

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

_____)	
)	
UNITED STATES OF AMERICA,)	Civil Action No. 98-475 JJF
)	Judge Farnan
Plaintiff,)	
)	
vs.)	
)	
FEDERATION OF PHYSICIANS AND)	
DENTISTS, INC.,)	
)	
Defendant.)	
_____)	

JOINT PRETRIAL ORDER

On a date and time to be determined by the Court*, counsel for United States of America (“United States” or “Government”) and counsel for Federation of Physicians and Dentists, Inc. (“Federation”) shall attend a pretrial conference before this Court. The following matters as to the trial commencing on a date and time to be determined by the Court, are hereby ordered by the Court:

* In a letter dated May 8, 2001 (D.I. 214), the parties responded to the Court’s request in an earlier letter (D.I. 212) soliciting the parties’ preference between the dates of August 2, and September 6, 2001, for holding the pretrial conference. The parties replied that, although defense counsel was unavailable for the August 2 date, counsel would be available on any of the following dates if the Court’s calendar allowed the date to be shifted: August 1, 8, 9, or 14, 2001. The parties’ letter explains that scheduling the pretrial conference on an alternative date in August would potentially allow the trial to commence in mid to late September, which would preclude scheduling problems for one of plaintiff’s two primary trial counsel, whose wife is expecting the birth of a child in late October. The parties’ letter further stated that, should none of the alternative dates posed in August be convenient for the Court, the parties would then prefer September 6 over August 2 for the date of the pretrial conference. The scheduling of the pretrial conference and trial awaits the Court’s order.

I. NATURE OF THE ACTION AND PLEADINGS

1. On August 12, 1998, the United States filed its Complaint against defendant, the Federation, alleging that it has engaged in a combination and conspiracy in unreasonable restraint of trade and commerce in violation of Section 1 of the Sherman Act, and seeking injunctive relief.

2. On October 13, 1998, the Federation filed its Amended Answer to the Complaint in which it denied the United States' allegations and asserted various defenses.

II. BASES FOR FEDERAL JURISDICTION

1. The United States' action arises under Section 4 of the Sherman Act. The Court has subject matter jurisdiction over this action pursuant to 15 U.S.C. § 4 and 28 U.S.C. §§ 1331 and 1337.

2. Venue is proper under 28 U.S.C. § 1391(b)(2).

III. STATEMENT OF STIPULATED FACTS

The parties have agreed that the stipulations of fact stated in Exhibit 1 are true and the Court may consider such facts as conclusively established, without further proof, for the purposes of this action only.

IV. STATEMENT OF ISSUES OF FACT REMAINING TO BE LITIGATED

1. The United States' statement of the issues of fact remaining to be litigated is attached as Exhibit 2.

2. The Federation's statement of the issues of fact remaining to be litigated is attached as Exhibit 3

V. STATEMENT OF ISSUES OF LAW REMAINING TO BE LITIGATED

1. The United States' statement of the issues of law remaining to be litigated is attached as Exhibit 4.

2. The Federation's statement of the issues of law remaining to be litigated is attached as Exhibit 5.

VI. EXHIBITS

1. The United States' list of pre-marked exhibits is attached as Exhibit 6.

2. The Federation's list of pre-marked exhibits is attached as Exhibit 7.

VII. WITNESSES TO BE CALLED IN PERSON OR BY DEPOSITION

1. The United States' list of all persons that it intends to call to testify either in person, or by deposition, at trial, and designated deposition excerpts is attached as Exhibit 8.

2. The Federation's list of all persons that it intends to call to testify either in person, or by deposition, at trial, and designated deposition excerpts is attached as Exhibit 9.

VIII. STATEMENT OF INTENDED PROOFS

1. A brief statement of what the United States intends to provide in support of its claims, in addition to the stipulated facts, is attached as Exhibit 10.

2. A brief statement of what the Federation intends to provide in support of its claims, in addition to the stipulated facts, is attached as Exhibit 11.

IX. MISCELLANEOUS

1. After having an opportunity to carefully review the issues of fact and law to be posed by the Federation, which have not yet been made available to the United States, the United States may seek the Court's ruling on one or more motions *in limine* to exclude or limit the

introduction of inadmissible evidence for the purpose of narrowing the evidentiary issues for trial and eliminating unnecessary trial interruptions.

2. Before the pretrial conference, the United States intends to apply to the Court for permission, pursuant to 15 U.S. C. § 23, to issue subpoenas to witnesses living out of the district at a greater distance than one hundred miles from this Court, requiring them to appear at trial.

X. CERTIFICATION OF ATTEMPTED RESOLUTION OF CONTROVERSY

The United States certifies that it has made a good-faith attempts to resolve this controversy by settlement. No agreement has been reached.

XI. ORDER TO CONTROL COURSE OF ACTION

This Order shall control the subsequent course of the trial, unless modified by the Court to prevent manifest injustice.

IT IS SO ORDERED.

Dated: _____, 2001.

Hon. Joseph J. Farnan

Respectfully submitted,

Dated: July 20, 2001

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UNITED STATES OF AMERICA

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