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

UNITED STATES OF AMERICA et al., *Plaintiffs*, v. JBS S.A. and NATIONAL BEEF PACKING COMPANY, LLC *Defendants.*	Civil Action No. 08-CV-5992 Honorable Elaine E. Bucklo Honorable Arlander Keys

REPORT OF PARTIES' PLANNING MEETING

I. Meeting. Pursuant to Fed. R. Civ. P. 26(f), a meeting was held on October 24, 2008, at the offices of Skadden, Arps, Slate, Meagher & Flom LLP, located at 1440 New York Avenue, N.W., Washington D.C., and was attended in person by:

John Snyder, Claude F. Scott, Angela Hughes, Tracy Fisher, William H. Stallings, and, via telephone, Tommy Prud'homme, for Plaintiffs;

Matthew R. Kipp, Neal R. Stoll, Matthew Hendrickson, Joe Sims, and Leslie Overton for Defendants.

A second meet and confer was conducted by telephone on November 10, 2008.

II. Pre-trial Schedule. Upon filing of the Complaint, Plaintiffs forwarded a proposed scheduling order to the Defendants that provided for the close of fact discovery on March 20, 2009 and the close of expert discovery on April 17, 2009. Defendants rejected the proposed

schedule and submitted a motion [Docket No. 21] for expedited treatment of this litigation. Plaintiffs opposed that motion [Docket No. 28] and continued to propose the schedule previously provided to the Defendants. The Court heard argument on October 30 and entered an Order denying Defendants' proposed schedule and ordering fact discovery to close on March 20, 2009, and expert discovery to close on April 17, 2009 [Docket No. 39]. For those reasons, Defendants agree to the following discovery plan and pre-trial schedule incorporated in the Proposed Scheduling and Case-Management Order emailed to the Court, but do not waive their objections and expressly reserve the right to seek modification of these dates as appropriate:

1. Response to the Complaint. The Defendants will file their responses to the Complaint, including their answers, no later than November 21, 2008.

2. Joinder and Amendments to the Pleadings. Additional parties joined this action as plaintiffs on November 7, 2008. Amendments to the pleadings, including joinder of additional parties, will not be permitted after December 5, 2008.

3. Settlement. By December 2, 2008, Plaintiffs will make a written settlement demand to the Defendants. By December 9, 2008, Defendants will respond in writing to the Plaintiffs' settlement demand.

4. Federal Rules of Civil Procedure and this Court's Local Rules. Unless otherwise modified by the Scheduling and Case-Management Order, another order of the Court, or an agreement between the parties, the Federal Rules of Civil Procedure and this Court's Local Rules shall govern discovery in this action.

5. Initial Disclosures. In lieu of initial disclosures pursuant to Fed. R. Civ. P. 26(a)(1), and consistently with the timing for producing potentially confidential information set

forth in the Protective Order that the parties are filing concurrently with the Court, the parties shall provide disclosures as follows under the terms and conditions set forth below:

A. Plaintiffs' initial disclosures: Plaintiffs shall produce to Defendants all correspondence, documents, data, oral examination transcripts, depositions or any other materials and statements, and declarations and affidavits (both executed finals and drafts), whether in hard-copy or electronic form, exchanged between any Plaintiff (including Plaintiffs' counsel) and any non-party (including the non-party's counsel) in anticipation of or in the course of Plaintiffs' "Investigation," which means the Department of Justice's and/or the Plaintiff States' pre-Complaint inquiry into the proposed acquisitions by JBS S.A. of National Beef Packing Company, LLC and Smithfield Beef Group, Inc. (collectively, "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 or provided by the Department of Justice to the Defendants during the Investigation or transcripts of depositions of party employees that the Department of Justice authorized to be released to the 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, or materials subject to the deliberative-process or any other governmental privilege.

B. Defendants' initial disclosures: Defendants shall produce to Plaintiffs copies of all correspondence, documents, data, oral examination transcripts, depositions or any other materials and statements, and declarations and affidavits (both executed finals and drafts), 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 anticipation of, in the course of responding to, or otherwise relating to, Plaintiffs' Investigation. Defendants are not required to produce back to Plaintiffs documents or other written materials originally received from Plaintiffs or documents or other written materials already provided to Plaintiffs. This Paragraph shall not be construed as requiring the production of Defendants' attorney work product, confidential attorney-client communications, or information provided to any potentially or actually retained expert.

6. Fact Discovery Period. The period for fact discovery shall begin after the Court enters the Scheduling and Case-Management Order and the Protective Order and shall be completed by March 20, 2009.

7. Written Discovery. All written discovery shall be served to permit timely responses to be served within the discovery period. Interrogatories shall be limited to 10 per side, including sub-parts. This limitation does not apply to interrogatories propounded by Plaintiff States limited to issues of standing, jurisdiction, and volume of commerce in the individual states. There will not be a limit on the number of requests for the production of documents, requests for admissions, or Rule 45 subpoenas for documents that may be served by the parties.

8. Depositions of Fact Witnesses. Absent good cause shown, depositions shall be limited to no more than 35 per side (excluding experts) plus depositions of the other side's designated witnesses as set forth in Paragraph 11 below. A deposition for up to seven hours 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. Such depositions shall be designated as such at the time that the deposition is noticed and shall be noticed only after the party taking the deposition has taken reasonable steps to establish authenticity and admissibility through other means. If any Defendant raises a proposed remedy or amendment of the Proposed Acquisition, Plaintiffs shall have the right to take additional depositions relating to this issue. If the parties are unable to agree to the number of additional depositions to be taken on this issue, Plaintiffs may petition the Court for a modification of the Scheduling and Case-Management Order to provide for additional depositions.

Defendants will consider, on an individual by individual basis, any deposition notice to produce employees, officers, or directors residing outside of the United States within the United States for deposition. The United States reserves the right to file a motion to compel the production of a witness residing outside of the United States for a deposition in this country.

Investigative depositions taken during the investigation of the Proposed Acquisitions do not count toward the limit of 35 depositions. Plaintiffs may further depose party witnesses whose investigative deposition was taken during the Investigation.

9. Nationwide Service of Trial Subpoenas. Plaintiffs requested Defendants to agree to including a provision permitting the parties, 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 Defendants have rejected such a provision. Plaintiffs reserve the right to file a motion seeking the ability to issue nationwide service of process compelling witnesses to attend the trial of this matter.

10. Discovery of Confidential Information. Discovery and production of potentially confidential information shall be governed by the Protective Order that the parties are concurrently filing with the Court.

11. Witness Lists. Each side shall exchange initial trial live witness lists of up to 25 witnesses no later than January 9, 2009. Each side may amend their initial witness lists by no later than February 6, 2009, provided the amendment is limited to the addition or substitution in total of no more than five witnesses, while still not exceeding 25 witnesses in total. Despite the limitation on the number of depositions (excluding experts) that each side may take of 35, each side shall have the right to depose any witness on the opposing side's witness list, even if the limitation is exceeded. Any witnesses who reside outside of the United States on the witness lists of the Defendants shall be produced by the Defendants for deposition in the United States.

12. Expert Witness Disclosures and Depositions. Expert-related discovery will be governed by Fed. R. Civ. P. 26, except as modified by this Report. Each side shall identify all experts that they will call in their respective case-in-chief and defense case by January 16, 2009. The Plaintiffs shall identify all rebuttal experts by February 6, 2009.

Plaintiffs' case-in-chief expert reports will be delivered to Defendants by February 12, 2009. Defendants' case-in-chief expert reports relating to Defendants' claimed efficiencies or any affirmative defense will be delivered to Plaintiffs by February 12, 2009. Defendants' case-in-chief expert reports relating to all other issues, including rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(c)(ii), will be delivered to Plaintiffs by March 4, 2009. Plaintiffs' expert rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(c)(ii), relating to Defendants' claimed efficiencies or any affirmative defense, will be delivered to Defendants by March 4, 2009. The parties' expert rebuttal reports permitted by Fed. R. Civ. P. 26(a)(2)(c)(ii), relating to any matter included in the March 4 expert reports will be delivered to the opposing side by March 19, 2009. Any supplemental expert reports will be delivered by March 27, 2009.

Each side's expert reports shall comply with the requirements of Fed. R. Civ. P. 26(a)(2), except that neither side need disclose the following categories of data, information, and documents: (a) any correspondence (excluding retention agreements and billing communications) or memos to or from or notes of conversations with (i) attorneys or other staff for the side offering the testimony or (ii) the staff of such expert witness, unless the expert witness is relying upon information in such correspondence, memos, or notes in forming any opinion the witness will express; (b) draft reports prepared by, for, or at the direction of an expert witness; or (c) voluminous textbooks or treatises considered by the expert, provided that they are made available for copying at the request of the opposing party.

Depositions of each side's experts will be conducted only after exchange of all of the above-referenced reports and must be completed by April 17, 2009. Depositions of each expert witness may extend to two days in length.

13. Service of Pleadings and Discovery on Other Parties. Service of all pleadings and discovery requests, including Rule 45 subpoenas for testimony or documents and all correspondence pertaining thereto, and delivery of all correspondence in this action will be made by email – except when the volume of attachments requires overnight delivery of the attachments – to individuals designated by the parties, including the principal designees for each side noted below:

For the United States:	Claude F. Scott (Claude.Scott@usdoj.gov)
	Tracy Fisher (Tracy.Fisher@usdoj.gov)
For the Plaintiff States:	John T. Prud'homme (jtp1@oag.state.tx.us)
For JBS S.A.:	Matthew R. Kipp (mkipp@skadden.com)
For National Beef:	Joe Sims (jsims@jonesday.com)
	Paula W. Render (prender@jonesday.com)

At least one of each of each party's principal designees served by email (or their designee) shall promptly confirm receipt. Electronic delivery actually received shall be treated in the same manner as hand delivery for purposes of calculating response times under the Federal Rules. However, email service that is delivered after 5:00 pm Central, shall be treated as if it was received the following business day except for pleadings that are responsive to a prior pleading.

Except as otherwise provided by the Scheduling and Case-Management Order, another order of the Court, or an agreement between the parties, each side shall copy and produce materials obtained in discovery (including all e-mail and written correspondence concerning the discovery request) from any non-party to the other side, including, as applicable, each Defendant,

the United States, and a designated representative of the Plaintiff states, within five business days after receipt by the party initiating the discovery request.

14. Consent to proceed before a Magistrate Judge. Plaintiffs do not consent to proceed before a Magistrate Judge. Defendants are willing to proceed before a Magistrate Judge.

15. Final pre-trial order. The parties will file a joint final pretrial order on May 8, 2009, prepared on a schedule in accordance with the Court's Case-Management Procedures.

16. Trial date. The case should be ready for trial by May 22, 2009. Plaintiffs expect the trial to require three to four weeks. Defendants expect that a trial will take one week.

17. Defendants' agreement not to close. The Defendants will not close the proposed transaction until the proceedings (on the claims brought by the United States and the Plaintiff States) in this Court have been resolved.

18. Modification of this Report: Nothing in this Report prevents any party from seeking modification of this Report for good cause and with the Court's consent.

Dated: November 19, 2008

s/
Claude F. Scott, Jr., Esq.
Counsel for the United States
U.S. Department of Justice
450 Fifth Street, NW
Suite 4100
Washington, DC 20530
TEL: (202) 353-0378
claude.scott@usdoj.gov

s/
Matthew R. Kipp, Esq.
Counsel for JBS S.A.
Skadden, Arps, Slate, Meagher & Flom LLP
333 W. Wacker Drive, Suite 2100
Chicago, IL 60606
TEL: (312) 407-0728
matthew.kipp@skadden.com

s/
J. Thomas Prud'homme, Esq.
Lead Counsel for Plaintiff States
300 W. 15th St.
Austin, TX 78701
TEL: (512) 936-1697
jtp1@oag.state.tx.us

s/
Paula W. Render, Esq.
Counsel for National Beef Packing Co., LLC
Jones Day
77 West Wacker
Chicago, IL 60601
TEL: (312) 269-1555
prender@jonesday.com

Joe Sims, Esq.
Leslie Overton, Esq.
Hugh Hollman, Esq.
Jones Day
51 Louisiana Avenue NW
Washington, DC 90001
jsims@jonesday.com
lcoverton@jonesday.com
hmhollman@jonesday.com