

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

BRITISH TELECOMMUNICATIONS PLC, §
§
Plaintiff, §
§
v. §
§
IAC/INTERACTIVECORP, MATCH §
GROUP, INC., MATCH GROUP, LLC, and §
VIMEO, INC., §
§
Defendants. §

Civil Action No. 18-366-WCB

ORDER

The parties have submitted competing letters to the court regarding a scheduling dispute. Dkt. Nos. 186 & 187. The dispute concerns four discovery depositions of defendants’ witnesses that are now scheduled for various dates between April 1 and April 15, 2020. Three of the scheduled depositions are Rule 30(b)(6) depositions and one is a Rule 30(b)(1) deposition. In light of the current situation with the spread of the COVID-19 outbreak and the restrictions on movement imposed by various state and local governments, the defendants wish to postpone the depositions. The plaintiff wants to proceed with the depositions as scheduled, by videoconferencing.

The situation with regard to restrictions on movement is changing rapidly and, for now at least, is not becoming less restrictive. I will not take action that would potentially endanger the health of any participant in the scheduled depositions or require any witness, counsel, or videographer to violate local or state stay-at-home directives, which have been adopted in California and Dallas, Texas, where the four depositions are scheduled to be held, two in Los Angeles and two in Dallas. Both California and Dallas County, Texas, have made exceptions to

their stay-at-home directives for “essential services,” and both have defined “essential services” that are exempt from the stay-at-home orders to include professional services, such as legal services “when necessary to assist in compliance with legally mandated activities.” It is doubtful whether that definition of “essential services” includes participation in civil discovery depositions. The parties have not pointed to any guidance issued by either jurisdiction that would shed light on that issue. If the stay-at-home directives would apply to civil discovery depositions and those directives are not amended or lifted by the scheduled dates for the depositions, the depositions could not lawfully be held, unless arrangements could be made such that the witnesses and other participants in Los Angeles and Dallas could all participate from their homes.

There is another problem, however, that makes conducting the three Rule 30(b)(6) depositions impracticable. The defendants represent that the defendants’ offices are closed and that information stored in the defendants’ offices is not available to the deponents at this time because of closures attributable to the COVID-19 response. The lack of access to documents and knowledgeable individuals, the defendants assert, would make adequate preparation for those depositions impossible. I credit that representation. I will therefore not require that the three Rule 30(b)(6) depositions go forward as presently scheduled.

The final deposition, scheduled for April 15, 2020, in Dallas, is a Rule 30(b)(1) deposition of Amaranth Thombre. In their letter, the defendants expressed a willingness to go forward with that deposition, depending on prevailing conditions at the time scheduled and assuming that the plaintiff can make suitable technical arrangements. If that deposition can be arranged and conducted lawfully, it may proceed.¹ Otherwise, that deposition will also be postponed.

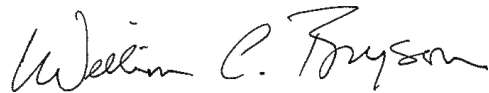
¹ The parties should seek to determine whether a deposition in a civil case falls within the Dallas County directive’s exemption for essential services. If not, the parties should attempt to determine whether a feasible form of videoconferencing and recording can be arranged that would

Accordingly, for now the three Rule 30(b)(6) depositions will be postponed, but the Rule 30(b)(1) deposition may proceed unless the parties determine that it may not be conducted pursuant to the Dallas County COVID-19 directive.

If the situation changes between now and the scheduled dates of the depositions, I will reconsider this order. It is not necessary at this time to decide what changes need to be made to the scheduling order, although it seems that at least the date for the close of fact discovery will have to be altered. The situation is so fluid at this point, however, that it would make little sense to set a new date for the close of fact discovery that would likely need to be revisited within a matter of days or weeks.

IT IS SO ORDERED.

SIGNED this 26th day of March, 2020.



WILLIAM C. BRYSON
UNITED STATES CIRCUIT JUDGE

not require travel by any of the participants in the deposition, such as the use of Skype or similar technology.