

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>STEPHANIE LYNN STEIGERWALD,</b>	)	
<b>on behalf of herself and the class,</b>	)	
	)	<b>CASE NO.: 1:17-CV-1516</b>
<b>Plaintiffs,</b>	)	
	)	<b>JUDGE JAMES S. GWIN</b>
<b>v.</b>	)	
	)	<b>PLAINTIFFS' OPPOSITION TO</b>
<b>NANCY A. BERRYHILL, ACTING</b>	)	<b>DEFENDANTS' MOTION TO STAY</b>
<b>COMMISSIONER OF SOCIAL</b>	)	<b>THE COURT'S APRIL 1, 2019</b>
<b>SECURITY, ET AL.</b>	)	<b>ORDER PENDING APPEAL</b>
	)	
<b>Defendants.</b>		

Defendants have filed a second request for a stay of the Court's Order requiring Defendant the Social Security Administration ("SSA") to perform the Subtraction Recalculations for the Class. *See* Docs. 96, 123. Plaintiffs oppose Defendants' request. In doing so, Plaintiffs rest on their prior briefs on this issue. *See* Docs. 98, 113, 119.

In addition, Plaintiffs note the following:

1. Defendants have given the Court an ultimatum of June 24, 2019 – a time before the briefing period for their Motion has even expired – to rule on the Motion, stating: “absent relief by this Court [by June 24], the government intends to seek relief from the United States Court of Appeals for the Sixth Circuit.” Doc. 123-1 at 8.

Should they choose to seek such relief before this Court rules on their pending Motion to Stay, Defendants ostensibly will be violating Federal Rule of Appellate Procedure 8(a). *See Baker v. Adams Cty./Ohio Valley Sch. Bd.*, 310 F.3d 927, 930-31 (6th Cir. 2002) (“[E]ven if we were inclined to stay the judgment, [it] would be ill-advised . . . the defendant here failed to comply with the rule governing a motion for an injunction. Under Rule 8 of the Federal Rules of

Appellate Procedure, ‘[a] party must ordinarily move first in the district court’ for an injunction pending appeal . . . The defendant’s failure to seek such relief below does not preclude the defendant from making such a motion before this court, but Rule 8 requires that in such a case, ‘[t]he motion must: (i) show that moving first in the district court would be impracticable; or (ii) *state that, a motion having been made, the district court denied the motion or failed to afford the relief requested [and state any reasons given by the district court for its action].*’” (Emphasis added)).

2. Plaintiffs continue to believe that Defendants can reasonably and quickly complete the task at hand if they drop the Quality Review in 100% of cases. *See* Doc. 119 at 5-7 (“The Court Should Order The Agency To End Its Current 100% ‘Quality Review’ Of The Subtraction Recalculation For Each And Every Class Member”). If Defendants were to do that, and still cannot finish the task within the eight months, Plaintiffs would be open at that time to consenting to further relief. However, at the same time, Plaintiffs implore the Court to order some enforcement mechanism to ensure that Defendants perform the Subtraction Recalculations expeditiously.

3. At the June 12, 2019 Status Conference, the Court suggested an alternative to reach an expeditious conclusion of this case. Defendants apparently have rejected this course of action.<sup>1</sup> Plaintiffs, however, have an alternative that tweaks the Court’s suggestion and should alleviate any of Defendants’ issue regarding their authority to settle damages. Plaintiffs’ alternative is as follows:

(a) Defendants provide the Court and Plaintiffs with the average payment made to

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<sup>1</sup> In addition, after the June 12 Status Conference transcript was made available on the Steigerwald website, Class Counsel received the email attached as Exhibit A from a Class Member, arguing that it would be inequitable for him to receive only an average payout.

Class Members to date.

(b) Defendants send that average payment to all Class Members, including those who to date received letters stating they were not entitled to any relief.<sup>2</sup>

(c) At the same time that Defendants send the average payment to all Class Members, they should enclose a letter stating that each Class Member could choose to either: (i) accept the lump-sum payment as an individual settlement of the individual Class Member's claim (such acceptance including a waiver of rights, which will be explained in the letter), or (ii) affirmatively request that SSA perform the Subtraction Recalculation for the individual Class Member.

(d) In the case of the latter choice (*i.e.*, where the Class Member requests that SSA perform the Subtraction Recalculation), the Class Member will keep the lump sum payout pending performance of the Subtraction Recalculation for him or her. Following performance of the Subtraction Recalculation, if the Class Member is owed additional money, SSA would pay that additional member to the Class Member. If the Class Member was owed less money than the initial payout, the Class Member would be assessed an overpayment for the difference.

The above proposal is equitable and fair to all parties, and will almost certainly expedite the process, inasmuch as many Class Members presumably simply will accept the average payment. Additionally, the proposal addresses and alleviates any concern that SSA should have regarding its ability to settle damages: that is because each individual Class Member will retain the right to have the Subtraction Recalculation performed, or will alternatively be choosing to

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<sup>2</sup> Any Class Members who received anything above that average will keep that amount. Any Class Members who received less than that amount shall be "made whole" by receiving an amount up to the average. In this manner, there will be no discrimination among Class Members, as all will receive at least the average amount at that juncture.

waive their rights.

Wherefore, Plaintiffs respectfully request that the Court: (1) order that the 100% Quality Review process be eliminated in order to expedite performance of the Subtraction Recalculations, and (2) hold another Status Conference call to discuss the above proposal, (3) in the interim either deny the Motion to Stay or hold it in abeyance pending another Status Conference call.

Respectfully submitted,

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*Attorneys for Plaintiff and the Class*

Dated: June 20, 2019

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of June, 2019, a copy of the foregoing Opposition to Motion to Stay Pending Appeal was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

*/s/ Ira T. Kasdan*

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Ira T. Kasdan  
*Attorney for the Plaintiff Class*

**CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 7.1**

The undersigned declares under penalty of perjury that the foregoing Opposition complies with the page limitations for a Standard matter, and is 4 pages long.

*/s/ Ira T. Kasdan*

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Ira T. Kasdan  
*Attorney for the Plaintiff Class*

# **EXHIBIT A**

**From:** [REDACTED]  
**Sent:** Monday, June 17, 2019 2:46 PM  
**To:** Stern, Bezalel  
**Subject:** Re: Steigerwald vs Berryhill

**CAUTION External Email**

Hello Mr Stern, I wanted to drop a quick email thanking you and Mr Kasdan for your calls this morning, I think the idea of giving each class member around \$800 with the option to have Social Security do their subtraction recalculation if they feel more is owed, that will save thousands of hour's in recalculations which will amount to millions of dollars in savings to tax payers and get the class relief at the same time, maybe a letter to class members stating that they are welcome to have the full recalculation done but with the understanding that doing so could result in an overpayment which would need to be collected, and Social Security would still reserve the right to assess any overpayments in the future to any class members they find were over payed, frankly I wish I would have come up with the idea myself lol, Again I appreciate your firm's hard work on this case and for doing your best to get class members payed, If you speak with Ira soon please let him know his call this morning especially being on vacation was much appreciated. [REDACTED].

On Sat, Jun 15, 2019, 1:38 PM [REDACTED] <[REDACTED]> wrote:

Hello Mr Stern [REDACTED] here, I had read on the class site yesterday the proposal that judge Gwen put forward and I have to say me nor my wife [REDACTED] are or would ever be ok with the averaging out all class members and giving each 4 or 5 hundred each, myself payed almost \$12 thousand to my attorney for work on my disability claim and my wife also a CAT 1 Class member paid 2 attorneys a total of almost \$17 thousand, according to research I have done over month's is that disability recipients generally receive around 70 percent of attorney fee's back when the subtraction recalculation is complete, so if my figure's are correct I would receive around \$7 to \$8 thousand and my wife around \$9 to \$10 thousand back, So compromising down to 4 or 5 hundred dollars is really inconceivable in our case's, I'm sure it will benifit some class members who wouldn't have received any money back or those who would be assessed an overpayment, in fact the 30 thousand or so who would have received nothing just brings down the average for those in our position, I think at this point the only compromise that can be made is by Social Security and that compromise needs to be the elimination of the quality review process, if not for the QR being done around a quarter of all class members would have been completed by now, Me and my wife and 16 year old daughter were very happy to here SS was finally going to make thing's right and we would have enough money finally to move out of slums we live in currently where you can't even let your grandchildren to go outside and play because the neighborhood is so bad, but this whole case has given us false hope's I am afraid, It looks like people in our position will either have to settle for thousands less than we are entitled or according to math it could take up to just over 30 year's for the agency to complete all 130 thousand at right around 4 thousand a year, either way is not right and I hope their is some other compromise that can be made because settling for thousands less or maybe dying before anything gets done is just plain WRONG, I appreciate your time Mr Stern and if you like you can forward this to Judge Gwin and Social Security if you like, Thank you again [REDACTED]. P.S. if you would like a phone conversation my number is [REDACTED].

On Tue, Jun 11, 2019, 6:25 PM [REDACTED] <[REDACTED]> wrote:

Thank you for your response.

On Tue, Jun 11, 2019, 11:43 AM Stern, Bezalel <[BStern@kelleydrye.com](mailto:BStern@kelleydrye.com)> wrote:

Dear [REDACTED],

Thank you for your email. The Social Security Administration has appealed the case to the Sixth Circuit Court of Appeals. Yesterday, SSA asked Judge Gwin to stay (postpone) his ruling until the Court of Appeals rules on the appeal. Judge Gwin has set a telephonic hearing for the attorneys tomorrow afternoon, at which he will likely discuss this request.

We are in the process of updating the website with SSA's new filing, and with SSA's most recent status updates. The Notice of Appeal is already on the website. As of last week, SSA claims they have processed about 1,650 Subtraction Recalculations to date. Please let us know if you have any further questions.

Sincerely,

Bez

**BEZALEL STERN**

Senior Associate

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bstern@kelleydrye.com

**From:** [REDACTED] [mailto:[REDACTED]]

**Sent:** Saturday, June 08, 2019 7:33 PM

**To:** Stern, Bezalel

**Subject:** Steigerwald vs Berryhill

**CAUTION External Email**

Hello Bez my name is [REDACTED] and I was emailing to see if there was any new news on the Steigerwald Cass action? I and my wife are both Cat 1 Class members, I visit the Class website daily to keep up but have noticed it seems today be at a standstill last couple weeks or so, also noticed it has been around a month since a update from Social security on the number of subtraction recalculations which was my understanding they were to update every 2 week's, I usually speak to Ira but since he has been out for the week I decided to see if you were able to give me and my wife a quick update, Thank you for your time Bez and will wait for your reply.

This message is subject to Kelley Drye & Warren LLP's email communication policy.

[KDW-Disclaimer](#)