

JUDGE SARA L. ELLIS

STANDING ORDER FOR SETTLEMENT CONFERENCES

The Court encourages the parties to consider settlement at the earliest reasonable 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 serious and thorough preparation. This Order sets out the procedures that Judge Ellis 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.**

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 letters also provide the Court with information it needs to assist the parties in exploring settlement. Copies of the settlement letters will be delivered to Judge Ellis' courtroom deputy before the scheduled settlement conference.
2. **FORMAT FOR PRE-SETTLEMENT CONFERENCE LETTERS.**

Plaintiff's counsel's letter shall set forth 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;
- c. A brief summary of the evidence and legal principles that plaintiff asserts will allow it to establish liability and defeat the affirmative defenses;
- d. An itemization of the damages plaintiff believes can be proven at trial and recovered from defendant, and a brief summary of the evidence and legal principles supporting those damages, including, without limitation, attention to proximate cause;
- e. A settlement demand that is less than total victory, recognizing the inherent risk of litigation; and

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

Plaintiff's letter also should summarize briefly the following matters:

- a. The status of any pending motions, including whether any such motions are fully briefed and any existing briefing schedules;
- b. 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; and
- c. Any existing discovery cut-off, pre-trial order, pre-trial conference or trial dates.

Defendant's counsel's responsive letter shall set forth 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 response to plaintiff's settlement demand and defendant's settlement counter-offer (again, less than total victory, recognizing the inherent risk of litigation); and
- d. Any additional information defendant believes would be helpful to the Court in assisting the parties to resolve the dispute.

Each of these letters typically should be five (5) pages or fewer. However, if counsel believes that more pages are required to provide the comprehensive presentation required, the letter may be as long as deemed necessary. Significant and supporting exhibits may be attached and are often quite helpful both to the court and to opposing counsel. **If exhibits are included, they must be tabbed with protruding tabs in accordance with Local Rule 5.2.**

Unless the Court sets a different schedule, plaintiff's counsel shall deliver copies of plaintiff's settlement letter to defendant's counsel and to Judge Ellis' courtroom deputy (Room 1720) at least fourteen (14) business days before the settlement conference, and defendant's counsel shall deliver copies of defendant's settlement letter to plaintiff's counsel and to Judge Ellis' courtroom deputy (Room 1720) at least seven (7) business days before the settlement conference. Do not file copies of these letters in the Clerk's Office or on the CM/ECF system.

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* 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 the position(s) set forth in the letters in preparation for the settlement conference. The Court requires that persons attending the settlement conference read the settlement letters exchanged between the parties before coming to the conference.

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. If a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority 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, materially increases the chances of settlement. Thus, absent a showing of unusual and extenuating circumstances, the Court will not permit a client or an insurance representative merely to be available by telephone. A party who believes it has good cause for the Court to alter these rules should raise that issue by motion.
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 plaintiff. 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. Although it is probable and even likely the case will settle for less than the settlement demand, the foregoing requirement 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 could be reasonably within the realm of possibility for the case. If a party requires approval by an insurer to settle, then a representative of the insurer with full settlement authority must attend in person.
5. **SANCTIONS.** A party who comes to a settlement conference without full settlement authority as described in this Order may be sanctioned. If a conference must be adjourned or continued so that a party may obtain additional authority up to the plaintiff’s demand, that party may be sanctioned, including, but not limited to, being required to pay the opposing party’s attorney’s fees incurred by the need to reconvene.
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 party 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 issues (in and outside of this lawsuit) need to be resolved? What are the strengths and 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. What are the practical impediments to settlement?
 - f. What actual, legal remedies are available to the parties through litigation or otherwise?
 - g. Are there possibilities for creative resolution of the dispute?
 - h. If the case does not settle, what are the possible legal and practical consequences for all concerned?
 - i. Are there outstanding liens? Do we need a representative of the lienholder at the settlement conference?
9. **CANCELLATION OR RESCHEDULING OF THE CONFERENCE.** If the parties are required to reschedule or if they have concluded that a settlement conference is not necessary, they must inform Judge Ellis' courtroom deputy as soon as possible. Counsel are cautioned that failure to attend a settlement conference without authorization may result in the imposition of monetary sanctions against them.

ANY PARTY WHO WISHES TO VARY ANY OF THE PROCEDURES SET FORTH IN THIS STANDING ORDER SHOULD MAKE AN APPROPRIATE REQUEST TO THE COURT BY MOTION NOTICED FOR PRESENTMENT IN ACCORDANCE WITH THE COURT'S PROCEDURES PRIOR TO THE SETTLEMENT CONFERENCE.

Dated: December 10, 2013

ENTER:

SARA L. ELLIS
United States District Judge