

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

04-cr-30-bbc

DIOGENES A. DIONISIO

Defendant.

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Before the court are defendant Diogenes Dionisio's Motion for a Bill of Particulars (dkt. 15) and his motion for pretrial disclosure of the government's witness list and witness addresses. (Dkt. 16). For the reasons stated below, I am denying both motions.

Starting with the witness list dispute, neither side separately briefed this issue, perhaps because it is virtually subsumed within the motion for a bill of particulars. As a practical matter and as discussed below, it appears that Dr. Dionisio now has obtained most or all of this information from the government. Whether I view the motion as abandoned, subsumed or moot, it is denied.

In the other motion, Dr. Dionisio requested eight categories of particulars, most of which are requests for evidentiary specificity. *See* dkt. 15 at ¶ 3(a)-(h). Dr. Dionisio notes that the alleged conspiracy lasted 22 months and could encompass up to 890 insurance claims. Dr. Dionisio observes that the indictment states simply that he "inflated the cost of the service" billed in CHAMPUS claims but does not specify which services—medications, lab tests, x-rays, inpatient services, physician services—the grand jury had in mind. Given the number of claims and the number of line items per claim, Dr. Dionisio asserts that he cannot reasonably anticipate the evidence the government would produce at trial and adequately prepare his defense. Brief in Support, dkt. 33, at 3-4.

The government opposes providing any particulars. *See* Brief in Response, dkt. 44. It reports that it has provided open file discovery, including transcripts of all grand jury testimony, all witness

interview reports and all documents in WPS's files regarding the claims made by Dr. Dionisio. More recently—that is, earlier today—the government disclosed its Rule 1006 summary chart (*see* dkt. 66) and provided its required notice of intent to offer evidence at trial (*see* dkt. 67). In the latter, the government announced its intent to dismiss the false claims charges (Counts 2 and 3), leaving only the conspiracy charge; it also named its three witnesses whose claims it contends are part of the alleged kickback conspiracy and who it alleges are Dr. Dionisio's coconspirators. The government also announced its intent to offer Dr. Dionisio's own statement to agents in which he allegedly admitted to inflating hundreds of claims and allowing his patients to keep part of the payments.

Against the current backdrop, there is no need for a bill of particulars. A bill of particulars under Rule 7(f) is not designed to provide a defendant with a detailed disclosure of the government's witnesses, legal theories or evidentiary detail. *See Wong Tai v. United States*, 273 U.S. 77, 82 (1927). The Court of Appeals for the Seventh Circuit disfavors bills of particulars, deeming them unnecessary whenever the indictment sets forth the elements of the offense charged, the time and place of the accused's conduct which constituted a violation, and a citation to the statutes violated. *See United States v. Blanchard*, \_\_\_ F.3d \_\_\_, 2008 WL 4119995 (7<sup>th</sup> Cir. Sept. 8, 2008 ) at \*4, *citing United States v. Fassnacht*, 332 F.3d 440, 446-47 (7<sup>th</sup> Cir. 2003) and *United States v. Hernandez*, 330 F.3d 964, 975 (7<sup>th</sup> Cir. 2003).<sup>1</sup> Because every valid indictment contains this information, it is difficult to envisage a circumstance in which a defendant in this circuit would be entitled to a bill.

Even so, this court can exercise—and occasionally has exercised—its discretion to order bills when confronted with a squinched indictment, white squalls of discovery and squeaky-tight deadlines. But this case does not present any of these obstacles.

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<sup>1</sup> The court has hewn to this policy for the last quarter-century. *See United States v. Kendall*, 665 F.2d 126, 134 (7th Cir. 1981), *cert. denied*, 455 U.S. 1021 (1982), *quoting United States v. Roy*, 574 F.2d 386, 391 (7th Cir. 1978); *United States v. Glecier*, 923 F.2d 496, 502 (7th Cir. 1991), *citing Kendall*, 665 F.2d at 135; *United States v. Canino*, 949 F.2d 928, 949 (7th Cir. 1991); *United States v. Andrus*, 775 F.2d at 843; *United States v. Glecier*, 923 F.2d at 502.

First, the grand jury returned a speaking indictment that, while not exactly *Atlas Shrugged*, adequately and clearly sets forth the government's theory of prosecution so that Dr. Dionisio understands what he is accused of having done in violation of the anti-kickback statute. Second, for six months the government has sedulously disseminated its evidence, including all documents that form the basis of its claims, its Rule 1006 summary chart and the identities of its key witnesses. Third, this court has given Dr. Dionisio ample time to review the discovery. We started with a very long trial date (by this court's standards) and then I granted Dr. Dionisio's request for an additional two months to prepare. In fact, Dr. Dionisio now *opposes* the government's motion for a brief continuance to allow some breathing room between final resolution of the dispositive motions and trial. Whatever concerns Dr. Dionisio may have had at the time he filed his motion have sufficiently abated that there is no need for a bill of particulars.

ORDER

It is ORDERED that defendant's two remaining discovery motions, dkts. 15 and 16, are DENIED.

Entered this 15<sup>th</sup> day of October, 2008.

BY THE COURT:

/s/

STEPHEN L. CROCKER  
Magistrate Judge