

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

UNITED STATES OF AMERICA, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 16-1493 (ABJ)
)	
ANTHEM, INC., <i>et al.</i> ,)	
)	
Defendants.)	

**ORDER ON MOTIONS IN LIMINE AND
ON OBJECTIONS TO CERTAIN EXHIBITS**

For the reasons stated on the record at the pretrial conference held on November 14, 2016, plaintiffs’ motions in limine were ruled upon and certain exhibits were admitted or excluded as set forth below. The pretrial conference will continue on Thursday, November 17, 2016 at 2:00 p.m.

I. MOTIONS IN LIMINE

Dkt. # 209: Plaintiffs’ Motion in Limine to Exclude the Declaration of Anthem’s Efficiencies Expert, Shubham Singhal, and Testimony from Defendants’ Experts Relying Upon that Declaration was GRANTED IN PART and DENIED IN PART. That portion of the motion seeking to exclude the declaration as an exhibit was denied as moot since the declaration is not being proffered; and that portion of the motion seeking to bar defendants’ experts from relying on the declaration is GRANTED IN PART and DENIED IN PART since pursuant to Federal Rule of Evidence (“FRE”) 703, the experts may rely on factual material contained in his declaration, but they may not proffer Singhal’s opinions as their own. Singhal may testify as a fact witness only,

and pursuant to FRE 701 and 702, the Court will entertain objections during his testimony if the defense seeks to elicit expert testimony in the form of a lay opinion.

Dkt. # 210: Plaintiffs' Motion in Limine to Exclude Defendants' Declarations and Testimony from Defendants' Expert Witnesses Relying Upon those Declarations was GRANTED IN PART and DENIED IN PART. Since the declarations are hearsay that do not meet the requirements of any exception or FRE 807, and they contain inadmissible lay opinions, the motion was granted with respect to all of the challenged exhibits¹ except DX 44, 186, 436, and 437, which may be admitted subject to any deposition excerpts proffered by plaintiffs under FRE 106.² *See also* Transcript of Status Conf. of Sept. 30, 2016 at 39–40 (“THE COURT [to counsel for Anthem]: . . . Is written direct testimony something that you’re seeking to utilize? [Counsel for Anthem]: No. THE COURT: All right. That’s the end of that. . . . I didn’t like the idea . . .”).

Dkt. # 211: Plaintiffs' Motion in Limine to Exclude Expert Opinion Testimony in Senator Benjamin Nelson's Declaration and Testimony from Defendants' Experts Relying Upon that Declaration was DENIED as moot. The amended declaration may be admitted.

Dkt # 212: Plaintiffs' Motion in Limine to Exclude Evidence of Purported Benefits Outside the Relevant Markets was DENIED.

1 The excluded exhibits are DX0001, DX0050, DX0176, DX0177, DX0178, DX0179, DX0180, DX0181, DX0182, DX0183, DX0184, DX0185, DX0187, DX0188, DX0189, DX0190, DX0192, DX0193, DX0194, DX0195, DX0196, DX0289, DX0429, DX0430, DX0431, DX0432, DX0433, DX0435, DX0438, DX0439, DX0440, DX0441, DX0509, DX0510, DX0514, DX0515, and DX0638.

2 Plaintiffs have provided notice that four of defendants' declarants have been deposed, *see* Pls.' Notice [Dkt. # 333], but defendants have indicated to the Court that a fifth declarant whose declaration appears as DX191 was also deposed. That declaration will be addressed at the continued pretrial conference on November 17, 2016.

II. EXHIBITS

The Court ruled as follows on exhibits.

Defendants' Objections to Plaintiffs' Exhibits:

Phase 1, Tier 1

Plaintiffs' Exhibits 1–34, 36, 97, 111, 325, 328, 329, and 346 will be admitted. Plaintiffs' Exhibit 327 is excluded but may be used to cross examine defense expert Singhal.

Phase 2, Tier 1

Plaintiffs' Exhibits 366, 378, 379, 380, 388, 455, 506, 507, 538, 594, 617, and 659 will be admitted. While Exhibit 617 has limited probative value, the relevance is not outweighed by any undue prejudice.

Plaintiffs' Objections to Defendants' Exhibits:

Phase 1, Tier 1

Defendants' Exhibits 13, 15, 16, 27, 31, 35, 40, 45, 49, 325, 329, 330, 331, and 332 will be admitted.

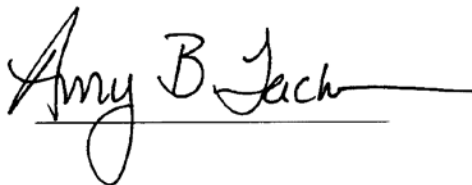
Defendants' Exhibit 8 does not appear to fall within any recognized exception to the hearsay rule, therefore it will be admitted only for the fact that the information contained in the report was conveyed to Cigna, not for the truth of any matter asserted or as a means to introduce any of the opinions or projections it contains.

The Court's ruling on Defendants' Exhibit 338 is deferred until the continued pretrial conference, pending further negotiation between the parties.

Phase 2, Tier 1

Defendants' Exhibits 420, 421, 424, 443, 444, 449, 451, 453, 454, and 455 will be admitted.

Defendants' exhibit 456 will be excluded.

A handwritten signature in black ink that reads "Amy B. Jackson". The signature is written in a cursive style with a horizontal line underneath the name.

AMY BERMAN JACKSON
United States District Judge

DATE: November 16, 2016