

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION**

ELI LILLY AND COMPANY, and )  
ELI LILLY DO BRASIL LTDA, )  
 )  
Plaintiffs, )  
 )  
v. ) Case No. 1:13-cv-01770-TWP-TAB  
 )  
ARCH INSURANCE COMPANY, )  
ARCH SPECIALTY INSURANCE COMPANY, )  
COMMERCIAL UNION INSURANCE )  
COMPANY, ENDURANCE AMERICAN )  
SPECIALTY INSURANCE COMPANY, )  
LIBERTY INSURANCE UNDERWRITERS )  
INC., RSUI INDEMNITY COMPANY, )  
WESTCHESTER SURPLUS LINES )  
INSURANCE CO., and XL INSURANCE )  
AMERICA, INC., )  
 )  
Defendants. )

**ORDER ADOPTING THE MAGISTRATE JUDGE'S REPORT AND  
RECOMMENDATION AND DENYING PLAINTIFFS' MOTION FOR RELIEF**

This matter is before the Court on a Motion for Relief Pursuant to Rule 56(d) and Objections to Report and Recommendation on the Rule 56(d) Motion ([Filing No. 1230](#); [Filing No. 1248](#)) filed by Plaintiffs Eli Lilly and Company ("Lilly") and Eli Lilly do Brasil, Ltda. ("Lilly Brasil") (collectively, "Plaintiffs"). The Plaintiffs brought this action asserting claims for insurance coverage for underlying lawsuits regarding liability for environmental and other claims against Lilly Brasil. The Plaintiffs assert other related claims, and seek declaratory relief and damages against some of Lilly's insurers: Arch Insurance Company and Arch Specialty Insurance Company (collectively, "Arch"), Endurance American Specialty Insurance Company ("Endurance"), Liberty Insurance Underwriters Inc. ("LIU"), RSUI Indemnity Company

("RSUI"), Westchester Surplus Lines Insurance Co. ("Westchester"), and XL Insurance America Inc. ("XL").<sup>1</sup>

On June 13, 2019, Arch and the Upper Excess Carriers filed separate motions for summary judgment on the Plaintiffs' claims. On June 14, 2019, the Plaintiffs filed their Motion for Relief Pursuant to Rule 56(d), requesting additional discovery concerning the Defendants' summary judgment motions. The Rule 56(d) Motion was referred to the Magistrate Judge for a report and recommendation. Magistrate Judge Baker issued his Report and Recommendation, to which the Plaintiffs filed Objections. For reasons stated below, the Court finds no error of law or fact in the Report and Recommendation and therefore **overrules** the Plaintiffs' Objections ([Filing No. 1248](#)), **adopts** the Magistrate Judge's Report and Recommendation ([Filing No. 1243](#)), and **denies** the Plaintiffs' Motion for Relief Pursuant to Rule 56(d) ([Filing No. 1230](#)).

### **I. LEGAL STANDARD**

A district court may assign dispositive motions to a magistrate judge, in which case the magistrate judge may submit to the district judge only a report and recommended disposition, including any proposed findings of fact. *Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 760 (7th Cir. 2009); *see also* 28 U.S.C. § 636(b)(1)(B); Fed. R. Civ. P. 72(b). "The magistrate judge's recommendation on a dispositive matter is not a final order, and the district judge makes the ultimate decision to adopt, reject, or modify it." *Schur*, 577 F.3d at 760; *see also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). After a magistrate judge makes a report and recommendation, either party may object within fourteen days. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). "A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1).

---

<sup>1</sup> Defendants Endurance, LIU, RSUI, Westchester, and XL will be collectively referred to as "Upper Excess Carriers."

Further, a judge "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." *Id.* A district court also may assign non-dispositive matters to a magistrate judge under Rule 72(a).

## II. DISCUSSION

The history and facts of this matter are sufficiently set forth in the Magistrate Judge's Report and Recommendation, which the Court adopts, so only a brief synopsis of the background is stated in this Order. In addition, the legal analysis and conclusions of the Magistrate Judge are set forth in that ruling ([Filing No. 1243](#)), and need not be repeated.

On June 18, 2018, the Court issued an Order providing some relief to Arch and co-defendant Commercial Union Insurance Company (now known as Lamorak Insurance Company ("Lamorak")) after Arch and Lamorak filed summary judgment motions ([Filing No. 1118](#)). The Court's Order granted summary judgment to Arch on the Plaintiffs' reformation claims because the claims are barred by the *laches* doctrine, and it granted summary judgment to Lamorak on all claims asserted against it. The Court also determined that Lilly Brasil does not have standing to bring claims against Arch. *Id.* at 26–27.

Following the Court's June 18, 2018 summary judgment Order, the Upper Excess Carriers and Arch filed new motions for summary judgment, arguing that they are entitled to judgment on the Plaintiffs' remaining claims based on the prior summary judgment Order. They base their motions on the Court's rulings on reformation, *laches*, and standing. The Plaintiffs responded with their Rule 56(d) Motion, asserting that they need additional discovery in order to fully respond to the pending summary judgment motions. The Magistrate Judge's Report and Recommendation concludes that additional discovery is not necessary for the Plaintiffs to be able to respond to the summary judgment motions, and thus, it recommends denial of the Rule 56(d) Motion.

Much of the Plaintiffs' Objection to the Report and Recommendation reiterates the arguments presented in the original Rule 56(d) Motion. The Plaintiffs argue that they should be permitted to seek any and all relevant and discoverable evidence concerning the case before responding to the summary judgment motions, and they assert that the Report and Recommendation is erroneous in cutting short their discovery opportunity. However, Rule 56(d) does not open the door to any and all discovery; it provides a mechanism to seek discovery necessary for the pending summary judgment motions. *See Citizens for Appropriate Rural Rds. v. Foxx*, 815 F.3d 1068, 1082 (7th Cir. 2016). The Court finds no error in the Magistrate Judge's recommendation in this regard.

The Plaintiffs complain that the Report and Recommendation states "Lilly" asked the Court to stay discovery, and they argue this is erroneous because the parties agreed to the stay. However, the Report and Recommendation is not in error as it correctly explains Lilly asked the Court to stay discovery and the Defendants did not object to the stay, which is recorded in the Court's conference notes at [Filing No. 1157](#).

The Plaintiffs also argue the Report and Recommendation is erroneous in concluding the summary judgment motions are limited to "purely legal" issues because the motions involve questions of fact. The Court disagrees with the Plaintiffs' position and agrees with the Magistrate Judge that the pending summary judgment motions concern legal questions about the impact of the prior summary judgment Order on the remaining claims.

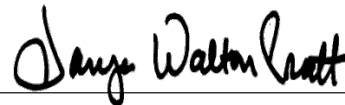
The Court's review of the Magistrate Judge's consideration, analysis, and conclusions regarding the need for additional discovery to respond to the pending summary judgment motions leads the Court to conclude that the Magistrate Judge's determination was correct and without error.

**III. CONCLUSION**

For the reasons stated above, the Court **OVERRULES** the Plaintiffs' Objections ([Filing No. 1248](#)), **ADOPTS** the Magistrate Judge's Report and Recommendation ([Filing No. 1243](#)), and **DENIES** the Plaintiffs' Motion for Relief Pursuant to Rule 56(d) ([Filing No. 1230](#)). The Plaintiffs are **ordered** to file their response, if any, to the pending summary judgment motions ([Filing No. 1228](#) and [Filing No. 1229](#)) within **thirty (30) days** of the date of this Order. The Defendants may file a reply within **fourteen (14) days** after the Plaintiffs' response is served.

**SO ORDERED.**

Date: 5/28/2020



TANYA WALTON PRATT, JUDGE  
United States District Court  
Southern District of Indiana

**DISTRIBUTION:**

Thomas B. Bays  
NORRIS CHOPLIN & SCHROEDER LLP  
tbays@ncs-law.com

Kyle Andrew Lansberry  
LEWIS WAGNER LLP  
klansberry@lewiswagner.com

Eileen K. Bower  
CLYDE & CO US LLP  
Eileen.Bower@clydeco.us

Cynthia Elaine Lasher  
NORRIS CHOPLIN & SCHROEDER LLP  
clasher@ncs-law.com

Jeffrey D. Claflin  
PLEWS SHADLEY RACHER & BRAUN  
jclaflin@psrb.com

Ryan Taylor Leagre  
PLEWS SHADLEY RACHER & BRAUN  
rleagre@psrb.com

Jared K. Clapper  
NICOLAIDES FINK THORPE  
MICHAELIDES SULLIVAN LLP  
jclapper@nicolaidesllp.com

Michael P. McNamee  
MEAGHER & GEER PLLP  
mmcnamee@meagher.com

Colin Edington Connor  
PLEWS SHADLEY RACHER & BRAUN  
cconnor@psrb.com

Erik S. Mroz  
DREWRY SIMMONS VORNEHM, LLP  
emroz@dsvlaw.com

Andrew J. Detherage  
BARNES & THORNBURG LLP  
andy.detherage@btlaw.com

Katherine Werner O'Malley  
COZEN O'CONNOR  
komalley@cozen.com

Kyle M. Dickinson  
TRAUB LIEBERMAN STRAUS &  
SHREWBERRY LLP  
kdickinson@traublieberman.com

Danielle C. Dobry  
MEAGHER & GEER PLLP  
ddobry@meagher.com

Wendy N. Enerson  
COZEN O'CONNOR  
wenerson@cozen.com

John Paul Fischer, Jr.  
BARNES & THORNBURG LLP  
john.fischer@btlaw.com

Ana M. Francisco  
FOLEY & LARDNER LLP  
afrancisco@foley.com

Michael Robert Giordano  
LEWIS WAGNER LLP  
mgiordano@lewiswagner.com

Emily A. Golding  
CLYDE & CO US LLP  
emily.golding@clydeco.us

Gregory M. Gotwald  
PLEWS SHADLEY RACHER & BRAUN  
ggotwald@psrb.com

Megan B. Gramke  
ULMER & BERNE LLP  
mgramke@ulmer.com

Scott A. Harkness  
NORRIS CHOPLIN & SCHROEDER LLP  
sharkness@ncs-law.com

Georgia Hatzis  
ULMER & BERNE LLP  
ghatzis@ulmer.com

George M. Plews  
PLEWS SHADLEY RACHER & BRAUN  
gplews@psrb.com  
Meghan Eileen Ruesch  
LEWIS WAGNER LLP  
mruesch@lewiswagner.com

Gina M. Saelinger  
ULMER & BERNE LLP  
gsaelinger@ulmer.com

Frederic Xavier Shadley  
ULMER & BERNE LLP  
fshadley@ulmer.com

Charles E. Spevacek  
MEAGHER & GEER PLLP  
cspevacek@meagher.com

Samuel R. Stalker  
COZEN O'CONNOR  
sstalker@cozen.com

Monica T. Sullivan  
NICOLAIDES FINK THORPE  
MICHAELIDES SULLIVAN LLP  
msullivan@nicolaidesllp.com

Meaghan A. Sweeney  
NICOLAIDES FINK THORPE  
MICHAELIDES SULLIVAN LLP  
msweeney@nicolaidesllp.com

Jason M. Taylor  
TRAUB LIEBERMAN STRAUS &  
SHREWSBERRY  
jtaylor@traublieberman.com

David A. Temple  
DREWRY SIMMONS VORNEHM, LLP  
dtemple@DSVlaw.com

Joseph P. Thomas  
ULMER & BERNE LLP  
jthomas@ulmer.com

Jennifer Snyder Heis  
ULMER & BERNE LLP  
jheis@ulmer.com

Christian P. Jones  
BARNES & THORNBURG, LLP  
christian.jones@btlaw.com

Bruce L. Kamplain  
NORRIS CHOPLIN & SCHROEDER LLP  
bkamplain@ncs-law.com

Joshua A. Klarfeld  
ULMER & BERNE LLP  
jklarfeld@ulmer.com

Michael S. Knippen  
TRAUB LIEBERMAN STRAUS &  
SHREWSBERRY LLP  
mknippen@traublieberman.com

John Carl Trimble  
LEWIS WAGNER LLP  
jtrimble@lewiswagner.com  
Bryan Vezey  
COZEN O'CONNOR  
bvezey@cozen.com

Mark F. Wolfe  
TRAUB LIEBERMAN STRAUS &  
SHREWSBERRY LLP  
mwolfe@traublieberman.com

Bradley J. Wombles  
NORRIS CHOPLIN & SCHROEDER  
bwombles@ncs-law.com

Joseph Ziemianski  
COZEN O'CONNOR  
jziemianski@cozen.com