

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION**

LISA TORREY, et al.,

Plaintiffs,

v.

INFECTIOUS DISEASES SOCIETY OF
AMERICA, et al.,

Defendants.

Civil Action No. 5:17-cv-00190-RWS

**JOINT REPORT OF THE PARTIES FOLLOWING
MOTIONS HEARING ON APRIL 23, 2021**

On April 23, 2021, the Court heard argument on motions, including a Motion to Stay (Dkt. 359) filed by Defendants Infectious Diseases Society of America (“IDSA”) and Dr. Gary P. Wormser, Dr. Raymond J. Dattwyler, Dr. Eugene Shapiro, Dr. John J. Halperin, Dr. Leonard Sigal, and Dr. Allen Steere (collectively, the “Doctors”).¹

During the hearing, the Court ordered the parties to meet and confer within 14 days and provide a response to the Court. The parties hereby submit this Joint Report.

I. AGREEMENT OF THE PARTIES

The parties agree that if any claims remain after the Court rules on the pending motions, it would not be feasible to begin the trial on September 27, 2021.

II. POSITION OF PLAINTIFFS

Plaintiffs do not agree to a stay while dispositive motions are being considered.

¹ On April 22, 2021, Plaintiffs and IDSA and the Doctors filed a Joint Stipulation of Dismissal with Prejudice (Dkt. 396) requesting that the Court dismiss with prejudice Plaintiffs’ RICO and antitrust claims against the Doctors and Plaintiffs’ RICO claims against IDSA.

Plaintiffs believe the case could be ready for a trial in December 2021.

Plaintiffs will within 45 days supplement their mandatory disclosures (including damages computations), document productions, and interrogatory responses with respect to their new misrepresentation claims.

Plaintiffs believe that fact discovery on their new misrepresentation claims could be completed within 60 days after Plaintiffs complete supplementation of their mandatory disclosures, document productions, and interrogatory responses.

Plaintiffs will not seek any additional fact discovery on their antitrust or their new misrepresentation claims unless the Court grants Plaintiffs' Motion to Compel (Dkt. 402), in which case any additional fact discovery would be governed by the Court's order on Plaintiffs' Motion to Compel.

III. POSITION OF IDSA

IDSA believes a stay is warranted until the Court rules on IDSA's pending motions for summary judgment and to dismiss or strike.

If Plaintiffs' new misrepresentation claims survive, IDSA does not believe that a trial in December 2021 is possible due to the extensive amount of fact discovery that would be required to address Plaintiffs' new misrepresentation claims, which assert that unnamed nonparty doctors, in reliance on the IDSA Lyme disease guidelines, failed to diagnose and properly treat Plaintiffs' so-called chronic Lyme disease. Lead Plaintiff Lisa Torrey alone alleges that she "visited more than 36 doctors before she was properly diagnosed with Lyme disease." Dkt. 361 ¶ 123. IDSA cannot estimate how long such discovery would take because Plaintiffs have not yet supplemented their mandatory disclosures (including damages computations), document

productions, and interrogatory responses but believes it could take more than six months and perhaps over a year.

IDSAs appreciate that the Court usually will not stay discovery while dispositive motions are pending but contends that a stay is warranted under these unique circumstances. Plaintiffs have brought brand-new claims at the end of discovery that raise new liability and damages theories and involve significant numbers of nonparties. IDSA should not be forced to incur the substantial costs of additional discovery on those claims unless the Court determines that the claims may proceed. These discovery costs are the very prejudice that is the subject of the motions to stay and strike.

CONCLUSION

The parties have outstanding areas of disagreement regarding the resolution of the Motion to Stay and respectfully request that the Court rule on the areas of dispute.

Dated: May 7, 2021

Respectfully submitted,

SHRADER & ASSOCIATES, LLP

BY: /s/Eugene Egdorf

EUGENE EGDORF

State Bar No. 06479570

3900 Essex Lane, Suite 390,

Houston, TX 77027

(713) 782-0000 phone

(713) 571-9605 fax

E-mail: gene@shraderlaw.com

-and-

BY: /s/Lance Lee

LANCE LEE

Texas Bar No. 24004762

5511 Plaza Drive

Texarkana, Texas 75503

Telephone: 903.223.0276

Fax: 903.223.0210

PILLSBURY WINTHROP SHAW
PITTMAN LLP

BY: /s/Casey Low

RONALD CASEY LOW

Ronald Casey Low

State Bar No. 24041363

401 Congress Avenue, Suite 1700

Austin, TX 78701

Phone: (512) 580-9616

Fax: (512) 580-9601

Email: casey.low@pillsburylaw.com

Alvin Dunn – *Lead Attorney*

(*pro hac vice*)

Michael A. Warley (*pro hac vice*)

1200 Seventeenth St. NW

Washington, D.C. 20036

Tel: (202) 663-8000

Email: wlancelee@gmail.com

Fax: (202) 663-8007

Email: alvin.dunn@pillsburylaw.com

-and-

RUSTY HARDIN & ASSOCIATES, LLP

***ATTORNEYS FOR DEFENDANTS
INFECTIOUS DISEASES SOCIETY OF
AMERICA, DR. GARY P. WORMSER, DR.
RAYMOND J. DATTWYLER, DR.
EUGENE SHAPIRO, DR. JOHN J.
HALPERIN, DR. LEONARD SIGAL, AND
DR. ALLEN STEERE***

BY: /s/ Ryan Higgins

RYAN HIGGINS

State Bar No. 24007362

1401 McKinney St., Suite 2250

Houston, Texas 77010

(713) 652-9000 phone

(713) 652-9800 fax

Email: rhiggins@rustyhardin.com

-and-

RUSTY HARDIN & ASSOCIATES, LLP

BY: /s/ Daniel Dutko

DANIEL R. DUTKO

State Bar No. 24054206

1401 McKinney St., Suite 2250

Houston, Texas 77010

(713) 652-9000 phone

(713) 652-9800 fax

E-mail: ddutko@rustyhardin.com

ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing Joint Report was served on May 7, 2021 to all counsel of record through the Court's CM/ECF system.

/s/ Casey Low _____
Casey Low