UNITED STATES DISTRICT JUDGE ROBERT M. DOW, JR.
219 South Dearborn Street, Chambers Room 1778
Chicago, IL 60604
(312) 435-5665 (phone)
(312) 554-8478 (fax)
Courtroom Deputy: Theresa Kinney (312) 435-5668, Room 1914
e-mail: Theresa_Kinney@ilnd.uscourts.gov

Court Web Site: http://www.ilnd.uscourts.gov

Standing Order Regarding Settlement Conferences With Judge Robert M. Dow, Jr.

A settlement can offer many potential advantages for parties engaged in litigation. Obviously, settlement enables parties to avoid time, expense, and anxiety associated with going forward with the litigation process. Settlement also allows parties to avoid the "zero sum" outcome that may result at trial. Settlement also presents an opportunity to fashion more creative resolutions than the more limited types of relief that can be awarded in many cases that are resolved at trial. Structured settlements, continued business relationships, and resolution of other conflicts between the parties (even those in which no litigation currently is pending) can sometimes be achieved in the process of settling a case.

In view of these potential advantages, it is perhaps not surprising that more than 95% of all civil cases filed in this district are resolved without a trial. But cases are far more likely to settle – and to settle efficiently, without unnecessary expenditure of resources – when parties and counsel prepare for a settlement conference with the same vigor and attention to detail that they would expend in preparing for trial. The settlement dialogue should be treated as a vital part of the litigation process, regardless of whether the case actually settles or is one of the small percentage that proceeds to trial. To facilitate that dialogue, the Court has established the following ground rules that parties, their counsel, and the Court will observe, both in preparing for and in conducting settlement conferences.

A. EXCHANGE OF PRE-CONFERENCE DEMAND AND OFFER

At least fourteen days before the settlement conference, plaintiff's counsel shall submit a letter to defendant's counsel that itemizes the claimed damages and provides a brief explanation of why such a settlement is appropriate. At least seven days before the settlement conference, defendant's counsel shall submit a written offer to plaintiff's counsel with a brief explanation of whether such a settlement is appropriate. If settlement is not achieved through this exchange of letters, plaintiff's counsel shall deliver or fax copies of these letters to Judge Dow's Courtroom Deputy, Theresa Kinney, at (312) 554-8478 no later than three full business days before the conference. These letters should NOT be filed in the Clerk's Office. All settlement letters will be discarded at the close of the case.

B. ADDITIONAL PREPARATION

Because many parties will not have previously participated in a court-supervised settlement conference, counsel are advised to provide a copy of this Standing Order to their clients and should discuss the procedures and strategy in advance of the conference. Counsel and parties also are encouraged to consult the following materials from the web page of United States Magistrate Judge Morton Denlow: (i) "Steps to an Effective Settlement Conference: Before You Come to the Table"; (ii) "Steps to an Effective Settlement Conference: At the Table"; and (iii) "Top Ten Ways to Prevent Settlement."

Parties and counsel also should be prepared to discuss the following matters:

1. What are your objectives in the litigation?

2. What issues (inside and outside of the lawsuit) would you like resolved?

3. What are the strengths and weaknesses of your case?

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

5. What are the points of factual and/or legal agreement between the parties? In other words, where is the common ground?

6. What are the points of factual and/or legal disagreement?

7. What are the impediments to settlement?

8. Are there possibilities for a creative resolution of the dispute?

9. Do you have adequate information to evaluate settlement? If not, how can you obtain sufficient information to make meaningful settlement discussion possible?

10. Are their outstanding liens? Should a representative of the lienholder be present at the settlement conference?

C. ATTENDANCE OF PARTIES REQUIRED

Parties with ultimate settlement authority must be physically present at the conference. An insured party shall appear by a representative of the insurer who is authorized to negotiate, and who has authority to settle the matter up to the limits of the opposing parties' existing settlement demand. An uninsured corporate party shall appear by a representative authorized to negotiate, and who has authority to settle the matter up the amount of the opposing parties' existing settlement demand or offer. The availability of a client by telephone is not an acceptable alternative except in the most

extenuating circumstances that must be approved by the Court in advance. Because the Court generally sets aside at least two hours for each conference, it is impossible for a party who is not physically present to appreciate the dynamic process and the reasons that may justify a change in one's view toward settlement.

D. CONFERENCE FORMAT

The Court generally will conduct a settlement conference in a mediation-style format. Under this format, parties, counsel, and the judge will meet together at the outset, usually in chambers. At that time, the judge will make a few introductory remarks and invite each participant to make their own introductory remarks to the group as a whole. Introductory remarks should be concise, focused, and framed with an appreciation for the fact that the parties to the litigation often are not attorneys.

After introductory remarks, the parties will engage in a joint discussion with the judge's involvement and input. The judge then will meet privately with each party to explore possible avenues for settlement through private caucusing and "shuttle diplomacy." During this process, the Court urges all parties and counsel to keep an open mind and to be willing to reassess their previous positions and to search for creative ways for resolving the dispute.

At all times during the conference, all participants are expected to be courteous and professional in communications with each other.

E. STATEMENTS INADMISSIBLE

Under the Federal Rules of Evidence, statements made by any party or attorney at the settlement conference or in correspondence required in preparation for the conference are inadmissible at trial. As a consequence, parties and counsel are strongly encouraged to be open and frank in their discussions.

* * * * *

Unless modified by the terms of the Court's Order setting the matter for a settlement conference, any party who requests to modify the procedures set forth in this Standing Order must submit the request to the Court in writing prior to the established due dates.

ENTER:

Dated: January 24, 2008

_____

Robert M. Dow, Jr.
United States District Judge