2. A decision from the U.S. District Court for the Southern District of New York granting so-called "copycat" or "cloned" discovery of documents produced by a party in a prior litigation but narrowing the documents to be re-produced to omit documents that would not be relevant to the current litigation.

In another opinion from *United States v. Anthem, Inc.*, 20-CV-2593 (ALC) (KHP), 2024 WL 1116276 (S.D.N.Y. Mar. 13, 2024), Magistrate Judge Parker addressed the standards applicable to requests for wholesale reproduction of documents produced by a party in a prior litigation.

At issue in this decision was Anthem's first request for production to the government in discovery, which sought so-called "copycat" or "clone" production of all discovery previously produced in a prior litigation involving similar claims against one of Anthem's competitors, *United States ex rel. Poehling v. UnitedHealth Group*. *Id.* at *2. Specifically, Anthem sought production of "all documents that the government produced in response to any discovery requests served on the government in the *Poehling* litigation, regardless of time period," as well as information about discovery in the *Poehling* matter, including information about the discovery requests, custodians, discovery negotiations, and the government's privilege log.

Discovery in the *Poehling* litigation involved collection from 187 custodians for the time period 2000 to 2019, after which the government applied broad search terms (some of which were specific to the defendant in the case) and applied technology-assisted review to a subset of the documents collected. Approximately 3 million documents were produced in the *Poehling* litigation, and Magistrate Judge Parker stated that many of those documents would be relevant in this action but not all (including because the *Poehling* litigation involved a much longer time period).

Magistrate Judge Parker noted that Anthem had already received a substantial set of core documents and testimony from the *Poehling* litigation because she had previously ordered the government to produce "certain documents from the *Poehling* litigation to allow the parties to benefit from work done in *Poehling* and tailor discovery in this action to information that was specific to Anthem and not redundant of key information that could be learned from *Poehling*." *Id.* at *3. This resulted in the government's producing 55,000 documents from the *Poehling* litigation. As a result of this production, Anthem narrowed its request for copycat discovery to seek 2.2 million additional documents produced in *Poehling* from only 40 out of the total 187 custodians.

Magistrate Judge Parker began her analysis with a discussion of the relevant rules. She explained that Rule 26(b)(3) specified that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense and proportional to the needs of the case." She further explained that in assessing proportionality, the court considers "the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit."

Magistrate Judge Parker also discussed Rule 34, which requires a party to "describe with reasonable particularity each item or category of items requested." She noted that Rule 34 prohibits "overly broad, non-particularized discovery requests that reflexively sought all documents, overuse of boilerplate objections that provided insufficient information about why a party was objecting to producing requested documents, and responses that failed to clarify whether responsive documents were being withheld on the basis of objections." *Id.* at *4 (quoting The Sedona Conference Federal Rule of Civil Procedure 34(b)(2) Primer: Practice Pointers for Responding to Discovery Requests, Sedona Conference Journal Vol 19, pp. 452-53 (2018)) (internal quotations omitted).

Magistrate Judge Parker highlighted a "best practice tip offered by the Sedona Conference" that she "fully endorses," which was "that requesting parties should tailor their requests to minimize objections and facilitate substantive responses." She further noted that "[a]ny increase in scope gained by overbroad requests is likely offset by wasted time spent resolving objections or narrowing the scope of the request, or by motion practice in which the request may be viewed as overbroad."

As related to "copycat" or "clone" discovery requests, Magistrate Judge Parker stated that numerous courts have found that requests for "all" documents produced in another litigation are "inherently overbroad requests requiring the Court to considerably scale back the information that a producing party must produce from another litigation or deny it entirely on the ground that a party must do its own work." *Id.* at *4 (surveying cases).

Applying these principles to Anthem's request for discovery from the *Poehling* litigation, Magistrate Judge Parker decided on "a middle approach that it believes is consistent with Rule 1 and 26(b)(3), minimizes the burdens on both parties and capitalizes on the work already done by the parties in *Poehling*." Specifically, she ordered the government to produce documents from the 40 custodians in Anthem's limited request for *Poehling* documents but only for limited time periods applicable to this case; eliminate documents related to the defendant in *Poehling*; and eliminate

other documents related to issues not relevant in this litigation or that were withheld as being subject to the deliberative process privilege in *Poehling*. *Id.* at *5.