

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

LISA TORREY, <i>et al.</i> ,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. 5:17-cv-00190-RWS
	§	
INFECTIOUS DISEASES SOCIETY OF AMERICA, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**PLAINTIFFS’ RESPONSE TO
DEFENDANTS’ NOTICE REGARDING IME MEET-AND-CONFER**

COME NOW Plaintiffs and file this Response to Defendants’ Notice Regarding Meet-and-Confer (Docket No. 199), and in support thereof, Plaintiffs show the Court the following:

DEFENDANTS WANT ONLY DR. TORTEN TO PERFORM IMES

Defendants’ expert, Dr. Dina Torten, was to recommend “independent” doctors to possibly perform IMEs on some of the Plaintiffs. Dr. Torten limited her selection solely to doctors who are members of the IDSA, a Defendant in this case. Additionally, none of the doctors recommended by Dr. Torten have any formal experience in the diagnosis or treatment of Lyme disease. (*See* Exhibit “A”, declaration of Dr. Elizabeth L. Maloney).

Dr. Torten told Dr. Maloney that she could only recommend doctors in Texas and could only recommend infectious disease doctors. (*See* Exhibit “A”). Neither of these were requirements set forth by this Court. (*See* Exhibit “B”, transcript from March 11, 2019 hearing). This Court’s requirement is:

I would prefer that person be in the Eastern District, and if not in the Eastern District, in the state of Texas, and if not in the state of Texas, centrally located within the United States. The degree to which it will be difficult to get an agreement between these two physicians I

think may lead somewhat to where that person might be located, but my preference would be centrally located. And let's see if we can have that done, as I said, within a couple of weeks.

(See Exhibit "B" at 91:25 – 92:8).

Dr. Maloney recommended, on behalf of Plaintiffs, doctors in Pineville, Louisiana (Eastern District), Little Rock, Arkansas (two hours from the courthouse), and Ashland, Missouri (centrally located in the United States). Dr. Maloney also recommended Dr. John Aucott, the Director of John Hopkins Lyme Disease Clinical Research Center, and an IDSA member. All of these doctors, unlike Defendants' recommendations, have experience with Lyme disease.

Dr. Torten rejected all these recommendations because they are not located in Texas and are not infectious disease doctors.

Defendants' Notice does not set forth the qualifications of any of the doctors recommended by Defendants. Instead, the Notice focuses on Dr. Torten's qualifications and the fact that the reason Defendants hired Dr. Torten was to conduct Plaintiffs' IMEs. (Docket 199 "Defendants identified Dr. Nina (sic) Torten as the proposed independent medical examiner").

Defendants were required to conduct a search for an independent doctor within the parameters set out by the Court and to consult with Plaintiffs' medical advisor. Dr. Torten was unable to do so given the self-imposed limitations on the doctors she would consider. Dr. Torten's self-imposed limitations were not part of this Court's order. Accordingly, Dr. Torten and the doctors she identified are not suitable to conduct IMEs on Lyme patients.

A suitably licensed examiner is required for potential IMEs¹, and the doctors recommended by Dr. Maloney satisfy the Court's criteria—if IMEs are to be conducted.

¹ See Plaintiffs Response to the Defendants' Motion for Independent Medical Examination (Dkt#163)

CONCLUSION

For these reasons, Plaintiffs respectfully request this Court deny Defendants' request for an Independent Medical Examination, or in the alternative, respectfully request that this Court appoint one of the doctors recommended by Dr. Maloney.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of May, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all registered parties.

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