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STANDING ORDER FOR SETTLEMENT CONFERENCES

Judge Finnegan believes the parties should fully explore and consider settlement at the earliest opportunity. Early consideration of settlement can prevent unnecessary litigation. This allows the parties to avoid the substantial cost, expenditure of time, and stress that are typically a part of 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 prior to the settlement conference. Set forth below are the procedures that Judge Finnegan will require the parties to follow and the procedures that she will employ in conducting the conference.

A. INITIAL STATUS HEARING

In most cases, Judge Finnegan will hold an initial status hearing to set dates for the settlement conference and the exchange of pre-conference letters. During the status hearing, the parties will also discuss: (1) whether they have the necessary information to conduct meaningful settlement discussions; (2) whether there are outstanding lien holders or third parties who should be invited to participate in the settlement conference; and (3) the optimal format for the settlement conference based upon the circumstances of the case. The format and procedures generally used by Judge Finnegan are set forth in this Standing Order. Any party who wishes to vary from these should make a request at the initial status hearing. Counsel primarily responsible for representing the parties must

participate in the status hearing and bring their calendars. Counsel will be expected to identify the individuals who will be present at the settlement conference on behalf of their respective parties, consistent with the requirements of this order. If Judge Finnegan does not set a date for an initial status hearing and the parties would like one, they are to contact the courtroom deputy with available dates. Upon request, Judge Finnegan will schedule an off-record telephone conference with counsel to discuss certain issues prior to the settlement conference.

B. SETTLEMENT CONFERENCE PREPARATION

1. PRE-SETTLEMENT CONFERENCE LETTERS.

Settlement conferences are more likely to be productive if, before the conference, the parties have had a written exchange of their settlement positions. Accordingly, Judge Finnegan will set a schedule for the exchange of pre-conference letters. The letter prepared by Plaintiff's counsel is usually provided to defense counsel at least fourteen (14) days prior to the settlement conference with the responding letter from defense counsel due seven (7) days prior to the conference. Each party emails a copy of its letter to Judge Finnegan's proposed order box on the same day that it is provided to opposing counsel. The email address is Proposed_Order_Finnegan@ilnd.uscourts.gov. These letters are not filed on the court docket. Plaintiff's letter should contain a written itemization of damages and a settlement demand with a brief explanation of why such a settlement is appropriate. The letter prepared by Defendant's counsel should contain a written offer with a brief explanation of why such a settlement is appropriate and should identify the points in Plaintiff's letter with which it agrees and disagrees. Plaintiffs are directed to include a demand that is not what they expect to win at trial, but rather a number that takes into account the risk of loss. Similarly, defendants are expected to offer a number that does not assume that there will be no liability. Counsel are required to provide copies of the settlement letters to their clients to read prior to the conference.

2. PREPARE FOR SUCCESS

In anticipation of a settlement, the parties should review and be prepared to complete Judge Finnegan's Settlement [Checklist/Term Sheet](#) at the conclusion of the settlement conference. This sheet may be found on Judge Finnegan's homepage on the court's website (under the heading "Settlement Conferences").

3. COURT ENFORCEMENT OF SETTLEMENT TERMS

Parties contemplating a settlement that provides for enforcement of the settlement terms in federal court are encouraged to review the article, "What's an Attorney to Do? Ensuring Federal Jurisdiction Over Settlement Agreements in Light of Recent Seventh Circuit Cases" and the sample dismissal orders contained in the article's appendix. Here is a link to the article:

<http://www.ilnd.uscourts.gov/home/JUDGES/DENLOW/FederalJurisdiction.pdf>

4. ISSUES TO BE DISCUSSED

Parties should be prepared to discuss the following at the settlement conference:

- ! What are your goals in the litigation and what problems and issues (in and outside of the lawsuit) would you like to address in the settlement conference? Does settlement or further litigation better enable you to accomplish your goals?
- ! What are the strengths and weaknesses of your case?
- ! Do you understand the opposing side's goals and view of the case? What is wrong with their perception? What is right with their perception?
- ! What are the points of agreement and disagreement between the parties? Factual? Legal?
- ! What are the impediments to settlement? Financial? Emotional? Legal?
- ! What remedies are available through litigation or otherwise?
- ! Are there possibilities for a creative resolution of the dispute?
- ! If the case does not settle, what are the likely (and possible) legal and practical consequences for all concerned?
- ! 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?

C. CONFERENCE FORMAT.

Judge Finnegan will generally use a mediation format: that is, a joint session with opening presentations by Judge Finnegan and each side followed by private caucusing by the judge with each side. Judge Finnegan expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and to be willing to reassess their previous positions and to explore creative means for resolving the dispute.

D. STATEMENTS INADMISSIBLE.

Any statements made by any party during the settlement conference will not be admissible at trial. The Court expects the parties to address each other with courtesy and respect, but at the same time strongly encourages the parties to speak frankly and openly about their views of the case.

E. ATTENDANCE OF PARTIES REQUIRED.

Unless the Court allows otherwise by separate order, parties with full and complete settlement authority are required to personally attend the conference. This means that 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 and complete settlement authority must personally attend. "Full and complete settlement authority" means the authority to negotiate and agree to a binding settlement agreement at any level up to the settlement proposal of the plaintiff. If a party requires approval by an insurer to settle, then a representative of the insurer with full and complete settlement authority must attend. The Court sets aside a significant block of time for each settlement conference. The Court strongly believes that the personal presence of the parties, and their direct participation in the discussions and "give and take" that occur, will materially increase the chances of settlement. Thus, absent a showing of unusual and extenuating circumstances, the Court will not permit a client to merely be available by telephone as an alternative to personal presence at the conference.

F. CANCELLATION OR RESCHEDULING OF THE CONFERENCE.

Because of the number of settlement conferences that Judge Finnegan conducts, it is often necessary that they be scheduled weeks and sometimes months in the future. Once a date is reserved for a settlement conference, it is unavailable for other litigants. Consequently, parties are not permitted to reschedule a settlement conference except under very unusual circumstances. In addition, if the parties conclude that a settlement conference is not necessary, they are to inform Judge Finnegan's staff as soon as possible. Counsel are cautioned that failure to attend a settlement conference without permission may result in the imposition of monetary sanctions.

ENTER:

Dated: October 5, 2012

SHEILA FINNEGAN
United States Magistrate Judge