

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BARONE-TANAMERA CONDOMINIUMS,)	Case No. 10cv132-BEN (BLM)
et al.,)	
)	ORDER CONTINUING MANDATORY
Plaintiffs,)	SETTLEMENT CONFERENCE
)	
v.)	
)	
WILLIS OF ARIZONA, INC., et al,)	
)	
Defendants.)	
_____)	

On May 4, 2010, this Court issued an Order Regulating Discovery and Other Pretrial Proceedings. Doc. No. 16. The Court inadvertently scheduled a Mandatory Settlement Conference on Martin Luther King Day, January 17, 2011. Therefore, the Mandatory Settlement Conference set for January 17, 2011 is hereby **CONTINUED** to **January 19, 2011** at **9:30 a.m.** in the chambers of Magistrate Judge Barbara L. Major located at **940 Front Street, Suite 5140, San Diego, CA 92101**. All discussions at the Mandatory Settlement Conference will be informal, off the record, privileged, and confidential. Counsel for any non-English speaking party is responsible for arranging for the appearance of an interpreter at the conference.

1 a. **Personal Appearance of Parties Required:** All parties,
2 adjusters for insured defendants, and other representatives of a party
3 having full and complete authority to enter into a binding settlement,
4 as well as the principal attorneys responsible for the litigation, must
5 be present **in person** and legally and factually prepared to discuss
6 settlement of the case. Counsel appearing without their clients
7 (whether or not counsel has been given settlement authority) will be
8 cause for immediate imposition of sanctions and may also result in the
9 immediate termination of the conference.

10 Unless there are extraordinary circumstances, persons required to
11 attend the conference pursuant to this Order shall not be excused from
12 personal attendance. **Requests for excuse from attendance for**
13 **extraordinary circumstances shall be made in writing at least three (3)**
14 **court days prior to the conference.** Failure to appear **in person** at the
15 Mandatory Settlement Conference will be grounds for sanctions.

16 b. **Full Settlement Authority Required:** In addition to
17 counsel who will try the case, a party or party representative with full
18 settlement authority¹ must be present for the conference. In the case
19 of a corporate entity, an authorized representative of the corporation
20 who is not retained outside counsel must be present and must have
21 discretionary authority to commit the company to pay an amount up to the
22 amount of Plaintiff's prayer (excluding punitive damages prayers). The

24 ¹ "Full settlement authority" means that the individuals at the settlement
25 conference must be authorized to explore settlement options fully and to agree at that
26 time to any settlement terms acceptable to the parties. Heileman Brewing Co. v. Joseph
27 Oat Corp., 871 F.2d 648, 653 (7th Cir. 1989). The person needs to have "unfettered
28 discretion and authority" to change the settlement position of a party. Pitman v.
Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose of requiring
a person with unlimited settlement authority to attend the conference contemplates that
the person's view of the case may be altered during the face to face conference. Id.
at 486. A limited or a sum certain of authority is not adequate. See Nick v. Morgan's
Foods, Inc., 270 F.3d 590, 595-97 (8th Cir. 2001).

1 purpose of this requirement is to have representatives present who can
2 settle the case during the course of the conference without consulting
3 a superior. Counsel for a government entity may be excused from this
4 requirement so long as the government attorney who attends the Mandatory
5 Settlement Conference (1) has primary responsibility for handling the
6 case, and (2) may negotiate settlement offers which the attorney is
7 willing to recommend to the government official having ultimate
8 settlement authority.

9 c. **Confidential Settlement Statements Required:** No later
10 than **January 12, 2011**, the parties shall submit directly to Magistrate
11 Judge Major's chambers confidential settlement statements no more than
12 five (5) pages in length. **These confidential statements shall not be**
13 **filed or served on opposing counsel.** Each party's confidential
14 statement must include the following:

15 (i) A brief description of the case, the claims and/or
16 counterclaims asserted, and the applicable defenses or position
17 regarding the asserted claims;

18 (ii) A specific and current demand or offer for
19 settlement addressing all relief or remedies sought. If a specific
20 demand or offer for settlement cannot be made at the time the brief is
21 submitted, then the reasons therefore must be stated along with a
22 statement as to when the party will be in a position to state a demand
23 or make an offer; and

24 (iii) A brief description of any previous settlement
25 negotiations, mediation sessions, or mediation efforts.

26 General statements that a party will "negotiate in good faith" is
27 not a specific demand or offer contemplated by this Order. It is
28 assumed that all parties will negotiate in good faith.

1 d. Requests to Continue a Mandatory Settlement Conference:

2 Any request to continue the Mandatory Settlement Conference or request
3 for relief from any of the provisions or requirements of this Order must
4 be sought by a written ex parte application. The application must (1)
5 be supported by a declaration of counsel setting forth the reasons and
6 justifications for the relief requested, (2) confirm compliance with
7 Civil Local Rule 83.3(h), and (3) report the position of opposing
8 counsel or any unrepresented parties subject to the Order. **Absent**
9 **extraordinary circumstances, requests for continuances will not be**
10 **considered unless submitted in writing no fewer than seven (7) days**
11 **prior to the scheduled conference.**

12 If the case is settled in its entirety before the scheduled date of
13 the conference, counsel and any unrepresented parties must still appear
14 in person, unless a written joint notice confirming the complete
15 settlement of the case is filed no fewer than twenty-four (24) hours
16 before the scheduled conference.

17 All other dates and deadlines shall remain as previously set.

18 **IT IS HEREBY ORDERED:**

19 DATED: May 5, 2010

20 

21 BARBARA L. MAJOR
22 United States Magistrate Judge
23
24
25
26
27
28