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STANDING ORDER FOR SETTLEMENT CONFERENCE

The Court encourages the parties to fully explore settlement at the earliest reasonable opportunity in the case. Early consideration of settlement allows the parties to avoid substantial cost, expenditure of time, and distractions that are typically a part of litigation. For cases that cannot be resolved through settlement, early consideration of settlement often results in focusing and streamlining the issues to be litigated – which, again, 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 the parties must follow in preparing for the settlement conference and the procedures that the Court typically will employ in conducting the conference. Counsel are directed to provide a copy of this Order to their clients and discuss these procedures with them prior to the settlement conference.

INITIAL STATUS HEARING

Judge Weisman will generally hold a status hearing to set the date for a settlement conference and dates for the exchange of pre-settlement conference letters. Counsel are required to attend the status hearing even if a date for a settlement conference has been previously arranged by counsel and the courtroom deputy. Judge Weisman strongly encourages parties to raise any requests to deviate from this Standing Order at the initial status hearing.

SETTLEMENT CONFERENCE PREPARATION

1. **PRE-SETTLEMENT CONFERENCE LETTERS.** Settlement conferences are more likely to be productive if the parties have exchanged their settlement positions in writing before the conference. The parties' settlement letters also provide the Court with information it needs to assist the parties in exploring settlement. Counsel should address all settlement letters to the opposing party or counsel, not to the Court. The Court expects these letters to be delivered on the dates set.

Unless the Court sets a different schedule, plaintiff's counsel must deliver plaintiff's settlement letter to defendant's counsel at least fourteen (14) days before the settlement conference, and defendant's counsel must deliver defendant's settlement letter to plaintiff's counsel at least seven (7) days before the settlement conference. **Both parties must also submit their respective settlement letters to Judge Weisman's proposed order box at Proposed_Order_Weisman@ilnd.uscourts.gov AND deliver a courtesy copy to the Court in chambers.** As a reminder, please do not file copies of settlement letters in the Clerk's Office or on the CM/ECF system. With the parties' permission, the Court may engage in ex parte communications with one or more of the parties before the settlement conference to obtain additional information or clarification about that party's settlement position.

2. **FORMAT AND LENGTH OF PRE-SETTLEMENT CONFERENCE LETTERS.**

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

- a. A brief summary of the evidence and legal principles that plaintiff asserts will allow it to establish liability and defeat affirmative defenses, where applicable;
- b. A brief explanation of why damages or other relief would appropriately be granted at trial;
- c. An itemization of the damages plaintiff believes can be proven at trial and a brief summary of the evidence and legal principles supporting those damages;
- d. A settlement proposal that includes both monetary and any non-monetary relief requested; and
- e. Any additional information plaintiff believes would be helpful to the Court in assisting the parties to resolve the dispute.

Defendant's responsive letter should 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, with references to supporting evidence and legal principles;
- c. A response to plaintiff's settlement demand and a settlement counter-offer; and

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

Persons attending the settlement conference should read the settlement letters exchanged between the parties prior to the conference. The Court recognizes that the complexity of issues affects the length of settlement letters. As a general rule, parties must limit settlement letters to no more than five (5) pages, exclusive of exhibits, unless they obtain leave of Court.

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 must attend in person. "Full settlement authority" means the authority to negotiate and agree to a binding settlement agreement with the opposing party. If a party requires approval by an insurer to settle, then a representative of the insurer with full and complete settlement authority must attend unless the Court excuses such attendance in advance of the settlement conference.

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 "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.

4. **CONFERENCE FORMAT.** The Court generally will follow a traditional mediation format, in which the Court initially meets with the parties together and then has private meetings with each side. The Court does not want the parties to prepare formal presentations about their case. Rather, the parties or their representatives should come to the settlement conference prepared to participate in interactive discussions. The Court encourages all parties to be willing to reassess their previous positions and explore creative means for resolving the dispute.

For many settlement conferences, the Court will employ the "10% rule." The rule operates as follows: During each negotiation round, the parties must collectively reduce the difference between the demand and offer by at least 10%. For example, if the plaintiff's opening demand were \$100,000, and defendant's opening offer is \$10,000. The difference between the demand and the offer is \$90,000. In the next round of negotiation, between the plaintiff's adjusted demand, and defendant's adjusted offer, the parties must collectively move at least \$9,000 (10% x \$90,000). Therefore, if plaintiff's demand in the next round of negotiation is \$90,000, the 10% rule has been satisfied as the overall movement between the two parties has met or exceeded \$9,000 (10% of the last round's difference).

Here is another example of the rule in operation:

Plaintiff Original Demand:	\$200,000
Defendant's Original Offer:	\$10,000
10% Rule Movement:	\$19,000 (\$190,000 x 10%)

Next Round:

Plaintiff's Revised Demand: \$195,000

Defendant must move up at least \$14,000 to satisfy the 10% rule (\$19,000 less \$5,000 (plaintiff's movement)). If the parties have collectively not moved the required 10%, the Court will give each side an opportunity to adjust their respective positions in order to satisfy the 10% requirement. If the 10% rule cannot be satisfied by the parties' collective movements, the Court will terminate the settlement conference.

5. **CONFIDENTIALITY.** The pre-conference letters and the settlement conference are governed by Federal Rule of Evidence 408 and 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.
6. **MEDICARE AS SECONDARY PAYER.** If a party has received or will be receiving conditional payments from Medicare to pay for treatment related to this case, he/she must bring a conditional payment letter from Medicare to the settlement conference. A party may access his/her payments directly by logging on to his/her MyMedicare.gov account. Counsel may request a conditional payment letter at:

<https://www.cob.cms.hhs.gov/MSPRP/assets/msprp/case/CondPymtLetter.htm> but must pre-register to do so by submitting proof of representation or consent to release of information. Parties should expect Medicare to demand at least 60% of its conditional payments to resolve the case.

7. **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?

8. SETTLEMENT TERM SHEET. If a settlement is reached, the Court will require the parties to complete a settlement term sheet unless the parties provide their own. The parties should review the term sheet (available here: [Settlement Term Sheet](#)) prior to the settlement conference so that they are familiar with the most common issues raised in finalizing a settlement.

ANY PARTY WHO WISHES TO VARY FROM THE PROCEDURES SET FORTH IN THIS STANDING ORDER SHOULD MAKE AN APPROPRIATE REQUEST TO THE COURT PRIOR TO THE EXCHANGE OF SETTLEMENT LETTERS DESCRIBED ABOVE.

ENTER:

**M. DAVID WEISMAN
United States Magistrate Judge**

Dated: October 25, 2019