

ORIGINAL

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COURT OF CLAIMS
OF OHIO

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IN THE OHIO COURT OF CLAIMS
STATE OF OHIO

DAVID A. BENTKOWSKI,)	CASE NO. 2014-00651
)	
Plaintiff,)	JUDGE PATRICK McGRATH
)	
vs.)	MOTION FOR ENLARGEMENT OF
)	TIME TO RESPOND IN OPPOSITION
OHIO LOTTERY COMMISSION,)	TO MOTION FOR SUMMARY
)	<u>JUDGMENT DUE TO EMERGENCY</u>
Defendant.)	

Plaintiff, David A. Bentkowski, through his undersigned authorized counsel, Brent L. English, respectfully moves this Court for a 14-day enlargement of time to file and serve his opposition to Defendant's Motion for Summary Judgment and submits:

1. By prior order of this Court, Plaintiff's opposition is due on, or before, September 17, 2015. The non-oral hearing is scheduled to occur on this motion on September 18, 2015.
2. An emergency situation has occurred which has unexpectedly affected counsel's ability to complete his client's opposition.
3. In a cascading series of unexpected events commencing on Friday evening, September 11, 2015, all electrical power to counsel's office, including that necessary to operate his computer system, was knocked out. Counsel learned of this problem on Saturday morning when he could not gain access to his office building in downtown Cleveland, Ohio due to the electrical failure.

4. After investigation, counsel learned that as a result of a hard and sustained rain storm on Friday night in the downtown Cleveland area a storm sewer in the middle of West 9th Street (adjoining and slightly north of his office) had collapsed resulting in a large backup of water into the basements and lower areas of a number of office buildings including his which is located at the northeastern corner of West 9th Street and Superior Avenue. His building, at 820 West Superior Avenue, is located just north of the State Office Tower and the Carl B. Stokes United States Courthouse at 810 West Superior Avenue, Cleveland, Ohio.

5. The water backup caused a series of electrical failures in Cleveland Electric Illuminating's vault as well as in his own office building. These failures resulted in major equipment failures, damaging computer lines, phone lines, sewer and water lines, and of course *all* electrical service.

6. From Saturday afternoon until Wednesday at 5:00 p.m, when this motion is being written, crews have worked around the clock to remedy these related and complicated problems. Counsel has just been informed that electrical power is unlikely to be restored for the balance of the week.

7. Worse yet, it is still unknown whether the problems described above resulted in any damage to the undersigned law firm's computer system, which operates from a single large server that may have been damaged.

8. Since Saturday morning, counsel has been unable to access his calendar (except as it exists on the web), any of his office files, his computer system, the deposition transcripts for this case (which are stored and accessed electronically), the document production by the Lottery Commission for this case (which was all produced electronically), contact lists, or other ordinarily accessible resources used to practice law.

9. When the nature and extent of the problems outlined above became evident, counsel, through his assistant, Wendy Barcik, who has been working from home, contacted counsel for the State, Randall W. Knutti, Esq. to seek his consent to this motion. Mr. Knutti has graciously consented to the proposed extension.

10. This motion is not made for any improper purpose and its necessity was totally unexpected.

11. An affidavit signed by Plaintiff's counsel is attached pursuant to Ohio R. Civ. Proc. 56(F) verifying the foregoing.

WHEREFORE, David A. Bentkowski respectfully requests that he be granted a 14-day extension of time to file and serve his opposition to the pending Motion for Summary Judgment.

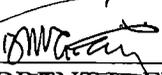
Respectfully submitted,



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

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of this Motion for Enlargement of Time to Oppose the State of Ohio's Motion for Summary Judgment was served by Federal Express upon Randall W. Knutti, Esq., Principal Attorney, Court of Claims Defense, 150 East Gay Street, Columbus, Ohio 43215 on this 16th day of September 2015.



BRENT L. ENGLISH

Attorney for Plaintiff, David A. Bentkowski

STATE OF OHIO)
)
COUNTY OF CUYAHOGA) ss. AFFIDAVIT

Brent L. English, after being duly sworn according to law, states:

1. I am a licensed attorney at law in the State of Ohio and am trial counsel for the Plaintiff, David A. Bentkowski, in Court of Claims Case No. 2014-00651.

2. I have personal knowledge of the facts set forth herein and am competent to testify to those facts.

3. This Court has previously ordered that David A. Bentkowski's opposition to the Ohio Lottery Commission's Motion for Summary Judgment in the above case is due on, or before, September 17, 2015. The non-oral hearing is scheduled to occur on the motion on September 18, 2015.

2. An emergency situation has occurred which has unexpectedly affected my ability to complete my client's opposition.

3. In a cascading series of unexpected events commencing on Friday evening, September 11, 2015, all electrical power to my downtown office building, including power to operate my firm's computer system, was knocked out. I learned of this problem on Saturday morning when I could not gain access to my office due to the electrical failure.

4. After investigation, and upon information and belief, I learned that as a result of a hard and sustained rain storm on Friday night in the downtown Cleveland area a storm sewer in the middle of West 9th Street (adjoining and slightly north of my office) had collapsed resulting in a large backup of water into the basements and lower areas of a number of office buildings including my building which is located at the northeastern corner of West 9th Street and Superior Avenue. My building, at 820 West Superior Avenue, is located just north of the State Office

Tower and the Carl B. Stokes United States Courthouse at 810 West Superior Avenue, Cleveland, Ohio.

5. The water backup caused a series of electrical failures in Cleveland Electric Illuminating's vault as well as in my own office building. These failures resulted in major equipment failures, damaging computer lines, phone lines, sewer and water lines, and of course *all* electrical service.

6. From Saturday afternoon until Wednesday at 5:00 p.m, when this affidavit is being written, crews have worked around the clock to remedy these related and complicated problems. I have now been informed that electrical power is unlikely to be restored for the balance of the week.

7. Worse yet, it is still unknown whether the problems described above resulted in any damage to my law firm's computer system, which operates from a single large server that may have been damaged.

8. Since Saturday morning, I have been unable to access my calendar (except as it exists on the web), any of my office files (my offices are on the ninth floor of a multi-tenant building), any part of my computer system, the deposition transcripts for this case (which are stored and accessed electronically), the document production by the Lottery Commission for this case (which was all produced electronically), contact lists, or other ordinarily accessible resources used by me to practice law.

9. When the nature and extent of the problems outlined above became evident, my assistant, Wendy Barcik, who has been working from home, contacted counsel for the State, Randall W. Knutti, Esq. to seek his consent to this motion. I am informed that Mr. Knutti has graciously consented to the proposed extension.

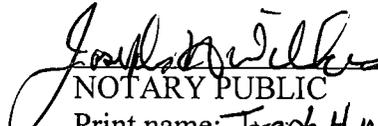
10. The motion to which this affidavit is attached is not made for any improper purpose and its necessity was totally unexpected.

11. In light of the foregoing, I need an additional 14 days to prepare and serve my client's opposition to the pending Motion for Summary Judgment.

Affiant further sayeth naught.


BRENT L. ENGLISH

SWORN TO AND SUBSCRIBED in my presence, a notary public in and for the State of Ohio, on this 16th day of September 2015 by Brent L. English, Attorney at law.


NOTARY PUBLIC
Print name: Joseph H. Wilkes
Commission expires: March 9, 2020