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STANDING ORDER FOR SETTLEMENT CONFERENCE

The Court encourages the parties to consider settlement at the earliest opportunity in the case. Even if the case cannot be resolved through settlement, early consideration of settlement often can result in focusing and streamlining the issues to be litigated – which can save the parties considerable time and money.

Consideration of settlement is a serious matter, and a settlement conference requires thorough preparation. This Order sets out the procedures that Judge Gilbert requires the parties to follow in preparing for the settlement conference and the procedures that the Court typically will employ in conducting the conference. **Counsel must provide a copy of this Order to their clients and discuss these procedures with them prior to the settlement conference.**

INITIAL STATUS HEARING

In most cases, Judge Gilbert will hold a status hearing to set the date for a settlement conference and dates for the exchange of pre-settlement conference letters. In some cases, the Court will have counsel contact Judge Gilbert's courtroom deputy to schedule a date for a settlement conference even before the status hearing, but still will schedule a status hearing with counsel for the purpose of discussing matters relevant to the settlement conference. Counsel are required to attend the status hearing even if a date has been set for a settlement conference.

SETTLEMENT CONFERENCE PREPARATION

1. **PRE-SETTLEMENT CONFERENCE LETTERS.** A settlement conference is more likely to be productive if, before the conference, the parties have exchanged their settlement positions in writing. The parties' settlement letters also provide the Court with information it needs to assist the parties in exploring settlement. Settlement letters should be addressed to one's opposing party or counsel, not to the Court. Copies of the settlement letters will be delivered to Judge Gilbert's Chambers when they are exchanged by the parties. The Court expects these letters to be delivered on the dates set.

   Unless the Court sets a different schedule, plaintiff's counsel shall deliver plaintiff's settlement letter to defendant's counsel and a copy to Judge Gilbert's Chambers (Room 1366) at least fourteen (14) days before the settlement conference, and defendant's counsel shall deliver defendant's settlement letter to plaintiff's counsel and a copy to Judge Gilbert's Chambers (Room 1366) at least seven (7) days before the settlement conference. Do not file copies of settlement letters in the Clerk's Office or on the CM/ECF system. Dates for the exchange of settlement letters can be changed only by a Court order.

2. **FORMAT FOR PRE-SETTLEMENT CONFERENCE LETTERS.**

   Plaintiff's letter shall include at least the following information:

   a. A brief summary of the claims asserted in the complaint and any counterclaim or third party complaint;

   b. If an answer has been filed, a brief summary of any affirmative defenses raised by defendant and plaintiff's position on those defenses;

   c. A description of the discovery that has been completed or that is outstanding, including the number of depositions that have been taken or are contemplated by each party, a description of any discovery that is outstanding, and a summary of any future discovery that is contemplated;

   d. Any existing discovery cut-off, pre-trial order, pre-trial conference or trial dates;

   e. The status of any pending motions, including whether any such motions are fully briefed and any existing briefing schedules;

f. A brief summary of the evidence and legal principles that plaintiff asserts will allow plaintiff to establish liability and defeat the affirmative defenses;

g. An itemization of the damages plaintiff believes can be proven at trial, by category, and a brief summary of the evidence and legal principles supporting those damages, including, without limitation, attention to proximate cause;

h. A settlement demand that is less than total victory, recognizing the inherent risk of litigation; and

i. Any additional information plaintiff believes would be helpful to the Court in assisting the parties to resolve the dispute.

Defendant's responsive letter shall include at least the following information:

a. Any points in plaintiff's letter with which defendant ***agrees***;

b. Any points in plaintiff's letter with which defendant ***disagrees*** and the basis for that disagreement;

c. A brief summary of the evidence and legal principles defendant asserts will defeat plaintiff's claim(s) and allow defendant to prevail;

d. A response to plaintiff's settlement demand and defendant's settlement counter-offer (again, less than total victory, recognizing the inherent risk of litigation); and

e. Any additional information defendant believes would be helpful to the Court in assisting the parties to resolve the dispute.

The Court requires that persons attending the settlement conference read the settlement letters exchanged between the parties before coming to the conference. Each of these letters typically should be five (5) pages or fewer in length. Reducing the size of the font or the margins to fit within the 5 page limit is strongly discouraged!

Unless a party states otherwise in its settlement letter, a party's agreement to participate in a settlement conference implicitly includes consent that the Court can discuss settlement matters with counsel for that party or its opponent *ex parte* (*i.e.,* without the opposing party or its counsel present) during the settlement conference or immediately prior to it. For example, after receiving the settlement letters, the Court may call counsel for one party or the other to discuss or clarify position(s) set forth in the letters in preparation for the settlement conference. If a party does not agree to this procedure, counsel should make that clear at the initial status hearing.

3. **ATTENDANCE OF PARTIES REQUIRED.** Unless the Court allows otherwise by separate order, ***parties with full settlement authority are required to attend the conference in person.*** If a party is an individual, that individual must attend in person. If a party is a corporation or governmental entity, a representative of that corporation or governmental entity (in addition to counsel of record) with full settlement authority (as defined more fully below) must attend in person. The Court strongly believes that the personal presence of the individuals with a stake in the outcome of the settlement conference, and their participation in the settlement discussions and the "give and take" that occurs at the conference, materially increases the chances of settlement. Thus, absent a showing of unusual or extenuating circumstances, the Court will not permit a party, party representative or an insurance representative merely to be available by telephone. If the person attending the settlement conference does not have authority to agree to a settlement without making a telephone call, then the person on the other end of that telephone call should attend the settlement conference. If a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority must attend the settlement conference in person. A party that believes it has good cause for the Court to alter these rules should raise that issue at the initial status hearing or by motion thereafter.

4. **FULL SETTLEMENT AUTHORITY REQUIRED.** The Court reserves a substantial block of time for each settlement conference. This time is wasted and opposing parties incur unnecessary expense if a party comes to the settlement conference with less authority than necessary to settle the case. Therefore, a party or its representative attending the settlement conference must have full settlement authority. "Full settlement authority" means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement demand of the opposing party. Although it is probable and even likely the case will settle for less than the settlement demand, and therefore one might question the Court's phrasing of the foregoing requirement, it is intended to avoid a situation in which a party or its representative comes to the settlement conference with authority that is less than what reasonably could be within the realm of possibility for the case.

5. **FAILURE TO ATTEND WITH FULL SETTLEMENT AUTHORITY; SANCTIONS.** A party that comes to a settlement conference without full settlement authority as described in this Order can be sanctioned. If a conference must be adjourned or continued so that a party can obtain additional authority to reach a settlement that reasonably was within the realm of possibility for the case, that party may be sanctioned, including, but not limited to, being required to pay the opposing party's attorney's fees and costs incurred by the need to reconvene. *See* Federal Rule of Civil Procedure 16(c)(1), 16(f)(1)(A) and (B), and 16(f)(2).

6. **CONFERENCE FORMAT.** The Court generally will follow a traditional mediation format. Each side will have an opportunity to make an opening presentation to the other side, if he/she/it desires to do so, which then will be followed by joint discussion with the Court and private meetings by the Court with each side. The Court expects the lawyers and the parties or their representatives to be fully prepared to participate in these discussions. The Court also

encourages all parties to be willing to reassess their previous positions and to be willing to explore creative means for resolving the dispute.

7. **CONFIDENTIALITY.** The pre-conference letters required by this Order and the settlement conference are governed by Local Rule 83.5 relating to Confidentiality of Alternative Dispute Resolution Proceedings. The Court expects the parties to address each other with courtesy and respect, but also to speak frankly and openly about their views of the case in this confidential setting.

8. **TOPICS FOR THE SETTLEMENT CONFERENCE.** The parties and their counsel should consider and be prepared to discuss the following topics, among others, at the settlement conference:

    a. What are your objectives in the litigation?

    b. What are the strengths and, just as important, the weaknesses of your case?

    c. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?

    d. What are the points of agreement and disagreement between the parties? Factual? Legal?

    e. Does a settlement require the participation or input of a third party not a party to the case?

    f. Are there any impediments to a settlement that are not discussed in the parties' settlement letters?

    g. If the party hoping to prevail at trial does prevail, what remedy (*i.e.*, damages, injunctive relief, statutory award or penalty, attorneys' fees, interest) does the law allow?

    h. Are there possibilities for creative resolution of the dispute?

    i. Have you considered how to deal with any outstanding liens?

ANY PARTY THAT WISHES TO VARY ANY OF THE PROCEDURES SET FORTH IN THIS STANDING ORDER SHOULD MAKE AN APPROPRIATE REQUEST TO THE COURT AT THE INITIAL STATUS HEARING OR, IN ANY EVENT, BY MOTION NOTICED FOR PRESENTMENT IN ACCORDANCE WITH THE COURT'S PROCEDURES PRIOR TO THE SETTLEMENT CONFERENCE.

BECAUSE OF THE NUMBER OF SETTLEMENT CONFERENCES SCHEDULED DURING THE COURSE OF A YEAR, AFTER A SETTLEMENT CONFERENCE HAS BEEN SET BY A COURT ORDER, IT WILL BE RE-SCHEDULED ONLY UPON A MOTION SUPPORTED BY GOOD CAUSE.

ENTER:
JEFFREY T. GILBERT
United States Magistrate Judge

As modified: January 8, 2015