

**C.A. No. 15-56424**

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**UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT**

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**LINDSAY R. COOPER, ET AL.,**

*Plaintiffs-Appellees,*

**v.**

**TOKYO ELECTRIC POWER COMPANY, INC.,**

*Defendant-Appellant.*

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Appeal from the United States District Court for the Southern District of California

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**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF BY  
THE GOVERNMENT OF JAPAN IN SUPPORT OF APPELLANT AND IN SUPPORT OF  
REVERSAL OF THE ORDER BELOW**

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF**

Pursuant to Federal Rule of Appellate Procedure 29(a) and Ninth Circuit Rule 29-3, the Government of Japan moves for leave to file the concurrently submitted *amicus* brief in support of Defendant-Appellant. *Amicus* urges reversal of the ruling below, which denied, in large part, a motion to dismiss filed by Defendant-Appellant Tokyo Electric Power Company Ltd. (“TEPCO”). *Amicus* sought the consent of all parties in the case; counsel for Plaintiffs-Appellants did not timely respond to the request.

*Amicus* is the Government of Japan, which responded to the 2011 accident at the Fukushima Daiichi Nuclear Power Station by enacting a comprehensive claims resolution system. *Amicus* is a sovereign nation, and this appeal addresses, in large part, issues involving international comity. Accordingly, this brief is filed to provide the Court with the Government of Japan’s perspective on the potential effects of this litigation on that claims resolution system.

For the foregoing reasons, *amicus curiae* seeks permission from this Court to file the brief accompanying this motion.

DATE: February 3, 2016

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: /s/ Djordje Petkoski

Djordje Petkoski

*Attorneys for Amicus Curiae the  
Government of Japan*

**C.A. No. 15-56424**

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**BRIEF OF *AMICUS CURIAE* THE GOVERNMENT OF JAPAN IN SUPPORT OF  
APPELLANT AND IN SUPPORT OF REVERSAL OF THE ORDER BELOW**

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**STATEMENT OF COMPLIANCE WITH RULE 29(C)(5)**

No counsel for any party authored this brief, in whole or in part. No party or party's counsel contributed money that was intended to fund preparing or submitting this brief. No person, other than amicus curiae or its counsel, contributed money that was intended to fund preparing or submitting the brief.

**CONSENT OF THE PARTIES**

Counsel for Defendant-Appellant has consented to the filing of this brief. Counsel for Plaintiffs-Appellees did not timely respond to the Government of Japan's request for consent.

## **STATEMENT OF INTEREST OF AMICUS CURIAE**

Since the accident at the Fukushima Daiichi Nuclear Power Station, the Government of Japan has acted to ensure that individuals and entities injured as a result of the accident receive fair compensation. Through laws passed by the Japanese Diet, the Government of Japan provided extraordinary financial support for Defendant-Appellant Tokyo Electric Power Company Ltd. (“TEPCO”) and thereby secured TEPCO’s solvency and ability to pay damage claims. The Government of Japan also designed and implemented a framework for the just resolution of all damage claims associated with the accident under a universal set of guidelines, and established Government-financed funds for the payment of damages.

The Government of Japan has a direct and substantial interest in protecting the viability of this carefully wrought claims-resolution and compensation system, which is threatened if Fukushima-related damage claims, like those in this case, are adjudicated outside of Japan.

## **ARGUMENT**

### **1. The Government of Japan Has Developed a Comprehensive System to Ensure Compensation for Victims of the Fukushima Nuclear Accident.**

Since the Fukushima nuclear accident in 2011, the Government of Japan has taken unprecedented steps to ensure that funds will be available to compensate

victims, and that victims will have access to a fair system for deciding their claims under a universal set of guidelines.

The Government of Japan has provided billions of dollars' worth of financial support to TEPCO, ensuring that TEPCO remains solvent. Within a comprehensive system developed by the Government of Japan as a result of this financial support and other legislative steps taken by the Japanese Diet, victims seeking nuclear damage compensation can submit a claim either directly to TEPCO, to the Nuclear Damage Claim Dispute Resolution Center (which provides ADR services), or to a court in Japan.

Compensation payments by TEPCO are financed by the Government of Japan through funds raised by the issuance of government bonds.

The Government of Japan's financial support of this important claims-resolution and compensation system has been substantial, and the system has worked well. To date, approximately 2.4 million claims have been resolved, with total payments equivalent to more than \$58 billion – an amount exceeding one percent of Japan's GDP.

**2. Damage Claims Brought in Tribunals Outside of Japan Threaten the Continuing Viability of the Compensation System Established by the Government of Japan.**

Victims of the Fukushima nuclear accident are numerous and diverse. The viability of Japan's nuclear damage compensation system depends upon all victims



having confidence that they will be treated fairly and equally.

Thus, the Government of Japan has striven to provide equal and just treatment of similar claims, developing a universal set of guidelines for adjudicating all claims, and also extending the statute of limitations on Fukushima-related claims from three years to ten years. The Government of Japan also has ensured that claimants are treated fairly and equally regardless of their nationality or residence. Substantial compensation has already been paid to citizens of foreign countries, including the United States, United Kingdom, and China.

In the meantime, not a single case for compensation – other than this one – has been brought in a foreign country’s court system. The Government of Japan has serious concerns that this suit, and perhaps others like it, could result in the application of different legal standards to adjudicate Fukushima-related claims and, as a result, disparate outcomes for similarly situated claimants. This could prove highly corrosive to the integrity of the compensation system established by the Government of Japan.

U.S. courts should not undermine the carefully calibrated public policy reflected in the legislation passed by the Japanese Diet establishing the nuclear accident compensation system. The irony of the situation is that this U.S. lawsuit against TEPCO is possible only because the Government of Japan, as part of its compensation system, ensured TEPCO’s solvency, including by providing ongoing

funds for damage payments. Plaintiffs-Appellees here are thus using one core component of the Government of Japan's plan as the basis for evading and undermining the Government of Japan's overall framework.

For the foregoing reasons, in order to maintain the integrity, fairness and equality of the process for compensating those affected by the Fukushima nuclear accident, this suit should be dismissed, with Plaintiffs-Appellees left free to pursue their claims in Japan.

DATE: February 3, 2016

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: /s/ Djordje Petkoski

Djordje Petkoski

Attorneys for *amicus curiae* the Government  
of Japan

**CERTIFICATE OF SERVICE**

I hereby certify that on February 3, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

By: /s/ Djordje Petkoski  
Djordje Petkoski