



MAGISTRATE JUDGE HEATHER K. McSHAIN
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Courtroom 1700
Chambers 1756
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STANDING ORDER FOR SETTLEMENT CONFERENCES

A. Before the Settlement Conference—Telephonic Status Hearing and Exchange of Settlement Statements

The Court will generally hold a telephonic status hearing to set dates for the settlement conference and the exchange of pre-conference settlement statements to opposing counsel and the Court. Counsel primarily responsible for representing the parties must participate in this telephonic status hearing. Counsel should come prepared to discuss the availability of both attorneys and decisionmakers who will participate in the settlement conference, consistent with the requirements of this order.

Particularly if the case is in the early stages of discovery, the parties should consider whether they have the necessary information to engage in meaningful settlement discussions and, if not, raise the issue during the telephonic status hearing.

If a party is claiming an inability to pay a judgment, counsel should also raise this issue at the telephonic status hearing and will be expected to provide verification of that fact prior to the settlement conference.

Consistent with the schedule that is set, plaintiff's counsel must submit a settlement statement to defendant's counsel, describing the nature of the action, the theory of liability, itemization of damages, and plaintiff's demand, including an explanation for it. Plaintiffs are expected to submit a demand that is *not* what they expect to win at trial, but rather a number that takes into account the risk of loss and cost savings from settling before dispositive motions are filed and/or trial.

Defendant's counsel must thereafter submit a settlement statement to plaintiff's counsel, describing the theory of defense and defendant's offer, including an explanation for it. Defendants are expected to offer a number that does *not* assume that there will be no liability.

Parties are encouraged to consider addressing in their settlement statements whether there are any areas of agreement; whether there are any creative solutions (*e.g.*, licensing agreement, allowing the use of a trademark, re-employment); whether there are any outstanding lien holders, particularly a Worker's Compensation lien or a Medicare lien; and, any and all non-monetary material terms that the parties seek (*e.g.*, confidentiality, tax treatment of settlement proceeds).

Settlement statements should be no more than 10 pages each.

The Court does not accept courtesy copies. On the same day the parties provide their settlement statements to opposing counsel, the parties are required to submit their statements to the Court by e-mail. All settlement statements should be sent to the Court via the following email address:

Settlement_Correspondence_McShain@ilnd.uscourts.gov

Exhibits, if any, to settlement statements should be attached to the email sent to the Court, or counsel should utilize an electronic file sharing service and the Court will download the exhibits. The parties' settlement statements are not to be filed on ECF, will not be made part of the Court's record, and will not be admissible as evidence.

The parties should invest sufficient time and effort when preparing their settlement statements because the Court finds that thoughtful and detailed settlement statements are critical to having productive settlement discussions. Parties are forewarned that failure to account for the risks and costs associated with proceeding with litigation in their settlement positions may result in the Court unilaterally canceling the settlement conference as a waste of the parties' time and money, as well as Court resources. In some circumstances, after reviewing the parties' settlement statements, the Court will set an off-the-record telephone conference before the settlement conference to determine if it will be productive. The Court may also separately contact counsel for one or both parties but will let the other party or parties know if/when this happens.

All counsel are required to provide the full set of the settlement statements to their clients to read prior to the conference. On occasion, this exchange process itself will lead to a settlement. The fact that a settlement conference has been scheduled does not mean that the parties should stop engaging in settlement discussions among themselves. The Court finds that too often the parties put settlement talks on hold until the settlement conference with the Magistrate Judge. Indeed, the parties should have multiple discussions about settlement between the date the Court sets the settlement conference and the actual date of the conference.

B. Persons Required to Attend the Settlement Conference

Individuals with full and complete settlement authority on behalf of the parties are ordered to personally participate in the entire settlement conference. An insured party shall participate with a representative of the insurer who is authorized to negotiate and who has authority to settle the case. If a party is an individual, that individual must personally participate. If a party is an uninsured corporation or governmental entity, a representative of that corporation or governmental entity (other than counsel of record) with authorization to negotiate and authority to settle the case must personally participate.

Having a client or representative with authority reachable by telephone during the settlement conference is not an acceptable alternative, except

under the most unusual and extenuating circumstances (and must be approved by the Court ahead of time in those cases). Because the Court generally sets aside a half day for each conference, it is impossible for a party who is not present to appreciate the process and the reasons that may justify a change in one's perspective towards or position on settlement. Failure to comply with this provision without good cause will result in an order requiring the party in violation to reimburse the opposing party's attorney fees and costs related to preparing for and appearing at the settlement conference.

C. Conference Format

Unless the parties request that a settlement conference take place in-person in the courthouse, the settlement conference will proceed remotely via videoconference. The Court will provide instructions in advance of the settlement conference regarding the videoconference platform the Court will utilize for the conference.

At the start of the conference, the Court will hold a joint session with short opening remarks and questions by the Court, with no opening presentations or statements by counsel or the parties. This short, joint session will be followed by each party having private caucuses with the Court. The Court expects both the lawyers and the party representatives to be fully prepared to participate openly during these discussions. Statements made by any party during the settlement conference are not to be used in discovery and will not be admissible at trial.

D. Prepare for Success

If the parties are successful in reaching an agreement, they will be required to detail the material terms of the settlement at the conclusion of the conference, so that the material terms are binding on the parties. Defendants that generally prefer a certain format of settlement agreement are encouraged to prepare it ahead of time and provide it to opposing counsel in advance of the settlement conference or, if that is not practicable, bring the draft agreement with them to the conference, in the hope that it can be completed if the parties are successful in reaching a settlement.

E. Cancellation or Rescheduling of the Conference

If the parties must reschedule, or if they conclude that a settlement conference is not necessary at this time, they should inform chambers (via email to Chambers_McShain@ilnd.uscourts.gov) as soon as possible. Counsel and parties are cautioned that failure to attend a scheduled settlement conference without advance notice to the Court may result in the imposition of monetary sanctions against them.

SO ORDERED.



Heather K. McShain
United States Magistrate Judge

Dated: January 29, 2024