

DISTRICT OF NEW HAMPSHIRE

Aetna Casualty,
Plaintiff

v.

Civil No. 96-556-M

Inter-City Construction Co., Inc.
and Paul E. Pandelena,
Defendants

O R D E R

Upon review of the Defendants' Motion to Enforce Settlement and for Attorneys' Fees, and having heard the parties regarding same, the court hereby enters the following order:

1. The settlement between the parties as memorialized in the letter from plaintiff's counsel to defendants' counsel dated February 13, 1998, is binding and enforceable and is hereby ordered enforced. The parties shall act in good faith to complete the documentation required to implement the settlement within 30 days of the court's order.

2. The defendants are awarded their reasonable attorneys' fees incurred in seeking to enforce the settlement agreement since defendants' legal rights were clear and they should not have been required by plaintiffs to invoke court proceedings to vindicate those rights. Harkeem v. Adams, 117 N.H. 687, 377 A.2d 617 (1977) (fees may be awarded when an individual is forced to seek judicial assistance to secure a clearly defined and established right). Keenan v. Fearon, 130 N.H. 494, 543 A.2d 1379 (1988) (fees if action prolonged without reasonable basis in

fact or reasonable claim in law as it is or might arguably be held to be). Plaintiff had no colorable legal basis for failing to perform the settlement as agreed, or to seek to add additional material terms after agreement was reached. See e.g. Clark v. Mitchell, 937 F. Supp. 110 (D.N.H. 1996).

3. The parties shall endeavor in good faith to agree on a reasonable fee amount (understanding that plaintiff does not thereby waive any objection to the actual award of fees). If the parties cannot agree on a reasonable amount, defendants shall submit a statement of attorneys' fees to the court, with a copy to the plaintiff, for review on or before March 31, 1998. The plaintiff shall object to any specific item(s) listed on or before April 6, 1998.

SO ORDERED.

Steven J. McAuliffe
United States District Judge

March 24, 1998

cc: John P. Connelly, Esq.
Edward D. Philpot, Jr., Esq.