

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

CASE NUMBER: 1:03CV02369 (RMC)

FIRST DATA CORPORATION,

and

CONCORD EFS, INC.,

Defendants.

**PRELIMINARY INJUNCTION HEARING
SCHEDULING AND CASE MANAGEMENT ORDER**

In accordance with Fed. R. Civ. P. 16 , the Court hereby ORDERS as follows:

I. SCHEDULE

1. Response to the Complaint. The United States having filed its Complaint on October 23, 2003, Defendants shall file their answers to the Complaint no later than October 31, 2003.

2. Discovery Period Excluding Expert Witness Discovery. The period for all fact discovery shall begin upon entry of this order and shall be completed by December 15, 2003. All discovery shall be served in a time frame that will permit timely responses, under this Order or pursuant to the Federal Rules of Civil Procedure, by December 15, 2003. Nothing in this Order shall preclude the taking of additional discovery in connection with further proceedings, if any, following the Preliminary Injunction hearing.

3. Expert Witness Reports and Depositions. Each of the parties shall serve expert report(s) no later than December 15, 2003. Reports prepared by each party's expert(s) to contradict or rebut evidence in an opposing side's previously disclosed expert report(s) shall be exchanged by December 22, 2003. Depositions of the parties' experts shall be conducted after the exchange of the above-referenced reports and shall be completed by January 3, 2003. At least two days before being deposed, each of the experts may supplement their disclosures to address evidence obtained after December 10, 2003. Notwithstanding any of the foregoing, both sides' experts shall have 7 days to respond to any econometric analysis included in the disclosure of the opposing expert. The parties agree that drafts of expert reports are not subject to discovery.

4. Exchange of Witness Lists. The parties shall exchange witness lists, compiled in accordance with Fed. R. Civ. P. 26(a)(3)(A), no later than November 14, 2003, limited to 10 fact witnesses per side. No more than 5 witnesses may be substituted for witnesses previously listed. All substitutions shall be made by December 1, 2003, except by agreement among the parties or by order of this Court upon good cause shown. The parties may designate experts responsive to experts designated by the opposing side no later than December 22, 2003.

5. Pre-hearing Conference. The Court will schedule a pre-hearing conference prior to the Preliminary Injunction hearing as its calendar permits.

6. Preliminary Injunction Hearing. A Preliminary Injunction hearing shall be held on January 5, 2004, or as soon thereafter as the Court's calendar permits.

II. CASE MANAGEMENT PRIOR TO A PRELIMINARY INJUNCTION HEARING

7. Initial Disclosure. The parties shall not be required to provide initial disclosures pursuant to Rule 26(a).

8. Limit on Depositions. Each side may take no more than 20 fact witness depositions, excluding any document custodian depositions that may be necessary to establish the foundation for admissibility, and also excluding any deposition plaintiff may need to take in connection with previously unproduced documents included on defendants' exhibit lists. 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. To the extent either side takes more than 3.5 hours of deposition testimony of a non-party deponent, the other side shall be permitted to exceed 3.5 hours by an equal amount of time. The parties and non-parties, if applicable, may stipulate to additional time for individual depositions. Absent agreement of the parties, the duration of depositions provided for in this Order may be modified only by order of this Court for good cause shown.

9. Limit on the Number of Rule 45 Document Subpoenas. Neither side shall serve more than 20 document subpoenas on non-parties.

10. Limits on Written and Document Discovery. All document requests shall be responded to and responsive documents produced within 10 business days after service. Parties will produce documents in either hard copy form, or, in the case of electronic documents, in the native electronic format (or a mutually agreeable format). Defendants agree to maintain documents previously produced to the Government through the Daticon website with at least the same level of availability and functionality as has been provided over the past 10 days. Plaintiffs

need not produce either of the Defendant's documents to either of the Defendants. Defendants will permit the Plaintiffs to depose the most knowledgeable witness concerning any document listed on either defendant's exhibit list that was not previously produced. Any such deposition shall be excluded from the limitation on the number of depositions. No interrogatories shall be permitted. Each side shall be limited to propounding no more than 15 Requests For Admissions.

11. Exchange of Deposition Designations. The parties shall exchange (page and line number) designations of deposition testimony to be offered at trial no later than December 15, 2003. Each party must provide counter designations of deposition testimony no later than December 22, 2003. Rebuttal and fairness designations applicable solely to counter designations and objections to any deposition designations or counter designations shall be exchanged no later than December 26, 2003. Notwithstanding the above, deposition designations for any deposition taken after December 10, 2003 shall be exchanged no later than December 19, 2003. Counter designations for post-December 10 depositions shall be exchanged no later than December 23, 2003. Rebuttal and fairness designations for post-December 10 depositions, applicable solely to counter designations and objections to any deposition designations or counter designations shall be exchanged no later than December 29, 2003.

12. Exchange of Exhibits and Exhibit Lists. No later than December 19, 2003, the parties will exchange numbered sets of all exhibits that the parties anticipate introducing at trial, limited to 500 document exhibits per side (excluding declarations), compiled in numerical order in notebooks and 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. The parties will exchange any objections to the exhibits to be offered by the other side no later than December 29, 2003.

13. Service of Pleadings and Discovery on Other Parties. Plaintiff and Defendants shall serve all pleadings and discovery requests, including Rule 45 subpoenas for documents, on the other parties (to a person designated by that party) by either e-mail or facsimile (on the day of service) 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 first-class mail. Any pleading, and exhibits thereto, that is filed under seal shall be delivered, by hand, to the Washington D.C. office of counsel representing the other parties, on the day of filing. 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 overnight delivery by that party on the other side within one business day after receipt of the documents.

14. Nationwide Service of Subpoenas. Good cause having been shown in view of the geographic dispersion of potential witnesses in this action, the parties are permitted, pursuant to 15 U.S.C. §23, to issue trial subpoenas that may run into any other district requiring witnesses to attend this Court.

15. Consummation of the transaction. The defendants shall not consummate the proposed transaction for at least five business days following a decision by this Court on whether to issue a Preliminary Injunction.

16. Evidentiary Presumptions For Preliminary Injunction Hearing. (a) Documents produced by non-parties or a party from its own files shall be presumed to be authentic and business records within the meaning of FRE 901 and 803(6) provided that the party intending to rely on such a document gives written notice (specifying production numbers or the equivalent) of its intent to the other parties; and the opposing side does not serve a specific good faith written objection to the document's authenticity or its status as a business record within 5 days of receiving the notice. The parties will meet and confer to attempt to resolve any objections made pursuant to this paragraph. (b) Investigative depositions of employees and former employees of the parties taken by the plaintiffs and defended by counsel for that defendant during plaintiffs' investigation of the transaction underlying this action are non-hearsay admissions under Federal Rule of Evidence 801.

17. Modification of this Order. This Order shall control the subsequent course of this action pending the Preliminary Injunction hearing, unless modified by agreement of the parties and approved by the Court or modified by the Court for good cause shown. Following the Preliminary Injunction hearing, the parties are directed to meet and confer, in light of the Preliminary Injunction hearing and the Court's decision therein, and to submit to the Court an Amended Scheduling And Case Management Order sufficient to bring this case to trial on May 20, 2004 or as soon thereafter as the Court's schedule permits.

IT IS SO ORDERED.

DATED: October____, 2003

The Honorable Rosemary M. Collyer
UNITED STATES DISTRICT JUDGE

PRE-HEARING EVENT	DATE
Complaint	October 23, 2003
Answer	October 31, 2003
Witness List exchange	November 14, 2003
Witness List - substitute up to 5 witnesses	December 1, 2003
Expert Reports exchange	December 15, 2003
Deposition Designation exchange*	December 15, 2003
Fact Discovery Deadline	December 15, 2003
Exhibit List exchange	December 19, 2003
Deposition Counter-designation*	December 22, 2003
Expert rebuttal reports (rebuttal witness designate)	December 22, 2003
Deposition rebuttal designations/objections*	December 29, 2003
Exhibit objections	December 29, 2003
Expert discovery deadline	January 3, 2004
Preliminary Injunction Hearing	January 5, 2004

* Because the initial exchange of deposition designations coincides with expert report exchange, the schedule provides for a supplemental exchange of deposition designations and counter-designations solely for depositions that are taken between December 10-15, 2003. That designation schedule is as follows: (1) initial designations, December 19; (2) counter-designations, December 23; and (3) rebuttal designations, December 29.