

CA - Old Bridge

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Letter - brief in support of P's motion
to exclude evidence and expert testimony on
behalf of D.

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School of Law-Newark • Constitutional Litigation Clinic
S.I. Newhouse Center For Law and Justice
15 Washington Street • Newark • New Jersey 07102 • 201/648-5687

May 18, 1984

The Honorable Eugene D. Serpentelli
Judge, Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08753

Re: Urban League of Greater New Brunswick et al.
vs. Carteret, et al.
No. C 4122-73

Dear Judge Serpentelli:

Please accept this letter-brief in support of plaintiffs' Motion to Exclude Evidence and Expert Testimony on Behalf of defendants North Brunswick and Old Bridge.

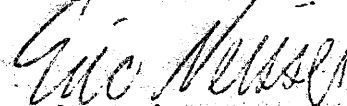
As set forth in my Affidavit and the attached documents, it is clear that the defendants North Brunswick and Old Bridge have done nothing to comply with their Mount Laurel obligation since the Judgment of July 1976, and more in point now, have done nothing to comply with this Court's March 19, 1984, discovery order, except that Old Bridge has requested an unwarranted delay in filing its expert report. Since November 29, 1983, defendants North Brunswick and Old Bridge have been aware that plaintiffs intended to insist on answers to extensive interrogatories. Since January 13, 1984, when this Court granted plaintiffs' Motion to Modify and Enforce Judgment, defendants have been aware that the Court intended to insist that defendants provide complete discovery on the issues in this case. As of March 16, 1984, at the case management conference, defendants have been aware that the Court would insist on a complete expert report on fair share issues. No complaint about difficulties of retaining experts, attorneys' illnesses, mailing delays or the like should be heard to justify the delays experienced here. Defendants and their counsel have known for over 4 months that interrogatory answers and experts reports would be required and for two months have known the precise date they are due.

Courts in New Jersey have repeatedly asserted the power of the judiciary to exclude evidence and expert reports, and indeed even strike defenses and claims, in light of such neglect of discovery obligations. See, e.g., Zaccardi v. Becker, 88 N.J. 245, 440 A.2d 1329 (1982); Douglass v. Harris, 35 N.J. 270, 173 A.2d 1 (1961) (default judgment upheld); Westphal v. Guarino, 163 N.J. Super. 137, 394 A.2d 376 (App. Div. 1978);

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Clark v. Fog Contracting Co., 125 N.J. Super. 159, 309 A.2d 617
(App. Div. 1973) (expert testimony precluded); Interchemical Corp.
v. Uncas Printing and Furnishing Co., 39 N.J. Super. 318,
120 A.2d 880 (App. Div. 1956) (suppressing defense and entering
default on damage claim). That discretion should be exercised
here to preclude defendants from introducing evidence that they
have chosen not to provide in a timely fashion to plaintiffs in
accordance with a court order.

Respectfully submitted,



Eric Neisser
John M. Payne
Bruce S. Gelber
Janet La Bella

Attorneys for Plaintiffs

cc/Leslie Lefkowitz, Esq.
Jerome Convery, Esq.
Thomas Norman, Esq.
Henry Hill, Esq.