

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

JEFFREY M. SIMONEAUX

CIVIL DOCKET NUMBER

VERSUS

12-219-SDD-SCR

E.I. du PONT de NEMOURS & COMPANY

RULING

Before the Court is a Motion for Leave to file a “Statement of Interest” and related Declaration by the United States.¹ Relator, Jeffrey Simoneaux initiated this lawsuit against E.I. du PONT de NEMOURS & COMPANY (“DuPont”) under the *qui tam* provision of the False Claims Act (“FCA”)² alleging violations the Toxic Substances and Control Act (“TSCA”)³.

In accordance with the FCA, Relator filed his action on behalf of the United States Government and served a copy of his Complaint under seal on the U.S. Attorney for the Middle District of Louisiana, as well as the Attorney General. On September 17, 2012, the United States filed a Notice of Election to Decline Intervention in this matter, but expressly reserved “its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator’s action or claim”⁴

¹ Rec. Doc. 90

² 31 U.S.C. § 3729, et seq

³ 15 U.S.C. § 2601, et seq

⁴ Rec. Doc. 5

This matter is set for trial commencing on January 12, 2015. The United States has represented unequivocally that it will not seek to intervene in this suit arising under the False Claims Act ("FCA").⁵ Section 3730(C)(3) of the FCA permits intervention by the USA "upon a showing of good cause." It is well settled that the United States is the real party in interest in a *qui tam* action such as this. Inasmuch as good cause is required to permit an intervention by the United States at this late stage in the proceedings, *a fortiori*, good cause must also be shown to file a "Statement of Interest" The United States sets forth no reasons of good cause for the proposed filing. The Court views the USA's proposed "Statement of Interest" in the nature of an amicus brief. The US cites no authority for the filing of same.

In addition to a "Statement of Interest", the USA seeks to file a "Declaration" of the Office Director for the Office of Pollution Prevention and Toxics for the EPA. Again the United States provides no authority and presents no good cause for this proposed filing. The Declaration is inadmissible hearsay and insofar as the declarant opines to the scope and application of the TSCA it constitutes an *ex parte* opinion. Even if the Court were persuaded to allow *ex parte* hearsay opinion testimony, the subject declaration is an attempt to offer a legal opinion. Interpretation and construction of federal statutes is the sole and exclusive province of the Courts, not experts.⁶

For the foregoing reasons the United States Motion for Leave to File a

⁵ Rec. Doc. 90

⁶ *Estate of Sowell v. United States*, 198 F.3d 169 (5th Cir. 1999); *Askanase v. Fatjo*, 130 F.3d 657, 669 (5th Cir.1997),

“Statement of Interest” and related Declaration is DENIED.

Signed in Baton Rouge, Louisiana, on November 20, 2014.



**SHELLY D. DICK, DISTRICT JUDGE
MIDDLE DISTRICT OF LOUISIANA**