is an advocacy and social service agency located in the heart of Miami's Little Haiti, serving the needs of indigent and low-income women and their families, as well as victims of abuse, neglect, violence, discrimination and racism, primarily those of Haitian immigrant background. Since 1991, FANM has championed and advocated for the rights of those who have been underserved, marginalized, disenfranchised, and discriminated against in South Florida, the United States, and Haiti.

Federation des Associations Regionales Haitiennes de la Diaspora (FAREHD) is an organization headquartered in Florida, whose mission is to gather Haitians living abroad for their participation in the development of their regions (departments) of origin.

Global Haitian Diaspora Federation (GHDF) is an 501(c)4 inclusive organization that represents the interests of the Haitian Diaspora in Host countries and in Haiti, in support of the socioeconomic development of both Haiti and the diaspora.

Haitian-American Grassroots Coalition (HAGC) is an umbrella organization made up of 17 local organizations in Miami, united to represent the rights and interests of Haitians and Haitian-Americans alike since 1998. HAGC

uses its collaborative strength to advocate on behalf of Haitians, and ensure that Haitian voices are heard and reflected in US law and policy. HAGC is deeply committed to ensuring that the lives of the Haitian people devastated by cholera are afforded due respect and justice.

Haitian-American Lawyers Association of New York (HALANY) and **Haitian-American Lawyers Association of New Jersey (HALANJ)** are non-profit professional, primarily legal, organizations founded to assist Haitian-Americans and other ethnic minorities in becoming an effective part of the judicial and legal systems. We aim to advance the science of jurisprudence, improve the administration of justice, support initiatives designed to improve economic conditions of all individuals, and work to eliminate discrimination and inequality based on racial, ethnic, or sexual considerations. HALANY and HALANJ strive to represent the interests of Haitian-Americans and other ethnic minorities in the judicial and legal systems by ensuring the meaningful participation of Haitian-Americans and other minorities in the legal profession.

Haitian Diaspora Advocacy Group (HDAG) is a broad-based and inclusive advocacy movement founded in 2013 to advocate for positive economic changes in Haiti. The movement is comprised of Haitian-Americans and individuals of Haitian descent living in the US. With headquarters in Chicago and Kentucky, the movement is composed of regional Chapters supported by local

networks. At the present time, the movement is seeking more inclusive opportunities to participate in the reconstruction of Haiti. In the interim, the movement is headed by Dr Jacques P. Bingue, a combat decorated veteran of the US Marine Corps.

Haitian Lawyers Association (HLA) is a Florida-based non-profit membership organization whose mission is to promote excellence, professionalism, equality and diversity in the legal profession and among our members. HLA strives to facilitate the administration of justice while protecting and promoting the general welfare of the Haitian-American community and other minority residents in the South Florida area. Founded in 1997, HLA seeks among other goals to promote a greater awareness of and commitment to the civil and political rights of the Haitian-American community and to promote the general welfare of Haitian-Americans in South Florida.

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assist farmers in the northwest part of Haiti in the production and development of the agricultural sector.

MIPO, Inc. is a non-profit membership organization dedicated to improving the quality of life of Haitian youth and educators residing in Haiti and immigrant youth and their families, residing in the New York metropolitan area, through a variety of activities. Projects range from providing free college tours and scholarships to high school graduating seniors to distributing school supplies, supporting schools in Haiti with short and long term projects, partnering with organizations to provide CPR & AED training, and conducting professional development training for educators in Haiti. Our mission is to vigilantly help young men and women transition into productive citizens of this world by providing them with sustainable skills to compliment their innate ability. We believe that our youth can attain their full potential given the opportunity to challenge their own expectations. Education, commitment, dedication, mentoring efforts and support are all components to escaping the revolving cycle of life. With that said, we have, thus far, greatly increased the quality of education for the undeserved youth of Haiti by improving the pedagogical skills of educators in the northern part of Haiti where we provide our services. If the teachers are well equipped, our students' performance will soar.

Haitian-American Leadership Council (HALEC) is an independent civic organization, which advocates voting in block for a politically strong community.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2015, a true and correct copy of the foregoing document was served via mail, on the following:

United Nations
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New York, NY 10017

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Edmond Mulet
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Copies of the same have also been sent via electronic mail to the following:

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Nicholas Cartier, Esq.
United States Department of Justice
nicolas.cartier@usdoj.gov

Respectfully submitted,

/s/: Emmanuel Coffy

15-455

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DELAMA GEORGES, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF DESILUS GEORGES AND ALL OTHERS SIMILARLY SITUATED, ALIUS JOSEPH, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF MARIE-CLAUDE LEFEUVE AND ALL OTHERS SIMILARLY SITUATED, LISETTE PAUL, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF FRITZNEL PAUL AND ALL OTHERS SIMILARLY SITUATED, FELICIA PAULE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED, JEAN RONY SILFORT, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Plaintiffs-Appellants,

v.

UNITED NATIONS, UNITED NATIONS STABILIZATION MISSION IN HAITI, EDMOND MULET, FORMER UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS STABILIZATION MISSION IN HAITI, BAN KI-MOON, SECRETARY-GENERAL OF THE UNITED NATIONS,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**MOTION OF HAITIAN-AMERICAN ORGANIZATIONS FOR
LEAVE TO FILE A BRIEF AS *AMICI CURIAE* BRIEF IN SUPPORT
OF PLAINTIFFS-APPELLANTS**

Emmanuel Coffy
Coffy Law, LLC
4400 US Highway 9 South, Suite 1000
Freehold, NJ 07728
Tel: (973) 375-1804
Counsel for Amici Curiae

Pursuant to Rule 29(b) of the Federal Rules of Appellate Procedure, certain Haitian-American community groups and professional associations respectfully move this Court for leave to file the accompanying BRIEF OF HAITIAN-AMERICAN ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-APPELLANTS (“Brief”) in the above-captioned matter. In support of this motion, *amici* state as follows:

INTERESTS OF *AMICI CURIAE*

Prospective *amici curiae* are civil society organizations representing Haitian-Americans in the United States, some of whose family members were afflicted by the cholera outbreak that is the basis of the current lawsuit.

Fanm Ayisyen Nan Miyami, Inc. (FANM) / Haitian Women of Miami is an advocacy and social service agency located in the heart of Miami’s Little Haiti, serving the needs of indigent and low-income women and their families, as well as victims of abuse, neglect, violence, discrimination and racism, primarily those of Haitian immigrant background. Since 1991, FANM has championed and advocated for the rights of those who have been underserved, marginalized, disenfranchised, and discriminated against in South Florida, the United States, and Haiti.

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political rights of the Haitian-American community and to promote the general welfare of Haitian-Americans in South Florida.

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challenge their own expectations. Education, commitment, dedication, mentoring efforts and support are all components to escaping the revolving cycle of life.

With that said, we have, thus far, greatly increased the quality of education for the undeserved youth of Haiti by improving the pedagogical skills of educators in the northern part of Haiti where we provide our services. If the teachers are well equipped, our students' performance will soar.

Together, *amici* possess first-hand knowledge of the Haitian-American community and current conditions in Haiti. *Amici* have a strong interest in ensuring that victims of the cholera epidemic are provided access to justice, and submit this brief in support of Plaintiffs-Appellants' position that Defendants-Appellees may not benefit from immunity when Defendants-Appellees have refused to abide by their obligations to provide victims of their wrongdoing with a mode of settlement.

THE PROPOSED AMICI CURIAE BRIEF IS DESIRABLE AND THE MATTERS ASSERTED THEREIN ARE RELEVANT TO THE DISPOSITION OF THE CASE

The pending case is rooted in a cholera epidemic that continues to affect Haiti and the Haitian-American community today. As organizations who serve the Haitian-American community, and whose members still have family in Haiti, *amici* possess direct knowledge of the harms the cholera epidemic, and the UN's refusal to adhere to its obligations to provide modes of settlement of private law claims, has inflicted. *Amici* wish to ensure the protection of the cholera victims'

right to access justice, and seek to provide the Court with insight into the potential real-life consequences of upholding the District Court's decision to dismiss the case.

Counsel for the Plaintiffs-Appellants consents to the filing of the Brief. Because Defendants-Appellees have not entered an appearance in this case, their consent to the filing of the Brief has not been obtained. Accordingly, this motion is necessary. No party will be prejudiced if *amici* are permitted to file their Brief. Should Defendants-Appellees desire to respond to anything in the Brief, they have the opportunity to do so.

CONCLUSION

Amici curiae are well-positioned to offer advice to this Court on the impact of the UN refusal to provide a mode of settlement to the cholera victims, and believe that their expertise will be of assistance to this Court in resolving the issues raised by this case. In view of the foregoing, *amici* respectfully request that the Court grant this motion for leave to file the accompanying *amici curiae* brief in the above-captioned matter.

DATED: June 3, 2015

Respectfully submitted,

/s/ Emmanuel Coffy

Emmanuel Coffy

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Tel: (973) 375-1804

*Attorney for Amici Curiae Haitian-
American Organizations*

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2015, a true and correct copy of the foregoing document was served via mail, on the following:

United Nations
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MINUSTAH headquarters
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New York, NY 10022

Edmond Mulet
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New York, NY 10022

Copies of the same have also been sent via electronic mail to the following:

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Assistant United States Attorney
ellen.blain@usdoj.gov

Nicholas Cartier, Esq.
United States Department of Justice
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Respectfully submitted,

/s/: Emmanuel Coffy