

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
(WESTERN DIVISION - LOS ANGELES)

UNITED STATES OF AMERICA,	)	CASE NO: 2:16-CV-08697-FMO-SS
	)	
Plaintiff,	)	CIVIL
	)	
vs.	)	Los Angeles, California
	)	
UNITED HEALTH GROUP, INC,	)	Tuesday, October 8, 2019
ET AL,	)	
	)	
Defendants.	)	

TELEPHONIC CONFERENCE RE DISCOVERY

BEFORE THE HONORABLE SUZANNE H. SEGAL,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

SEE PAGE 2

Court Reporter:

Recorded; XTR

Courtroom Deputy:

Marlene Ramirez

Transcribed by:

Exceptional Reporting Services, Inc.
P.O. Box 8365
Corpus Christi, TX 78468
361 949-2988

Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

EXCEPTIONAL REPORTING SERVICES, INC

APPEARANCES FOR:

Plaintiff:

**ROBERT MCAULIFFE, ESQ.
U.S. Department of Justice
Civil Division - Fraud Section
175 N. Street NE, Room 9-103
Washington, DC 20044**

**JOHN E. LEE, ESQ.
Office of the U.S. Attorney
300 North Los Angeles, Room 7516
Los Angeles, CA 90012**

Defendants:

**DAVID J. SCHINDLER, ESQ.
DANIEL MERON, ESQ.
Latham & Watkins, LLP
355 South Grand Avenue, Suite 100
Los Angeles, CA 90071**

**STEPHEN S. HASEGAWA, ESQ.
Phillips & Cohen
100 The Embarcadero, Suite 300
San Francisco, CA 94105**

**HENRY C. SU, ESQ.
Constantine Cannon, LLP
1001 Pennsylvania Ave. NW, Suite 1300N
Washington, DC 20004**

Los Angeles, California; Tuesday, October 8, 2019

(Attorneys appear telephonically)

Call to Order

THE CLERK: Good morning. We're here today on the record on Case CV 16-08697 the *United States of America versus United Health Group, Inc., et al.*

Counsel, state your appearance for the record.

MR. MCAULIFFE: Yeah, this is Rob McAuliffe, I'm here for the United States.

THE COURT: Good morning.

MR. LEE: Good morning, your Honor, John Lee on behalf of the United States.

THE COURT: Good morning.

MR. HASEGAWA: Good morning, your Honor. Steve Hasegawa of Phillips and Cohen for the Relator.

THE COURT: Good morning.

MR. SU: Good morning, your Honor. Henry Su from Constantine Cannon also on behalf of the Relator.

THE COURT: Good morning.

MR. SCHINDLER: Good morning, your Honor, David Schindler on behalf of Defendant United Health.

THE COURT: Good morning.

MR. MERON: Good morning, your Honor. This is Daniel Meron, I'm also from -- on behalf of United Health.

THE COURT: Good morning. So is that everyone? I

1 think we've got everyone who has made their appearance.

2 This is an informal discovery conference. The
3 counsel for United Health Care had suggested we get together to
4 discuss the schedule in this matter, so Mr. Schindler?

5 **MR. SCHINDLER:** Yes, good morning, your Honor. Thank
6 you. First of all thanks so much for accommodating us on short
7 notice and I hope this won't be a long conference.

8 **THE COURT:** Okay.

9 **MR. SCHINDLER:** The parties were hoping to enlist
10 your assistance in approaching Judge Olguin. As you know, the
11 matter has been transferred -- oh, I think -- hopefully you
12 know that the matter has been transferred from Judge Fitzgerald
13 to Judge Olguin.

14 **THE COURT:** Yes.

15 **MR. SCHINDLER:** And without belaboring sort of a long
16 history, the short answer is that the document production is
17 not going to be complete for quite some time and the schedule
18 that Judge Olguin set upon transfer of the matter,
19 unfortunately, doesn't work for either side. We can get into
20 more details with you if it's helpful, although I suspect at
21 the end of the day it probably isn't all that germane.

22 But what we were hoping to do is have you make a
23 Report and Recommendation assuming you agreed with us asking
24 Judge Olguin to modify the schedule that he set to essentially
25 accommodate the additional time that it's going to take the

1 Government to produce the documents that need to be produced to
2 us and we have some residual production to make to them, but
3 what we were hoping to do is send to you, if you are willing, a
4 proposed Amended Schedule and enlist your assistance then in
5 making a Report and Recommendation to Judge Olguin that he
6 modify the schedule that he set. So that's what we were hoping
7 to talk about with you this morning.

8 **THE COURT:** All right. It might be helpful if you
9 could just give me a short lingo or view into what the cause of
10 the delay is.

11 **MR. SCHINDLER:** You know, I think the -- and, again,
12 without getting into a lot of history and I -- Mr. McAuliffe
13 who joined the case from the Government has been very helpful
14 and I appreciate his input, but it's been very helpful.

15 But the short answer is that, in part, as you may
16 recall, Judge Fitzgerald did not rule for quite some time on a
17 number of the issues the Government had raised and where we are
18 today is that the Government has indicated to us that they
19 cannot produce or cannot be complete with their production of
20 the records that are responsive to our discovery requests until
21 June of 2020, and it really is a question of the volume of
22 documents, the volume of custodians, the 3:58:11 process that
23 was employed and some tweaks and changes that needed to be
24 made, and we had a lot of productive discussions with
25 Mr. McAuliffe and Ms. McMahon and so I don't really -- the

1 history of how we got here probably doesn't matter as much as
2 the fact that we are where we are. And given what their
3 vendors are telling them in terms of when they are going to be
4 able to complete their document productions to us, as a result
5 of that, everything else kind of follows from there in terms of
6 the schedule that actually makes some sense because it will
7 allow us then to complete the depositions and the fact
8 discovery that would need to take place after the production of
9 those records. So that's kind of where we are, and I'm happy
10 to answer additional questions or get more granular with you if
11 you'd like.

12 **THE COURT:** I guess my other question is are you
13 proposing a change to other deadlines?

14 I don't have Judge Olguin's Scheduling Order in front
15 of me, but --

16 **MR. SCHINDLER:** Yes, we are.

17 **THE COURT:** Uh-huh (yes.) And --

18 **MR. SCHINDLER:** Especially what we would be proposing
19 a change to all of his dates.

20 When the case was transferred to him, as you may
21 know, he tends not to have conferences or meet with the
22 parties; indeed, issued a Scheduling Order essentially on his
23 own without any input from the parties and the current
24 schedule, for example, has fact discovery cutoffs like December
25 5th of this year, and obviously we're not going to be having --

1 we won't have complete production of the Government's records
2 until June of next year, and the rest of the dates would be set
3 to flow from his December 5th, 2019 discovery cutoff including
4 the current trial date; everything else, the Summary Judgment
5 and the usual leading to a tentative 4:00:09 trial date of June
6 23rd of 2020.

7 What we would be producing and are proposing, and we
8 can lay it out for you in whatever format is most convenient
9 for you, is a revision to the entirety of the schedule.

10 **THE COURT:** Okay. And just, if you have them, what
11 are the dates that you're suggesting for a new date?

12 **MR. SCHINDLER:** For?

13 **THE COURT:** New date?

14 **MR. SCHINDLER:** Yeah. So we are proposing a
15 discovery cutoff of December 4th, 2020, which essentially is a
16 one-year extension, and then a revision to the settlement
17 conference completion date. Again, that -- Judge Olguin set
18 that 4:01:00 discovery cutoff, so the same date moving from
19 December 5th, 2019 to December 4th of 2020.

20 And then we have pushed out the expert disclosures
21 and various initial experts and rebuttal experts disclosures
22 and expert discovery, again, moving these things about a year.

23 **THE COURT:** I see.

24 **MR. SCHINDLER:** And then his Summary Judgment
25 protocol, as you know, is a little bit different than other

1 Judges, but pushing out the Summary Judgment protocol is a
2 little bit more than a year which is how we get to our proposed
3 trial date ultimately of September 28th of 2021.

4 **THE COURT:** All right. So I appreciate very much
5 that counsel are working so cooperatively together, that's a
6 great, great sign. I just want to hear from either Counsel for
7 the United States or for the Relator if they want to add
8 anything to Mr. Schindler's comments.

9 **MR. MCAULIFFE:** Yes, your Honor, this is Rob
10 McAuliffe for the United States.

11 Yeah, I think it was very helpful the way Mr.
12 Schindler laid that out. I do want to make a few comments in
13 that both parties are having challenges in this case to
14 producing documents.

15 Yes, the Government, as you have heard, is not going
16 to be able to get the documents produced by the discovery
17 cutoff here. But it's on both sides as well.

18 There are some -- as Mr. Schindler referenced this
19 individual production from United, we continue to look forward
20 to getting their productions. We don't know exactly when
21 they're going to be completed, but I think it's fair to say
22 that both sides are having challenges.

23 And I would like to just add to, maybe for your
24 Honor's benefit I could do it very cursorily if you'd like or
25 in more detail, but just to give you a little flavor for why,

1 you have asked, why the delay, why it's going to take so long.
2 But the volume of the discovery is enormous in this case, and
3 that creates huge problems for -- probably for United, but
4 certainly for our side.

5 Just a couple of numbers, we're dealing with 121
6 Requests for Production, they cover about 20 years -- actually
7 22 years.

8 We have about 200 custodians that we pulled documents
9 -- that we pulled from so, I mean, I don't want to be belabor
10 this, but the long and short of it is the data requirements
11 that are enormous and over the last two months we have been
12 consulting with Mr. Schindler and others, as well as our own
13 client, and then there's -- and trying to get the 4:03:41
14 because that's how long it would take us to produce the large
15 volume documents that are being asked for in this case.

16 So the dates that we have in mind are to do that, and
17 we're not just tossing dates out cavalierly, we're providing --
18 you know, Mr. Schindler says production by the end of June,
19 that's the best information we have from our client vendors as
20 to when we'll be able to actually complete production.

21 **THE COURT:** Okay.

22 **MR. MCAULIFFE:** So we think this is a reasonable
23 extension as well. It will allow the parties to complete their
24 production and then to have time after the completion of
25 production to do other discovery, such as depositions so, you

1 know, we agree that this would be a reasonable extension as
2 laid out and we're happy to send your Honor or Judge Olguin a
3 proposed schedule and provide any other information that may be
4 needed.

5 **THE COURT:** All right. Anyone on behalf of Relator
6 wish to be heard?

7 **MR. HASEGAWA:** No, your Honor, Mr. McAuliffe covered
8 it.

9 **THE COURT:** All right, great.

10 So I just want to tell you this, I certainly
11 understand the volume of discovery in this case that I was
12 pretty involved in some of our earlier conflicts over
13 discovery, and I think I appreciate the scope, and it is
14 difficult, there's no question about it. And I think it's a
15 reasonable request.

16 I think what Judge Olguin's concerns would be, he
17 does -- and any District Judge, frankly, would not want this to
18 go on forever. Like I think what he doesn't want is to give
19 you a year and have you come back in, you know, May of 2020 and
20 say "Oh, our vendors says we need another year," you know, or
21 something like that. I mean, I'm exaggerating but, you know,
22 there's always a balancing by the Court of parties' requests
23 for continuances against our duty to move cases along
24 efficiently.

25 So I think what would be helpful for me is if what

1 you want from me is to make a recommendation to the District
2 Judge which I don't have a problem doing.

3 In that document, the stipulation that you file I
4 would include two things:

5 I would include some description of the effort made
6 thus far because I think one of the concerns from Judges
7 sometimes is that the parties were busy doing other things.
8 I'm not saying that's true here, but I'm just saying I would
9 just put in some description about what you have been doing,
10 how diligently you have been pursuing discovery in this case
11 thus far.

12 And then, second, I would put in some of the numbers
13 that Mr. Schindler and you have raised that talk about the true
14 volume in this case and how extraordinary it is, and what your
15 vendors have represented to you about the time it would take to
16 go through all of that.

17 And, lastly, maybe I'm adding one more thing, you
18 know, an affirmation or a statement by the parties that they do
19 not intend to seek further continuances, that instead of coming
20 back to the Court, you know, every three months, you're asking
21 for a fairly lengthy extension now with the hope that you will
22 not need any further continuances, and so I think --

23 **MR. SCHINDLER:** And, so, your Honor, if --

24 **THE COURT:** Yeah, go ahead.

25 **MR. SCHINDLER:** I'm sorry, your Honor, it's David

1 Schindler.

2 Understood entirely, and I know that Mr. McAuliffe
3 shares the same views that I do, 4:07:22 what the Court has
4 said, we're mindful that this is a meaningful amount of time
5 and not a situation that would cause Judge Olguin or your Honor
6 to, in the future, say "Sure, you can have another extension."

7 So one thing that we're also trying to propose, just
8 to have some meaningful short term meet and confers along the
9 way to ensure, to guard against the problem that you have
10 raised as well; namely, that if for some reason the vendor is
11 suggesting it's not working that we know about that sooner
12 rather than later and not find ourselves exactly in the
13 position that you have raised so we are sensitive exactly to
14 the point you have raised and are implementing steps to try and
15 minimize that risk.

16 **THE COURT:** Understood. All right, well, I suggest
17 that you file then a stipulation and I would include, perhaps,
18 and this is very, very unusual, but I think in this context it
19 might make sense, a proposed recommendation as opposed to a
20 proposed Order because I do not have the authority, obviously,
21 to change the Scheduling Order, but I can make a recommendation
22 to the District Judge and I may not adopt verbatim what you
23 submit in terms of your proposed recommendation, but at least
24 that will very clearly confirm for me what it is you would like
25 me to recommend to the District Judge.

1 **MR. SCHINDLER:** Yes, your Honor, we will do exactly
2 that.

3 **THE COURT:** All right.

4 **MR. SCHINDLER:** And we very much appreciate your time
5 this morning.

6 **THE COURT:** All right.

7 **MR. MCAULIFFE:** Thank you very much, your Honor.

8 **THE COURT:** Thank you. Thank you.

9 **(All respond thank you)**

10 **(This proceeding was adjourned)**

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



Signed

October 11, 2019

Dated

TONI HUDSON, TRANSCRIBER