

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

AUTOCAM CORPORATION, *et al.*,

Plaintiffs,

CASE NO. 1:12-CV-1096

v.

HON. ROBERT J. JONKER

KATHLEEN SEBELIUS, Secretary of the
United States Department of Health and
Human Services, *et al.*,

Defendants.

_____ /

ORDER

This matter is before the Court on the portion of Plaintiffs' Motion for Preliminary Injunction (docket # 8) that seeks expedited consideration. The Court has carefully reviewed the record and does not find good cause for expedited consideration. Plaintiffs filed their action on October 8, 2012, and their Motion for Preliminary Injunction two days later. Plaintiffs say they need to know by November 1, 2012, whether the Court will enjoin enforcement of federal regulations affecting group health plan coverages before the new plan year effective January 1, 2013. Granting expedited consideration would require the parties and the Court to set aside already scheduled commitments in other cases, assimilate significant factual information, engage in analysis of complicated and still emerging legal issues, conduct a hearing – possibly evidentiary – and issue a decision in less time than the Local Rules ordinarily provide for the first response brief. Plaintiffs have not established good cause for that kind of expedited consideration in this case, and so the Court denies the request

for expediting and intends to handle the pending motion on the normal timeline provided in the Local Rules for motions seeking injunctive relief.

In this case, the showing of good cause for expediting falters on two points. First, the November 1, 2012 deadline is driven primarily by Plaintiffs' desire to have time to work with its insurance carriers so that health plans can be ready to launch by January 1, 2013. Of course, nothing in the challenged regulation requires action or inaction by November 1; rather, it is simply Plaintiffs' apparent estimate of lead time it would like to have before the January 1, 2013 regulatory deadline. Moreover, the November 1 deadline is not supported by affidavit, declaration, or other evidence; it is simply the assertion of Plaintiffs' counsel. The desire of Plaintiffs' counsel to give Plaintiffs time to consult with their insurance provider is not enough to support a request for expediting that imposes on the convenience and ordinary process of the Court and other litigants. The Court also expects that the Plaintiffs can and will work with their insurance provider to prepare for all reasonable contingencies, as good businesspeople routinely do.

Second, even assuming November 1, 2012, were a hard regulatory deadline totally outside of Plaintiffs' control and convenience, there would not be good cause for expediting in this case. That is because Plaintiffs could have brought their challenge sufficiently in advance of their desired deadline of November 1, 2012, to provide for decision-making on the normal timetable of the Court. The regulations giving rise to this case issued in interim form with request for comment on July 19, 2010, over two years ago. 75 Fed. Reg. 41726. Amended interim final regulations with request for comment issued August 3, 2011, over one year ago. 76 Fed. Reg. 46621. Final rules issued on February 15, 2012 and took effect on April 16, 2012. 77 Fed. Reg. 8725. The Federal Register notice makes it plain that the very issues now joined in litigation were part of the comment process.

Id. Moreover, there has been considerable litigation on the topic (at least from non-profit organizations) since as early as 2011. Even assuming it was reasonable to wait for the Supreme Court decision as to the overall constitutionality of the Affordable Care Act, there remained ample time to file so that the parties and the Court would have time to consider the issues before the Plaintiffs' asserted deadline of November 1, 2012. Expedited consideration is not for parties that create the need for prompt action by delaying a filing that could reasonably have been brought earlier.

For these reasons, the Court finds that Plaintiffs have failed to establish good cause for expedited consideration. The deadlines the Local Rules establish for motions seeking injunctive relief remain in effect.

ACCORDINGLY, IT IS ORDERED:

1. Plaintiffs' Request for Expedited Consideration of Motion for Preliminary Injunction (docket # 8) is **DENIED**.
2. Defendants' Motion for Status Conference to discuss expediting (docket # 10) is **DISMISSED AS MOOT**.

Dated: October 12, 2012

/s/ Robert J. Jonker
ROBERT J. JONKER
UNITED STATES DISTRICT JUDGE