

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION**

**WISSAM ABDULLATEFF SA'EED
AL-QURAIISHI, et al.,**

Plaintiffs,

v.

ADEL NAKHLA, et al.,

Defendants.

Civil Action No. 8:08-cv-01696-PJM

**DEFENDANT L-3 SERVICES, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR
LEAVE TO BRIEF THE DECISION IN *AL SHIMARI v. CACI PREMIER TECHNOLOGY, INC.***

Plaintiffs' opposition to Defendant L-3 Services, Inc.'s motion to file supplemental briefing is baseless and hypocritical: They provide no good reason why the parties should not provide short supplemental briefing on a post-argument 71-page opinion in a related case, while at the same time submitting just such a brief. There are times when new authority warrants a brief notice because it goes to a single issue.¹ This is not such a situation. In the face of a 71-page decision on a related case, in the same circuit, briefing is warranted. But instead of defending their hypocritical position and blatant attempt to use the meet and confer process to secure unwarranted litigation advantage,² Plaintiffs seek to shift attention away from themselves through innuendo and their outrageous assertion that our submission of this brief is

¹ We will be filing such a notice to provide the Court with the recently-released full-length redacted unclassified report: *Inquiry into the Treatment of Detainees in U.S. Custody*, Committee on Armed Services, United States Senate, November 20, 2008. We previously provided notice of the earlier-released Executive Summary of the same report.

² Plaintiffs cannot deny, as set forth in their email, that their "conditional consent" was based on conditions that would have put defendants at a tactical disadvantage in terms of the time and sequencing of these briefs.

an attempt to delay these proceedings when it is we, not them, who have acted more promptly at every stage of this issue. There is no truth to what they imply, and the briefs should be accepted.

The Facts. Plaintiffs do not dispute the sequence of events set forth in our opening brief or that they withheld their consent after L-3 would not give in to their extortionate offer that they charitably label “conditional consent.” In fact, Plaintiffs did not “consent” in any meaningful way. After L-3 agreed to file within three calendar days (rather than the one day on which Plaintiffs conditioned their “consent”) and reserved the right to reply given Plaintiffs’ unexplained refusal to brief simultaneously, Plaintiffs withdrew their alleged consent. *See Ex. C (3/23/09 2:21p.m. Email S. Burke to A. Zymelman, et al.)* (withdrawing consent to L-3’s proposed filing). Consent to filing motions is not a “professional courtesy,” as Plaintiffs claim. It is their professional obligation in the absence of a real dispute, which there clearly is not given that their filing of a supplemental brief concedes that the *Al Shimari* opinion is relevant and warrants briefing.

Plaintiffs’ Distortions. While Plaintiffs do not dispute the facts we set forth, they do provide a series of distortions in what appears to be an attempt to distract from their lack of diligence. Plaintiffs imply that L-3 received the *Al Shimari* decision on March 18th when it was emailed to “the parties.” But unlike Plaintiffs’ counsel, L-3’s counsel does not represent a party to *Al Shimari*, and unlike Plaintiffs’ counsel, L-3 did not receive the opinion until it was docketed on March 19th. L-3 contacted Plaintiffs four (not five) calendar days after receiving the opinion (which Plaintiffs neglect to mention was two business days). Thus, Plaintiffs were insisting that L-3 file its brief three business days after receiving the 71-page opinion and only 24 hours after their extortionate consent offered in response to L-3 having contacted Plaintiffs’ counsel about agreeing to a coordinated schedule on which to submit the *Al Shimari* opinion in this case.

Defendant Is Not Seeking Delay. Plaintiffs attempt to imply that the supplemental briefing is a form of delay. This is particularly absurd given that L-3 filed its supplemental brief seven days after the

opinion was docketed and three days after Plaintiffs refused to consent to such briefing. In contradiction, despite Plaintiffs' "offer" to file their supplemental brief within three business days, they took SEVENTEEN DAYS after we filed our motion and supplemental brief (which itself was filed within three days of negotiations breaking down), to file their supplemental brief.

And finally, Plaintiffs misquote our papers to assert that we are asking the Court to delay its decision pending the decision on the appeal in *Al Shimari*. We did not ask the court to delay decision until the Fourth Circuit rules. We simply acknowledged that district courts frequently hold off deciding contested motions when related cases in the same circuit are on appeal so that they may have the guidance of the Court of Appeals. It is odd that Plaintiffs are castigating L-3 for acknowledging this standard approach, when Plaintiffs' counsel consented to continued imposition of a stay of *all* proceedings in *Al Shimari* pending resolution of CACI's appeal. And while they complain of delay and assert they will be moving to dismiss the so-called frivolous CACI appeal, as of the date of this reply, they have not done so. In fact, Plaintiffs' counsel has not yet even entered an appearance in that appeal, while the opening merits brief is due to be filed on May 19, in less than four weeks time.

CONCLUSION

For the reasons set forth in our opening memorandum and above we respectfully request that the Court accept L-3's supplemental brief Plaintiffs' opposition brief, and L-3's supplemental reply brief, attached as Exhibit D, on the *Al Shimari* opinion.

Respectfully submitted,

Dated: April 27, 2009

/s/ F. Greg Bowman

Ari S. Zymelman, *pro hac vice*
azymelman@wc.com

F. Greg Bowman (Bar No. 16641)
fbowman@wc.com

Anne M. Rucker (Bar No. 27808)
arucker@wc.com

WILLIAMS & CONNOLLY LLP

725 Twelfth Street, N.W.

Washington, DC 20005

(202) 434-5000 (telephone)

(202) 434-5029 (facsimile)

Attorneys for Defendant L-3 Services, Inc.