

/s/ with the consent of M. Elizabeth Lippitt

M. Elizabeth Lippitt (P-70373)

Thomas S. Marks (P-69868)

Assistant Attorney General

G. Mennen Williams Building, 6th Floor

525 W. Ottawa Street

Lansing, Michigan 48933

lippitte@michigan.gov

markst@michigan.gov

Attorneys for the State of Michigan

March 15, 2012

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA and the
STATE OF MICHIGAN,

Plaintiffs,

v.

BLUE CROSS BLUE SHIELD OF
MICHIGAN,

Defendant.

Civil Action No.

2:10-cv-14155-DPH-MKM

Hon. Denise Page Hood

Mag. Judge Mona K. Majzoub

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ENTRY OF A CASE-
MANAGEMENT ORDER**

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STATEMENT OF ISSUES

1. Should plaintiffs' proposed case-management order, which allows plaintiffs in private tag-along damages actions to participate in depositions through informal coordination without delaying or interfering with this government antitrust enforcement action, govern ongoing discovery in this case?

2. Should the Court find cause to authorize the issuance of trial subpoenas to be served outside this District, pursuant to 15 U.S.C. § 23, where the case involves conduct throughout the State of Michigan, and non-party witnesses reside throughout the State and elsewhere?

INTRODUCTION

Plaintiffs the United States and the State of Michigan seek entry of a proposed case-management order (Ex. 1) to facilitate ongoing discovery in this government enforcement action. The Court has ordered that fact discovery be completed by July 25, 2012, to allow expert discovery and pretrial proceedings to be completed in a timely manner to meet the Court's April 2, 2013 trial date. (Doc. 67.)

Plaintiffs have been attempting to negotiate a case-management order for more than a year, during which Blue Cross has presented an ever-changing set of demands, most of which government plaintiffs have agreed to meet, only to be met with additional and sometimes contradictory demands. Blue Cross now would prefer a case-management order to govern all actions challenging Blue Cross's use of MFN clauses, and seeks a 90-day stay of depositions in this case to negotiate such an order (Doc. 123), a stay that plaintiffs oppose as unnecessary and causing unwarranted delay. (Doc. 134.)¹ Instead, plaintiffs' proposed case-management order provides for (among other things) private plaintiffs' participation in depositions in this case – part of the informal coordination that has worked well to date to minimize duplicative discovery, while allowing this action to proceed on the faster track Congress mandated in Section 4 of the Sherman Act, 15 U.S.C. § 4. (*See* Doc. 134 at 14-15.)²

¹ Despite Blue Cross's professed desire to have one case-management order formally coordinating discovery across all related actions, Blue Cross did not seek to negotiate a common case-management order until after it moved to delay depositions in the government's case for 90 days. (Doc. 123) Indeed, Blue Cross had *refused* to negotiate such an order with the class plaintiffs until liaison counsel is appointed, *see* Ex. 3 at 2, and has never provided a draft "comprehensive CMO," despite plaintiffs' requests.

² In addition, government plaintiffs have been coordinating with the *Shane Group* plaintiffs and Aetna on document discovery and other issues, as government plaintiffs outlined to Blue Cross on April 6, 2011. *See* Ex. 7. Discovery is stayed in *City of Pontiac* (*see* Doc. 123 at 2 n.3), and the *Pontiac* plaintiffs have not been participating in discovery.

By September 2011, plaintiffs believed the parties had reached substantial agreement on all provisions of a proposed order except for those governing the total number of depositions and the number of depositions per day. *See* Ex. 2. In the interest of reaching resolution, plaintiffs have since accepted Blue Cross's position on those issues.³ Although plaintiffs believed Blue Cross had agreed to all other provisions, three paragraphs in plaintiffs' proposed order – paragraphs 1.b(1), 1.b(2) and 5 – now appear to be in dispute. Paragraphs 1.b(1) and 1.b(2) contain provisions regarding the participation of plaintiffs in follow-on private civil actions in depositions taken in this matter. Blue Cross itself had initially proposed that private plaintiffs participate in depositions. *See* Ex. 4 ¶ 1.c. Paragraph 5 provides for nationwide service of trial subpoenas, as authorized by 15 U.S.C. § 23.⁴

Entry of plaintiffs' proposed case-management order will formalize many of the practices followed by the parties thus far in discovery, likely reduce conflict as discovery proceeds, and help the parties complete discovery according to the Court's schedule. Because the parties have been unable to reach agreement on these provisions, plaintiffs have moved for

³ Paragraph 1(a) provides that each side may take up to 170 depositions rather than 10 as limited by Fed. R. Civ. P. 30(a)(2)(A)(i), absent the parties' stipulation or a court order. Plaintiffs do not believe that either side needs anything close to 170 depositions, and anticipate taking far fewer than 170 (although more than 10). Blue Cross apparently intends to depose all 130 hospitals in Michigan (Doc. 123 at 4), and some outside the State. "Blue Cross has served 139 third-party subpoenas for the production of documents; DOJ has served 40 such subpoenas. . . . Blue Cross has noticed 33 third-party depositions; DOJ has noticed 10" (Doc. 123 at 4.)

⁴ The remaining provisions of the proposed order are straightforward and largely ministerial. Paragraph 2 provides that expert depositions may be taken over two consecutive days. Paragraph 3 prescribes service of pleadings and discovery, including providing copies of discovery demands to parties in related cases (which Blue Cross requested and plaintiffs agreed to on March 13). Paragraph 4 provides procedures for Rule 45 subpoenas, including exchanges of non-parties' subpoenaed documents among the parties. Plaintiffs understand that Blue Cross does not object to any of these provisions.

entry of plaintiffs' proposed order, including the provisions to which Blue Cross objects – paragraphs 1.b and 5.⁵

A. Paragraph 1.b 2 Reflects the Parties' Existing Practice of Allowing Private Plaintiffs to Participate in Depositions in This Matter and Should be Made a Part of the Case-Management Order in this Case

It was Blue Cross that originally proposed that the case-management order in this government action include language allowing for the participation of private plaintiffs in depositions. *See* Ex. 4. Because private plaintiffs' participation in depositions in this case would not delay or otherwise prejudice government plaintiffs' antitrust enforcement action, government plaintiffs agreed to include language in paragraphs 1.b of the case-management order to provide for that participation. By contrast, "coordination" that would delay or impede this government antitrust injunction action – such as a common, slower schedule or the 90-day stay of depositions sought by Blue Cross – is contrary to Congress's command that government actions seeking to enjoin anticompetitive conduct proceed to trial "as soon as may be," 15 U.S.C. § 4, and the policy underlying Congress's exemption of government antitrust enforcement actions from coordination or consolidation in multi-district litigation, 28 U.S.C. § 1407. *See* Doc. 134 at 13-19.

Paragraph 1.b(1), which addresses the division of time for questioning in non-party depositions, provides that the noticing party may question a non-party witness for at least five hours, and the adverse party may question the witness for at least two hours. If government plaintiffs use less than their allotted time, private plaintiffs may question the witness during the

⁵ After extensive meet-and-confer discussions had not resulted in complete agreement on the proposed order, government plaintiffs had previously planned to file this motion. Aware of plaintiffs' plans, Blue Cross abruptly moved on February 27 for a 90-day stay of depositions, purportedly to negotiate a common case-management order governing all related cases (Doc. 123) – although Blue Cross had not (and still has not) provided a proposed common case-management order (*see* Doc. 134 at 7).

remainder of the government's time (with the consent of the non-party witness). *Id.* Paragraph 1.b(2) contains a similar provision for private plaintiffs' participation in party depositions.

Blue Cross agreed on February 7, 2012, that paragraph 1.b of plaintiffs' proposed order "accurately stated the parties' practice to date," Ex. 5 at 2, and on February 17 reaffirmed that "to date, the parties have cooperated" in this manner. Ex. 8 at 3. As Blue Cross itself has recently recognized, the informal coordination provided for in plaintiffs' proposed case-management order is working – Blue Cross and government plaintiffs are taking depositions, and private plaintiffs have been participating. As a result of plaintiffs' agreement to Blue Cross's request, class plaintiffs have participated in all depositions taken in this matter.⁶

Blue Cross now maintains that this provision "does not . . . sufficiently address coordination of all the related litigation as it relates to depositions" Ex. 8 at 3. Blue Cross speculates that private plaintiffs will seek additional depositions of the "many small hospitals that can ill-afford to undergo discovery" (Doc. 123 at 2-3), small hospitals that have already been burdened with document and deposition discovery served primarily *by Blue Cross*. No private plaintiff has yet noticed a deposition of a non-party witness already deposed – although private plaintiffs have cross-noticed some depositions to assure their right to attend, a formality that would be unnecessary if the Court enters plaintiffs' proposed case-management order. Private plaintiffs have merely reserved their rights to seek further depositions (Doc. 123 at 5); they have not exercised those rights.

⁶ Although Blue Cross claims to want all plaintiffs to coordinate to avoid duplicative depositions, Blue Cross objects to Aetna's questioning non-party hospitals before producing documents relating to those non-parties. (Doc. 123 at 7.) Blue Cross itself has not produced all of its documents (and in particular has not produced its email, *see* Doc. 112 at 2-8), but has been noticing and taking hospital depositions. Entry of this order would confirm Aetna's right to participate.

Blue Cross stated on February 7, 2012, that it does not believe “private class plaintiffs should have the unfettered right” to attend depositions absent “some corresponding obligation” on the part of private plaintiffs “not to attempt to re-notice depositions of those persons or entities.” Ex. 5 at 2. If Blue Cross or non-parties are unjustifiably burdened by duplicative discovery in the private actions, they can of course seek judicial relief. If private plaintiffs have legitimate reasons to take additional depositions of witnesses previously deposed in the government’s case, they should be allowed to do so. *See* Fed. R. Civ. P. 30(a)(2)(A)(ii) (Court may grant leave for additional deposition time).

The government cannot currently coordinate with plaintiff *City of Pontiac*, which has agreed to a stay of discovery pending a ruling on motions to dismiss that case and therefore have not participated in depositions. The City of Pontiac alleges a conspiracy among hospitals that have agreed to MFN-pluses with Blue Cross, which government plaintiffs and the other private plaintiffs have not alleged. *See City of Pontiac v. Blue Cross*, tr. of oral arg. at 36-40 (June 7, 2011) (No. 11-cv-10276). If the *Pontiac* case survives pending motions to dismiss, coordinating depositions with that plaintiff – pursuing a different legal theory and seeking to establish very different facts against many different defendants (hospitals as well as Blue Cross) – is unlikely to be efficient. The depositions those plaintiffs would take are likely to involve very different lines of questioning than in the government’s case and the other private cases. Depositions coordinated with *Pontiac* are therefore unlikely to be completed in one seven-hour session, causing further delay without meaningful efficiencies.

Plaintiffs respectfully submit that the Court should include in its case-management order the provision for informal coordination of deposition questioning contained in plaintiffs’ proposed order. This provision will allow private plaintiffs to attend and participate in

depositions in this government enforcement action in a manner that does not interfere with this case, allow the depositions to proceed without delay, and likely obviate many of the same witnesses being deposed again in the private actions.

B. Good Cause Exists for Inclusion of Nationwide Service of Process for Trial Subpoenas in the Case-Management Order

Paragraph 5 of plaintiffs' proposed order permits the parties to issue trial subpoenas that may run into any other federal judicial district requiring witnesses to attend trial in this court, as authorized by Section 13 of the Clayton Act, 15 U.S.C. § 23, upon a showing of cause.⁷

Although Blue Cross had previously agreed to this provision (*e.g.*, Ex. 4 ¶ 6), Blue Cross now contends that this provision, which has been entered by many courts, cannot "be properly entered by the Court." (Ex. 9.)

Congress recognized that government antitrust cases can require testimony of witnesses beyond the district court's normal subpoena power. *See* H.R. Rep. No. 627, Pt. 1, 63d Cong, 2d Sess. at 20 (1914) (recognizing that nationwide service would expand subpoena power). As one court has recognized, "Section 13 of the Clayton Act was passed as an exception to Rule 45(e) due to the scope of most antitrust cases. If such a broad subpoena power did not exist there would often be no suitable venue for the trial of an antitrust case." *United States v. Ciba Corp.*, 1973 WL 834 at *2 (D.N.J. 1973) (distinguishing trial and deposition subpoenas). Orders

⁷ The statute provides: "In any suit, action, or proceeding brought by or on behalf of the United States subpoenas for witnesses who are required to attend a court of the United States in any judicial district in any case, civil or criminal, arising under the antitrust laws may run into any other district: Provided, That in civil cases no writ of subpoena shall issue for witnesses living out of the district in which the court is held at a greater distance than one hundred miles from the place of holding the same without the permission of the trial court being first had upon proper application and cause shown." *Id.*

permitting service of process outside the district in which the case is pending have been entered in many antitrust cases brought by the United States.⁸

Good cause plainly exists here. As alleged in the Complaint, Blue Cross has entered into agreements including MFNs with many hospitals outside the Eastern District and more than 100 miles from the courthouse, such as Marquette General Hospital in the Upper Peninsula.

Complaint ¶¶ 49-52. Marquette General is the only tertiary care hospital in the Upper Peninsula. *Id.* ¶ 51. In 2008, Blue Cross agreed to pay Marquette General significantly higher prices in exchange for an MFN-plus that requires Marquette General to charge other insurers at least 23% more than it charges Blue Cross, *id.* ¶ 49, which Blue Cross believed would “keep blue lock on U.P.” *Id.* ¶ 57. Under Blue Cross’s MFN-plus, the lowest rate Marquette could offer would preclude Priority from entering the Upper Peninsula, and Priority did not enter. *Id.* ¶ 56.

Both Priority and Marquette (and their relevant employees) are outside this District. Other witnesses will likely testify to effects of Blue Cross’s MFNs at other hospitals in the Western District. Furthermore, several of the health insurers that Plaintiffs allege have had their costs raised by Blue Cross’s MFN clauses have employees outside Michigan who are likely to have relevant knowledge. The United States identified several persons outside Michigan, likely having relevant information, in its initial disclosures. Plaintiffs plan to call witnesses who reside outside this District and State, and more than 100 miles from the courthouse, to testify regarding Blue Cross’s practices and their effects in markets in Michigan.

⁸ *E.g., United States v. First Data & Concord EFS, Inc.*, 287 F. Supp. 2d 69, 71 (D.D.C. 2003). Four more such orders are attached in Ex. 10: *United States v. AT&T Inc.*, Stipulated Scheduling and Case-Management Order, ¶ 8, No. 11-cv-01560 (D.D.C. Sept. 23, 2011); *United States v. UPM-Kymmene*, Scheduling and Case Management Order, ¶ 11, No. 03-cv- 2528 (N.D. Ill. Apr. 23, 2003); *United States v. Microsoft Corp.*, Pretrial Order No. 1, ¶ 14, No. 98-cv-1233 (D.D.C. June 12, 1998); *United States v. Brown University*, Order, 1, No. 91-cv-3274 (E.D. Pa. May 2, 1992).

Blue Cross apparently believes that the Court must make a witness-by-witness determination of good cause based on “why the witness is being called, where the witness is in fact located, and whether the witness was deposed in the case.”⁹ (Ex. 9) However, all of the orders cited above make a determination of good cause for the case as a whole, and plaintiffs are not aware that any court has required witness-by-witness determinations before entering an order allowing a specific trial subpoena to be issued to an out-of-district witness. Moreover, there is no need for the Court to make a witness-by-witness determination (or to allow Blue Cross to object to specific witnesses that the government would call) *before* the subpoena issues, or for the parties to so burden the Court. The *witness* can move to quash under Fed. R. Civ. P. 45(c)(1) in cases of undue burden. In considering such a motion, the Court will weigh the burden to the witness against the importance of his testimony in this government antitrust case – which, as Congress contemplated nearly 100 years ago (when travel was far more burdensome), may require imposition of greater burdens than in other cases.

Entering this provision now will assist the parties in discovery by informing them whether witnesses outside the district are subject to trial subpoena, or whether their trial testimony must be preserved by deposition.¹⁰ It will assist the parties in determining whom to

⁹ Blue Cross had previously suggested that it might object to plaintiffs’ use of deposition testimony in lieu of live witnesses as authorized by Rule 32 (Ex. 6); now it seeks the opportunity to object to subpoenas to secure the same witnesses’ live testimony.

¹⁰ Allowing service of trial subpoenas outside this District would not prevent the parties from using depositions at trial as otherwise allowed by law. Fed. R. Civ. P. 32(a)(4)(B) allows the use at trial of depositions of a witness that is “unavailable” because she is more than 100 miles from the courthouse. Courts have held that witnesses are “unavailable” by reason of being more than 100 miles from the courthouse – and therefore their depositions can be used at trial – even if they are subject to service of trial subpoenas. *Carey v. Bahama Cruise Lines*, 864 F.2d 201, 204 n.2 (1st Cir. 1988); *United States v. International Business Machines Corp.*, 90 F.R.D. 377, 380 (S.D.N.Y. 1981) (15 U.S.C. § 23 does not make witnesses “available” under Rule 32(a)(4)(B)).

depose in this case, and is consistent with the Sixth Circuit's observation that "[t]he law prefers live testimony over hearsay." *Steele v. Taylor*, 684 F.2d 1193, 1202 (6th Cir. 1982).

CONCLUSION

For the reasons set forth above, plaintiffs the United States and the State of Michigan respectfully request that the Court enter, pursuant to Fed. R. Civ. P. 16(b), the attached Case-Management Order (Ex. 1).

Respectfully submitted,

By

/s/ Ryan Danks
Antitrust Division
United States Department of Justice
450 5th Street, N.W., Suite 4100
Washington, D.C. 20530
(202) 305-0128
ryan.danks@usdoj.gov
Attorney for the United States

/s/ with the consent of M. Elizabeth Lippitt
M. Elizabeth Lippitt (P-70373)
Thomas S. Marks (P-69868)
Assistant Attorney General
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933
lippitte@michigan.gov
markst@michigan.gov
Attorneys for the State of Michigan

March 15, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the date listed above, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of the filing to the counsel of record for all parties for civil action 2:10-cv-14155-DPH-MKM, and I hereby certify that there are no individuals entitled to notice who are non-ECF participants.

/s/ Ryan Danks

Trial Attorney

Antitrust Division

United States Department of Justice

450 5th Street, N.W., Suite 4100

Washington, D.C. 20530

(202) 305-0128

Ryan.danks@usdoj.gov

Exhibit 1

plaintiffs' time that the plaintiffs do not use, and the non-party may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent. If government and private plaintiffs, or defendant, use less than their allotted time, the other side may continue until a total of seven hours is reached. To the extent the non-noticing party believes it needs more than two hours to question a non-party witness, that party may cross-notice the deposition, in which event plaintiffs and defendant shall divide time equally.

(2) Party Depositions. Absent a Court order extending the time or agreement of counsel, party depositions shall be limited to one day of seven hours, during which the noticing party shall have at least seven hours (including for redirect). If private plaintiffs in parallel litigation before this Court wish to participate in a deposition of defendant, the private plaintiffs may use whatever portion of the seven-hour time period that plaintiffs do not use, and the defendant may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent.

2. Expert Depositions. Expert depositions may extend to two consecutive days of up to seven hours each day for each expert witness. Unless the parties agree otherwise concerning a particular deposition, 14 days shall constitute reasonable notice of an expert deposition to the other side.

3. Service of Pleadings and Discovery on Other Parties. In accordance with LR 5.1, the parties shall serve all pleadings and other court filings on the opposing side using the Court's electronic filing system. Service of all discovery demands and responses, including notice of subpoenas to non-parties, shall be made by electronic mail to the persons designated below by

the respective parties. Service of hard copies to the opposing side is not required. All documents are deemed served such that three days are added to the response period pursuant to Fed. R. Civ. P.6(d). The parties designate the following individuals to receive service of all discovery demands and responses:

a. For Plaintiff United States:

Amy R. Fitzpatrick	(202) 532-4558	amy.fitzpatrick@usdoj.gov
Barry J. Joyce	(202) 353-4209	barry.joyce@usdoj.gov
Steven Kramer	(202) 307-0997	steven.kramer@usdoj.gov
David Gringer	(202) 532-4537	david.gringer@usdoj.gov

b. For Plaintiff State of Michigan:

M. Elizabeth Lippitt	(517) 373-1160	LippittE@michigan.gov
Thomas Marks	(517) 373-1160	tmarks@michigan.gov

c. For Defendant Blue Cross Blue Shield of Michigan:

Todd M. Stenerson	(202) 419-2184	Tstenerson@hunton.com
D. Bruce Hoffman	(202) 955-1619	Bhoffman@hunton.com
Ashley Cummings	(404) 888-4223	Acummings@hunton.com
Jonathan Lasken	(202) 955-1983	Jlasken@hunton.com

The parties shall also provide copies of all discovery demands to attorneys for parties in related cases, by electronic mail.

4. Federal Rule of Civil Procedure 45 Subpoenas.

a. A party serving a subpoena on a non-party for the production of documents, including electronically stored information, need not provide advance notice of the subpoena to the other parties.

b. If a party serves on a non-party a subpoena for the production of documents, including electronically stored information (“document subpoena”), and a subpoena commanding attendance at a deposition, the scheduled deposition date must be at least 14 days after the return date for the document subpoena. If extending the date of compliance for the document subpoena results in there being fewer than 14 days between the extended compliance date and the date scheduled for that non-party’s deposition, the scheduled date for deposition must be postponed to be at least 14 days following the extended compliance date, unless the opposing party consents to there being fewer than 14 days.

c. All modifications to the scope or date of compliance of a non-party document subpoena, agreed to by the party that served the subpoena, must be reduced to writing and emailed to all other parties within one week after agreement to the modifications with the subpoenaed non-party.

d. Whenever a party receives documents or electronically stored information in response to a non-party document subpoena, the receiving party must provide a complete copy of all materials, including documents, including electronically stored information that it received to all other parties within seven calendar days following receipt. If technical problems with the non-party production prevent meeting this deadline, the receiving party shall promptly notify the other parties and provide copies as soon as practical. If a non-party produces documents that are not Bates stamped, the party receiving the documents will Bates stamp them before producing a copy to the other parties.

5. Service of Trial Subpoenas. In view of the fact that potential witnesses in this action are located outside this judicial district and beyond 100 miles from this Court, the parties have shown the requisite good cause to permit the parties, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal judicial district requiring witnesses to attend this Court.

6. Modification of Scheduling and Case Management Order. Any party may move the Court to amend or modify any of the provisions of either the Scheduling Order or Case-Management Order for good cause shown and/or to set a status conference to address case-management issues.

SO ORDERED:

Dated at Detroit, Michigan, this ___ day of _____, 2012.

BY THE COURT:

UNITED STATES DISTRICT JUDGE

Exhibit 2

From: Fitzpatrick, Amy
Sent: Monday, September 26, 2011 6:33 PM
To: Cummings, Ashley; 'Lasken, Jonathan H.'
Subject: U.S. v. BCBSM
Attachments: 9-26-11 - Draft CMO.pdf

Ashley & Jonathan,

As we discussed last week, attached is the updated draft of the CMO. I believe that everything other than the limits on depositions has been agreed to, but please let me know if there is anything that I missed. I have included what I understand to be your last position on the deposition limits issue as well as a revised proposal from us. I would be happy to discuss our revised proposal whenever it is convenient for you.

Please let me know if you have any questions.

Best,
Amy

Amy R. Fitzpatrick
Trial Attorney
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530
(202) 532-4558
amy.fitzpatrick@usdoj.gov

may take no more than two depositions on the same day (allowing a total number of four depositions per day).

Notwithstanding these limitations, a deposition of a non-party witness taken during the last two months of fact discovery shall be counted toward a party's monthly or daily limit for the month for which the deposition is originally noticed rather than the month the deposition is taken if the party: (1) noticed the deposition for a month prior to the final two months of fact discovery, (2) made a good faith effort to schedule the deposition for a month prior to the final two months of fact discovery, and (3) was unable to schedule the deposition for a month prior to the final two months of fact discovery due to the unavailability of the non-party witness.

c. Duration of Depositions.

(1) Non-party Depositions. Absent a Court order extending the time or agreement of counsel, non-party depositions shall be limited to one day of seven hours, during which the noticing party shall have at least five hours (including for redirect) and the adverse party shall have at least 2 hours. However, if one party uses less than its allotted time, the other party may continue until a total of seven hours is reached. If private plaintiffs in parallel litigation before this Court wish to participate in the deposition, the private plaintiffs may use whatever portion of the seven-hour time period that the parties do not use, and the non-party may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent. To the extent the non-noticing party believes it needs more than 2 hours to question a non-party witness, that party must cross-notice the deposition.

(2) Party Depositions. Absent a Court order extending the time or agreement of counsel, party depositions shall be limited to one day of seven hours, during which the noticing party shall have at least seven hours (including for redirect). If private plaintiffs in parallel litigation before this Court wish to participate in the deposition, the private plaintiffs may use whatever portion of the seven-hour time period that the parties do not use, and the party affiliated with the deponent may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent.

2. Expert Depositions. Expert depositions may extend to two consecutive days of up to seven hours each day for each expert witness. If private plaintiffs in parallel litigation before this Court also participate in the expert deposition, those private plaintiffs shall have two additional hours to question the deponent. Unless the parties agree otherwise concerning a particular deposition, 14 days shall constitute reasonable notice of an expert deposition to the other side.

3. Service of Pleadings and Discovery on Other Parties. In accordance with LR 5.1, the parties shall serve all pleadings and other court filings on the opposing side using the Court's electronic filing system. Service of all discovery demands and responses, including notice of subpoenas to non-parties, shall be made by electronic mail to the persons designated below by the respective parties. Service of hard copies to the opposing side is not required. All documents are deemed served such that 3 days are added to the response period pursuant to Fed. R. Civ. P.6(d). The parties designate the following individuals to receive service of all discovery demands and responses:

a. For Plaintiff United States:

Amy R. Fitzpatrick	(202) 532-4558	amy.fitzpatrick@usdoj.gov
Barry J. Joyce	(202) 353-4209	barry.joyce@usdoj.gov
Steven Kramer	(202) 307-0997	steven.kramer@usdoj.gov

b. For Plaintiff State of Michigan:

M. Elizabeth Lippitt	(517) 373-1160	LippittE@michigan.gov
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c. For Defendant Blue Cross Blue Shield of Michigan:

Todd M. Stenerson	(202) 419-2184	Tstenerson@hunton.com
D. Bruce Hoffman	(202) 955-1619	Bhoffman@hunton.com
Ashley Cummings	(404) 888-4223	Acummings@hunton.com
Jonathan Lasken	(202) 955-1983	Jlasken@hunton.com

4. Federal Rule of Civil Procedure 45 Subpoenas.

a. A party serving a subpoena on a non-party for the production of documents, including electronically stored information, need not provide advance notice of the subpoena to the other parties.

b. If a party serves on a non-party a subpoena for the production of documents, including electronically stored information (“document subpoena”), and a subpoena commanding attendance at a deposition, the scheduled deposition date must be at least 14 days after the return date for the document subpoena. If extending the date of compliance for the document subpoena results in there being fewer than 14 days between the extended compliance date and the date scheduled for that non-party’s deposition, the scheduled date for deposition must be postponed to be at least 14 days following the extended compliance date, unless the opposing party consents to there being fewer than 14 days.

c. All modifications to the scope or date of compliance of a non-party document subpoena, agreed to by the party that served the subpoena, must be reduced to writing and emailed to all other parties within three business days after transmittal of the modifications to the subpoenaed non-party.

d. Whenever a party receives documents or electronically stored information in response to a non-party document subpoena, the receiving party must provide a complete copy of all materials, including documents, including electronically stored information, that it received to all other parties within seven calendar days following receipt. If a non-party produces documents that are not Bates stamped, the party receiving the documents will Bates stamp them before producing a copy to the other parties.

5. Service of Trial Subpoenas. In view of the fact that potential witnesses in this action are located outside this judicial district and beyond 100 miles from this Court, the parties have shown the requisite good cause to permit the parties, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal judicial district requiring witnesses to attend this Court.

6. Modification of Scheduling and Case Management Order. Any party may move the Court to amend or modify any of the provisions of either the Scheduling Order or Case Management Order for good cause shown and/or to set a status conference to address case management issues.

SO ORDERED:

Dated at Detroit, Michigan, this ____, day of _____, 2011.

BY THE COURT:

UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND SUBSTANCE

Dated: September ___, 2011

By: _____

Ryan Danks
Attorney for Plaintiff United States of America
U.S. Department of Justice, Antitrust Division
450 Fifth Street, NW, Suite 4100
Washington, DC 20530
(202) 305-0128
ryan.danks@usdoj.gov

By: _____

M. Elizabeth Lippitt P-70373
Attorney for Plaintiff State of Michigan
Assistant Attorney General
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933
(517) 373-1160
lippitee@michigan.gov

By: _____

Todd Stenerson P51953
Attorney for Defendant
Blue Cross Blue Shield of Michigan
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500
tstenerson@hunton.com

Exhibit 3



HUNTON & WILLIAMS LLP
600 PEACHTREE STREET, N.E.
ATLANTA, GEORGIA 30308

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

ASHLEY CUMMINGS
DIRECT DIAL: 404 • 888 • 4223
EMAIL: acummings@hunton.com

FILE NO: 77535.02

November 10, 2011

Via Email

Amy Fitzpatrick, Esq.
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

United States v. Blue Cross Blue Shield of Michigan
E.D. Mich., Case No. 2:10-14155

Dear Amy:

This letter concerns the proposed Case Management Order, which the parties have in good faith attempted to negotiate. Those negotiations have been directed toward reaching an agreement between the Department and Blue Cross concerning the number of fact depositions, the duration of fact and expert depositions, and how the Department and Blue Cross will serve pleadings and discovery. And we have generally been in accord that the parties should endeavor to coordinate discovery. Indeed, such coordination is imperative given the broad scope of the Complaint and the 34 separate and distinct antitrust markets pled, the breadth of discovery and that the number of witnesses — consisting almost entirely of non-parties — could be as many as 340.

Precisely how to fit that anticipated number of depositions into a discovery period that concludes July 25, 2012 has been a source of concern for all, especially in view of the Department's desire to limit depositions to no more than two depositions per day per side, and no more than 30 depositions in a month (15 per side). If we were to agree to such limitations, it would no doubt afford third parties a means to delay and ultimately avoid depositions. And, any such limitations necessarily would be inconsistent with the parties' contemplation that each party may take 170 fact witness depositions. The Department attempted to craft language to address that concern, and we have considered with much deliberation and care whether there's a good way to address the various logistical issues that will present over the course of this extensive third-party deposition discovery.



Amy Fitzpatrick, Esq.
November 10, 2011
Page 2

But reaching an agreement now that is only between the Department and Blue Cross on this issue would ignore the present realities involving the necessity of reaching a broader agreement that coordinates discovery across the government and civil plaintiff matters. It is apparent that coordination not only between the Department and Blue Cross but also coordination with the civil plaintiffs is critical to case management. And as discussed at the *City of Pontiac* status hearing on October 17, it is essential that discovery in and across these proceedings be coordinated. Therefore, if the Department and Blue Cross were to present at this juncture a case management order negotiated between them, without including civil plaintiffs in those discussions, it would be counterintuitive and contrary to efficient case management — the very thing a case management order should address.

But engaging in those discussions now, while the civil plaintiffs await the Court's decision regarding who will serve as coordinating lead counsel, would be premature. This is illustrated by the Department's own question to Blue Cross, seeking clarification regarding who among the civil plaintiffs' counsel should receive service copies of subpoenas issued in *U.S. v. BCBSM*, requesting that Blue Cross confirm in writing its request that service be made on civil plaintiffs, whether the Department should also serve on civil plaintiffs' counsel any written discovery, and whether in doing so the Department risks running afoul of the Protective Order by disclosing to litigants in the parallel actions confidential information.¹

We propose that, upon the Court's resolution of who will serve as coordinating lead counsel for civil plaintiffs and how to structure the management of *City of Pontiac*, *Shane Corp.*, *MRCC* and *Steele* — and after the civil plaintiffs file their consolidated class action complaint, so that Blue Cross has a clear picture of precisely what it has been accused — counsel for all represented parties meet *in person* with *full authority* to negotiate a case management order for coordinated discovery to present to the Court.²

¹ We confirm in writing our request that the Department and the State of Michigan that any subpoenas issued in *U.S. v. Blue Cross Blue Shield of Michigan* also be served on counsel for civil plaintiffs including the following (at least, until the Court appoints coordinating lead counsel): lyoung@sommerspc.com; jthompson@sommerspc.com; fait@whafh.com; tangren@whafh.com; dsmall@cohenmilstein.com; bgebrewold@cohenmilstein.com; dhedlund@gustafsongluek.com; caf@millerlawpc.com.

² The deadline for the United States and the State of Michigan to modify their Complaint has long since passed.



Amy Fitzpatrick, Esq.
November 10, 2011
Page 3

We expect that the Court will soon resolve that issue and all counsel can work together to prepare a case management order for coordinated discovery. Meanwhile, we will continue to proceed as we have in the discovery taken to date. We, of course, have no objection to beginning the discussions with the private civil plaintiffs now so that, when lead counsel is appointed, we can reach agreement on a final case management order as soon as practicable.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Cummings".

Ashley Cummings

cc: Mary Jane Fait, Esq.
Casey A. Fry, Esq.
Besrat J. Gebrewold, Esq.
Daniel C. Hedlund, Esq.
M. Elizabeth Lippett, Esq.
Daniel A. Small, Esq.
Todd M. Stenerson, Esq.
Jason Thompson, Esq.
Lance C. Young, Esq.

Exhibit 4

From: Cummings, Ashley [acummings@hunton.com]
Sent: Thursday, August 18, 2011 10:48 AM
To: Fitzpatrick, Amy
Cc: Lasken, Jonathan H.
Subject: US v. Blue Cross - Draft CMO
Attachments: ORD_ Case Management Order_(36821961)_ (1).DOCX

Amy,

Here is a redline CMO with our comments and suggestions. Please let us know if you'd prefer this in a different format.

Best,
Ashley

[Home](#) [VCard](#) [Bio](#)



Ashley Cummings
Partner
acummings@hunton.com

Hunton & Williams LLP
Bank of America Plaza, St 4100
600 Peachtree Street, N.E.
Atlanta, GA 30308
Phone: (404) 888-4223
Fax: (404) 602-9019
www.hunton.com

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

UNITED STATES OF AMERICA)	
and the STATE OF MICHIGAN,)	
)	
Plaintiffs,)	
)	Civil Action No. 10-cv-14155-DPH-MKM
vs.)	Judge Denise Page Hood
)	Magistrate Judge Mona K. Majzoub
BLUE CROSS BLUE SHIELD OF)	
MICHIGAN, a Michigan nonprofit)	
healthcare corporation,)	
)	
Defendant.)	

[DRAFT] CASE MANAGEMENT ORDER

Upon joint motion of the parties, and in accordance with Fed. R. Civ. P. 16(b), the Court hereby ORDERS as follows:

1. Depositions of Fact Witnesses.

a. Notice and Scheduling. Unless the parties agree otherwise concerning a particular deposition, ~~fourteen~~ 30 days shall constitute reasonable notice to the other side under Fed. R. Civ. P. 30(b)(1) of a party deposition and 20 days shall constitute reasonable notice to the other side under Fed. R. Civ. P. 30(b)(1) of a non-party deposition. Depositions may be taken or defended by telephone or other remote means.

b. Number of Depositions~~Time Limits.~~ ~~Examination of witnesses in non-expert depositions in this action shall be limited to 500 hours for the government plaintiffs and 500 hours for defendant. Only deposition time during which one side controls the questioning shall count against that side's hour limitation.~~ Plaintiffs may take 170 depositions, including depositions of parties, third parties, and witnesses designated

as corporate representatives under Fed. R. Civ. P. 30(b)(6). Defendants may take 170 depositions, including depositions of parties, third parties, and witnesses designated as corporate representatives under Fed. R. Civ. P. 30(b)(6).

c. Duration of Depositions. Absent a Court order extending the time or agreement of counsel, depositions shall be limited to one day of seven hours, during which the noticing party shall have five hours and the other party shall have 2 hours, except in the event that private plaintiffs in parallel litigation before this Court also participate in the deposition, in which instance the parties agree that those private plaintiffs shall have one additional hour to question the deponent and thus the duration of the deposition will total eight hours. Upon request, counsel for the witness shall be allocated up to 30 minutes of examination time, which shall not count against the duration allotted above. To the extent the non-noticing party believes it needs additional time to question a third-party witness, that party must cross-notice the deposition, in which instance the cross-notice will count against the cross-noticing party's deposition quota as well as the noticing party's deposition quota.

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d. Cancellation of Non-party Depositions: A party may elect to cancel a non-party deposition that it previously noticed. If a party cancels a non-party deposition that it previously noticed, the opposing party may re-notice the deposition for the previously noticed date, unless the deposition was cancelled due to extraordinary and unforeseen circumstances, in which event the parties will meet and confer regarding an agreeable date for the deposition.

2. Expert Depositions. Expert depositions may extend to two days of up to seven hours each day for each expert witness; and, in the event that private plaintiffs in parallel

litigation before this Court also participate in the expert deposition, those private plaintiffs shall have two additional hours to question the deponent. Unless the parties agree otherwise concerning a particular deposition, ~~fourteen~~ 5 days shall constitute reasonable notice to the other side under Fed. R. Civ. P. 30(b)(1) of a deposition.

2.3. Interrogatories. Pursuant to Fed. R. Civ. P. 33(a)(1), interrogatories shall be limited to 25 per side, including sub-parts. The parties agree that each numbered interrogatory set forth in Blue Cross Blue Shield of Michigan's First Interrogatories to Plaintiff the United States of America constitutes a single interrogatory and any subparts therein shall not be counted as multiple interrogatories because they are factually or logically related to the primary question; and the parties further agree that if Plaintiffs serve the same or substantially similar interrogatories on Blue Cross, each numbered interrogatory shall constitute a single interrogatory and any subparts therein shall not be counted as multiple interrogatories, except that Blue Cross reserves the right to object on the grounds that an interrogatory with subparts should be counted as multiple interrogatories rather than one interrogatory if any interrogatory that Plaintiffs serve on Blue Cross is not substantially similar in nature and structure to those previously served by Blue Cross. The parties further agree that as to future interrogatories served in discovery, if the subparts to an interrogatory are factually or logically related to the primary question or directed at eliciting details concerning a common theme, those should be considered a single interrogatory, consistent with applicable law. ~~An interrogatory that asks for a response for each item in a series (e.g., for each MFN, for each geographic market/area, for each occasion, for each hospital, for each meeting, and/or for each communication) shall be counted as a single interrogatory or a single sub-part.~~

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2.4. Service of Pleadings and Discovery on Other Parties. In accordance with LR 5.1, the parties shall serve all pleadings and other court filings on the opposing side using the Court's electronic filing system. Service of -all discovery demands and responses, including notice of subpoenas to non-parties, shall be made by electronic mail to the persons designated below by the respective parties. Service of hard copies to the opposing side is not required. All documents are deemed served such that 3 days are added to the response period pursuant to Fed. R. Civ. P.6(d). The parties designate the following individuals to receive service of all discovery demands and responses:

a. For Plaintiff United States:

Amy R. Fitzpatrick	(202) 532-4558	amy.fitzpatrick@usdoj.gov
Barry J. Joyce	(202) 353-4209	barry.joyce@usdoj.gov
Steven Kramer	(202) 307-0997	steven.kramer@usdoj.gov

b. For Plaintiff State of Michigan:

M. Elizabeth Lippitt	(517) 373-1160	LippittE@michigan.gov
----------------------	----------------	-----------------------

c. For Defendant Blue Cross Blue Shield of Michigan:

<u>Todd M. Stenerson</u>	<u>(202) 419-2184</u>	<u>Tstenerson@hunton.com</u>
<u>D. Bruce Hoffman</u>	<u>(202) 955-1619</u>	<u>Bhoffman@hunton.com</u>
<u>Ashley Cummings</u>	<u>(404) 888-4223</u>	<u>Acummings@hunton.com</u>
<u>Jonathan Lasken</u>	<u>(202) 955-1983</u>	<u>Jlasken@hunton.com</u>
<u>{BCBSM to add.}</u>		

5. Federal Rule of Civil Procedure 45 Subpoenas.

a. A party serving a subpoena on a non-party for the production of documents, including electronically stored information, need not provide advance notice of the subpoena to the other parties.

b. If a party serves on a non-party a subpoena for the production of documents, including electronically stored information ("document subpoena"), and a subpoena commanding attendance at a deposition, the scheduled deposition date must be at least 14 days after the return date for the document subpoena. If extending the date of compliance for the document subpoena results in there being fewer than 14 days between the extended compliance date and the date scheduled for that non-party's deposition, the scheduled date for deposition must be postponed to be at least 14 days following the extended compliance date, unless the opposing party consents to there being fewer than 14 days. ~~If a party intends to cancel a non-party deposition that it previously noticed, the noticing party must give at least five days advance notice to the other side. The opposing side may then proceed with the deposition if it chooses, as if it had been the party noticing the deposition, without reissuing a deposition subpoena.~~

c. All modifications to the scope or date of compliance of a non-party document subpoena, agreed to by the party that served the subpoena, must be reduced to writing and emailed to all other parties within three business days after transmittal of the modifications to the subpoenaed non-party.

d. Whenever a party receives documents or electronically stored information in response to a non-party document subpoena, the receiving party must provide a complete copy of all materials, including documents, including electronically stored information, that it received to all other parties within seven calendar days following

receipt. If a non-party produces documents that are not Bates stamped, the party receiving the documents will Bates stamp them before producing a copy to the other parties.

6. Service of Trial Subpoenas. In view of the fact that potential witnesses in this action are located outside this judicial district and beyond 100 miles from this Court, the parties have shown the requisite good cause to permit the parties, pursuant to 15 U.S.C. § 23 to issue trial subpoenas that may run into any other federal judicial district requiring witnesses to attend this Court. ~~Notwithstanding the Court's order allowing parties to issue subpoenas to distant witnesses under 15 U.S.C. § 23, a party may present the testimony of a witness at trial via deposition if that witness is "unavailable" pursuant to the terms of Federal Rule of Civil Procedure 32(a)(4) or Federal Rule of Evidence 804(a).~~

~~6-7. Exhibits and Exhibit Lists. The parties shall exchange electronic copies of numbered sets of all exhibits (other than demonstrative exhibits), and separately identifying exhibits the party expects to offer and may offer with lists of the exhibits itemizing each exhibit by date and document number (if applicable) and a brief description. These lists will be compiled in an agreed-upon electronic format that allows searching and sorting of exhibits by exhibit number, chronological order, and Bates stamp alphabetical and numerical order. Exhibit lists will be exchanged during pretrial disclosures after fact discovery closes.~~ Modification of

Scheduling and Case Management Order. Any party may move the Court to amend or modify any of the provisions of either the Scheduling Order or Case Management Order for good cause shown and/or to set a status conference to address case management issues.

Formatted: Bullets and Numbering

SO ORDERED:

Dated at Detroit, Michigan, this ___, day of ___, 2011.

BY THE COURT:

UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND SUBSTANCE

Dated: _____, 2011

By: _____

[Name] [state bar number]
Attorney for Plaintiff United States of America
U.S. Department of Justice, Antitrust Division
450 Fifth Street, NW, Suite 4100
Washington, DC 20530
(202) xxx-xxxx
[email address]

By: _____

M. Elizabeth Lippitt P-70373
Attorney for Plaintiff State of Michigan
Assistant Attorney General
G. Mennen Williams Building, 6th Floor
525 W. Ottawa Street
Lansing, Michigan 48933
(517) 373-1160
lippitee@michigan.gov

By: _____

Todd Stenerson P51953
Attorney for Defendant

Blue Cross Blue Shield of _____

Michigan

Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500
tstenerson@hunton.com

Exhibit 5



HUNTON & WILLIAMS LLP
2200 PENNSYLVANIA AVENUE, NW
WASHINGTON, D.C. 20037-1701

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

ASHLEY CUMMINGS
DIRECT DIAL: 404-888-4223
EMAIL: acummings@hunton.com

FILE NO: 77535.00002

February 7, 2012

Via Email

Amy Fitzpatrick, Esq.
United States Department of Justice
Antitrust Division, Litigation I Section
Liberty Square Building
450 Fifth Street, NW
Suite 4100
Washington, DC 20530

United States v. Blue Cross Blue Shield of Michigan,
E.D. Mich., Case No. 2:10-14155

Dear Amy:

Thank you for your email of February 3, 2012, which attached a redline of the proposed Case Management Order (CMO). As we indicated in prior discussions regarding the Case Management Order, we anticipated that the parties would be able to cooperate with respect to scheduling issues and other matters set forth in the draft CMO; and we are pleased that to date the parties have been able to do so.

Nevertheless, we continue to believe that a CMO coordinating discovery among the related cases would be beneficial for all litigants. *See* Nov. 10, 2011 letter from A. Cummings to A. Fitzpatrick. We see no need to ask the Court to consider a CMO that would apply only in the government action—particularly where the parties have proceeded quite well by agreement and without a CMO—when the real issues (e.g. civil plaintiffs' attendance at depositions, coordinated search terms, third-party documents and confidentiality designations) are issues related to coordination among the various litigants.

Regarding the proposed CMO that you provided on February 3, we do have these comments to the extent that CMO may be considered an effort to memorialize our agreement in certain respects:

- We noted previously that once depositions were underway, it was likely that some of the CMO subject-matter that both Plaintiffs and Blue Cross found difficult to negotiate in the abstract would be informed by experience. Based



Amy Fitzpatrick
February 7, 2012
Page 2

on our experience scheduling and taking depositions since September 2011, when we last exchanged comments on a proposed Case Management Order, if we are to complete the necessary depositions before the close of fact discovery, we do not find it feasible to be bound to a hard rule on scheduling no more than two depositions on the same day. The ability to complete these depositions is contingent upon obtaining the third-parties' production and scheduling the depositions when those third parties' representatives are available. We will continue, as we have done to date, working with you on scheduling issues to the best of our ability.

- In paragraph 1(b), you have accurately stated the parties' practice to date. We want to clarify, however, that it is by no means our intention that the private class plaintiffs should have the unfettered right to attend and participate in depositions noticed in this action, without some corresponding obligation not to attempt to re-notice depositions of those same persons or entities. We have agreed to their attendance, to date, in an effort to facilitate coordinated discovery so that, where possible, discovery can occur only once. In view of the private class plaintiffs' reluctance to even comment on search terms and reservation of rights on that issue, we are concerned that our effort to facilitate coordinated discovery is one-sided.
- Regarding paragraph 4(c), we have not engaged in modifications to the scope of subpoenas but to the extent we do so, it will be memorialized. As a general proposition, we have told hospitals that we expect them to search for documents in the possession of custodians known to most likely to have responsive documents rather than conducting an exhaustive company-wide search, and that the time limitation in the request (i.e., from 2004) did not require them to search archives or off-site storage locations. It has not been our practice to memorialize extensions of a third party's deadline to respond to a document subpoena. We have and will continue to notify you weekly of any such extensions.

This is not, however, intended to suggest that we consent to the submission of a proposed CMO in this matter when, in fact, what is really needed is a comprehensive CMO binding all litigants in the related litigation.



Amy Fitzpatrick
February 7, 2012
Page 3

I would be happy to discuss these matters with you on Thursday at 11:30 a.m. during weekly call.

Sincerely,

A handwritten signature in cursive script that reads "Ashley Cummings".

Ashley Cummings

Enclosure

cc: Elizabeth Lippitt, Esq.
Todd M. Stenerson, Esq.

Exhibit 6



HUNTON & WILLIAMS LLP
1900 K STREET, N.W.
WASHINGTON, D.C. 20006-1109

TEL 202 • 955 • 1500
FAX 202 • 778 • 2201

D. BRUCE HOFFMAN
DIRECT DIAL: 202-955-1619
EMAIL: bhoffman@hunton.com

FILE NO: 77535.000002

April 15, 2011

Via E-Mail

Steve Kramer
U.S. Department of Justice
Antitrust Division
450 Fifth Street, N.W., Suite 4100
Washington, DC 20530

Re: *Case Management Order*

Dear Steve:

This letter responds to your March 24, 2011 letter regarding the case management order. We are amenable to all the changes explained in your letter, other than your reinsertion of paragraph 1, which we disagree with for two reasons.

First, we neither understand nor agree with your apparent position that this case can be tried by deposition to avoid presenting “unnecessarily cumulative evidence.” Of course, cumulative evidence is inadmissible in the first place, whether it comes in the form of a deposition or live testimony. Further, in addition to being a poor substitute for live testimony, depositions are hearsay and we will not waive our hearsay objections. If you have authority that allows you to try a case—or many of the claims in a case—by deposition please send it to us so that we can review it.

Second, we find it premature to arbitrarily limit the number of witnesses before discovery ends. Can you identify to us other cases in which the number of trial witnesses have been specified in a case management order at the beginning of the case? At present, we cannot discern how you arrived at the number of 30 witnesses—less than one per claim—even in light of your desire to try most of this case by deposition. And, we cannot begin to determine how many witnesses Blue Cross will need, having taken no discovery at this time. We further find your concerns regarding the need to depose witnesses on witness lists misplaced. The normal practice is to exchange witness lists at the end of discovery and this does not result in any of the problems you envision.

HUNTON &
WILLIAMS

Steve Kramer
April 15, 2011
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Bruce Hoffman', with a long horizontal flourish extending to the right.

D. Bruce Hoffman

cc: Ann Marie Blalock
Steve Kramer
Elizabeth Lippitt
Todd M. Stenerson
David Higbee

Exhibit 7



U.S. Department of Justice

Antitrust Division

Liberty Square Building
450 Fifth Street, NW
Washington, DC 20001
(202) 307-0997

April 6, 2011

Via Email

tstenerson@hunton.com

Todd Stenerson
Hunton & Williams
1900 K Street, NW
Washington, DC 20006

*Re: United States and State of Michigan v. Blue Cross Blue Shield of Michigan
Case No. 2:10-cv-14155-DPH-MKM*

Dear Todd:

This letter follows our conversation during the Rule 26(f) conference hosted by the plaintiff City of Pontiac on March 29, 2011, when you requested more information regarding how the United States and State of Michigan (Plaintiffs) intend to coordinate discovery in this action with discovery in the private tag-along damages actions.

As we have stated to you since we first began discussing coordination with you back in January, our position remains that we are willing to informally coordinate discovery on Blue Cross with private plaintiffs to the extent that this coordination does not delay or interfere with prosecution of this case. We will object to any formal coordination of discovery with private plaintiffs' damages actions, and we intend to resist any coordination of discovery that delays the prosecution of this action. We refer you to our February 18, 2011 letter to you and our February 16, 2011 Opposition to the Motion to Stay Discovery (Docket No. 27) for the basis for our position.

In terms of coordinating discovery schedules, we circulated our revised proposed scheduling order a few weeks ago to you and to private plaintiffs. In response, several of the private plaintiffs have responded that they believe it may be feasible to enter into a similar discovery schedule with Blue Cross. As we discussed on March 29, however, Blue Cross's ongoing refusal to produce to private plaintiffs a copy of the documents it already produced to Plaintiffs during their preceding investigations will likely impede the private plaintiffs' ability to "catch up" and coordinate discovery schedules with Plaintiffs

in this case. Blue Cross' delay of discovery in the private cases should not result in delays to this case.

We welcome any feedback you have on the revised proposed scheduling order we sent you on March 24. We also continue to await your response to the request in our February 18, 2011 letter that Blue Cross facilitate informal coordination of discovery by providing additional information to us, including Blue Cross's proposed discovery schedule in the private actions. In the absence of a response from you on your proposed scheduling order in the private cases and in the absence of the parties moving towards agreement on a proposed scheduling order in this case, it appears largely academic to discuss further the details of coordination of discovery schedules with private plaintiffs. In an attempt to move forward, however, we offer the following approach in concept.

Your March 16, 2011 letter asked about coordinating depositions of Blue Cross employees. For any depositions we notice of Blue Cross employees, we anticipate giving notice to plaintiffs in the private actions, and we will work with Blue Cross and private plaintiffs to schedule the deposition on a date that is convenient to all, to the extent that rescheduling the deposition does not prejudice Plaintiffs. Giving notice to private plaintiffs of depositions we schedule for Blue Cross employees should allow Blue Cross ample opportunity to work out with private plaintiffs any arrangements necessary for additional time for questions they may have for Blue Cross employees in the private actions.

We also anticipate providing advance notice to private plaintiffs of any document requests we plan to serve on Blue Cross, which will allow private plaintiffs to provide input into any document requests we serve on Blue Cross. We expect that, despite this coordination, private plaintiffs will likely choose to issue their own document request(s) to Blue Cross relating to issues not present in our case, such as class certification. We also expect that any disputes that may arise solely between Blue Cross and private plaintiffs over the appropriate scope of a document request would not affect Blue Cross's compliance with any document requests that we serve on Blue Cross.

We believe this letter responds to your request regarding coordination of discovery. If you envision coordination occurring under a framework significantly different from what we have described in this letter, please either give us a call or send us a counterproposal.

Sincerely yours,

/s/

Steven Kramer

cc: Barry Joyce
Ryan Danks
Elizabeth Lippitt
Bruce Hoffman
David Higbee
All counsel on the City of Pontiac's Rule 26 email list

Exhibit 8

From: Cummings, Ashley [acummings@hunton.com]
Sent: Friday, February 17, 2012 3:13 PM
To: Fitzpatrick, Amy
Cc: Liebeskind, Richard L; Stenerson, Todd M.; Lasken, Jonathan H.
Subject: US v. BCBSM - CMO
Attachments: BCBSM - Draft Case Management Order_(37765050)_(4) (2) (2).rtf

Dear Amy:

As we discussed, here are Blue Cross's comments to the Case Management Order. Please do not hesitate to call if you would like to discuss.

Sincerely,
Ashley

<<BCBSM - Draft Case Management Order_(37765050)_(4) (2) (2).rtf>>

Ashley Cummings

**HUNTON &
WILLIAMS**

Bank of America Plaza
Suite 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216

Dir (404) 888-4223
Fax (404) 888-4190
e-mail acummings@hunton.com
www.hunton.com

)	
UNITED STATES OF AMERICA)	
and the STATE OF MICHIGAN,)	
)	
Plaintiffs,)	
)	Civil Action No. 10-cv-14155-DPH-MKM
vs.)	Judge Denise Page Hood
)	Magistrate Judge Mona K. Majzoub
BLUE CROSS BLUE SHIELD OF)	
MICHIGAN, a Michigan nonprofit)	
healthcare corporation,)	
)	
Defendant.)	
)	

Upon motion of plaintiffs, and in accordance with Fed. R. Civ. P. 16(b), the Court hereby
ORDERS as follows:

a. Number of Depositions

Plaintiffs may take 170 depositions of fact witnesses. Defendants may take 170 depositions of fact witnesses. Each side may take no more than two depositions on the same day (allowing a total number of four depositions per day), however, the parties may agree to more than two depositions per side per day (e.g., when multiple depositions of the same or related or geographically proximate witnesses may be scheduled and are reasonably anticipated to take less than a full day each).

b. Duration of Depositions

(1) Non-party Depositions. Absent a Court order extending the time or consent of the witness, non-party depositions shall be limited to one day of seven hours, during which the noticing party shall have at least five hours (including for redirect) and the adverse party shall have at least two hours. ~~If private plaintiffs in parallel litigation before this Court wish to participate in the deposition, with the consent of the witness, the private plaintiffs may use whatever portion of plaintiffs' time that the plaintiffs do not use, and the non party may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent.~~ If government and private plaintiffs, or defendant use less than their allotted time, the other side may continue until a total of seven hours is reached. To the extent the non-noticing party believes it needs more than two hours to question a non-party witness, that party may cross-notice the deposition.

(2) Party Depositions. Absent a Court order extending the time or agreement of counsel, party depositions shall be limited to one day of seven hours, during which the noticing party shall have at least seven hours (including for redirect). ~~If private plaintiffs in parallel litigation before this Court wish to participate in a deposition of defendant, the private plaintiffs may use whatever portion of the seven hour time period that plaintiffs do not use, and the defendant may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent.~~

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(3) Coordination with Private Class Plaintiffs in Related Litigation.

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To date, the parties have cooperated as follows with respect to non-party depositions: If private plaintiffs in parallel litigation before this Court wish to participate in the deposition, with the consent of the parties and the witness, the private plaintiffs may use whatever portion of plaintiffs' time that the plaintiffs do not use, and the non-party may agree to extend the deposition beyond seven hours to allow the private plaintiffs to question the deponent; if government and private plaintiffs, or defendant use less than their allotted time, the other side may continue until a total of seven hours is reached. This does not, however, sufficiently address coordination of all the related litigation as it relates to the depositions or otherwise. Blue Cross therefore reserves all rights to seek relief from the Court to coordinate the various pieces of related litigation in order to protect the parties' interests, maximize efficiencies and minimize the burden not only to Blue Cross but to the many third-parties that are affected by discovery in this and related litigation.

2. Expert Depositions.

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Expert depositions may extend to two consecutive days of up to seven hours each day for each expert witness. ~~If private plaintiffs in parallel litigation before this Court also participate in the expert deposition, those private plaintiffs shall have two additional hours to question the deponent.~~ Unless the parties agree otherwise concerning a particular deposition, 14 days shall constitute reasonable notice of an expert deposition to the other side.

3. Service of Pleadings and Discovery on Other Parties

In accordance with LR 5.1, the parties shall serve all pleadings and other court filings on the opposing side using the Court's electronic filing system. Service of all discovery demands and responses, including notice of subpoenas to non-parties, shall be made by electronic mail to the persons designated below by the respective parties. Service of hard copies to the opposing side is not required. All documents are deemed served such that three days are added to the response period pursuant to Fed. R. Civ. P.6(d). The parties designate the following individuals to receive service of all discovery demands and responses:

a. For Plaintiff United States

Amy R. Fitzpatrick	(202) 532-4558	amy.fitzpatrick@usdoj.gov
Barry J. Joyce	(202) 353-4209	barry.joyce@usdoj.gov
Steven Kramer	(202) 307-0997	steven.kramer@usdoj.gov

b. For Plaintiff State of Michigan

M. Elizabeth Lippitt	(517) 373-1160	lippitte@michigan.gov
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c. For Defendant Blue Cross Blue Shield of Michigan

Todd M. Stenerson	(202) 419-2184	tstenerson@hunton.com
D. Bruce Hoffman	(202) 955-1619	bhoffman@hunton.com
Ashley Cummings	(404) 888-4223	acummings@hunton.com
Jonathan Lasken	(202) 955-1983	jlasken@hunton.com

4. Federal Rule of Civil Procedure 45 Subpoenas

a. A party serving a subpoena on a non-party for the production of documents, including electronically stored information, need not provide advance notice of the subpoena to the other parties.

b. If a party serves on a non-party a subpoena for the production of documents, including electronically stored information (“document subpoena”), and a subpoena commanding attendance at a deposition, the scheduled deposition date must be at least 14 days after the return date for the document subpoena. If extending the date of compliance for the document subpoena results in there being fewer than 14 days between the extended compliance date and the date scheduled for that non-party’s deposition, the scheduled date for deposition ~~may~~^{ust} be postponed to be at least 14 days following the extended compliance date, unless the opposing party consents to there being fewer than 14 days.

c. All modifications to the scope ~~or date of compliance~~ of a non-party document subpoena, agreed to by the party that served the subpoena, must be reduced to writing and emailed to ~~the~~^{all} other parties within ~~five~~^{three} business days after agreement to the modifications with the subpoenaed non-party. Any extension of the date of compliance of a non-party document subpoena, agreed to by the party that served the subpoena, should be communicated to the other parties within five days after agreement to the extension.

d. Whenever a party receives documents or electronically stored information in response to a non-party document subpoena, the receiving party must provide a complete copy of all materials, including documents, including electronically stored information, that it received to all other parties within seven calendar days following receipt. If technical problems with the non-party production prevent meeting this deadline, the receiving party shall promptly notify the other parties and provide copies as soon as practical. If a non-party produces documents that are not Bates stamped, the party receiving the documents will Bates stamp them before producing a copy to the other parties.

5. Service of Trial Subpoenas

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~~In view of the fact that potential witnesses in this action are located outside this judicial district and beyond 100 miles from this Court, the parties have shown the requisite good cause to permit the parties, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal judicial district requiring witnesses to attend this Court.~~

6.5. Modification of Scheduling and Case Management Order

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Any party may move the Court to amend or modify any of the provisions of either the Scheduling Order or Case Management Order for good cause shown and/or to set a status conference to address case management issues.

Blue Cross agrees to this Case Management Order as it reflects the parties' agreements to date, but Blue Cross will separately move the Court to enter a broader Case Management Order that addresses coordination among and between the parties in related litigation.

SO ORDERED:

Dated at Detroit, Michigan, this ____ day of _____, 2012.

BY THE COURT:

UNITED STATES DISTRICT JUDGE

AGREED AS TO FORM AND SUBSTANCE

Dated: February~~September~~ __, 2012 By: Ryan Danks
Attorney for Plaintiff United States
of America U.S. Department of
Justice, Antitrust Division 450 Fifth
Street, NW, Suite 4100
Washington, DC 20530

(202) 305-0128
ryan.danks@usdoj.gov

By: M. Elizabeth Lippitt P-70373
Attorney for Plaintiff State of
Michigan Assistant Attorney
General
G. Mennen Williams Building, 6th
Floor 525 W. Ottawa Street
Lansing, Michigan 48933
(517) 373-1160
lippitee@michigan.gov

By: Todd Stenerson P51953
Attorney for Defendant
Blue Cross Blue Shield of Michigan
Hunton & Williams LLP
1900 K Street, NW
Washington, DC 20006
(202) 955-1500
tstenerson@hunton.com

Exhibit 9

From: Cummings, Ashley [acummings@hunton.com]
Sent: Tuesday, February 21, 2012 6:11 PM
To: Liebeskind, Richard L; Fitzpatrick, Amy
Cc: Stenerson, Todd M.; Lasken, Jonathan H.
Subject: RE: US v. BCBSM - CMO

Richard,

Paragraph 5 has been a long-standing source of concern for us. Paragraph 5 would have the Court make a blanket determination that good cause exists under Rule 45. From the Department's perspective, what would be the basis for such a blanket determination? We would expect the witnesses subject to such trial subpoenas to expect notice and an opportunity to be heard regarding whether the "requisite good cause" is shown. To make a good cause determination, would not the Court need an understanding of the facts and circumstance surrounding a witness--for instance, why that witness is being called, where the witness is in fact located, and whether the witness was deposed in the case? We are concerned that the proposed paragraph 5 would bypass the good cause showing necessary under Rule 45, and that third parties impacted by that paragraph would rightly challenge it. In short, we do not believe that this paragraph could be properly entered by the Court. We would, however, be glad to consider your thoughts on this matter.

Sincerely,
Ashley

From: Liebeskind, Richard L [<mailto:Richard.Liebeskind@usdoj.gov>]
Sent: Friday, February 17, 2012 4:14 PM
To: Cummings, Ashley; Fitzpatrick, Amy
Cc: Stenerson, Todd M.; Lasken, Jonathan H.
Subject: RE: US v. BCBSM - CMO

Ashley,

Could you let us know why you want to delete paragraph 5 (re nationwide service)?

Richard Liebeskind
Antitrust Division
Litigation I Section
U.S. Department of Justice
450 Fifth Street, N.W.
Washington, D.C. 20530
(202) 532-4680
richard.liebeskind@usdoj.gov

From: Cummings, Ashley [<mailto:acummings@hunton.com>]
Sent: Friday, February 17, 2012 3:13 PM
To: Fitzpatrick, Amy
Cc: Liebeskind, Richard L; Stenerson, Todd M.; Lasken, Jonathan H.
Subject: US v. BCBSM - CMO

Dear Amy:

As we discussed, here are Blue Cross's comments to the Case Management Order. Please do not hesitate to call if you would like to discuss.

Sincerely,
Ashley

<<BCBSM - Draft Case Management Order_(37765050)_(4) (2) (2).rtf>>

Ashley Cummings
**HUNTON &
WILLIAMS**
Bank of America Plaza
Suite 4100
600 Peachtree Street, N.E.
Atlanta, Georgia 30308-2216

Dir (404) 888-4223
Fax (404) 888-4190
e-mail acummings@hunton.com
www.hunton.com

Exhibit 10

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,
STATE OF NEW YORK, STATE OF
WASHINGTON, STATE OF
CALIFORNIA, STATE of ILLINOIS,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF OHIO,
and COMMONWEALTH OF
PENNSYLVANIA,

Plaintiffs,

v.

AT&T INC., T-MOBILE USA, INC., and
DEUTSCHE TELEKOM AG,

Defendants.

Civil No. 11-01560 (ESH)

STIPULATED SCHEDULING AND CASE-MANAGEMENT ORDER

In accordance with Fed. R. Civ. P. 16(b) and LCvR 16.4 and upon agreement of the parties, the Court hereby ORDERS as follows:

1. Service of and Response to the Complaint. In this action, counsel for the Defendants, acting on behalf of Defendants, have accepted service of the Complaint and have waived service of a summons. Defendants have already filed their answer to the Complaint.
2. Joinder and Amendments to the Pleadings. Without leave of Court, the parties may join additional parties within 7 days of entry of this Order, and amendments to the Complaint shall occur by 10 days after entry of this Order. Any answer to an amended complaint shall occur within 10 days of its filing.

3. Discovery Conference. The parties' prior consultations and submission of this stipulated Order relieve the parties of their duty under Fed. R. Civ. P. 26(f) to confer about scheduling and a discovery plan.

4. Initial Disclosures. Initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1) shall be limited as follows:

A. Plaintiffs' initial disclosures: Under the terms and conditions set forth below, Plaintiffs shall

1. produce to Defendants within 10 days of the entry of this Order a list of all non-parties that received a Civil Investigative Demand or otherwise provided materials to the Plaintiffs in their investigation that preceded this lawsuit; Defendants reserve the right to seek a list of all persons interviewed or otherwise contacted by the Plaintiffs in the course of their investigation of the Proposed Acquisition; and

2. produce to Defendants, as soon as reasonably practicable and consistent with the timing for producing confidential information set forth in Paragraph 9 below, all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between Plaintiffs (including Plaintiffs' counsel) and any non-party (including the non-party's counsel) in the course of Plaintiffs' Investigation of the Proposed Acquisition (collectively, Plaintiffs' "Investigation Materials"). Plaintiffs shall produce these Investigation Materials regardless of whether those materials were received informally or through compulsory process, such as a subpoena or Civil Investigative Demand. Plaintiffs are not required to produce back to Defendants documents or other written materials originally received from Defendants. This Paragraph shall not be construed as requiring the

production of Plaintiffs' attorney work product, confidential attorney-client communications, communications with or information provided to any potentially or actually retained expert, communications subject to a common interest privilege, or materials subject to the deliberative process or any other governmental privilege.

B. Defendants' initial disclosures: Under the terms and conditions set forth below, Defendants shall produce to Plaintiffs, consistent with the timing for producing confidential information set forth in Paragraph 9 below, copies of all documents, data, oral examination transcripts, depositions, statements, declarations, and affidavits, whether in hard-copy or electronic form, exchanged between any Defendant (including Defendants' counsel) and any non-party (including the non-party's counsel) in the course of responding to Plaintiffs' Investigation of, or otherwise relating to, the Proposed Acquisition, including statements of support provided to Plaintiffs and/or the Federal Communications Commission (collectively Defendants' "Investigation Materials"). Notwithstanding the above, Defendants shall not at this time be required to produce emails or correspondence, including any attachments, soliciting support for the merger or other lobbying materials discussing or promoting the benefits of the merger, although Plaintiffs reserve the right to seek such materials in discovery. The Defendants are not required to produce back to the Plaintiffs documents or other written materials originally received from Plaintiffs. This Paragraph shall not be construed as requiring the production of Defendants' attorney work product, communications with or information provided to any potentially or actually retained expert, communications subject to a common interest privilege, or confidential attorney-client communications.

5. Discovery Period. The period for fact discovery shall begin on the date of the entry of this Order and shall be completed by January 10, 2012.

6. Written Discovery. All written discovery shall be served to permit timely responses to be served within the discovery period. Interrogatories shall be limited to 20 per side, including sub-parts. There will not be a limit on the number of requests for the production of documents that may be served by the parties. Requests for admission shall be limited to 50 per side, except for requests relating solely to the authentication or admissibility of documents, data, or other evidence. Parties shall respond to written discovery requests 20 days after service of the request. To the extent it is reasonably possible, parties shall produce documents within 20 days after service of the request but in no event, except for good cause shown, more than 30 days after service of the request. Notwithstanding the foregoing, to the extent that any discovery request relates to any office or agency of the U.S. Government other than the Antitrust Division or any office or agency of any Plaintiff State, it is understood that the Plaintiffs cannot guarantee that such agency or office will produce requested materials within 30 days, and that Plaintiffs will have no obligation other than making good-faith efforts with respect to such other agency or office. The Plaintiffs, further, reserve all rights to object to any such discovery, pursuant to the Federal Rules of Civil Procedure.

7. Depositions of Fact Witnesses. Absent good cause shown, depositions shall be limited to no more than 30 per side (excluding experts), plus depositions of the parties' designated witnesses as set forth in Paragraph 10 of this Order. A deposition of a party or non-party, taken pursuant to Fed. R. Civ. P. 30(b)(6), shall count as one deposition regardless of the number of witnesses produced to testify. Depositions taken for the sole purpose of establishing

the authenticity and admissibility of documents produced by any party or non-party do not count toward the limit of depositions.

Depositions of fact witnesses shall be no more than one (7 hour) day in length; however deposition of five fact witnesses employed by or otherwise affiliated with a party may extend to two days in length at the discretion of the noticing party. Party witnesses residing outside the United States shall be produced in Washington, D.C. for deposition. Employees of party witnesses will be made available for deposition upon five days' notice if reasonably possible, though the deposing party will make a good-faith effort to provide at least seven business days' notice. The parties and affected non-parties may stipulate to additional time for individual depositions. Absent agreement of the parties, the length of depositions provided for in this Scheduling Order may be modified only by order of this Court for good cause shown.

All depositions, including the depositions of Defendants' employees taken by Plaintiffs during Plaintiffs' investigation of the Proposed Acquisition, may be used for all purposes under Fed. R. Civ. P. 32 or Fed. R. Evid. 801(d)(2)(D). Depositions taken during the investigation of the Proposed Acquisition do not count toward the limit of depositions.

8. Nationwide Service of Trial Subpoenas. To assist the parties in planning discovery and in view of the geographic dispersion of potential witnesses in this action outside this District, the parties will be permitted, pursuant to 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise "unavailable" for purposes of Fed. R. Civ. P. 32 and Fed. R. Evid. 804, available under those rules.

9. Discovery of Confidential Information. Discovery and production of confidential information shall be governed by the Protective Order that the parties are concurrently filing with the Court, after entry by the Court, and a copy of the Order shall be included with any discovery requests, notices, or subpoenas directed to non-parties.

Once entered by the Court, the Protective Order shall be provided by Plaintiffs to all non-parties that produced Investigation Materials during Plaintiffs' investigation of the Proposed Acquisition. The non-parties shall have 15 days after receipt of a copy of the Protective Order in which to review the Protective Order and designate Investigation Materials as confidential under the Protective Order. If any non-party determines that the Protective Order does not adequately protect its confidential Investigation Materials, it may, within 10 days after receipt of a copy of the Protective Order, seek additional relief from the Court. If a non-party seeks additional relief from the Court, the Investigation Materials for which additional protection has been sought will not be produced until the Court has ruled. Otherwise, no non-party Investigation Materials shall be produced to Defendants by Plaintiffs until 11 days after a non-party's receipt of a copy of the Protective Order unless, before then, the non-party that produced the Investigation Materials indicates that it is satisfied with the terms of the proposed Protective Order. In these circumstances, Plaintiffs shall produce to Defendants that non-party's Investigation Materials as soon as feasible. All materials so produced shall be treated as confidential under the Protective Order until the non-party has had an opportunity to designate its materials as confidential or the 15-day period noted above has elapsed.

Investigation Materials in possession of the Defendants shall be produced no later than fifteen days after entry of this Order.

10. Witness Lists. On or before October 14, 2011, the parties shall negotiate the timing, method, manner, and content of the exchange of witness lists. Preliminary witness lists shall be exchanged at the earliest possible time to ensure adequate opportunity for each side to depose any witness on the opposing side's witness list if that witness has not already been deposed in this case. Despite the limitation on the number of depositions that each side may take, each side shall have the right to depose any witness on the opposing side's witness list if that witness has not already been deposed in this case, even if the limitation on depositions is exceeded.

11. Expert Witness Disclosures and Depositions. Expert-related discovery will be governed by Fed. R. Civ. P. 26, except as modified by this Order. Each side shall identify all experts that it will call in its respective case-in-chief and defense case by ~~December 1, 2011/~~ ^{November 22} ~~November 10, 2011~~ ^{December 7, 2011}. Each side shall identify all rebuttal experts by ~~December 20, 2011/~~ ^{December 28} ~~November 25, 2011~~.

Plaintiffs' case-in-chief expert reports will be delivered to Defendants by ~~January 5, 2012/~~ ^{December 28} ~~November 15, 2011~~. Defendants' expert reports on efficiencies of the merger will be delivered to Plaintiffs by ~~January 5, 2012/~~ ^{December 28, 2011} ~~November 15, 2011~~. Both sides will deliver responsive expert reports to the other side by ~~January 16, 2012/~~ ^{January 9, 2012} ~~December 2, 2011~~. Rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(D)(ii) will be delivered by ~~January 23, 2012/~~ ^{January 16,} ~~December 15, 2011~~ ²⁰¹². Expert discovery, including each party's expert reports, shall comply with the requirements of Fed. R. Civ. P. 26(a)(2), except that neither side must preserve or produce in discovery the following documents or materials:

- a. Any form of oral or written communication or correspondence between any of Defendant's counsel and its expert(s) or the Plaintiffs and their expert(s), between testifying and non-testifying experts, between non-testifying experts, or between testifying experts.

- b. Written communication or correspondence between an expert(s) and the expert's staff
- c. Expert's notes, except to the extent that the notes reflect facts or assumptions relied upon by the expert in the opinions contained in his or her final report.
- d. Drafts of expert reports.
- e. Data formulations, data runs, or any database-related operations not relied upon by the experts in the opinions contained in his or her final report.

Depositions of each side's experts will be conducted only after exchange of all of the above-referenced reports and must be completed by January 25, 2012 [~~January 30, 2012/January 20, 2012~~].

Depositions of each expert witness may extend to two days in length.

12. Service of Pleadings and Discovery on Other Parties. Service of all pleadings, discovery requests, including Rule 45 subpoenas for testimony or documents, and delivery of all correspondence in this matter will be made by email to the following individuals designated by the parties (including principal designees for each side, noted with an asterisk ('*')) below:

For Plaintiff United States of America:

Matthew C. Hammond*
Tel: 202-305-8541
matthew.hammond@usdoj.gov

Katherine Celeste
Tel: 202-532-4713
katherine.celeste@usdoj.gov
U.S. Department of Justice, Antitrust Division
450 Fifth Street, N.W., Suite 7000
Washington, DC 20001
Fax: 202-514-5381

For Plaintiff States (collectively):

Geralyn J. Trujillo*
STATE OF NEW YORK
Office of the Attorney General
Antitrust Bureau
120 Broadway, 26th Floor
New York, NY 10271
Tel: (212) 416-6677
Fax: (212) 416-6015
Geralyn.Trujillo@ag.ny.gov

David M. Kerwin*
STATE OF WASHINGTON
Office of Attorney General
Antitrust Division
800 Fifth Avenue, S. 2000
Seattle, WA 98104
Tel: (206) 464-7030]
Fax: (206) 464-6338
davidk3@atg.wa.gov

For Defendant AT&T Inc.:

Steven F. Benz*
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.
Sumner Square
1615 M Street, NW, Suite 400
Washington, DC 20036
Tel: (202) 326-7929
Fax: (202) 326 - 7999
sbenz@khhte.com

For Defendants T-Mobile USA, Inc., and Deutsche Telekom AG:

Patrick Bock*
Cleary Gottlieb Steen & Hamilton LLP
2000 Pennsylvania Avenue, NW
Washington, DC 20006
Tel: (202) 974-1922
Fax: (202) 974-1999
pboc@cgsh.com

The serving party will telephone the other side's principal designees when the materials are sent to alert them that the materials are being served. Any party's principal designee served by email shall promptly confirm receipt. Electronic delivery with confirming receipt shall be treated in the same manner as hand delivery for purposes of calculating discovery response times under the Federal Rules. However, email service that is delivered after 6:00 pm EST, shall be treated as if it was received the following business day.

Each side shall copy and produce materials obtained in discovery from any non-party to the other side, including, as applicable, each Defendant and Plaintiff United States, within three business days after receipt by the party initiating the discovery request.

13. Privilege Issues. By separate order, the Court may designate a magistrate or appoint a special master to review and rule on disputes pertaining to the Defendants claims of privilege for documents listed in logs that they produced during the Investigation.

14. Exhibit Lists. On or before December 16, 2011, the parties shall negotiate the timing, method, and manner of the exchange of exhibit lists, as well as a process for stipulating to the authenticity and admissibility of proposed exhibits.

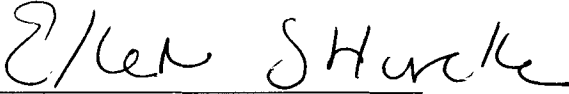
15. Demonstrative exhibits, other than those to be used by experts, do not need to be included on exhibit lists, but unless otherwise agreed or ordered, need to be served on all counsel of record at least 48 hours before any such exhibit may be introduced, or otherwise used, at trial. (1) Text-only powerpoint slides and (2) demonstratives created in court, need not be pre-disclosed to the opposing party.

16. Plaintiffs shall provide the Court and Defendants with their pre-filed direct testimony on ~~January 23, 2012~~ January 29, 2012. Defendants shall provide the Court and Plaintiffs with their pre-filed direct testimony on ~~February 6, 2012~~ February 8, 2012.

17. Trial Date. Date for the Pretrial conference and trial shall be set by the Court. Pretrial proceedings shall be governed by this Court's standing pretrial order and applicable local court rules. The parties shall be prepared to begin trial on February 13, 2012.

IT IS SO ORDERED.

DATED: September 23, 2011


Ellen S. Huvelle
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

UPM-KYMMENE OYJ , et al.,

Defendants.

Civil No.: 03 C 2528

Filed: April 15, 2003

Judge: Hon. James B. Zagel

Magistrate

Judge: Hon. Michael T. Mason

PRELIMINARY INJUNCTION HEARING
SCHEDULING AND CASE MANAGEMENT ORDER

The Court hereby ORDERS as follows:

1. Response to the Complaint. The United States having filed its Complaint and Motion for a Temporary Restraining Order and Motion for a Preliminary Injunction on April 15, 2003, defendants shall file their answers to the Complaint and responses to the United States' Motion for a Preliminary Injunction no later than April 28, 2003.

2. Discovery Period Excluding Expert Witness Discovery. The period for all fact discovery shall begin upon entry of this order by the Court, and shall be completed by May 21, 2003. The parties shall target their discovery efforts to evidence necessary for presentation at the preliminary injunction hearing.

3. Expert Witness Disclosures. The plaintiff shall serve its expert disclosures under Rule 26(a)(2) on or before May 19, 2003. The defendants shall serve their expert disclosures under Rule 26(a)(2) on or before May 22, 2003. The plaintiff's rebuttal disclosure, if any, shall

be served on or before May 24, 2003. At least two days before being deposed, each of the experts may supplement their disclosures to address evidence obtained after May 15, 2003. Notwithstanding any of the foregoing, both sides' experts shall have 7 days to respond to any econometric analyses included in the disclosure of the opposing expert. The parties shall not be required to exchange drafts of expert disclosures. The depositions of the experts shall take place in the same sequence as the expert disclosures and shall take place prior to May 29, 2003.

4. Witness Lists The plaintiff shall serve its list of all witnesses to be offered at the hearing no later than May 5, 2003. The defendants shall serve their list of all witnesses to be offered at the hearing no later than May 7, 2003. The parties may designate experts responsive to experts designated by the opposing side no later than May 10, 2003. Each side will be permitted to depose any witness that will be presented live by the other side notwithstanding any other provision of this Order.

5. Duration of Depositions In accordance with Rule 30(d)(2) of the Federal Rules of Civil Procedure, all pre-hearing depositions are limited to one day in length. The noticing party shall confer with the opposing side regarding the provision of adequate time for examination of the witness by all parties. The parties and non-parties, if applicable, may stipulate to additional time for individual depositions. Absent stipulation otherwise, the duration of depositions provided for in this Order may be modified only by order of this Court for good cause shown.

6. Limit on Written Discovery Each party shall propound no more than 10 document requests under Rule 34 of the Federal Rules of Civil procedure to another party. All

document requests shall be responded to and responsive documents produced within 5 days after service. No interrogatories or requests for admissions shall be permitted.

7. Production of Pre-complaint Materials By 5:00 p.m. on ~~il~~ ~~2~~ plaintiff shall produce to defendants all non-party documents and affidavits provided to plaintiff during its investigation pursuant to the terms of the Stipulated Protective Order. By 5:00 p.m. on April 25, 2003, defendants will produce to plaintiff all non-party documents and affidavits provided to defendants during plaintiff's investigation.

8. Exchange of Deposition Designations. The parties shall exchange (page and line number) designations of deposition testimony to be offered at the preliminary injunction hearing no later than May 21, 2003, except for depositions taken after May 17, 2003, which shall be exchanged by May 23, 2003. Each party must provide counter designations of deposition testimony no later than May 27, 2003. Rebuttal and fairness designations applicable solely to counter designations and objections to any designations or counter designations and shall be exchanged not later than May 29, 2003.

9. Exchange of Exhibits and Exhibit Lists. No later than May 23, 2003, the parties will exchange numbered sets of all exhibits that the parties anticipate introducing, compiled in numerical order in notebooks and with lists of the exhibits itemizing each exhibit by date and Bates number (if applicable) and a brief description. Such lists will be compiled in an agreed upon electronic format capable of being sorted by exhibit number, chronological order, and Bates-stamp alphabetical and numerical order. No later than May 28, 2003, the parties will exchange any objections to the exhibits to be offered by the other side and designate those

materials that shall be designated confidential for the purpose of the preliminary injunction hearing pursuant to the provisions of the Stipulated Protective Order.

10. Service of Pleadings and Discovery on Other Parties. The plaintiff and defendants shall serve all pleadings and discovery requests, including Rule 45 subpoenas for documents, on the other parties (to a person, or persons, designated by the other parties) by hand, e-mail or facsimile (and also by overnight mail if attachments are not transmitted by e-mail or facsimile). Electronically transmitted pleadings and discovery requests not sent also by overnight mail, shall also be served by hand or first-class mail. To minimize burdens on non-parties, any documents produced to a party by a non-party, pursuant to a Rule 45 subpoena for documents, shall be copied by the party that issued the subpoena and served by hand on the other side or sent by overnight delivery to outside counsel within 1 business day after receipt of the documents and at least 2 days before any deposition of the producing party.

11. Nationwide Service of Subpoenas. Good cause having been shown in view of the geographic dispersion of potential witnesses and the urgency of this action, the parties are permitted, pursuant to 15 U.S.C. § 23, to issue subpoenas that may run into any other district requiring witnesses to attend this Court. Subpoenas may be served by commercial overnight delivery. Non-parties may be required to provide testimony or documents under subpoena within 7 calendar days. Non-parties shall serve any objections to subpoenas more than 3 calendar days before the return date.

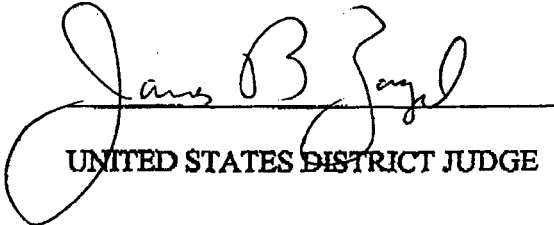
12. Preliminary Injunction Hearing The preliminary injunction hearing will begin on June 2, 2003, or June 9, 2003, depending on the Court's schedule.

13. Issues Remaining to Be Resolved. The parties have currently failed to reach agreement on several issues, pending their receipt of additional information on April 25, 2003, including (1) whether, (a) as plaintiff contends, there should be a reasonable limit on the number of depositions taken by each side during the agreed upon four-week pre-hearing discovery period above the ten permitted without leave of Court by Fed. R. Civ. P. 30(a)(2)(A), or (b), as defendants contend, there should be no pre-set limit on the number of depositions during this period; (2) whether there should be a limit on the number of Rule 45 document subpoenas that each side may serve on non-parties; (3) the admissibility of investigative depositions and pre- and post-complaint affidavits; and (4) the length of time for each side to present evidence and argument at the hearing and whether there should be a limit on the number of witnesses that each side will be allowed to present. In addition, the parties may seek the Court's resolution of (1) whether defendants are obligated to produce all materials and data files supporting analyses provided to plaintiff by defendants during the investigation, (2) whether UPM Kymmene will make additional documents and employees in Finland available to plaintiff in this country before the preliminary injunction hearing, and (3) whether plaintiff is obligated to provide Brady-type exculpatory information to defendants. The parties shall continue to seek agreement on all of these issues. By April 29, 2003, the parties shall file a stipulation containing any agreements they have reached on these issues and submissions on any of these issues that remain unresolved for resolution by the Court at its earliest convenience.

13. Modification of this Order. This Order shall control the subsequent course of this action, unless modified by *agreement* of the parties and approved by the Court or modified by the Court to prevent manifest injustice.

IT IS SO ORDERED.

DATED; April 23, 2003



UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1232 (TPJ)

FILED

JUN 12 1998

NANCY MAYER-WHITTINGTON, CLERK,
U.S. DISTRICT COURT

STATE OF NEW YORK *ex rel.*
Attorney General DENNIS C. VACCO, *et al.*,

Plaintiffs,

vs.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 98-1233 (TPJ)

PRETRIAL ORDER NO. 1

Having fully considered the written submissions of the parties and the arguments of counsel at a hearing on June 9, 1998, the Court enters the following Order to govern pretrial proceedings in this action.

NON-EXPERT DISCOVERY

1. Pursuant to Rule 34(b) of the Federal Rules of Civil Procedure, and subject to any notifications of non-parties and designations of confidential information pursuant to the Stipulation and Protective Order entered by the Court on May 27, 1998, each party shall respond, including objections, to any requests for production of documents within ten calendar days of service of any such requests.

2. Pursuant to Rules 33 and 36 of the Federal Rules of Civil Procedure, each party shall respond, including objections, to all interrogatories and requests for admissions served by an adverse party within ten calendar days of such service. The presumptive limitations on interrogatories set forth in Local Rule 207(b) shall not apply, but counsel for the parties shall exercise their good judgment in not serving unreasonably large numbers of interrogatories on an adverse party.

3. Pursuant to Rule 30(a) of the Federal Rules of Civil Procedure and Local Rule 208, each party may take depositions upon oral examination on ten calendar days' notice. The presumptive limitations on depositions set forth in Local Rule 207(b) shall not apply, but counsel for the parties shall exercise their good judgment in not taking an unreasonably large number of depositions.

4. In the context of the expedited proceedings ordered by the Court in this action, the Court finds that ten calendar days is also a reasonable period for compliance with discovery subpoenas directed to non-parties pursuant to Rule 45 of the Federal Rules of Civil Procedure and requests that other district courts from which such subpoenas are issued require prompt compliance therewith, subject to the legitimate objections of such non-parties.

5. The Court expects the parties to work in good faith to resolve discovery disputes. The Court will, however, entertain in-chambers conferences or conference calls with counsel in lieu of formal motions to resolve routine discovery disputes that may arise. In dealing with discovery matters, the parties shall strictly comply with Local Rule 106.

PRETRIAL SUBMISSIONS

6. Microsoft shall file its answers to the complaints by July 28, 1998.

7. Microsoft shall file a legal memorandum in opposition to plaintiffs' motions for a preliminary injunction on August 10, 1998 (without the evidentiary materials typically required by Local Rule 205(c)) and plaintiffs shall file reply memoranda, if any, in support of those motions on August 24, 1998.

8. The parties shall file lists of witnesses they intend to call at trial on August 21, 1998, which lists may be supplemented in advance of the pretrial conference for good cause shown.

9. The parties shall file their pretrial statements on August 31, 1998 in accordance with Local Rule 209(b).

10. The final pretrial conference shall be held at 10:00 A.M. on September 3, 1998.

CONDUCT OF THE TRIAL

11. Plaintiffs as a group and defendant shall each be limited to between six and 12 witnesses at trial, although the Court will consider increasing that number for good cause shown.

12. The parties shall file the direct examinations of their witnesses, with the exception of hostile witnesses, in the form of written declarations on or before September 3, 1998.

13. The parties shall submit proposed findings of fact and conclusions of law on a schedule to be established by the Court at the conclusion of trial.

SUBPOENAS FOR WITNESSES

14. Because there are witnesses with knowledge of relevant matters residing throughout the United States, the Court hereby finds that there is good cause to give all parties

to this action permission pursuant to 15 U.S.C. § 23 to issue subpoenas to compel witnesses living outside this District to appear to testify at trial.

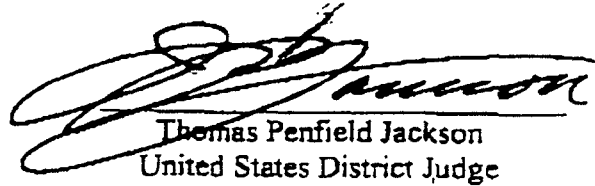
**SERVICE OF DISCOVERY REQUESTS AND RESPONSES
AND PRETRIAL SUBMISSIONS**

15. Service on Microsoft of any pleading or other submission to this Court or any requests for discovery under the Federal Rules of Civil Procedure or responses thereto shall be sufficient if delivered by hand, facsimile or overnight courier either to Sullivan & Cromwell's offices in New York at 125 Broad Street, 27th Floor, New York, New York 10004 or to Sullivan & Cromwell's offices in Washington, D.C. at 1701 Pennsylvania Avenue, N.W., 7th Floor, Washington, D.C. 20006.

16. Service on plaintiffs of any pleading or other submission to this Court or any requests for discovery under the Federal Rules of Civil Procedure or responses thereto shall be sufficient if delivered by hand, facsimile or overnight courier to (a) A Douglas Melamed, Esq., U.S. Department of Justice, Antitrust Division, 10th Street & Constitution Avenue, N.W., Washington, D.C. 20530, (b) Phillip R. Malone, Esq., U.S. Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Room 10-0101, San Francisco, California 94102 and (c) Stephen D. Houck, Esq., Chief, Antitrust Bureau, New York State Attorney General's Office, 120 Broadway, Suite 2601, New York, New York 10271.

Dated: Washington, D.C.
June 12, 1998

SO ORDERED:



Thomas Penfield Jackson
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,

v.

BROWN UNIVERSITY IN PROVIDENCE
IN THE STATE OF RHODE ISLAND,
AND PROVIDENCE PLANTATIONS;

THE TRUSTEES OF COLUMBIA
UNIVERSITY IN THE CITY
OF NEW YORK;

CORNELL UNIVERSITY;

THE TRUSTEES OF DARTMOUTH
COLLEGE;

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE, MASSACHUSETTS;

MASSACHUSETTS INSTITUTE OF
TECHNOLOGY;

THE TRUSTEES OF PRINCETON
UNIVERSITY;

THE TRUSTEES OF THE UNIVERSITY
OF PENNSYLVANIA; and

YALE UNIVERSITY.

FILED MAY 2 - 1992

Civil Action No. 91-CV-3274

ORDER

AND NOW, this 22nd day of May, 1992, upon consideration of the Government's Motion for Authority to Issue Subpoenas, IT IS HEREBY ORDERED that the Motion is GRANTED. The parties to this action may cause subpoenas to be issued requiring the attendance of witnesses residing outside this District more than 100 miles from this court.

NUMBERED:

5-27-92

LOUIS C. BECHTLE, CH. J.

CLERK OF COURT

10. Orders: *United States v. AT&T Inc.*, Stipulated Scheduling and Case-Management Order, ¶ 8, No. 11-cv-01560 (D.D.C. Sept. 23, 2011); *United States v. UPM-Kymmene*, Scheduling and Case Management Order, ¶ 11, No. 03-cv- 2528 (N.D. Ill. Apr. 23, 2003); *United States v. Microsoft Corp.*, Pretrial Order No. 1, ¶ 14, No. 98-cv-1233 (D.D.C. June 12, 1998); *United States v. Brown University*, Order, 1, No. 91-cv-3274 (E.D. Pa. May 2, 1992)