

**IN THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF ILLINOIS**

JEFFREY ORR, et al.,)	
)	
Plaintiffs,)	
)	
-vs-)	No. 08-2232-HAB-DGB
)	
WILLARD O. ELYEA, M.D., et al.,)	
)	
Defendants.)	

**IDOC DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING APPROVAL
OF PROPOSED CONSENT DECREE IN LIPPERT CASE**

The IDOC Defendants, by and through their attorney, Lisa Madigan, Illinois Attorney General, hereby move to stay all scheduled proceedings pending approval of the proposed Consent Decree in *Lippert v. Ghosh*, No. 10-4603 (N.D. Ill.), and in support of their motion state as follows:

The Court scheduled an evidentiary hearing for January 22-23, 2019, and the parties have scheduled depositions of several medical experts, with the first deposition currently set for January 11, 2019. The IDOC Defendants now move to stay the evidentiary hearing and associated discovery because of a recent development in the *Lippert* case in the Northern District.

In the *Lippert* case, plaintiffs sought “declaratory and injunctive relief to redress alleged violations of the class members’ constitutional rights. Plaintiffs allege that they are denied adequate medical and dental care and are at substantial risk of serious harm which violates the class members’ rights under the Eighth and Fourteenth Amendments to the United States Constitution.” *See* proposed Consent Decree, filed as Exhibit A, at p. 1. The Court certified a plaintiff class on April 28, 2017, with the class defined to include “all prisoners in the custody of

the Illinois Department of Corrections with serious medical or dental needs.” *Id.* The class was certified under Federal Rule of Civil Procedure 23(b)(2), which does not allow class members to opt out. *Jefferson v. Ingersoll International, Inc.*, 195 F.3d 894, 897 (7th Cir. 1999). In December, 2018, the parties reached agreement on a proposed Consent Decree, and they moved for preliminary approval on January 3, 2019. *See* Motion, filed as Ex. B. A hearing on that motion is scheduled for January 10, 2019. *See* Notice of Motion, filed as Ex. C.

The proposed Decree explicitly includes treatment for inmates who are infected with the Hepatitis C virus. Paragraph II.B.6 provides in relevant part: “IDOC agrees to implement changes in the following areas: ... f. Chronic disease care: diabetes, Chronic Obstructive Pulmonary Disease (“COPD”), asthma, **HCV**, HIV/AIDs, hypertension, hyperlipidemia” (emphasis added). Ex. A at p. 6. Thus, all of the plaintiffs in the *Orr* case and consolidated cases (collectively, the *Orr* plaintiffs) who are HCV+ and have a serious medical need are members of the plaintiff class certified in *Lippert*, and the Consent Decree, if approved, will dictate constitutionally-required treatment for the HCV+ inmates whose cases are before this Court. Any *Orr* plaintiffs who do not have a serious medical need are not entitled to relief in either case. The specific changes to treatment required under the proposed Decree are not known at this time, but will be developed as part of an Implementation Plan that IDOC will create and implement with the assistance of a court-appointed monitor. *See id.* at p. 18. In the meantime, IDOC’s revised HCV treatment protocol, previously filed with this Court (Doc. No. 471, Ex. A), will be followed.

If the *Lippert* Consent Decree is approved, all of the *Orr* plaintiffs with a serious medical need will be covered by that Decree, and their claims for injunctive relief, pending before this

Court, will be mooted and/or precluded. It thus will be unnecessary, and a waste of judicial resources, to continue to litigate the *Orr* plaintiffs' injunctive claims.

WHEREFORE, for these reasons, the IDOC Defendants ask this Court to stay all proceedings until the Court in the *Lippert* case has decided whether to give final approval of the proposed Consent Decree in that case.

Respectfully submitted,

ILLINOIS DEPARTMENT OF CORRECTIONS,

Defendant,

LISA MADIGAN, Attorney General,
State of Illinois,

Attorney for Defendant,

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Of Counsel.

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CERTIFICATE OF SERVICE

I hereby certify that, on January 7, 2019, the foregoing document, **IDOC DEFENDANTS' MOTION TO STAY PROCEEDINGS PENDING APPROVAL OF PROPOSED CONSENT DECREE IN LIPPERT CASE**, was electronically filed with the Clerk of the Court using the CM/ECF system, which will send electronic notice of same to all counsel of record.

Respectfully Submitted,

By: s/ Christopher L. Higgerson
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Assistant Attorney General

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