

## Settlement Conferences Follow-up

Having just returned from a week of settlement conferences, a number of issues arose that need clarification or reiteration.

1. Defendants MUST serve an NOSJM on plaintiff's counsel before making a formal motion to the court. This is a prerequisite whether defense counsel believes they will be let out of the case or not. Upon receipt of the NOSJM, counsel for plaintiff must promptly specify the nature of the proof upon which they rely. Upon learning of the proof and evaluating it, defense counsel is free to make a motion if the motion has merit.

2. Settlements are supposed to be confidential. I have learned that some (not all) carriers who represent multiple defendants in a single case are attempting to "leverage" settlements based on their knowledge of an earlier settlement with a different defendant. Although carriers are not bound by the same code of ethics that applies to attorneys, carriers must either set up a "Chinese Wall" or otherwise refrain sharing information about individual settlements in a given case. If settlements are not confidential, plaintiffs will find it very difficult to settle cases.

Please alert your carriers.

3. If your firm represents multiple defendants in a single case, be prepared to obtain conflict waivers well in advance of any trial date.

Under no circumstances will a trial be delayed to allow new counsel to get "up to speed." Counsel should be able to anticipate when settlement does not seem probable and a multiple representation will be problematic.

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