

IN THE DISTRICT COURT OF \_\_\_\_\_ COUNTY, KANSAS

	)	
Plaintiff.	)	
	)	
vs.	)	Case No.
	)	Division
	)	
Defendants.	)	

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**ORDER FOR MEDIATION**

Pursuant to Court Order, mediation shall be conducted in this case by Patrick R. Nichols of Lawrence, Kansas. The mediation shall take place at Patrick Nichols's office 947 New Hampshire St 204, Lawrence, KS 66049; his mailing address is P.O. Box 442202, Lawrence, KS 66044) or wherever is agreed between the mediator and parties. The telephone number to Attorney Patrick Nichols's office for scheduling purposes is (785) 865-3700. His facsimile number is (785)783.5421.

The basic purpose of the Court ordered mediation and the basic purpose of all of the specific requirements set forth below is to promote informal, candid and ultimately productive discussions among the parties and their representatives, lead trial counsel and the mediator. Every aspect of the litigation bearing on its settlement value will be considered in order that the mediator may privately express his views concerning the actual dollar scalcment value or other reasonable disposition of the case.

As with trial, it is essential that everyone involved be fully prepared for the mediation. Toward that end, by at least seven (7) days prior to the date of the scheduled mediation session, each party's lead trial counsel of record shall submit directly to the



mediator a written mediation statement which shall concisely provide in summary form the following information: (1) the general nature and facts of the case; (2) the key factual issues; (3) the key legal issues; (4) a detailed itemization and explanation of the damages or other relief requested; (5) the most pertinent or compelling evidence that is anticipated to be offered at trial by each side; (6) an evaluation of the probability of success of trial (e.g., 50%, 75%, etc.) on each of the key factual and legal issues; (7) the projected out of pocket expense for each side to take the case to trial and if successful at trial, to defend any appeal brought by an adverse party; (8) the estimated amount of delay associated with proceeding to trial and dealing with any appeals; (9) a recapitulation of the parties' prior negotiations, with the date and terms of each settlement offer and counteroffer; and (10) perhaps most importantly, a detailed explanation of why the case has not been settled to date, accompanied by specific suggestions concerning how the impasse can be remedied. The parties' written mediation statements shall not exceed five (5) pages and shall not be filed. The statements may but need not be served on opposing counsel.

The above described mediation statements shall contain a notation thereon that copies have been provided to the client and any aligned nonparty who has a direct financial stake in the outcome of the case, e.g., liability insurance carrier(s). Further, the statements shall provide the name, address, telephone number, employer and job title (if applicable) of the representatives who will attend the mediation.

If there are nonparties who have an interest in the outcome of this case, including but not limited to, primary and any excess liability insurance carriers, subrogation claimants or lienholders, the Court hereby orders that the parties' lead trial counsel of

Record immediately provide written notice to all such nonparties of the time, date and place of the mediation and inform them that their physical presence is required by the Court.

Counsel of record also shall furnish each such interested nonparty a copy of this Order. Counsel of record shall promptly inform the Court in the event that such a nonparty indicates intent not to appear in person as required by this Order.

In addition to lead trial counsel being present at the mediation, a person with actual settlement authority for each party likewise must be present in person. The person with actual settlement authority shall be adequately familiarized with the case so as to enable him or her to negotiate about the case in good faith.

A person with limited settlement authority does not meet the requirements of this Order. Trial counsel rarely satisfies the requirement of a person with actual settlement authority. For most plaintiffs a person with actual authority requires a representative with the final authority to authorize dismissal of the case, with prejudice or to accept a settlement amount recommended by the mediator down to the defendant's last offer, in the representative's discretion. For most defendants, such a representative must have final settlement authority to commit the defendant or its liability insurance carrier(s) to pay a settlement amount recommended by the mediator up to the plaintiff's prayer or up to the plaintiff's last demand, whichever is lower, in the representative's discretion, without having to call for additional authority. The purpose of this requirement is to have a representative present for each party who can settle the case during the course of the mediation without consulting a superior.

Only the undersigned Judge may excuse the presence of the person with actual settlement authority from attending the mediation in person. Any request for permission



not to appear or to participate by telephone, shall be requested in writing no later than three (3) days before the mediation begins. Such requests, however are highly disfavored and seldom will be granted.

Counsel of record shall bring to the mediation all portions of their files that would be helpful to the mediator or the parties during the course of the mediation. This includes, but is not necessarily limited to such things as key pleadings and correspondence, the key exhibits expected to be used at trial, damage calculations, expells' reports, settlement brochures, photographs, etc.

The requirements of this Order have been imposed to make certain, to the extent possible; the possible avenues of settlement are reasonably explored before the mediation begins. The Court intends to minimize the risk that the valuable time, money and resources of anyone involved in the mediation process are wasted unnecessarily.

Any material noncompliance with the requirements of this Order may result in the imposition of sanctions against the responsible party, attorney or other representative. Such sanctions may include, but are not limited to, an award of attorney's fees, travel expenses or both. Plaintiff and defendant shall equally bear the costs of mediation.

**IT IS BY THE COURT SO ORDERED.**

Dated \_\_\_\_\_ Kansas this day of, \_\_\_ 20.

District Judge