**MAGISTRATE JUDGE IAIN D. JOHNSTON**
**327 South Church Street**
**Rockford, IL 61101**

**Courtroom 5200** **Web Site: http://www.ilnd.uscourts.gov**
**Chambers 6200** **Telephone: (815) 987-4255**

**Operations Specialist: Yvonne Pedroza (779) 772-8609**

# STANDING ORDER FOR SETTLEMENT CONFERENCE

The Court believes that the parties should fully consider settlement at the earliest reasonable opportunity in the case. Even if the case cannot be settled, early consideration of settlement often can result in focusing the issues to be litigated– which can save the parties considerable time and money.

A settlement conference requires serious and thorough preparation. This Order sets out the procedures the parties are 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 before the settlement conference.

## STATUS HEARING

In most cases, Magistrate Judge Johnston will hold a status hearing to set the date for the settlement conference and the dates for the exchange of pre-settlement conference letters. **Counsel primarily responsible for representing the parties must attend the status hearing and bring their calendars**. Often Magistrate Judge Johnston will discuss with counsel preliminary matters for the settlement conference, such as whether there is additional information that must be exchanged before a settlement conference can be useful, or whether the parties have engaged in previous settlement discussions. Counsel will also be expected to name on the record the individuals who will be present on behalf of their respective parties.

All parties and their lead counsel are ORDERED TO APPEAR at the Stanley J. Roszkowski, U.S. Courthouse, 327 South Church Street, Courtroom No. 5200, Rockford, Illinois on the date and time set for the settlement conference.

**SETTLEMENT CONFERENCE PREPARATION**

1. **PRE-SETTLEMENT CONFERENCE LETTERS.** The Court requires the following two (2) letters from each party: an initial settlement position letter exchanged by the parties and a confidential letter provided only to the Court. The letters provide Magistrate Judge Johnston with information that he needs to assist the parties with exploring settlement. At the status hearing, Magistrate Judge Johnston will set a schedule for the exchange of the initial settlement position letters and submission of the confidential letters to chambers.

**A. INITIAL SETTLEMENT POSITION LETTERS.**

Before the conference, the parties must exchange initial settlement position letters. The plaintiff's counsel's initial letter must set forth at least the following information: (a) a brief summary of the evidence and legal principles that plaintiff asserts will allow it to establish liability; (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; and (d) a settlement demand. The defendant's counsel's letter in response to the plaintiff's initial letter must set forth at least the following information: (a) any points in plaintiff's letter with which the defendant ***agrees***; (b) any points in plaintiff's letter with which defendant ***disagrees***; and (c) a settlement offer. Each of these letters typically should be five pages or fewer. The parties' counsel shall email or deliver copies of their respective letters to Magistrate Judge Johnston's operations specialist no later than the date set at the status hearing, so that Magistrate Judge Johnston can review them in advance of the conference. **DO NOT FILE COPIES OF THESE LETTERS IN THE CLERK'S OFFICE.** Counsel must provide his/her client with the opposing party's letter before the settlement conference.

**B. CONFIDENTIAL LETTERS TO CHAMBERS.**

The second set of letters are confidential. Counsel are to provide these letters only to the Court. This second set of letters should not be filed or provided to the other side. The second set of letters shall include only the following information: a specific dollar figure (or, in the appropriate case, other specific settlement proposal) at which the party is willing to settle. The parties shall not include additional information or argument in their confidential letters. In addition to the confidential letters, by agreeing to have the Court conduct a settlement conference, the parties also consent to allowing the Court to have *ex parte* telephone conferences with counsel before the settlement conference.

2. **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 personally attend; if a party is a corporation or governmental entity, a representative of that

corporation or governmental entity (other than counsel of record) with full settlement authority must personally attend; and 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 presence of the parties and their direct participation in the discussions and "give and take" that occur materially increase the chances of settlement. Moreover, a "few minutes of observation of the parties in the courtroom is more informing than reams of cold record." *Ashcraft v. Tennessee*, 322 U.S. 143, 171 (Jackson, J., dissenting). Thus, absent a showing of extraordinary circumstances, the Court will not permit a client or an insurance adjuster merely to be available by telephone. If extraordinary circumstances arise, counsel shall contact opposing counsel and jointly call Magistrate Judge Johnston's operations specialist to make an oral motion to excuse a person's presence. **All participants in the settlement conference must stay until 5:00 p.m. (Central time), unless the Court terminates the conference earlier.**

3. **FULL SETTLEMENT AUTHORITY.** The Court reserves a substantial block of time for each settlement conference. The Court's time is wasted and opposing parties incur unnecessary expense if a party comes to the settlement conference with limited authority. "Full settlement authority" means that **the person present at the settlement conference must be the decision maker.** In cases involving governmental entities that require approval from a legislative body for settlement over a certain dollar amount, the Court will explain to counsel and the person present what it expects to be conveyed to the governmental entity. The decision maker must have *both* authority to make a final and binding settlement *and* authority to make the decision to the last offer or demand. It does not require that any party make any particular offer or demand, but it does require that the person who is personally present be fully authorized to make the decision to the last offer or demand without having to get additional authorization from any person not present at the conference. A party who comes to a settlement conference without full settlement authority may be sanctioned. If a conference must be adjourned so that a party may obtain additional authority, that party may be sanctioned, including, but not limited to, the opposing party's attorney's fees incurred by the need to reconvene.

4. **CONFERENCE FORMAT.** The Court generally will follow a mediation format: that is, each side will make an opening presentation to the other side, which will be followed by joint discussion with the Court and private meetings by the Court with each side. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions. Additionally, the Court notes that a settlement is a *compromise* that concludes a legal dispute. And compromise occurs when the parties make concessions. The Court encourages all parties to be willing to reassess their previous positions and to explore creative means for resolving the dispute. *If a party requests a settlement conference but refuses to compromise in any way during the requested conference, the Court will impose appropriate sanctions on that party.*

5. **CONFIDENTIALITY.** The pre-settlement 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. Settlement communications are confidential, including pre-settlement conference letters and statements made during the settlement conference. These communications are confidential under Federal Rule of Evidence 408, as well as Western Division ADR Local Rule 4-10. The communications are also "confidential" in the generic, common understanding of the word. 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.

**6. THE PARTIES SHOULD BE PREPARED TO DISCUSS THE FOLLOWING 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?

d. What are the impediments to settlement?

e. What remedies are available through litigation or otherwise?

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

g. Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?

h. Are there outstanding liens? Do we need a representative of the lienholder at the settlement conference? If Medicare has paid any of the plaintiff's medical expenses, does the plaintiff have a conditional payment letter from Medicare identifying the amounts Medicare has paid for which it will seek reimbursement?

**ANY PARTY WHO WISHES TO VARY ANY OF THE PROCEDURES SET FORTH IN THIS STANDING ORDER SHOULD MAKE AN APPROPRIATE REQUEST TO THE COURT AT THE STATUS HEARING.**

**ENTER:**
**IAIN D. JOHNSTON**
**United States Magistrate Judge**