

Attachment C

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

QUAD/GRAPHICS, INC., QLC MERGER
SUB, INC., and LSC COMMUNICATIONS,
INC.

Defendants.

Civil Action No. 1:19-cv-04153

Hon. Charles R. Norgle, Sr.

**DECLARATION OF THOMAS DEMATTEO IN SUPPORT OF THE UNITED STATES'
MOTION TO ENTER SCHEDULING AND CASE MANAGEMENT ORDER**

I, Thomas DeMatteo, declare and state as follows:

1. I am an attorney with the Antitrust Division of the Department of Justice, counsel for the United States of America and counsel in the above-captioned matter. I have personal knowledge of the matters set forth in this Declaration and am competent to testify about them.
2. I submit this declaration in support of the United States' Motion to Enter Scheduling and Case Management Order.
3. A true and correct copy of the July 2, 2019 Letter from William H. Jones II of the U.S. Department of Justice to Jim McKeown of Foley & Lardner LLP and Steven L. Holley of Sullivan & Cromwell LLP, Re: *United States v. Quad/Graphics et al.*, is attached to this declaration as Exhibit 1.

4. A true and correct copy of the July 8, 2019 Letter from Craig Minerva of the U.S.

Department of Justice to Jim McKeown of Foley & Lardner LLP and Steven L. Holley of Sullivan & Cromwell LLP, Re: *United States v. Quad/Graphics et al.*, is attached to this declaration as Exhibit 2.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

July 9th, 2019.



Thomas DeMatteo

Exhibit 1
(Attachment C)



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

July 2, 2019

Jim McKeown
Foley & Lardner LLP
777 East Wisconsin Ave.
Milwaukee, WI 53202

Steven L. Holley
Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004

Re: *United States v. Quad/Graphics et al.*

Dear Jim and Steve:

I am following up on our ongoing discussion regarding an appropriate trial date in this matter.

The United States continues to believe that the most prudent course is to proceed directly to a full trial on the merits on a reasonable, expedited schedule. Doing so would allow for timely resolution of this matter, while also providing the parties sufficient time to prepare and present their respective cases to the Court.

We do not believe your proposal for a trial beginning on October 1 is acceptable or consistent with this approach. The United States' trial preparation will entail, *inter alia*, discovery of customers and competitors, depositions of party witnesses, exchanges of interrogatories, document requests, deposition designations, and exhibits, motions in limine, pretrial briefing, development of expert reports, and expert depositions. The schedule you propose severely restricts each of these critical elements of trial preparation and would prejudice the United States' ability to present its case.

Despite our disagreement, however, and as we have continued to emphasize during our calls, we would like to work with you to reach a mutually agreeable solution on scheduling. Accordingly, we propose the following two options for your consideration, both of which are calculated to strike a reasonable balance between Defendants' desire for a prompt resolution in

this matter and the United States' need for a sufficient opportunity to prepare for and present its case to the Court in order to protect the interest of American consumers:

- Trial on the merits beginning November 12, 2019 (or as soon as convenient for the Court), with interim dates outlined in Attachment A; or
- A preliminary injunction motion pursuant to the briefing schedule outlined in Attachment B, with a hearing on August 8 (or as soon as convenient for the Court) only if the Court decides one is necessary, followed by a trial on the merits beginning December 9, 2019 (or as soon as convenient for the Court).

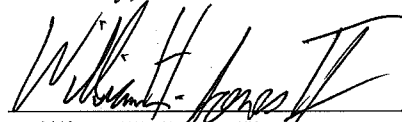
We believe that either of these schedules would achieve our mutual objectives, and would require only a modest extension of Defendants' walk-away option date.

We recognize that proceeding directly to trial offers the most efficient path to resolving this matter, but also recognize that Defendants' desire to receive an early indication from the Court may make our second proposal more attractive. Accordingly, the second proposal provides for a preliminary injunction motion culminating in a hearing on August 8 (or as soon as convenient for the Court), if the Court deems such a hearing to be necessary.¹

Finally, under either proposal, Defendants would need to agree not to consummate the transaction prior to the Court's ruling on the preliminary injunction or following a trial on the merits. Please confirm promptly whether Defendants will agree to preserve the status quo pending the Court rendering a decision. If Defendants are unwilling to agree not to consummate their transaction, the United States will advise the Court on July 11 that it will need to file a motion for a temporary restraining order to preserve the status quo.

Please let us know if you would like discuss further.

Sincerely,



William H. Jones II
U.S. Department of Justice
450 Fifth Street, NW #4000
Washington, D.C. 20530
Counsel for Plaintiff United States of America

¹ We do not believe an evidentiary hearing is warranted here. Based on our review of the case law, district courts in the Seventh Circuit can, and do, resolve preliminary injunction motions on the briefs.

ATTACHMENT A

Event	Date
Fact discovery begins	On filing of this proposed Order
Parties produce Investigation Materials	Two business days after entry of this proposed Order
Answers to Complaint due	Seven business days after entry of this Order
Parties exchange preliminary trial witness lists	August 2, 2019
Parties exchange final trial witness lists	August 30, 2019
Close of fact discovery	September 13, 2019
Close of Supplemental Discovery	September 20, 2019
Parties serve Rule 26(a)(2)(B) initial expert witness disclosures that contain complete statements of all opinions the witness will express and the basis and reasons for those opinions.	September 20, 2019
Parties serve Rule 26(a)(2)(D)(ii) expert witness disclosures that are intended solely to contradict or rebut evidence on the same subject matter identified by another Party under Rule 26(a)(2)(B)	October 4, 2019
Parties exchange exhibit lists and opening deposition designations	October 8, 2019
Each Party informs each non-party of all documents produced by that non-party that are on that Party's exhibit list and all depositions of that non-party that have been designated by any Party	October 15, 2019
Each side exchanges its objections to the other side's exhibits and opening deposition designations and its deposition counter-designations	October 15, 2019
Parties submit proposed Trial Procedures Order	October 15, 2019
Motions <i>in limine</i> to be filed	October 18, 2019
Non-parties provide notice whether they object to the potential public disclosure at trial of any non-party documents and depositions, explain the basis for any such objections, and propose redactions where possible	October 22, 2019
Each side exchanges its objections to the other side's deposition counter-designations and its counter-counter-designations	October 22, 2019
Parties serve supplemental/rebuttal expert witness	October 23, 2019

disclosures that are intended solely to contradict or rebut evidence on the same subject matter identified by another Party under Rule 26(a)(2)(D)(ii)	
Parties and non-parties meet and confer regarding confidentiality of non-party documents on trial exhibit lists and non-party depositions	October 25, 2018
Parties meet and confer regarding admissibility of trial exhibits and deposition designations	October 25, 2018
Parties meet and confer regarding disputes about confidentiality of Party documents on trial exhibit lists	October 25, 2018
Oppositions to motions <i>in limine</i> to be filed	October 28, 2019
Close of expert discovery	October 30, 2019
Replies in support of motions <i>in limine</i> to be filed	October 31, 2019
Joint submission regarding disputes about admissibility of trial exhibits and deposition designations	November 1, 2019
Joint submission regarding disputes about confidentiality of Party documents on trial exhibit lists to be filed	November 1, 2019
Joint submissions regarding disputes about confidentiality of each non-party's documents on trial exhibit lists and non-party depositions to be filed	November 1, 2019
Pretrial briefs to be filed	November 1, 2019
Final pretrial conference	November 8, 2019 , or at the Court's earliest convenience thereafter
Parties submit final trial exhibits to Court	November 8, 2019
First day of trial	November 12, 2019 , or at the Court's earliest convenience thereafter
Post-trial briefs and proposed findings of fact and conclusions of law to be filed	Three weeks after trial concludes

ATTACHMENT B

Event	Date
Fact discovery begins	On filing of this proposed Order
Parties produce Investigation Materials	Two business days after entry of this proposed Order
Answers to Complaint due	Ten business days after entry of this Order
Plaintiff's motion for preliminary injunction due	July 25, 2019
Defendants' opposition to Plaintiff's motion for preliminary injunction due	August 1, 2019
Plaintiff's reply in support of its motion for preliminary injunction due	August 5, 2019
Hearing on Plaintiff's motion for preliminary injunction, if ordered by the Court	August 8, 2019 , or at the Court's earliest convenience thereafter
Parties exchange preliminary trial witness lists	August 16, 2019
Parties exchange final trial witness lists	September 13, 2019
Close of fact discovery	September 27, 2019
Close of Supplemental Discovery	October 4, 2019
Parties serve Rule 26(a)(2)(B) initial expert witness disclosures that contain complete statements of all opinions the witness will express and the basis and reasons for those opinions.	October 4, 2019
Parties submit proposed Trial Procedures Order	October 11, 2019
Parties serve Rule 26(a)(2)(D)(ii) expert witness disclosures that are intended solely to contradict or rebut evidence on the same subject matter identified by another Party under Rule 26(a)(2)(B)	October 18, 2019
Parties exchange exhibit lists and opening deposition designations	October 25, 2019
Each Party informs each non-party of all documents produced by that non-party that are on that Party's exhibit list and all depositions of that non-party that have been designated by any Party	October 30, 2019
Each side exchanges its objections to the other side's exhibits and opening deposition designations and its deposition counter-designations	November 1, 2019
Parties serve supplemental/rebuttal expert witness disclosures that are intended solely to contradict or rebut evidence on the same subject matter identified by another Party under Rule 26(a)(2)(D)(ii)	November 6, 2019

Motions <i>in limine</i> to be filed	November 8, 2019
Non-parties provide notice whether they object to the potential public disclosure at trial of any non-party documents and depositions, explain the basis for any such objections, and propose redactions where possible	November 8, 2019
Each side exchanges its objections to the other side's deposition counter-designations and its counter-counter-designations	November 8, 2019
Close of expert discovery	November 15, 2019
Parties and non-parties meet and confer regarding confidentiality of non-party documents on trial exhibit lists and non-party depositions	November 15, 2019
Parties meet and confer regarding admissibility of trial exhibits and deposition designations	November 15, 2019
Parties meet and confer regarding disputes about confidentiality of Party documents on trial exhibit lists	November 15, 2019
Oppositions to motions <i>in limine</i> to be filed	November 18, 2019
Replies in support of motions <i>in limine</i> to be filed	November 21, 2019
Joint submission regarding disputes about admissibility of trial exhibits and deposition designations	November 22, 2019
Joint submission regarding disputes about confidentiality of Party documents on trial exhibit lists to be filed	November 22, 2019
Joint submissions regarding disputes about confidentiality of each non-party's documents on trial exhibit lists and non-party depositions to be filed	November 22, 2019
Pretrial briefs to be filed	November 22, 2019
Final pretrial conference	December 4, 2019 , or at the Court's earliest convenience thereafter
Parties submit final trial exhibits to Court	December 6, 2019
First day of trial	December 9, 2019 , or at the Court's earliest convenience thereafter
Post-trial briefs and proposed findings of fact and conclusions of law to be filed	Three weeks after trial concludes

Exhibit 2
(Attachment C)



U.S. Department of Justice

Antitrust Division

Liberty Square Building

*450 5th Street, N.W.
Washington, DC 20001*

July 8, 2019

Jim McKeown
Foley & Lardner LLP
777 East Wisconsin Ave.
Milwaukee, WI 53202

Steven L. Holley
Sullivan & Cromwell LLP
125 Broad St.
New York, NY 10004

Re: *United States v. Quad/Graphics et al.*

Dear Jim and Steve:

Thank you for speaking with me and my colleagues on Friday, July 5, regarding the scheduling options we presented in the July 2 letter from Bill Jones to you, as well as several other open issues concerning a proposed case management order. Based on that discussion, we understand that notwithstanding good-faith negotiations by both sides, several areas of disagreement remain.

We explained the rationale for the two schedule options we offered in the July 2 letter. The first option of proceeding straight to a trial on the merits beginning November 12 (or as soon thereafter as convenient for the Court) is the most truncated timing plausible for a trial on the merits given the pre-trial events necessary as discussed at June 28 hearing. As we have previously mentioned, we believe a reasonable extension of the Defendants' walk-away option date would be an appropriate decision similar to what other companies in similar situations have done.

The second scheduling option we proposed includes a preliminary injunction proceeding before a full trial on the merits. This schedule includes a preliminary injunction hearing on August 8 (or as soon thereafter as convenient for the Court) in the event that the Court determines a hearing is necessary. This schedule allows for a decision on a preliminary injunction in advance of the existing walk-away option date without any extension of it. We thought this proposal would interest you for that reason and because you had previously asked for a proposal contemplating a preliminary injunction proceeding. However, we understand

from the Friday discussion not only that you reject our specific proposal for a preliminary injunction schedule but also that you are not interested in responding with an alternative schedule proposal for an interim preliminary injunction decision prior to a full trial on the merits.

We confirmed your understanding that neither of our proposed schedule options would lead to a decision on a full trial prior to Defendants' current October 30 walk-away option date. To be clear though, our proposal for a schedule with a preliminary injunction would lead to a decision on such a motion prior to that date. Moreover, we do not consider Defendants' demand for a trial decision prior to October 30 to be consistent with the discussion at the June 28 hearing that a trial date in September is unreasonable.

We also asked again whether there has been any update on Defendants' willingness to extend the walk-away option date. We understand that Quad is not entertaining that possibility and that LSC would consider a short extension but that decision would have to be reached by its Board of Directors. Moreover, we understand that a schedule that leads to a trial decision at the end of January likely would be unacceptable to LSC.

The July 2 letter from Mr. Jones to you asked you to confirm promptly whether Defendants will agree to preserve the status quo pending the Court rendering a decision. We explained that absent such an agreement, the United States will need to advise the Court of the need to file a motion for a temporary restraining order to preserve the status quo. On the Friday call, Mr. McKeown indicated that he would need to discuss this with Quad and get back to us.¹ We reiterate our request for a prompt response so as to avoid unnecessary diversion by the Court and the United States in the event that a temporary restraining order is unnecessary.

We also highlighted that our November 12 trial date proposal is predicated on the position, set out in our proposed case management order, that the trial would consider liability only and that any remedy proposed by Defendants would be bifurcated to a subsequent proceeding. We asked whether Defendants intend to present evidence during this case of any proposed remedy, and Mr. McKeown agreed to get back to us with a response. In the event that Defendants do plan to present evidence of a proposed remedy at trial and the Court determines not to hold a bifurcated trial, then the United States would require additional time and discovery prior to trial to investigate Defendants' proposed remedy making a trial starting on November 12 untenable.

We also discussed several other items in the drafts of the proposed case management orders. Our most recent proposed case management order sent to you today sets out our current position on those issues, and we remain available to continue to discuss any of those issues.

¹ We understand that LSC will follow Quad's lead on this issue.

Sincerely,

/s/ Craig D. Minerva

Craig D. Minerva

U.S. Department of Justice

450 Fifth Street, NW #4000

Washington, D.C. 20530

Counsel for Plaintiff United States of America