

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Sidney L. Peterson,)	
)	
<i>Plaintiff,</i>)	
-vs-)	No. 19-cv-415
)	
Sarah Mays,)	(Judge Kocoras)
)	
<i>Defendant.</i>)	

**PLAINTIFF'S RESPONSE TO MOTION
TO ENFORCE SETTLEMENT**

Illinois law, which the parties agree controls the pending motion, requires that the Court deny defendant's "motion to enforce settlement," ECF No. 143.

1. The defendant in this case is a state employee who will be indemnified by the State of Illinois. Settlement of the case is therefore governed by 5 ILCS 350/2(a), which requires that the Illinois Attorney General must approve all provisions of any settlement. *Steidl v. Madigan*, 2016 IL App (1st) 150040, ¶ 17, 48 N.E.3d 180, 184 (2016). See *Gust K. Newberg, Inc. v. Illinois State Toll Highway Auth.*, 98 Ill. 2d 58, 66-67, 456 N.E.2d 50, 55 (1983) (same, applying Illinois Toll Highway Act and Illinois common law).

2. Defendant concedes in the "motion to enforce" that, as of the filing of that pleading, the Illinois Attorney General has not approved any settlement of this case: On January 17, 2024, the settlement "was in the Illinois

Attorney General's approval pipeline." (Motion, ¶ 6.) On January 28, 2025, defendant informed plaintiff's counsel that additional information "was required to obtain final approvals." (Motion, ¶ 11.) On February 27, 2025, defense counsel stated that he had not yet obtained "approval of settlement paperwork." (Motion, ¶ 21.) The failure of the Illinois Attorney General to have approved the settlement means that, pursuant to 5 ILCS 350/2(a), there is not an enforceable agreement. *Steidl v. Madigan, supra*, 2016 IL App (1st) 150040, ¶ 17, 48 N.E.3d 180, 184 (2016).

3. The "motion to enforce" asserts that the Illinois Attorney General will not approve any settlement that is not first approved by the Illinois Department of Corrections. *See* Motion, ¶ 7 ("agreement subject to formal approval by IDOC"). The motion does not allege that IDOC has approved any settlement.

4. In addition to lacking the approval by the Illinois Attorney General and IDOC, the parties have not reached "a meeting of the minds on all material items," *Magallanes v. SBC*, 472 F.3d 923, 924 (7th Cir. 2006), a basic element of an enforceable agreement. Defense counsel admits that the Illinois Attorney General will not approve any settlement that does not conform to that office's "standard settlement agreement," which includes a confidentiality provision. (Motion, ¶ 5.) This is a material provision that can

transform a non-taxable settlement for personal injury into a partially taxable settlement. *Amos v. Comm'r*, 86 T.C.M. (CCH) 663, T.C. Memo. 2003-329, T.C.M. (RIA) 2003-329, 2003 RIA TC Memo 2003-329, 2003 WL 22839795, at *1 (T.C. 2003) (\$200,000 settlement for personal injuries and confidentiality viewed as \$120,000 non-taxable settlement for personal injuries and \$80,000 taxable settlement for confidentiality provision). Plaintiff did not agree to any confidentiality provision, and defendant does not argue that he did.

5. Plaintiff's counsel informed defense counsel on February 25, 2025, that plaintiff was rescinding his willingness to settle the case. (Motion, ¶ 20.) Thereafter, without objection by defendant, the Court set a schedule for expert discovery. Counsel requested his previously retained expert to prepare a Rule 26(a)(2) report setting out her opinions; counsel paid his retained expert \$3,500 for her work to prepare the report, which plaintiff served on June 13, 2025. Plaintiff would not have instructed his expert to undertake this work had defendant acted promptly to file the motion to enforce. Plaintiff was therefore prejudiced by defendant's delay in bringing the motion to enforce. *Wells Fargo Bank, N.A. v. Nguyen*, 2024 IL App (3d) 230253, ¶ 32, 238 N.E.3d 579, 588 (2024). The Court should therefore conclude that defendant's motion is barred by laches. *Id.*

The Court should therefore deny the motion to enforce.

Respectfully submitted,

/s/ Kenneth N. Flaxman
Kenneth N. Flaxman
ARDC No. 08830399
Joel A. Flaxman
200 South Michigan Ave. Ste 201
Chicago, Illinois 60604
(312) 663-9500
Attorneys for Plaintiff