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MEMORANDUM

To: All Counsel in the NYCAL
From: Laraine Pacheco, Special Master
Date: 4 24 09
Re: Settlement Conference Protocol

The past few rounds of settlement conferences have led me to believe it might be useful to remind all counsel of their responsibilities with respect to these conferences if there is to be any meaningful opportunity to settle cases.

Follow any directions in the notice. Each notice clearly directs every defendant to call plaintiff's counsel UPON RECEIPT. Those calls should be used to agree upon the cases involved, discuss the nature of the ID, raise any legal issues, raise any administrative issues (such as lack of service, wrong party, insurance coverage), discuss any outstanding discovery, confirm the demand. I expect every defense attorney to make that call.

If there is a dispute about the ID, bring the transcript of plaintiff's testimony (marked up) to the conference. Summaries are unreliable.

A partner or a highly responsible and knowledgeable associate must attend the conference. Please do not send a note taker, a messenger, a conduit for information or an attorney in training to discuss settlement. The person attending should be experienced, well versed in the cases and have access to the client.

Demands should be reasonable and reasonably related to the amount counsel hopes to secure from each defendant. However, even if defense counsel believes a demand is unreasonable, counsel is required to make an offer commensurate with his or her determination of the value of the case (assuming counsel wishes to settle the case). It is unacceptable to respond with, "I can't respond to a demand that high."

If there are pervasive ongoing discovery issues, notify me in advance of the conference.

In the ten years I have been settling cases, I have learned that cases tend to settle when the attorneys communicate frequently, the facts are discussed in a meaningful manner and the parties are willing to listen to one another's point of view. Going forward, I expect everyone to keep these principles in mind and to follow the procedures outlined above.