SETTLEMENT CONFERENCES

Judge McNally believes the parties should fully explore and consider settlement at the earliest opportunity. Early consideration of settlement can prevent unnecessary litigation, allowing the parties to avoid the substantial cost, distraction, and stress inherent in the litigation process. Even for those cases that cannot be resolved through settlement, early consideration of settlement can allow the parties to better understand the factual and legal nature of their dispute and streamline the issues to be litigated.

Consideration of settlement is a serious matter that requires thorough preparation before the settlement conference. Set forth below are the procedures that Judge McNally will require the parties to follow and the procedures that she will employ in conducting the conference.

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 settlement discussions must participate in this telephonic status hearing. Counsel should come prepared to discuss the availability of both attorneys and all 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. This document should not be viewed as an informal draft of proposed findings of fact and conclusions of law. Instead, the document is best understood to be the plaintiff's best effort to explain to the defendant why settlement now would be fair and would satisfy the defendant's needs and interests. 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. Again, this document should not be viewed as an informal draft of proposed findings of fact and conclusions of law. Instead, the document is best understood to be the defendant's best effort to explain to the plaintiff why settlement now would be fair and would satisfy the defendant's needs and interests. Defendants are expected to offer a number that does not assume that there will be no liability, 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.

The parties must include in their statements the names of all individuals who will be attending the settlement conference, along with their role. Insured parties must include the identity of any insurer representative who will be attending as well. Third parties other than insurer representatives may attend the settlement conference only upon the consent of all other parties and leave of court.

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, going-forward business terms, re-employment); whether there are any outstanding lien holders, particularly a Worker's Compensation lien or a Medicare lien; the impact of potential insurance coverage; and, any and all non-monetary material terms that the parties seek (*e.g.*, confidentiality, non-disparagement, tax treatment of settlement proceeds). Settlement statements should be no more than 10 double-spaced pages each.

The proposals set forth in the settlement letters are to be understood as opening positions for the settlement conference. Unless a proposal in the letter is accepted before the settlement conference, attendance at the settlement conference is an acknowledgement that further compromise will be required of each side. If a party is not willing to move from the terms set forth in the settlement letter, it must disclose that position to the Court and to the other parties in advance of the settlement conference. In all likelihood, the Court will thereafter cancel the settlement conference.

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_McNally@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 in this action or in other litigation related to this dispute.

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 Court encourages the parties to continue discussions after the letters are exchanged and in advance of the settlement conference.

In most circumstances, after reviewing the parties' settlement statements, the Court will contact counsel, either jointly or separately for off-the-record discussions. If separate conferences are held, the Court will inform the other parties of those communications.

Persons Required to Attend the Settlement Conference

Except in the rarest of circumstances, individuals with settlement authority on behalf of the parties are ordered to personally participate in the entire settlement conference. If the settlement is expected to involve funds from an insurer, the insurer representative must attend with authority to discuss financial contributions and other terms. If the insurer has reserved rights, the insurer shall attend and be prepared to evaluate, at a minimum, any request to consent to settlement.

Absent agreement of the parties and leave of court, if a party is an individual, that individual must personally participate. If a party is a 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. That attendance obligation exists whether or not the financial obligations of settlement will be borne exclusively by an insurer.

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). 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.

Occasionally, such as in cases involving certain public entities, settlements require separate board or governmental ratification of proposed terms. In such cases, counsel must advise the Court and all parties of this restriction in the settlement letter and must identify the legal basis for this requirement. The parties will be expected to discuss the limitations arising from these requirements in a pre-conference call with the Court.

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. The parties may wish to make opening statements in this initial joint statement. If so, that topic should be raised with the Court prior to the conference. The Court welcomes productive opening statements and encourages the parties to introduce attendees, communicate a willingness to explore resolving the dispute, and express appreciation for the other party's shared goal in that regard. Opening statements that are designed to convince the other side that it will lose the case are counterproductive. If a party believes such an advocacy-style statement is needed at some point in the day, the party may raise that idea with the Court in a private caucus.

The 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 confidential, are not to be used in discovery, and will not be admissible at trial.

Documenting the Agreement

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. Parties 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.

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_McNally@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.