

Respectfully submitted,


BRENT L. ENGLISH
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Sup. Ct. Reg. 0022678
Attorney for Plaintiff, David A. Bentkowski

CERTIFICATE OF SERVICE

I certify that a true and complete copy of Plaintiff's Motion For Enlargement Of Time To Complete Discovery, to Respond In Opposition to Defendant's Motion For Summary Judgment and to Continue the Trial Date was served by first class U.S. Mail, postage prepaid and by e-mail upon Randall Knutti, Esq., Assistant Attorneys General, 150 East Gay Street, 25th Floor, Columbus, Ohio 43215, randall.knutti@OhioAttorneyGeneral.gov on this 30th day of June 2015.


BRENT L. ENGLISH
Attorney for Plaintiff, David A. Bentkowski

MEMORANDUM

Plaintiff, David A. Bentkowski, seeks equitable relief from this Court in the form of an extension of the discovery cutoff, his response date to Defendant's Motion for Summary Judgment and a continuance of the trial date.

These extensions of time are sought for the following reasons:

1. By prior order of this Court, the discovery cutoff was extended to June 30, 2015. This date was requested because the Defendant had not yet responded to Plaintiff's request for production of documents and because necessary depositions had not yet taken place.
2. Plaintiff has previously informed the Court that he had scheduled three depositions to take place on June 17, 2015 and that the Defendant had scheduled the Plaintiff's deposition to take place on June 10, 2015. The first deposition was cancelled due to the fact that Plaintiff's wife unexpectedly went into labor early that morning and gave birth of his first child later that day. The June 17, 2015 depositions were cancelled at the request of Defendant's counsel.
3. Due to conflicting schedules and obligations (including a vacation), the depositions cannot be taken until July 28, 2015. The parties have worked diligently to reschedule those depositions and accommodate various schedules.
4. Further, the Defendant is still working on its document production to the Plaintiff. On June 30, 2015 Plaintiff's counsel received an e-mail from a paralegal at the Attorney General's office indicating that there are over 250,000 responsive documents being reviewed for privilege and relevancy (Exh. A). When those documents are received, Plaintiff's counsel (not to mention the Plaintiff himself) will need to devote significant time to their review and consideration, which will take significant time.

5. Given the foregoing circumstances, Plaintiff respectfully submits that the proposed extensions, including a continuance of the trial date, would be fair, just and equitable to all parties. It is the undersigned's understanding that Defendant will not oppose any part of this motion.

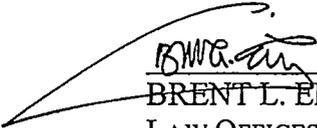
It is clear that an adequate time for discovery must be afforded before a motion for summary judgment can be considered. See, *Celotex Corp. v. Catrett*, 477 U.S. 317, 322–23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) (Civ. R. 56(C) “mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial”); *Kool, Mann, Coffey & Co. v. Castellini Co.*, 1st Dist. Hamilton No. C930951, 1995 WL 453049 (Aug. 2, 1995) at *5. Plaintiff has previously provided this Court with Civ. R. 56(F) affidavits from himself and his counsel as to why he cannot respond at present to Defendant's motion for summary judgment. Out of an abundance of caution, his counsel submits an additional affidavit as an attachment to this motion (Exh. B) verifying the facts set forth herein and demonstrating why the additional extensions are necessary, as well as why the trial day in this case should be continued to a mutually agreeable date and time.

The requested extensions and continuance would be consistent with the general tenet of Ohio law that cases should be decided upon their merits whenever possible. *Perotti v. Ferguson*, 7 Ohio St.3d 1, 3, 454 N.E.2d 951 (1983); *Peterson v. Teodosio*, 34 Ohio St.2d 161, 175, 297 N.E.2d 113 (1973).

The parties have been diligent in scheduling discovery in this case and but for the unusual circumstances described above, the requested extensions and continuance of the trial date would not have been necessary.

WHEREFORE, in the interests of justice and for good cause shown, Plaintiff, David A. Bentkowski, respectfully requests a 30-day extension of time for completing all discovery in this case (to July 31, 2015) for a corresponding 21-day extension of time to respond to Defendant's Motion for Summary Judgment (August 21, 2015), and for a continuance of the trial date now set for August 31 through September 2, 2015.

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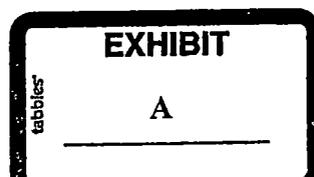
From: Margie Welsheimer <Marjorie.Welsheimer@ohioattorneygeneral.gov>
Sent: Tuesday, June 30, 2015 10:39 AM
To: Brent English
Cc: Randall W. Knutti
Subject: Bentkowski

Hi Mr. English:

I work with Randy Knutti, and I understand you called about the Bentkowski discovery responses. Randy is out of the office today, but I have been gathering documents from our client and expect to get a first production out to you shortly (probably by tomorrow, once Randy returns). There are more than 250,000 pages of documents so far. Our client has had to work with DAS to pull email files for the requested custodians, and we are now working with them to review the documents for privilege/relevancy, etc. As you can imagine, this extra step of going through DAS has caused some delays.

But I wanted to update you that we should have a large chunk of the production to you shortly, and we continue to work with our client to get the remaining email files reviewed. Again, Randy will be back tomorrow if you have any questions.

Thank you,





Margie Welsheimer

Paralegal - Court of Claims Defense
Office of Ohio Attorney General Mike DeWine
150 East Gay Street, 18th Floor
Columbus, Ohio 43215
Office: (614) 466-7447
Direct: (614) 644-9356

to Defendant's Motion for Summary Judgment and for a Continuance of the Trial Date set for August 31-September 2, 2015 to which this Affidavit is appended.

7. Many of the essential facts needed to respond to the motion for summary judgment need to come from the witnesses who have been noticed for deposition and from the documents I requested on behalf of my client but which have not yet been supplied.

8. The depositions of my client and of the three Lottery Commission witnesses have been scheduled for July 28, 2015 to accommodate various schedules. They cannot be taken earlier without disrupting other obligations and scheduled activities of both counsel.

9. I thus request an additional 30 days (to July 31, 2015) within which to complete discovery, an additional 21 days thereafter to prepare and file my client's opposition to the Lottery Commission's Motion for Summary Judgment, and a continuance of the trial date so that the Court has adequate time to consider the Commission's motion and the Plaintiff's opposition thereto.

Affiant further sayeth naught.


BRENT L. ENGLISH

SWORN TO AND SUBSCRIBED before me, a Notary Public, by Brent L. English on the 30th day of June 2015.



ELIZABETH A. PROCHASKA
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
June 23, 2020


Notary Public
Print name: ELIZABETH A. PROCHASKA
Commission expires: June 23, 2020

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Attorney for Plaintiff, David A. Bentkowski

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Respectfully submitted,

A handwritten signature in black ink that reads "Brent English" followed by a stylized monogram or initials.

BRENT L. ENGLISH

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Attorney for Plaintiff, David A. Bentkowski