UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

INSTRUCTIONS FOR SETTLEMENT CONFERENCE
FOR CASES ASSIGNED TO U.S. DISTRICT JUDGE PHILIP P. SIMON

Over 95% of all civil suits are settled prior to trial. For those cases that can be resolved through settlement, early consideration of settlement can allow the parties to avoid unnecessary litigation as well as the substantial cost, expenditure of time, distraction and anxiety that are typically 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 thus focus the issues to be litigated. **If a civil case has been settled, the courtroom deputy must be notified promptly. Jury costs will be assessed for failure to inform the courtroom deputy of a settlement until the day of trial.**

At the final pretrial conference, the Court will conduct a settlement conference in all civil cases to be tried to a jury. However, the Court encourages the parties to discuss settlement well before that time and the Court is always willing to hold a settlement conference at any time that the parties feel that it would be productive.

Given the importance of settlement, and the fact that it is by settlement that the vast majority of cases are resolved, settlement preparation should be treated as seriously as trial preparation. Set forth below are the procedures that the Court will require the parties to follow in preparing for the settlement conference and the procedures that the Court typically will employ in conducting the conference.

For many clients, this will be the first time they have participated in a court-supervised settlement conference. Counsel are directed to provide a copy of these instructions to their clients and to discuss the procedures with them in advance of the conference.

Any party who wishes to vary any of the procedures described in these instructions should make an appropriate request to the Court prior to the exchange of settlement letters described below.

1. **Pre-conference demand and offer**. Settlement conferences are more likely to be productive if the parties have previously exchanged demands and offers and have made a good faith effort to settle the case on their own. Accordingly, at least fourteen days before the settlement conference, the plaintiff shall submit a written itemization of damages and a settlement demand to the defendant. No later than seven days before the settlement conference, the defendant shall submit a written offer to the plaintiff. On occasion, this process will lead directly to a settlement. If settlement is not reached, the parties shall furnish copies of the letters, along with any settlement memoranda they wish the Court to consider, to Judge Simon's chambers e-mail box (simon_chambers@innd.uscourts.gov) no later than 2 business days before the settlement conference. The letters and settlement memoranda are not to be filed with the Clerk.

2. **Attendance of parties required**. Parties with ultimate settlement authority must be personally present at the settlement conference, unless otherwise ordered by the Court. 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 the corporation or governmental entity who is authorized to negotiate and who has full settlement authority must personally attend; if a party requires approval by an insurer to settle, then a representative of the insurer who is authorized to negotiate and who has full settlement authority must attend. Having a client with authority available by telephone is not an acceptable alternative, except under the most extenuating circumstances (the purchase of an airplane ticket is not an extenuating circumstance). The Court sets aside a significant amount of time for each settlement conference and believes that it is impossible for a party who is not present to appreciate fully the process and the reasons that may justify a change in one's perspective towards settlement.

3. **Conference format**. The Court generally will separate the parties into different conference rooms. The Court will then engage in private meetings with the parties, alternating between the sides. The Court expects both the lawyers and the party representatives to be fully prepared to participate in the discussions and meetings. In these discussions, the Court encourages all parties to be willing to reassess their previous positions and to be willing to explore creative means for resolving the dispute.

4. **Statements inadmissible**. Any statements made by any party or attorney during the settlement conference will be inadmissible at trial. To the extent the parties are engaged in face-to-face discussions, the Court expects the parties to address each other with courtesy and respect but at the same time strongly encourages the parties to be frank and open in their discussions.

5. **Issues to be discussed at settlement conference**. Parties should be prepared to discuss the following issues 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?

   c. What are the strengths and weaknesses of your case?

   d. Do you understand the opposing side's view of the case? What is wrong with their perception? What is right with their perception?

   e. What are the points of agreement and disagreement between the parties (both factual and legal)?

   f. What are the impediments to settlement?

g. What remedies are available through litigation or otherwise?

h. Are there possibilities for a creative resolution of the dispute?

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

j. Are there outstanding liens? Do we need to include a representative of the lienholder?