



**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

DECLARATION OF DINA N. TORTEN, M.D.

I, Dina N. Torten, M.D., do hereby declare as follows:

1. I am a practicing physician with board certifications in internal medicine and infectious diseases. My practice is currently based in Frisco, Texas.
2. At the request of counsel for Anthem, IDSA, and the Doctor Defendants, I agreed to be available to conduct independent medical exams of Plaintiffs, if such exams were ordered by the Court.
3. I was informed by counsel that the Court did not select me to conduct the exams but that the Court asked that I work with Plaintiffs' medical advisor to agree on a physician to conduct the exams who is located in the Eastern District of Texas or, if not possible, in the State of Texas or, if not possible, in the central United States.
4. On or about March 22, 2019, I was informed that Plaintiffs' medical advisor is Dr. Elizabeth Maloney.

5. On March 25, 2019, I called Dr. Maloney and recommended the following physicians to be considered to conduct the exams: Dr. Allison Liddell, Dr. Gebre Tseggay, and Dr. Howard Kussman. Each is a board-certified infectious diseases specialist either in Plano (which is in the Eastern District) or in Dallas (which is adjacent to the Eastern District). I feel strongly that an infectious diseases specialist would be qualified to conduct the exams because Lyme disease is an infectious disease and the most challenging Lyme disease cases are typically handled by infectious diseases specialists.
6. During our call on March 25, 2019, Dr. Maloney recommended the following physicians to be considered to conduct the exams: Dr. Joseph Burrascano, Dr. Richard Horowitz, and Dr. John Aucott. I conducted some quick research on each doctor and discovered that not one is located in or near the Eastern District.
7. Dr. Maloney and I spoke on April 12, 2019. On that call, Dr. Maloney told me that she did not agree with any of my three suggestions and recommended three additional physicians for me to consider: Dr. Johnathan Forester, Dr. Torin Gray, and Dr. Charles Crist. I conducted some quick research on each doctor and discovered that not one is located in Texas, although two are in adjacent states.
8. On April 18, 2019, I suggested to Dr. Maloney additional physicians for her to consider: Dr. Edward Goodman, Dr. Arpita Sheth, and Dr. Eliane Haron. Each is a board-certified infectious diseases specialist either in Plano or in Dallas.
9. On or about April 26, 2019, I exchanged text messages with Dr. Maloney, who asked me about the physicians she had recommended. I replied that I did not believe her recommended physicians would be good choices to conduct the exams and said I would be happy to discuss in more detail on a call. Dr. Maloney did not call me but instead

replied with a text message that stated in part as follows: “I have a sense that we are not going to be able to agree on anyone. Should we just report that back to our respective lawyers and move on?” These text messages are attached as Exhibit A.

10. On May 15, 2019, I contacted Dr. Liddell and Dr. Sheth, only to see whether each would be available to conduct the exams if selected to do so. Dr. Liddell is available to conduct the exams in June and July, subject to working out logistical issues, such as use of examining facilities, with her practice. (Dr. Liddell works for a larger practice.) Dr. Sheth is not available to conduct the exams. I did not discuss with either one of these physicians the disputes at issue in the case or how they approach Lyme disease. I attempted to contact Dr. Goodman but was informed that he recently left his practice and has retired. I am continuing my efforts to contact Dr. Goodman because, if he is available to conduct the exams, I expect that he would be able to arrange for the use of the examining facilities he would need. I have not yet attempted to contact any of the other physicians I have suggested to conduct the exams but could do so if helpful.

11. I am confident that any one of my six recommended physicians – each a trained infectious diseases specialist practicing in Plano or Dallas – is well-qualified to conduct the exams.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 5/17/2019
Date

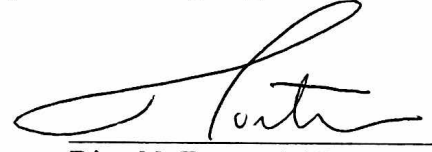

Dina N. Torten, M.D.

EXHIBIT A

