



U.S. Department of Justice

*United States Attorney
Southern District of New York
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July 10, 2020

BY ECF AND E-MAIL

Hon. Andrew L. Carter
United States District Judge
Thurgood Marshall Federal Courthouse
40 Foley Square
New York, New York 10007

Re: *United States v. Anthem, Inc.*, 20 Civ. 2593 (ALC)

Dear Judge Carter:

This Office represents the Government as the plaintiff in the above-referenced False Claims Act case. We write in response to Anthem's letters dated July 9, 2020 (Dkt. Nos. 27 & 28).

The Government filed this case on March 26, 2020. (Dkt. No. 1.) On April 14, 2020, Anthem filed a letter requesting a pre-motion conference regarding an anticipated motion to transfer venue. (Dkt. No. 14.) On May 29, 2020, Anthem filed two separate letters requesting pre-motion conferences regarding an anticipated motion to strike certain allegations in the Government's complaint (Dkt. No. 19) and an anticipated motion to dismiss certain claims in the Government's complaint (Dkt. No. 20). On June 10, 2020, the Government filed a response to both of Anthem's May 29, 2020, letters, indicating that it intended to file an amended complaint. (Dkt. No. 23.) The Government did so on July 2, 2020. (Dkt. No. 26 ("AC").) On July 8, 2020, Anthem emailed the Government asking whether "the government would agree to a short extension of the deadline to file an answer or move to dismiss, from Thursday July 3 to Monday August 3." The Government agreed to that request and proposed that, should Anthem decide to move to dismiss on August 3, the Government's opposition be due by August 31, and Anthem's reply be due by September 14. Anthem then responded stating that it was not actually proposing to file a motion to dismiss by August 3, and instead wanted an extension to that date to file a letter indicating whether it intended to file such a motion.

Anthem's proposal would unnecessarily and unduly delay the progress of this case. Anthem had over two months to review the Government's initial complaint in this case and evaluate whether to make any motions in response. The parties then exchanged substantive pre-motion letters laying out their positions on Anthem's anticipated motions. Anthem now requests that it be given a month just to make a decision as to how it plans to respond to the Amended Complaint—which added only five paragraphs of allegations that would be relevant to Anthem's potential dispositive motion (as well as three new paragraphs related to venue).¹ Indeed,

¹ Aside from a handful of edits that correct typographical errors and streamline some of the Government's allegations, the Amended Complaint contains additional allegations regarding

Anthem's tactics are clear, in that it claims that a protracted deliberative and pre-motion process is necessary regarding its potential motion to dismiss (a motion that Anthem was seemingly ready to make in May), but suggests that the pre-motion process may be largely dispensed with regarding its anticipated venue application. (*See* Dkt. No. 28.)² The Government requests instead that the Court so-order the briefing schedule that the Government proposed to Anthem, by which Anthem would answer or move to dismiss the Amended Complaint by August 3, the Government would file an opposition by August 31, and Anthem's reply would be due by September 14.

The Government also remains of the view that, in the interest of judicial efficiency, Anthem's dispositive motion briefing should be consolidated with its briefing on the issue of venue, and should proceed on the above-proposed schedule.³ If the Court is inclined to permit Anthem to submit separate briefing on venue, the Government does not necessarily object to the venue briefing schedule proposed by Anthem in its letter (*see* Dkt. No. 28); but the Government does not believe that Anthem's dispositive motion briefing should be held up indefinitely or substantially while the venue motion proceeds.

Finally, if the Court would prefer not to set any briefing schedules at this time, the Government respectfully asks that Anthem be required to file a letter no later than July 23, 2020, indicating whether it intends to move to dismiss the Amended Complaint (and, if it does so intend, setting forth the anticipated bases for its motion). The Government would, of course, be prepared promptly to respond and to participate in a pre-motion conference regarding both of Anthem's proposed applications, should the Court decide to hold one.

the materiality of Anthem's false annual attestations, *see* AC ¶¶ 162, 167, and Anthem's internal discussions concerning government settlements obtained in enforcement actions involving inaccurate risk-adjustment data submissions, *id.* ¶¶ 103–105. Three added paragraphs discuss Anthem's activities and employees within this District, *id.* ¶¶ 13, 118, 119.

² In light of the additional allegations in the Amended Complaint regarding Anthem's activities in this District, *see* AC ¶¶ 13, 118, 119, the Government disputes Anthem's assertion that "[t]he revised allegations in the Amended Complaint do not materially impact the reasons why this matter should be transferred to the Southern District of Ohio, as described in Anthem's April 14, 2020 letter" (Dkt. No. 28 at 1).

³ Anthem suggests that separate rounds of briefing would—despite entailing twice the number of briefs—be more efficient because if the Court were to grant Anthem's motion to transfer it would not have to consider Anthem's motion to dismiss. If briefing were consolidated, however, the Court could still review Anthem's venue motion first and, if it decided that the case should be transferred, transfer the case without considering the motion to dismiss. If, on the other hand, the Court were to determine that the venue motion is meritless—which, as the Government has explained, it is (*see* Dkt. No. 17), the Court could move directly to considering the motion to dismiss without losing time with an additional briefing process.

We thank the Court for its consideration of these issues.

Respectfully submitted,

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By: _____ /s/

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Encl.

cc (by ECF)
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