

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

HENRY KUEHN AND JUNE P. KUEHN

PLAINTIFFS

VERSUS

CIVIL ACTION NO. 1:08CV577-LTS-RHW

STATE FARM FIRE AND CASUALTY COMPANY
AND JOHN DOES 1 THROUGH 10

DEFENDANTS

MOTION TO ENFORCE SETTLEMENT

COME NOW the Plaintiffs, HENRY KUEHN and JUNE P. KUEHN, by and through their attorneys of record, DENHAM LAW FIRM, PLLC, and would file this, their Motion to Enforce Settlement, and would show as follows:

I.

On approximately May 13, 2010, State Farm conveyed an offer of settlement through its attorney, John Banahan. No mention of confidentiality whatsoever was made in defense counsel's conveyance of the offer. On May 17, 2010, counsel for the Kuehns, Earl Denham, accepted the offer of settlement. Thus, the case was settled. State Farm is now, after the fact, attempting to require that the settlement should be confidential, when those terms simply were not even discussed as part of the settlement offer which was accepted by the Kuehns. Because the offer was made by State Farm and accepted by the Kuehns, the Kuehns would ask that the Court enforce the terms of the settlement as agreed upon, with no after-the-fact condition of confidentiality. Confidentiality in this case is inappropriate, among other things, since State Farm has paid no consideration to the Kuehns for it, and State Farm had a duty to raise the issue prior to settling.

II

State Farm has taken the position that because the last Hurricane Katrina case that Bryan, Nelson, Schroeder, Castigliola & Banahan settled with Denham Law Firm contained a confidentiality provision, that the Kuehns “should have known” that it intended confidentiality to be a condition of settlement. Aside from the fact that the Kuehns’ lawsuit is not remotely similar to a typical Hurricane Katrina case, the Kuehns are in no way obligated to settle on the same or similar terms as the single prior case Bryan, Nelson, Schroeder, Castigliola & Banahan litigated with Denham Law Firm. *See Platcher v. Health Professionals, Ltd.*, 549 F. Supp. 2d 1040, 1043-1044 (C. Dist. Ill. 2008) (holding that settlement should be enforced without confidentiality clause, reasoning that if confidentiality were material, it should have been specifically raised during settlement negotiations, and fact that plaintiffs’ counsel had been involved in prior similar litigation in which confidentiality provision was included in settlement was not considered to put plaintiffs themselves on notice of such practice).

State Farm simply cannot seek to add new conditions to the settlement agreement with the Kuehns, as its offer has already been accepted.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs respectfully request the Court to enforce the settlement agreement on the terms agreed upon.

Respectfully submitted on 19th day of May, 2010

HENRY KUEHN AND JUNE P. KUEHN

BY: DENHAM LAW FIRM, PLLC

BY: s/Earl L. Denham

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CERTIFICATE

I, EARL L. DENHAM, do hereby certify that I electronically filed the above and foregoing Motion to Enforce Settlement with the Clerk of the Court utilizing the ECF system, which provides notification of said filing to the following:

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SO CERTIFIED on this the 19th day of May, 2010.

s/Earl L. Denham
EARL L. DENHAM

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