

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

MATTHEW CHATHAM and ERIN
CHATHAM,

Plaintiff,

v.

DANIEL J. LEWIS and CANTERBURY
VENTURES, LLC,

Defendants,

CIVIL ACTION NO. 1:17-CV-11473-IT

DEFENDANTS' MOTION TO CONDUCT VIRTUAL JURY-WAIVED TRIAL

The Defendants Daniel J. Lewis and Canterbury Ventures, LLC move that the jury-waived trial of this matter, scheduled to begin on April 12, 2021, be conducted over a virtual platform, either Zoom or such other platform as the Court may deem available, due to the continued impact of the COVID-19 pandemic.

As grounds for this Motion, the Defendants state as follows:

1. While restrictions arising from the COVID-19 pandemic are being relaxed, and the Court has been modifying its procedures to reopen the Courts for public access, there remains significant public health issues associated with the pandemic and the gathering of unvaccinated individuals.

2. The Plaintiffs propose a jury waived-trial that will consume 12 trial days. The Plaintiffs have identified 24 witnesses to testify at trial. Restrictions on courtroom attendance by non-parties will make witness attendance and sequencing cumbersome, and will expose witnesses, parties, counsel and court staff to each other over the period of the trial.

3. The Defendant and all of Defendants' trial counsel are each at least 53 years of age or older, and not all of these four individuals have been vaccinated.¹ Additionally, a number of non-party witnesses identified by the Plaintiffs are believed to be in their mid-fifties or older.

4. Conducting the trial in person, in the Moakley Courthouse, will require the parties and counsel to travel to Boston, park their cars and make their way to the Courthouse for twelve days (as projected by the Plaintiffs), thereby exposing them to others in closed indoor public areas. Non-party witnesses – whose attendance in the courtroom is restricted - will additionally need to travel to the courthouse, and then await their turn to testify while in a public space.

5. Defendants' copyright co-counsel are resident in Denver, Colorado and would need to fly to Boston and stay in a hotel during the trial, which as projected by the Plaintiffs will consume parts of three weeks, and may need to quarantine following travel to Massachusetts. Importantly, the coronavirus is still active in Colorado. Indeed, one of Defendants' Colorado counsel has contracted COVID-19 and is currently quarantined until at least March 19, 2021. Further, the other Colorado counsel's legal assistant is currently quarantined and recovering from the virus.

6. Conducting the trial over Zoom will eliminate the need of the parties and counsel to travel to a public space, and to be subject to potential virus exposure for parts of three weeks, while in the alternative they would be permitted to participate from remote locations, without

¹ While the Centers for Disease Control has issued new guidelines for vaccinated people, its Director also recently cautioned against the relaxation of coronavirus restrictions. *See, e.g.,* Louisa Moller, *CDC Director Issues Warning as Mass. Businesses Prepare to Reopen*, CBSN Boston Website, <https://boston.cbslocal.com/2021/02/26/cdc-covid-19-warning-reopening-theaters-business/> (Feb. 26, 2021).

being subject to viral exposure from trial participants. Moreover, non-party witnesses would be able to attend trial from a remote location, and would not need to wait in a public area to testify.

7. In addition to the health and public safety benefits from conducting the trial virtually, witnesses would be made available from their remote locations when the time comes to call them, thereby streamlining and potentially shortening the trial.

8. It is expected that exhibits would be handled electronically, rather than with physical documents, whether the trial is conducted in person or virtually. The handling of exhibits would therefore be no different in a virtual or live trial setting.

9. In summary, conducting the trial over a virtual platform will allow the parties, their counsel, the witnesses and court personnel to avoid an unnecessary health risk, with no significant detriment to the trial proceedings. In contrast, a single exposure by a trial participant could result in the trial and the court session being shut down.

10. Undersigned counsel hereby certifies that he contacted Thomas McNulty, Plaintiffs' counsel to determine the Plaintiffs' position on a virtual trial, in an effort to narrow the issue in dispute as required by Local Rule 7.1. Plaintiffs will oppose Defendants' motion.

WHEREFORE, the Defendants respectfully request that the Court conduct the jury-waived trial of this matter be conducted over Zoom or other suitable virtual platform.

DANIEL J. LEWIS
CANTERBURY VENTURES, LLC

By their attorneys
RIEMER & BRAUNSTEIN LLP

Dated: March 12, 2021

/s/ Mark W. Corner
Mark W. Corner, BBO # 550156
Riemer & Braunstein LLP
100 Cambridge Street
Boston, Massachusetts 02114
(617) 880-3418
mcorner@riemerlaw.com

Robert Brunelli, admitted pro hac vice
Scott Bialecki, admitted pro hac vice
Sheridan Ross P.C.
1560 Broadway
Suite 1200
Denver, Colorado 80202-5145
(303) 863-2981
sbialecki@sheridanross.com

CERTIFICATE OF SERVICE

I hereby certify that this document will be sent by e-mail upon counsel of record to the Plaintiffs on March 12, 2021.

/s/ Mark W. Corner
Mark W. Corner

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