General Matters: Conferences

I. Scheduling/Status

When a case has been referred for all pretrial proceedings or for all discovery, the Court may hold a status, scheduling, or discovery conference as needed. If all parties agree that an informal conference would be productive, counsel may request such a conference by emailing the Court at efile_ivy@mied.uscourts.gov. This conference will require the personal appearances of all counsel of record.

In a particular case, where discovery disputes appear to multiply needlessly or where many motions are filed, the Court may set the matter for a general discovery conference or direct the parties to conduct a Rule 26(f) conference prior to meeting with the magistrate judge.

II. Settlement Conferences

The Court views facilitation as a valuable part of the litigation process and encourages counsel to consider voluntary settlement conferences when appropriate. The Court is willing to serve as a facilitator upon the parties' request and/or order of reference. Settlement conferences are generally conducted in person, and set to begin at 10:00 a.m. The parties should be prepared to devote the entire day to the conference.

1. REQUIRED PARTICIPANTS

   Each party, together with its lead trial counsel or counsel of record who have primary responsibility for discovery, must attend the conference unless expressly excused by the Court. If there are other parties that are necessary to settle the case, counsel must arrange for their attendance. Due to the confidential nature of the Settlement Conference, individuals other than those listed herein as a required participant will not be allowed to participate or receive communications or information related to this mediation.

   Individuals with full settlement authority shall be personally present at settlement conferences . For plaintiff(s), "full settlement authority" means the authority to dismiss the complaint with prejudice in exchange for a settlement. For defendant(s), "full settlement authority" is defined as the full relief requested in the lawsuit and/or the relief requested by the last settlement demand. A party will not be permitted to have only counsel attend the settlement conference without the Court's prior approval. If approval is granted, the excused individual must be available by telephone or video conference, without delay, throughout the settlement conference.

   An insured party need not attend unless the settlement decision will be made in part by the insured. When the settlement decision will be made in whole or part by an insurer, the insurer must send a representative in person with full and complete authority to make settlement decisions. A corporate party must send an authorized representative with full and complete authority to make settlement decisions and to bind the company. A governmental entity must send an authorized representative with full and complete authority to make settlement decisions and to bind the governmental entity, understanding that some settlement decisions may be subject to further approval by an elected municipal board. The Court encourages and invites lienholders whose rights could affect the likelihood of resolving the matter to attend the conference and/or be reachable by telephone.

   Settlements of litigation involving governmental bodies frequently must be formally approved

by elected officials such as a county board or city council, or by senior members of a governmental agency. The requirement that negotiators have full settlement authority is slightly modified in a case involving a government agency, in that government negotiators must come to a settlement conference with authority to affirmatively recommend that final decision-makers adopt a settlement agreed to at a settlement conference and must go on the record in court saying so.

A party appearing at the conference without full settlement authority will be in violation of this directive. If a party appears at the conference with authority to settle for only less than full settlement authority, the conference will be rescheduled. Failure to produce the appropriate person(s) at the conference may result in an award of costs and attorney fees incurred by the other parties in connection with the conference and/or sanctions against the noncomplying party and/or counsel.

2. PROCEDURES PRIOR TO THE CONFERENCE

The parties shall adhere to the procedures below:

At least fourteen days prior to the settlement conference, counsel for the parties shall meet and confer in a good faith attempt to settle the case or to narrow the areas of disagreement. They shall exchange good-faith and realistic offers to settle and shall explain to each other why their demand or offer is reasonable. If a demand or offer is rejected, the attorney who rejects shall explain to opposing counsel the reasons for the rejection. Following this meeting, if the parties agree the settlement conference will be an exercise in futility, the parties are directed to email the Court at efile_ivy@mied.uscourts.gov seeking an informal conference.

Five days before the settlement conference, the parties shall submit confidential, *ex-parte* settlement statements directly to the Magistrate Judge's chambers. The statement must be delivered by email to chambers (efile_ivy@mied.uscourts.gov). DO NOT FILE THESE STATEMENTS WITH THE COURT. The statements will not become part of the case record, and parties are directed to be candid in their statements. **The statements shall be limited to ten pages (double-spaced; 14-point font) and shall include the following:**

1. A brief description of the background and nature of the case;
2. The party's perceived strengths;
3. The party's perceived weaknesses;
4. A statement identifying each cause of action at issue, and the remedies available under each of those causes of action;
5. A summary of all settlement discussions that have taken place to date, including the **specific amount** of any offers/counter-offers that have been made; and
6. The **specific amount** of the party's opening offer or demand **to be shared with the opposing party to initiate settlement negotiations**. Note that because opening offers and demands are used to initiate settlement negotiations, they are not treated as confidential.

While the settlement statement may summarize the facts, claims and defenses, it is not a summary judgment motion, and counsel should be mindful that the Magistrate Judge facilitating settlement is not trying the case or deciding dispositive motions at this point.

3. PROCEDURES DURING THE CONFERENCE

One attorney for each party should be prepared to give a short summary of their case at the

beginning of the settlement conference. The summary should identify the remaining issues in the case and the evidence that supports the party's position on those issues.

At the settlement conference, the parties and their attorneys are expected to conduct themselves in a business-like manner and to negotiate in good faith. Posturing and other theatrics are counter-productive and prohibited.

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 or for any other purpose, will not be admissible at trial or other proceedings, and may not be disclosed to anyone other than the participants without an order of the court. E.D. Mich. LR 16.3(d); Fed. R. Evid. 408(a). Any documents submitted for the Settlement Conference will be maintained in Chambers and will be destroyed after the Conference.

In the event of a virtual settlement conference, all participants confirm that they will be in a private location and will disclose if anyone outside of the mediation process enters their private location. No participants shall record any part of the mediation session by any electronic means.

The Court sends a Notice with detailed information related to attendance and other matters. Scheduling and all other contact about settlement conferences is handled by Sara Krause, Case Manager (sara_krause@mied.uscourts.gov).