

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

JANET JENKINS, <i>et al.</i> ,)	
Plaintiffs)	
)	
v.)	Docket No. 2:12-cv-184
)	
KENNETH L. MILLER, <i>et al.</i> ,)	
Defendants)	

OPPOSITION OF DEFENDANTS ZODHIATES, RESPONSE UNLIMITED AND HYDEN TO PLAINTIFFS’ MOTION TO EXCUSE CASE FROM EARLY NEUTRAL EVALUATION

Defendants Zodhiates, Response Unlimited and Hyden (the “Zodhiates Defendants”), through their counsel, Gravel & Shea PC, oppose Plaintiffs’ Motion, and state as follows:

The Early Neutral Evaluation program in the District of Vermont has been extremely successful across a wide range of cases since its inception in 1994. Reports available on the Court’s website present statistical evidence of its success for the years 2012 through 2016. The 2016 report recites that of 4030 ENE eligible cases since 1994, only 1% opted out. Of the 2,127 individual sessions that had been held since the program began, 43% achieved full settlement at the session (*See* 2016 Report, at p. 5). In 2016, more than half achieved full settlement at the session (*See* 2016 Report, at p. 6). The ENE evaluator selected by the parties in this case, Michael Marks, had as of 2016, achieved success at the session in 52% of the cases in which he participated. Comments provided in 2016 by those attorneys who participated in the program described the experience as “excellent” (78%) or “good” (22%). None described the experience as “indifferent,” or “negative.” Civil Rights cases are among those included in the ENE process, and enjoyed similar results as other cases.

Against this wealth of experience, the suggestion that there is good cause to excuse the current case “due to the low likelihood of settlement” (Motion at 1), cannot be taken at face value. Counsel for the Zodiates Defendants does not approach this, or any ENE or mediation session with such low regard for the process. While they would agree, as they have consistently held, that the ENE session is better had near the end of discovery, and are amenable to substitute arrangements for those who would find it impossible or a hardship to attend in person, they do not agree that this case should be excused from ENE.¹ It is their view that the parties will benefit from a frank discussion as to the merits of the case, assisted by the highly skilled neutral they have chosen.

WHEREFORE, the Zodiates Defendants respectfully request that Plaintiffs’ Motion to Excuse Case from Early Neutral Evaluation Requirement be denied, with the provision that substitute arrangements may be made for those who would find it impossible or a hardship to attend in person.

Dated: Burlington, Vermont
December 11, 2019

/s/ Robert B. Hemley

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For Zodiates Defendants

¹ Plaintiffs’ motion is an abrupt departure from their stated willingness, expressed in a December 9, 2019 e-mail to counsel, just the day before they filed their motion, stating that despite their doubts, “Plaintiffs are willing to engage in ENE if Defendants would like to do so.” See Motion, Exhibit 2 (e-mail exchange between Clemons and Hemley).

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CERTIFICATE OF SERVICE

I, Robert B. Hemley, Esq., attorney for Defendants Philip Zodhiates, Victoria Hyden and Response Unlimited, Inc., certify that, on December 11, 2019, I caused the Opposition of Defendants Zodhiates, Response Unlimited and Hyden to Plaintiff’s Motion to Excuse Case From Early Neutral Evaluation to be served through the CM/ECF system and by e-mail and in some instances by first-class mail, on the following individuals:

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