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U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

**EDWARD BOUDREAU**, by and through his )  
parents, Edwin and Ann Boudreau, et. al., )  
 )  
 ) Plaintiffs, )  
 )  
 ) vs. )  
 )  
 )  
 )  
**GEORGE H. RYAN**, in his official capacity as )  
Governor of the State of Illinois, et al., )  
 )  
 )  
 ) Defendants. )

No. 00 C 5392  
JUDGE GRADY  
MAGISTRATE DENLOW

**DOCKETED**  
DEC 28 2001

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS MOTION TO DISMISS PLAINTIFFS  
THIRD AMENDED COMPLAINT**

Now comes the Plaintiffs, by and through their attorney, Robert H. Farley, Jr., Ltd., and Thomas G. Morrissey, Ltd., and submits this Response to the Defendants Motion To Dismiss the Plaintiffs Third Amended Complaint, as follows:

**Introduction**

The Defendants have requested leave of court to file a Motion to Dismiss the Plaintiffs Third Amended Complaint. Plaintiffs do not procedurally object to the Defendants being granted leave of Court to file the Motion to Dismiss the Plaintiffs Third Amended Complaint. However, the Defendants in the Motion to Dismiss are once again raising the issue of immunity under the Eleventh Amendment which was previously denied by this Court in denying the Defendants Motion to Dismiss the Plaintiffs First Amended Complaint on May 1, 2001. The

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Defendants did not appeal the order of May 1, 2001, denying the claim of Eleventh Amendment immunity under the collateral order doctrine.

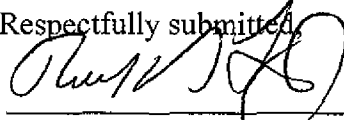
**The Defendants Claim Of Eleventh Amendment Immunity Relates Back To Their Prior Motion To Dismiss.**

The Plaintiffs filed a Third Amended Complaint in order to add four new Plaintiffs to be class representatives. In *Olech v. Village of Willowbrook*, 138 F. Supp. 2d 1036, 1044 (N.D. Ill. 2000), Magistrate Schenkier addressed the issue of whether the amended complaint relates back to the date of the original complaint.

In determining whether the addition of claims by new plaintiffs will relate back, some courts within this district have applied a four-factor inquiry to determine whether the Rule 15(c) requirements of fair notice and lack of prejudice have been met. These factors include whether or not (1) the new plaintiffs claim arose out of the “same conduct, transaction or occurrence” set forth in the original complaint; (2) the new plaintiff shares an “identity of interest” with the original plaintiff; (3) the defendants have “fair notice” of the new plaintiff’s claim; and (4) the addition of the new plaintiff causes the defendants prejudice. See *Sherwin Manor*, 1997 U.S. Dist. LEXIS 9255, 1997 WL 367368 at \*6 (citing *Williams v. United States*, 405 F.2d 234 (5<sup>th</sup> Cir. 1968)); *J. Pease Construction*, 1994 U.S. Dist. LEXIS 12331, 1994 WL 499137, at \*2-5.

In the instant case, the claims of the new Plaintiffs seeking residential services relates back to the First Amended Complaint. Likewise, the Defendants raising the claim of Eleventh Amendment immunity relates back to the filing of their prior Motion to Dismiss which was denied on May 1, 2001.

WHEREFORE, the Plaintiffs requests that this Court deny the Defendants Motion To Dismiss the Plaintiffs Third Amended Complaint on the basis that the Defendants Motion To Dismiss the Third Amended Complaint relates back to the Defendants prior filing of a Motion To Dismiss which was denied on May 1, 2001.

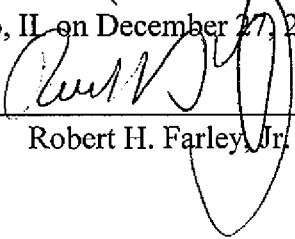
Respectfully submitted,  
  
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One of the Plaintiffs Attorney

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**CERTIFICATE OF SERVICE**

I, Robert H. Farley, Jr., Attorney for the Plaintiffs, deposes and states that he served a copy of the foregoing Plaintiffs Response To Defendants Motion To Dismiss Plaintiffs Third Amended Complaint by mailing a copy to Hinshaw & Culbertson (Attn. Steven M. Puiszis / Michael Leech) 222 N. LaSalle Street, Suite 300, Chicago, IL on December 27, 2001.



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