

UNITED STATES OF AMERICA
BEFORE THE FOOD AND DRUG ADMINISTRATION
DEPARTMENT OF HEALTH AND HUMAN SERVICES

In the matter of)
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)
)
LAHAYE CENTER FOR ADVANCED)
EYE CARE OF LAFAYETTE,)
D/B/A LAHAYE TOTAL EYE CARE,)
)
a corporation,)
)
and)
)
LEON C. LAHAYE,)
)
an individual.)

FDA Docket No. 02H-0443

1948 '03 SEP 24 11:29

**JOINT MOTION TO STAY PROCEEDING
TO PERMIT EXECUTION OF SETTLEMENT DOCUMENT**

Pursuant to 21 C.F.R. § 17.32, the United States and Respondents Dr. Leon C. LaHaye and the LaHaye Center for Advanced Eye Care of Lafayette move for an order staying this proceeding for twenty-one days to permit the preparation and execution of a settlement document resolving this proceeding. In support of the motion, the parties aver as follows:

1. The parties conducted a settlement meeting on September 17, 2003. The meeting resulted in agreed terms for a proposed settlement that, when finalized, would resolve this lawsuit. The agreed terms must be incorporated into a settlement document to be executed by the parties.

2. The proposed stay would afford an opportunity for the parties to prepare and execute a settlement document, while avoiding the time and expense of ongoing litigation. For example, discovery in this action closes on October 1, 2003. Absent a stay, the Government

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would need to depose Dr. LaHaye and four of his key employees before this deadline, as a precaution in case the parties' efforts to finalize the settlement failed.¹ This risks causing both parties to spend time and money on discovery that the settlement would obviate. Likewise, under the current scheduling order, the parties must file dispositive motions by November 3, 2003. Without a stay, the parties would need to begin preparing these motions while attempting to wrap up the settlement.

3. The proposed stay avoids the time and expense associated with these activities. More important, it permits the parties to focus their efforts on preparing and executing a settlement document.

4. The parties seek a stay of twenty-one days. If the parties fail to conclude the settlement within that period, they will provide the Court with a proposed revised scheduling order that will govern the disposition of this proceeding.² The parties will file the proposed revised scheduling order within seven days of the expiration of the stay.

¹ The Government had scheduled the depositions for September 23-25, 2003, but given the outcome of last week's meeting, the parties agreed to continue the depositions pending resolution of this motion.

² The proposed scheduling order would provide the parties with time to complete discovery and conduct the other activities remaining under the current scheduling order.

Accordingly, the parties respectfully request the Court to issue an order staying this action for a period of twenty-one days. A proposed Order is attached.

DATED: September 24, 2003

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Silverman", is written over a horizontal line.

STEVEN D. SILVERMAN
Attorney for Complainant
U.S. Food and Drug Administration
5600 Fishers Lane (GCF-1)
Rockville, MD 20857
(301) 827-6474

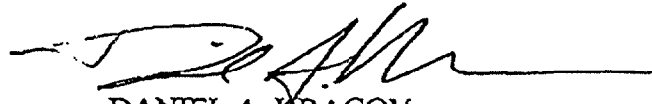
DANIEL A. KRACOV
Attorney for Respondents
PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037-1350
(202) 457-5623

~~Accordingly, the parties respectfully request the Court to issue an Order staying this action~~
for a period of twenty-one days. A proposed Order is attached.

DATED: September 23, 2003

Respectfully submitted,

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and)	
)	
LEON C. LAHAYE,)	
)	
an individual.)	
)	

ORDER

Pending before the Court is the parties' Joint Motion To Stay Proceeding To Permit Execution of Settlement Document. For good cause shown, it is ORDERED that the motion is GRANTED. It is further ORDERED that this matter is stayed for twenty-one days. It is further ORDERED that, if the parties have not filed a final settlement document within twenty-one days after entry of this ORDER, within seven days thereafter they shall file a proposed revised

scheduling order. The Court will then enter a revised scheduling order that will govern the disposition of this proceeding.

Dated: September _____, 2003

DANIEL J. DAVIDSON
Administrative Law Judge
Food and Drug Administration
Room 9-57, HF-3
5600 Fishers Lane
Rockville, MD 20857

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on September 24, 2003, I caused a copy of the parties' Joint Motion To Stay Proceeding To Permit Execution of Settlement Document to be sent via first-class mail to the following:

DANIEL A. KRACOV
Attorney for Respondents
PATTON BOGGS LLP
2550 M Street, NW
Washington, DC 20037-1350
(202) 457-5623

A handwritten signature in black ink, appearing to read "Steven D. Silverman", is written over a horizontal line.

STEVEN D. SILVERMAN
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(301) 827-6474

Silverman, Steven

From: Silverman, Steven
Sent: Wednesday, September 24, 2003 9:36 AM
To: Davidson, Daniel J
Cc: 'lemoinej@onebane.com'; 'DKracov@PattonBoggs.com'; Schifter, Karen
Subject: United States v. LaHaye, et al.

Judge Davidson,

Pursuant to your instructions in this matter, I am enclosing a motion, captioned Joint Motion To Stay Proceeding To Permit Execution of Settlement Document, that will be filed today. Should the Court have any questions or require additional information, the parties will make themselves available at the Court's convenience.

Thank you for your consideration of the attached motion.

-- Steven Silverman



stayaction.pld.doc

Steven Silverman
FDA OCC
301-827-1142
ssilverman@oc.fda.gov

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