

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA,  
*ex rel.* MICHAEL DAUGHERTY,  
Plaintiff,

v.

BOSTWICK LABORATORIES, *et al.*,  
Defendants.

Case No. 1:08-cv-354

Spiegel, J.  
Litkovitz, M.J.

**ORDER**

This *qui tam* matter is before the Court following an informal discovery conference held on December 11, 2013. Defendant Bostwick Laboratories represents that it is engaged in settlement discussions with the Department of Justice due to its claimed “inability to pay” potential damages in light of its current financial status. Counsel for the parties represented that a valuation process is triggered when a defendant in a *qui tam* action asserts an “inability to pay,” which begins with a Department of Justice audit of the defendant’s finances. In the event the Department of Justice determines that the defendant’s claimed “inability to pay” is supported, the relator advises the Department of Justice as to the estimated value of the case and settlement discussions commence. Defendant requests that the Court stay discovery in this case while the Government evaluates its “inability to pay” claim in order to ensure that defendant’s limited assets are not needlessly expended in the event that this matter proceeds to settlement. Relator does not object to a stay outright but is concerned that issuing a stay without addressing defendant’s alleged failure to adhere to its discovery obligations will cause great prejudice to relator’s ability to prosecute this matter given the existing discovery schedule. Relator further requests that defendant be ordered to share any and all financial information that has been shared with the Department of Justice.

In order to assist the Court’s understanding of the process employed by the Department

of Justice in assessing defendant's "inability to pay" claim, counsel for relator is to submit to the Court further information about the process, including, but not limited to, governing statutes or regulations. Upon receipt of this information, the Court will take this matter under submission and will either schedule a follow-up discovery conference with the parties or issue an appropriate order.

**IT IS SO ORDERED.**

Date: 12/11/13

  
Karen L. Litkovitz  
United States Magistrate Judge