

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

UNITED STATES OF AMERICA *ex rel.*
STEVEN SCOTT,

Plaintiff,

v.

HUMANA INC.,

Defendant.

Civil Action No. 3:18-cv-00061-GNS-CHL

**DECLARATION OF RICHARD S. FOSTER IN SUPPORT OF PLAINTIFF-RELATOR
STEVEN SCOTT'S OPPOSITION TO DEFENDANT HUMANA INC.'S
MOTION TO COMPEL EXPERT WITNESS DEPOSITION TESTIMONY AND
RESPONSES TO REQUESTS FOR PRODUCTION AND INTERROGATORIES**

I, Richard S. Foster, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am an independent consulting health actuary and an expert witness for Plaintiff-Relator Steven Scott in the above-captioned matter. I am over 21 years of age and am competent to give testimony. By virtue of my role as an expert witness for Relator, the statements contained in this declaration are based on my personal knowledge. I make this declaration in support of Plaintiff-Relator Steven Scott's Opposition to Defendant Humana Inc.'s Motion to Compel Expert Witness Deposition Testimony and Responses to Requests for Production and Interrogatories, filed October 9, 2020.

2. I have been a consulting expert for Relator in this matter since June 2018 and a testifying expert since late 2018. Pursuant to my agreement with Relator, I have consulted with the government in connection with this case.

3. In connection with my work as a testifying expert witness for Relator, I produced three expert reports – an affirmative expert report dated April 21, 2020, a rebuttal report dated June 15, 2020, and a supplemental report dated August 21, 2020.

4. Other than information the Centers for Medicare & Medicaid Services (“CMS”) has produced to both parties in this litigation, none of my opinions in any of those three expert reports are based on any information from or communications with current government officials, including officials from CMS, since I have been retained in this case.

5. Specifically, my April 21, 2020 affirmative expert report provides my opinions regarding the significance of the Part D program’s actuarial equivalence requirement and whether the alleged false representations in Humana’s bids were capable of influencing the payment of money to Humana by CMS. Those opinions are based on my education, knowledge, and understanding of CMS’s actuarial requirements for PDP bids developed over 46 years of actuarial experience, including as the Chief Actuary for CMS from February 1995 through January 2013. All of the facts, data, and assumptions that I relied upon to form these opinions are set out in my April 21, 2020 report. None of the facts or data I considered or the assumptions I relied on in forming the opinions in this affirmative report came from any conversations I had with anyone in the government since I have been retained in this case.

6. My June 15, 2020 rebuttal report provides my evaluation of and opinions concerning three specific assertions made in the affirmative expert report of Humana’s expert, Ross Winkelman. Those opinions rely on my education, knowledge, and over 46 years of actuarial experience, including as Chief Actuary for CMS from February 1995 through January 2013. All of the facts, data, and assumptions that I relied upon to form these opinions are set out in my June 15, 2020 report. None of the facts or data I considered or the assumptions I

relied on in forming the opinions in this rebuttal report came from any conversations I had with anyone in the government since I have been retained in this case.

7. My August 21, 2020 supplemental report provides my opinions on statements made by Jennifer Lazio, the Director of the Parts C&D Actuarial Group in the Office of the Actuary, in her August 7, 2020 declaration in this case. As with my affirmative and rebuttal reports, none of the facts or data I considered or the assumptions I relied on in forming the opinions in this supplemental report came from any conversations I had with anyone in the government since I have been retained in this case.

8. To the extent that I have communicated with the government during the course of my involvement in this case, those communications were not made for the purposes of informing my expert opinions in any way, and none of those communications affected my expert opinions in any way. Those communications were also unrelated to the facts or data I considered in forming my opinions set forth in my three expert reports, or the assumptions I relied on in forming those opinions. Instead, I consulted with the government to assist in its evaluation of aspects of the case other than those on which I have provided expert opinions.

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

Executed this 9th day of October 2020.


Richard S. Foster, FSA, MAAA