

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

PUEBLO OF ZUNI,

Plaintiff,

vs.

CIVIL NO. 01-1046 LH/LFG

UNITED STATES OF AMERICA et al.,

Defendants.

SCHEDULING AND DISCOVERY ORDER,
AND RULINGS ON PENDING NON-DISPOSITIVE MOTIONS

THIS MATTER is before the Court on a Fed. R. Civ. P. 16 scheduling conference conducted on April 19, 2005. The Court considered Defendants' Motion to Stay Briefing on Plaintiff's Motion for Class Certification and to Stay Discovery [Doc. 35] and Defendants' Motion for an Enlargement of Time to Answer or Otherwise Respond to First Amended Complaint [Doc. 42] and determines that the motion should be granted in part and denied in part. Defendants will be given thirty days from entry of this order to file its answer or, alternatively, to file any motion to dismiss. Plaintiff has also agreed to withdraw its Motion for Class Certification for the time being, thus, making moot Defendant's motion to stay briefing.

Plaintiff previously filed its Motion for Class Certification [Doc. 26] on March 9, 2005. This motion is premature as some discovery will be necessary for Rule 23 issues. Accordingly, Plaintiff will withdraw its motion and will file a notice of withdrawal within ten days. The motion will be re-filed upon phase one discovery.

After considering the recommendations in the Federal Judicial Center's Manual for Complex Litigation (4th Ed. 2004), the Court determines that phased or staggered discovery is appropriate.

The first phase of discovery (phase one) will be directed toward the Rule 23 issues of numerosity, commonality of questions of law or fact, typicality of claims or defenses, and whether the representative parties will fairly and adequately protect the interests of the class.

The Court assigns phase one discovery to a 90-day schedule. Thus, phase one discovery must end by July 19, 2005; discovery motions must be filed no later than August 8, 2005.

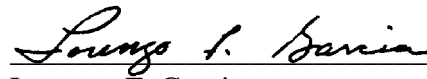
For purposes of class certification, each side is entitled to 10 depositions with each deposition limited to one deposition day of seven hours, not counting lunch breaks or any recess. Each side may serve 50 interrogatories, make 50 requests for production and 50 requests for admission.

After completion of phase one discovery, Plaintiff will file a new motion for class certification. Once the motion to certify the class is fully briefed, no further discovery will proceed pending the Court's consideration and disposition of the class certification motion. Should the class be certified, the case will be assigned to a "standard" case management track for phase two merits discovery with a 150-day schedule. For phase two merits discovery, each side will be permitted the same discovery as phase one, that is, 10 depositions per side, fifty interrogatories, fifty requests for production, fifty requests for admission, and the length of depositions will be the same as in phase one.

At present, the parties expect that a 150-day standard case management track is sufficient to complete phase two merits discovery, but recognize that given the significant number of contracts at issue, it may be necessary for the parties to request additional discovery or even request a transfer from the "standard" case management track to the "complex" case management track.

Should the class be certified, the Court will issue a new scheduling order outlining appropriate case management deadlines without the necessity of a further scheduling conference unless a conference is requested by the parties.

Should the class not be certified, the stay of discovery will be lifted and the case assigned to the standard case management track with a 150-day discovery schedule. The Court will issue a scheduling order with appropriate case management deadlines without the need of a further scheduling conference.



Lorenzo F. Garcia
Chief United States Magistrate Judge