



MAGISTRATE JUDGE JAMES P. HUTTON

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STANDING ORDER RE: SETTLEMENT CONFERENCE

The Court 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. This Standing Order supplements LCivR 16(a)(5).

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

A. FORMAT

1. PRE-SETTLEMENT CONFERENCE EXCHANGE OF DEMAND AND OFFER

A settlement conference is more likely to be productive if, before the conference, the parties exchange written settlement proposals. Accordingly, on the date set forth in the settlement conference scheduling order, plaintiff's counsel shall submit a written itemization of damages and settlement demand to defense counsel with a brief explanation of why such a settlement is appropriate. On the deadline established in the scheduling order, defense counsel

shall submit a written response to plaintiff's counsel stating the defense settlement position and counteroffer. Sometimes this process will lead directly to a settlement. If settlement is not achieved, plaintiff's counsel shall attach copies of the parties' written demands to plaintiff's *in camera* letter.

2. SUBMISSION OF SETTLEMENT LETTER

In preparation for the settlement conference, each party shall submit an *in camera* letter, labeled confidential, by the date set forth in the settlement conference scheduling order. Do not file copies of these letters on the court docket and do not serve these letters on the opposing party. The *in camera* letters shall not exceed ten (10) pages in length and shall set forth the following:

- Name and title of the client who will be present throughout the conference and will be authorized to enter into a settlement agreement, and the names and titles of any other persons who will attend the conference. If counsel becomes aware at any time that the settlement conference participants will differ from those listed in the *in camera* letter, counsel shall inform the Court in writing at HuttonOrders@waed.uscourts.gov;
- A brief analysis of key issues involved in the litigation;
- A description of the strongest and weakest points in the party's case, both legal and factual (the parties are invited to include as attachments key exhibits, expert reports, or deposition transcripts);
- A description of the strongest and weakest points in the opponent's case, both legal and factual;
- Itemization of damages, fees, and costs;
- Status of any settlement negotiations, including the last settlement proposal made by the party and opposing parties; and
- A settlement proposal the party believes to be fair.

Failure to submit an *in camera* letter may result in cancellation or rescheduling of the settlement conference. All communications made in connection with the settlement conference are confidential and will not be disclosed. Fed. R. Evid. 408(a). Any documents requested and submitted for the settlement conference will be maintained in chambers and will be destroyed after the conference. Neither the settlement conference statements nor any communication occurring during the settlement conference can be used by any party with regard to any aspect of the litigation or trial of this case. *In camera* copies shall be emailed to HuttonOrders@waed.uscourts.gov.

Judge Hutton may contact the parties *ex parte* in advance of the settlement conference if there are questions or concerns.

3. ATTENDANCE OF PARTIES REQUIRED

Parties with full and complete settlement authority are required to personally attend the conference. An insured party shall appear by a representative of the insurer who is

authorized to negotiate, and who has *authority to settle the matter up to the limits of the opposing parties' existing settlement demand*. An uninsured corporate party shall appear by a representative authorized to negotiate, and who has *authority to settle the matter up to the amount of the opposing parties' existing settlement demand or offer*. Having a client with authority available by telephone is *not* an acceptable alternative, except under the most extenuating circumstances, which must be approved by Judge Hutton in advance of the settlement conference. It is impossible for a party who is not present to appreciate the process and the reasons which may justify a change in one's perspective towards settlement.

Settlement conferences are typically scheduled to last an entire day, unless otherwise set forth in the settlement conference scheduling order. Personal attendance is required for the entire duration of the settlement conference.

4. SETTLEMENT CONFERENCE FORMAT AND REQUIREMENTS FOR VIRTUAL PARTICIPANTS

The Court will generally use a mediation format that consists of a joint session with an opening discussion by the Court, followed by private caucusing by the Court with each side. The Court expects both the lawyers and the party representatives to be fully to prepared to participate. The Court encourages all parties to keep an open mind in order to re-assess their previous positions and to consider creative means for resolving the dispute.

The parties may request an in-person or virtual settlement conference, or a hybrid of these formats. The format will be addressed at the scheduling conference. In selecting the format, the Court considers the needs of the participants and nature of the parties' dispute.

The following guidelines and rules apply to all virtual participants.

- Mediation access. Virtual participants are provided access information to the virtual mediation session in advance. Participants are prohibited from sharing this information with any non-participant.
- Secure connection: Participants need a strong and secure ethernet (preferable) or wifi connection to ensure proper functioning of the video feature. Each participant shall participate from a separate device, unless an alternative arrangement for joint participation is tested and approved in advance.
- Pre-mediation test. All virtual participants must participate in a pre-settlement conference test with the assigned law clerk. The test must be conducted using the same device and connection that will be used during the mediation. The law clerk will schedule the test.
- Prohibition on recording/relaying. No one may audio or video record any part of the settlement conference. No one may transmit, broadcast, or relay the settlement conference to third parties.
- Best practices. Log on to the scheduled settlement conference session at least 10 minutes in advance of the start time. When you are not speaking, please mute yourself to prevent any unnecessary echo. Please keep in mind that it takes a

moment for the mediator to join and to exit a meeting room so briefly pause so the mediator does not inadvertently hear any conversation intended to be private.

- Troubleshooting. You should take all reasonable measures to ensure you are not interrupted during the settlement conference. If you need assistance, you may contact chambers (509) 573-6670 or the Court's IT Help Desk at (509) 458-3421.

5. STATEMENTS INADMISSIBLE

The Court expects the parties to address each other with courtesy and respect. Parties are encouraged to be frank and open in their discussions. As a result, statements made by any party during the settlement conference are not to be used in discovery, are not to be used for any other litigation purpose, and will not be admissible at trial. Fed. R. Evid. 408(a).

B. 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 would you like to address in the settlement conference? What do you understand the opposing side's goals to be?
- What issues (in and outside of this lawsuit) need to be resolved? What are the strengths and weaknesses of your case?
- Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?
- What are the points of agreement and disagreement, both factual and legal, between the parties?
- Does settlement or further litigation better enable you to accomplish your goals?
- Are there possibilities for a creative resolution of the dispute?
- Do you have adequate information to discuss settlement? If not, how will you obtain sufficient information to make a meaningful settlement discussion possible?
- Are there outstanding lien holders or third parties who should be invited to participate in the settlement conference?

C. INVOLVEMENT OF CLIENTS

Parties, lead counsel, and local counsel are **ORDERED TO APPEAR** on the date and time set for the settlement conference. For many clients, this will be the first time they will participate in a court-supervised settlement conference. Therefore, prior to the settlement conference, counsel shall provide a copy of the Standing Order to the client and shall discuss the points contained herein with the client.

D. PREPARE FOR SUCCESS

In anticipation of a settlement, the parties should bring with them to the settlement conference a “Settlement Agreement” in a form acceptable to them for signature by all parties when a settlement is reached.

ENTER:

s/James P. Hutton

JAMES P. HUTTON

United States Magistrate Judge

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