

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION**

KIMBERLY A. HIVELY,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 3:14-cv-01791-JD-MGG
)	
IVY TECH COMMUNITY COLLEGE,)	
)	
Defendant.)	

**DEFENDANT IVY TECH’S NOTICE TO COURT OF
EFFORTS TO COMPLY WITH MEDIATION DEADLINE
AND REQUEST FOR RELIEF**

Defendant Ivy Tech Community College (“Ivy Tech”), by counsel, provides this notice to the Court of its efforts to comply with the Court’s mediation deadline. As set forth below, Ivy Tech has made extensive efforts to schedule a mediation with the Court-appointed mediator (Christopher Nuechterlein) within the deadline. The Plaintiff has not cooperated with these efforts. As a result, it is now clear that the parties will be unable to comply with the July 11, 2018 mediation deadline. Based upon the information contained in this Notice, Ivy Tech respectfully requests that the Court: (1) provide additional time to participate in a mediation with Mediator Nuechterlein; (2) require the Plaintiff to provide all available dates on which she is available to mediate with Mediator Nuechterlein; and (3) require the Plaintiff to provide any initial settlement demand. In support of these requests for relief, Ivy Tech states as follows:

I. RELEVANT FACTUAL BACKGROUND

1. On November 17, 2017, the parties agreed to Christopher Nuechterlein as the mediator in this matter. [See Exhibit 1].

2. On November 17, 2017, the parties' Notice of Mediator Selection was submitted to the Court. [Dkt. No. 48].

3. On December 21, 2017, the Court granted a joint motion for extension which moved the mediation deadline to June 9, 2018. [Dkt. No. 50]. On March 26, 2018, the Court granted a motion for extension which moved the mediation deadline to July 11, 2018. The Court's order also specifically stated: "***Parties are ADMONISHED that absent extraordinary circumstances, there will be no further extensions.***" [Dkt. No. 58 (emphasis added)].

4. On April 23, 2017, as part of a larger email exchange on discovery issues, Plaintiff's Houston-based counsel, D.J. Healey, stated via email: "*I want to do mediation in late May or early June.*" Accordingly, on the following day, Ivy Tech obtained Mediator Nuechterlein's available dates for May and June, 2018. Counsel for Ivy Tech then cross-referenced those dates with any conflicts on their respective schedule as well as any conflicts on the Ivy Tech client representative's schedule.

5. Later on April 24, 2017, Ivy Tech sent the following email to Plaintiff's counsel:

My assistant reached out to the mediator's office who gave us his available dates in May and June. We cross-referenced those dates against our available dates and are able to mediate on any of the following days:

- *May 21, 22, 24, 29, and 30;*
- *June 1, 4, 5, 12, 13, 15, 18, 19, 21, 22, 28, and 29.*

Please let us know which date you would prefer so that we can get it on the calendar.

[See Exhibit 2]. Plaintiff did not respond to Ivy Tech's correspondence.

6. On May 2, 2018, Ivy Tech sent a follow-up email to Plaintiff's counsel seeking mediation dates:

Following up on the email below, can you please let us know on the mediation dates?

[See Exhibit 3].

7. On May 3, 2018, Plaintiff's local counsel, Dan Pfeifer, responded that he was available on June 18 and 19, 2018. [See Exhibit 4]. Later that day, Plaintiff's Houston-based counsel D.J. Healey responded to Mr. Pfeifer's email stating "*I have a hearing on June 18 so I will confer with Dan on dates.*" [Ex. 4]. Ivy Tech then waited for Ms. Healey and Mr. Pfeifer to internally confer and respond with available dates.

8. On May 20, 2018, Plaintiff's Houston-based counsel D.J. Healey emailed stating: "*I am generally available after June 4 except for the following dates, June 12 and 13, June 17-19, June 25-27.*" [See Exhibit 5]. In response, Ivy Tech wrote:

We sent an email on April 24 providing the dates on which Ivy Tech and the mediator are available. Comparing those dates to the ones that you provided below today, that leaves June 5, 15, 21, 22, and 29. However, Ivy Tech is no longer available on June 5, 15, 21, or 22. This leaves June 29. We will notify the mediator's office that the parties have selected June 29.

[Ex. 5]. However, later on that same day, Ms. Healey would **not** agree to Ivy Tech notifying Mediator Nuechterlein of the parties' availability on June 29. Specifically, Ms. Healey stated:

Please wait for confirmation from us before notifying the mediator of anything.

If this date does not work for us we will need to find a substitute mediator, but let's not cross that bridge until we check the dates.

Please discuss this with Dan on Tuesday.

[Ex. 5]. Ivy Tech was confused by Plaintiff's instruction not to contact Mediator Nuechterlein with the parties' availability as her email from earlier that day indicated that Ms. Healey was

available on June 29, 2018. Nonetheless, Ivy Tech heeded Ms. Healey's instruction and did not notify Mediator Nuechterlein. Instead, Ivy Tech waited for Plaintiff's confirmation as Ms. Healey requested.

9. On May 22, 2018, following a witness deposition, Ivy Tech sent an email to Plaintiff's counsel as follows:

Dan did not indicate that he was unavailable on this date (though he did state that it was his opinion that the mediator would not be able to settle this case for the Plaintiff). Is there any reason that we should not go forward with this date with the mutually agreed upon, court-appointed mediator? Ivy Tech wants to ensure that it is meeting the deadline provided by the Court.

[See Exhibit 6]. Ms. Healey did not confirm the June 29th date or provide additional dates. Rather, she responded: "Take it up Friday [May 25th] at Fulton depo." [Ex. 6].

10. Following the witness deposition on May 25, 2018, Plaintiff's local counsel Dan Pfeifer stated his opinion that Mediator Nuechterlein is incapable of settling this case. The undersigned asked why Mr. Pfeifer believed that, and Mr. Pfeifer did not give a reason. During this exchange, Mr. Pfeifer did not confirm that Plaintiff was available on June 29th nor did he provide other available dates.

11. On June 19, 2018, Ivy Tech sent the following email outlining its efforts to get Plaintiff to agree to a mediation date:

On April 24, 2018, Ivy Tech sent 17 dates in May and June on which the mediator and Ivy Tech were available. On May 20, 2018, Plaintiff's counsel responded with open dates which included the mutually available date of June 29th. On that same day, Ivy Tech's counsel identified that mutually available date, however Plaintiff's counsel insisted that the date not be provided on the mediator's office. To date, Plaintiff has not identified any other available dates. Our mediation deadline in this case is July 11th. Ivy Tech is very concerned that Plaintiff's unwillingness to commit to a date over the last two months has put the parties in jeopardy of not complying with that date. As such, Ivy Tech is requesting that Plaintiff either confirm that June 29th is available for mediation or provide all other available dates between now and the mediation deadline.

As far as the mutually selected mediator, Ivy Tech sees no reason to change the mediator. Judge Nuechterlein is a respected former federal magistrate judge who has handled many Title VII cases. There is no reason to change the mutually-agreed upon, court-appointed mediator weeks before the mediation deadline.

We look forward to hearing from you soon on this issue.

[See Exhibit 7]. In response, later on June 19, 2018, Ms. Healey did not confirm availability on June 29th nor did she provide any other available dates. Rather, Ms. Healey stated:

Mediation does not work if both sides do not have faith in the mediator.

We agreed to the mediator before we had co-Counsel in South Bend.

We have since learned that mediation with this mediator will likely be a waste of everyone's time.

This said, please discuss this in person with Dan tomorrow at Ms. Green's deposition.

Mediation will be based on Dan's schedule.

[Ex. 7]. This was the first time that Plaintiff had indicated that mediation would be based upon its local counsel's schedule, and not its Houston-based counsel's schedule.

12. On June 20, 2018, at a witness deposition, Plaintiff's local counsel Dan Pfeifer notified Ivy Tech – *for the first time* – that he was available to mediate on July 2nd or the afternoon of July 3rd. Mr. Pfeifer did not provide any other available dates. Counsel for Ivy Tech responded that it needed to check the availability of Mediator Nuechterlein and its client representative (in-house counsel located in Indianapolis) on those dates.

13. On June 25, 2018, another of Plaintiff's Houston-based counsel, Kate Quisenberry sent an email seeking mediation with Gene Duffin on July 2 or 3rd instead of a mediation with the previously mutually agreed, and court-appointed mediator, Christopher Nuechterlein. Ms. Quisenberry relayed Mr. Pfeiffer's position "*that mediation with Judge*

Nuechterlein will likely be fruitless” and a request to mediate with Gene Duffin on July 2nd or 3rd. [See Exhibit 8].

14. On June 27, 2018, Ivy Tech responded by reiterating to Plaintiff’s counsel that it is not interested in mediating with Judge Duffin and believes Mediator Nuechterlein “*is a respected former federal magistrate judge who has handled many Title VII cases. There is no reason to change the mediator who has an expertise in the subject matter weeks before the mediation deadline.*” [Ex. 8]. Ivy Tech also informed Plaintiff that Mediator Nuechterlein’s office stated that he was unavailable on July 2 and 3. Finally, Ivy Tech offered another mediator who routinely mediates Title VII cases as an alternative. [Ex. 8]. Later on June 27, 2018, Plaintiff’s local counsel Dan Pfeifer rejected both of Ivy Tech’s proposals.

15. The parties exchanged additional communications on July 2, 2018. It is Ivy Tech’s position that it is now impossible to get a mediation scheduled between now and the deadline on July 11, 2018. Mediator Nuechterlein is unavailable from July 2-6. Additionally, Plaintiff’s Houston-based counsel D.J. Healey stated that mediation would be scheduled based upon Plaintiff’s local counsel’s schedule and Plaintiff’s local counsel is not available between July 5, 2018 and the mediation deadline on July 11, 2018. On the morning of July 3, 2018, Plaintiff’s counsel proposed that the parties switch mediators to Gene Duffin to conduct a mediation on July 6, 2018 (seemingly changing a previous representation about Mr. Pfeiffer’s availability) or to Terry Shewmaker on July 13, 2018 (after the mediation deadline). Ivy Tech declined Plaintiff counsel’s proposal. Plaintiff’s last minute proposal is unacceptable to Ivy Tech because: (1) neither mediators are the court-appointed mediator (and Ivy Tech has consistently informed the Plaintiff that it is not interested in changing mediators); (2) neither proposed

mediator has substantial experience mediating Title VII cases; and (3) the timing of the proposals are either too short notice or after the Court's imposed deadline. [*See* Exhibit 9].

16. In addition to the above difficulties getting Plaintiff to agree to a mediation date, counsel for Ivy Tech has also requested an initial settlement demand from Plaintiff's counsel on July 26, 2017; September 26, 2017; October 10, 2017; November 15, 2017; and April 23, 2018. To date, Plaintiff has not provided such a demand.

II. REQUEST FOR RELIEF

Ivy Tech has made extensive efforts to schedule mediation prior to the mediation deadline of July 11, 2018, consistent with the Court's order. Ivy Tech is very cognizant of the Court's admonition on March 26, 2018, that "absent extraordinary circumstances, there will be no further extensions." However, Plaintiff has not been cooperative with Ivy Tech's numerous attempts to schedule a mediation with Mediator Nuechterlein prior to the deadline.¹ Based upon the foregoing, Ivy Tech requests:

- (1) additional time to conduct the mediation with Mediator Nuechterlein;
- (2) that the Plaintiff be required to provide dates upon which she is available to mediate with Mediator Nuechterlein;
- (3) that Plaintiff be required to promptly provide an initial settlement demand, itemized by alleged damage categories; and
- (4) Ivy Tech further requests all other relief just and equitable under the circumstances.

¹ It is Ivy Tech's position that it should not be this difficult to schedule a mediation session with a mutually agreed-upon mediator.

Respectfully submitted,

s/ Adam L. Bartrom

Jason T. Clagg (24123-02)
(jason.clagg@btlaw.com)
Adam L. Bartrom (27019-02)
(adam.bartrom@btlaw.com)
BARNES & THORNBURG LLP
888 South Harrison Street, Suite 600
Fort Wayne, Indiana 46802
Telephone: (260) 423-9440
Facsimile: (260) 424-8316

ATTORNEYS FOR DEFENDANT
IVY TECH COMMUNITY COLLEGE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the above and foregoing has been served this 3rd day of July, 2018, by electronically filing the same with the Clerk of the Court using the CM/ECF system, which sent notification of such filing to the following:

Danielle J. Healey – healey@fr.com
Karrie H. Wheatley – wheatley@fr.com
Raisa Ahmad – ahmad@fr.com
FISH & RICHARDSON P.C.
1221 McKinney Street, Suite 2800
Houston, TX 77010

Daniel H. Pfeifer – dpfeifer@pilawyers.com
PFEIFER MORGAN & STESIAK
53600 North Ironwood Road
South Bend, IN 46635

s/ Adam L. Bartrom

Adam L. Bartrom

EXHIBIT “1”

Bartrom, Adam

From: Bartrom, Adam
Sent: Friday, November 17, 2017 9:42 AM
To: DJ Healey; Clagg, Jason
Cc: Raisa Ahmad; Karrie Wheatley; Desarai Smith
Subject: RE: Mediator - Hively v Ivy Tech

Thank you. We'll put together our customary notification of selection of mediator letter and send it out (with a copy to you).

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [<mailto:Healey@fr.com>]
Sent: Friday, November 17, 2017 9:10 AM
To: Clagg, Jason
Cc: Raisa Ahmad; Karrie Wheatley; Desarai Smith; Bartrom, Adam
Subject: Re: Mediator - Hively v Ivy Tech

Then he is fine with us

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

On Nov 17, 2017, at 7:42 AM, Clagg, Jason <Jason.Clagg@btlaw.com<<mailto:Jason.Clagg@btlaw.com>>>>
wrote:

I believe the only ties our firm has to the former magistrate would be that lawyers in our firm have had cases decided and/or mediated by him. Nothing more than that.

Jason T. Clagg | Partner

Barnes & Thornburg LLP
(260) 425-4646 - direct
(260) 312-7750 - mobile
(260) 424-8316 - fax
jason.clagg@btlaw.com<<mailto:jason.clagg@btlaw.com>>

<image003.png><<http://www.btlaw.com/jason-t-clagg/>>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles
Michigan | Minneapolis | Ohio | Washington D.C.

From: DJ Healey [<mailto:Healey@fr.com>]
Sent: Friday, November 17, 2017 8:37 AM
To: Raisa Ahmad; Karrie Wheatley; Clagg, Jason; Desarai Smith; DJ Healey; Bartrom, Adam
Subject: Mediator - Hively v Ivy Tech

Let's also close the loop on the mediator today. The former Magistrate you suggested is fine assuming you will confirm he has no personal ties to your firm that you are aware of as of today.

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

EXHIBIT “2”

Bartrom, Adam

From: Bartrom, Adam
Sent: Tuesday, April 24, 2018 2:34 PM
To: DJ Healey (Healey@fr.com); 'ahmad@fr.com'; Karrie Wheatley (wheatley@fr.com); dpfeifer@pilawyers.com
Cc: Clagg, Jason
Subject: Ivy Tech/Hively: Available Mediation Dates

Counsel,

My assistant reached out to the mediator's office who gave us his available dates in May and June. We cross-referenced those dates against our available dates and are able to mediate on any of the following days:

- May 21, 22, 24, 29, and 30;
- June 1, 4, 5, 12, 13, 15, 18, 19, 21, 22, 28, and 29.

Please let us know which date you would prefer so that we can get it on the calendar.

Thanks,
Adam

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

EXHIBIT “3”

Bartrom, Adam

From: Bartrom, Adam
Sent: Wednesday, May 02, 2018 1:15 PM
To: DJ Healey (Healey@fr.com); 'ahmad@fr.com'; Karrie Wheatley (wheatley@fr.com); dpfeifer@pilawyers.com
Cc: Clagg, Jason
Subject: RE: Ivy Tech/Hively: Available Mediation Dates

Counsel,

Following up on the email below, can you please let us know on the mediation dates?

Thanks much,
Adam

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

From: Bartrom, Adam
Sent: Tuesday, April 24, 2018 2:34 PM
To: DJ Healey (Healey@fr.com); 'ahmad@fr.com'; Karrie Wheatley (wheatley@fr.com); dpfeifer@pilawyers.com
Cc: Clagg, Jason
Subject: Ivy Tech/Hively: Available Mediation Dates

Counsel,

My assistant reached out to the mediator's office who gave us his available dates in May and June. We cross-referenced those dates against our available dates and are able to mediate on any of the following days:

- May 21, 22, 24, 29, and 30;
- June 1, 4, 5, 12, 13, 15, 18, 19, 21, 22, 28, and 29.

Please let us know which date you would prefer so that we can get it on the calendar.

Thanks,
Adam

EXHIBIT “4”

Bartrom, Adam

From: DJ Healey <Healey@fr.com>
Sent: Thursday, May 03, 2018 6:33 PM
To: Bartrom, Adam
Cc: Daniel H. Pfeifer; Raisa Ahmad; Karrie Wheatley; Clagg, Jason; Julia Cuson
Subject: Re: Ivy Tech/Hively: Available Mediation Dates

I have a hearing on June 18 so I will confer with Dan on dates.

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

On May 3, 2018, at 11:38 AM, Bartrom, Adam
<Adam.Bartrom@btlaw.com<<mailto:Adam.Bartrom@btlaw.com>>> wrote:

(former) Judge Nuechterlein is the mediator.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: Daniel H. Pfeifer [<mailto:Dpfeifer@pilawyers.com>]
Sent: Thursday, May 03, 2018 6:50 AM
To: Bartrom, Adam; Healey@fr.com<<mailto:Healey@fr.com>>; ahmad@fr.com<<mailto:ahmad@fr.com>>;
wheatley@fr.com<<mailto:wheatley@fr.com>>
Cc: Clagg, Jason; Julia Cuson

I am available June 18 and June 19. Who is the mediator? I can not find any email identifying who the mediator is. Thanks.

From: Bartrom, Adam<<mailto:Adam.Bartrom@btlaw.com>>
Sent: May 02, 2018 1:15 PM
To: <mailto:Healey@fr.com> ; <mailto:ahmad@fr.com> ; <mailto:wheatley@fr.com> ;
dpfeifer@pilawyers.com<<mailto:dpfeifer@pilawyers.com>>
Cc: Clagg, Jason<<mailto:Jason.Clagg@btlaw.com>>
Subject: RE: Ivy Tech/Hively: Available Mediation Dates

Counsel,

Following up on the email below, can you please let us know on the mediation dates?

Thanks much,
Adam

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: Bartrom, Adam
Sent: Tuesday, April 24, 2018 2:34 PM
To: DJ Healey (Healey@fr.com<<mailto:Healey@fr.com>>); 'ahmad@fr.com'<<mailto:ahmad@fr.com>>'; Karrie Wheatley (wheatley@fr.com<<mailto:wheatley@fr.com>>);
dpfeifer@pilawyers.com<<mailto:dpfeifer@pilawyers.com>>
Cc: Clagg, Jason
Subject: Ivy Tech/Hively: Available Mediation Dates

Counsel,

My assistant reached out to the mediator's office who gave us his available dates in May and June. We cross-referenced those dates against our available dates and are able to mediate on any of the following days:

* May 21, 22, 24, 29, and 30;

* June 1, 4, 5, 12, 13, 15, 18, 19, 21, 22, 28, and 29.

Please let us know which date you would prefer so that we can get it on the calendar.

Thanks,
Adam

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute

EXHIBIT “5”

Bartrom, Adam

From: DJ Healey <Healey@fr.com>
Sent: Sunday, May 20, 2018 4:13 PM
To: Bartrom, Adam; Clagg, Jason; Daniel H. Pfeifer; Julia Cuson; Raisa Ahmad
Subject: RE: Let's nail down mediation date on Tuesday at depos.

Please wait for confirmation from us before notifying the mediator of anything.

If this date does not work for us we will need to find a substitute mediator, but let's not cross that bridge until we check the dates.

Please discuss this with Dan on Tuesday.

From: Bartrom, Adam [<mailto:Adam.Bartrom@btlaw.com>]
Sent: Sunday, May 20, 2018 3:11 PM
To: DJ Healey <Healey@fr.com>; Clagg, Jason <Jason.Clagg@btlaw.com>; Daniel H. Pfeifer <Dpfeifer@pilawyers.com>; Julia Cuson <jic@pilawyers.com>; Raisa Ahmad <ahmad@fr.com>
Subject: RE: Let's nail down mediation date on Tuesday at depos.

Counsel,

We sent an email on April 24 providing the dates on which Ivy Tech and the mediator are available. Comparing those dates to the ones that you provided below today, that leaves June 5, 15, 21, 22, and 29. However, Ivy Tech is no longer available on June 5, 15, 21, or 22. This leaves June 29. We will notify the mediator's office that the parties have selected June 29.

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [<mailto:Healey@fr.com>]
Sent: Sunday, May 20, 2018 10:07 AM
To: Bartrom, Adam; Clagg, Jason; Daniel H. Pfeifer; Julia Cuson; Raisa Ahmad
Subject: Let's nail down mediation date on Tuesday at depos.

I suggest we nail down a mediation date at the depositions Tuesday.

I am generally available after June 4 except for the following dates, June 12 and 13, June 17-19, June 25-27.

 This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

 This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

EXHIBIT “6”

Bartrom, Adam

From: DJ Healey <Healey@fr.com>
Sent: Tuesday, May 22, 2018 9:07 PM
To: Bartrom, Adam
Cc: Clagg, Jason; Daniel H. Pfeifer; Julia Cuson; Raisa Ahmad
Subject: Re: Let's nail down mediation date on Tuesday at depos.

Take it up Friday at Fulton depo.

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

On May 22, 2018, at 8:01 PM, Bartrom, Adam
<Adam.Bartrom@btlaw.com<mailto:Adam.Bartrom@btlaw.com>> wrote:

DJ,

Dan did not indicate that he was unavailable on this date (though he did state that it was his opinion that the mediator would not be able to settle this case for the Plaintiff). Is there any reason that we should not go forward with this date with the mutually agreed upon, court-appointed mediator? Ivy Tech wants to ensure that it is meeting the deadline provided by the Court.

Thanks,
Adam

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [mailto:Healey@fr.com]
Sent: Sunday, May 20, 2018 4:13 PM
To: Bartrom, Adam; Clagg, Jason; Daniel H. Pfeifer; Julia Cuson; Raisa Ahmad
Subject: RE: Let's nail down mediation date on Tuesday at depos.

Please wait for confirmation from us before notifying the mediator of anything.

If this date does not work for us we will need to find a substitute mediator, but let's not cross that bridge until we check the dates.

Please discuss this with Dan on Tuesday.

From: Bartrom, Adam [mailto:Adam.Bartrom@btlaw.com]
Sent: Sunday, May 20, 2018 3:11 PM
To: DJ Healey <Healey@fr.com<mailto:Healey@fr.com>>; Clagg, Jason <Jason.Clagg@btlaw.com<mailto:Jason.Clagg@btlaw.com>>; Daniel H. Pfeifer <Dpfeifer@pilawyers.com<mailto:Dpfeifer@pilawyers.com>>; Julia Cuson <jic@pilawyers.com<mailto:jic@pilawyers.com>>; Raisa Ahmad <ahmad@fr.com<mailto:ahmad@fr.com>>
Subject: RE: Let's nail down mediation date on Tuesday at depos.

Counsel,

We sent an email on April 24 providing the dates on which Ivy Tech and the mediator are available. Comparing those dates to the ones that you provided below today, that leaves June 5, 15, 21, 22, and 29. However, Ivy Tech is no longer available on June 5, 15, 21, or 22. This leaves June 29. We will notify the mediator's office that the parties have selected June 29.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

USDC, IN/ND case 3:14-cv-01791-JD-MGG document 65-6 filed 07/03/18 page 4 of 4
From: DJ Healey [mailto:Healey@fr.com]
Sent: Sunday, May 20, 2018 10:07 AM
To: Bartrom, Adam; Clagg, Jason; Daniel H. Pfeifer; Julia Cuson; Raisa Ahmad
Subject: Let's nail down mediation date on Tuesday at depos.

I suggest we nail down a mediation date at the depos on Tuesday.

I am generally available after June 4 except for the following dates, June 12 and 13, June 17-19, June 25-27.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and

EXHIBIT “7”

Bartrom, Adam

From: DJ Healey <Healey@fr.com>
Sent: Tuesday, June 19, 2018 4:58 PM
To: Bartrom, Adam
Cc: Raisa Ahmad; Karrie Wheatley; Kate Quisenberry; dpfeifer@pilawyers.com; Clagg, Jason; Desarai Smith
Subject: Re: Ivy Tech/Hively: Mediation

Mediation does not work if both sides do not have faith in the mediator.

We agreed to the mediator before we had co-Counsel in South Bend.

We have since learned that mediation with this mediator will likely be a waste of everyone's time.

This said, please discuss this in person with Dan tomorrow at Ms. Green's deposition.

Mediation will be based on Dan's schedule.

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

On Jun 19, 2018, at 3:47 PM, Bartrom, Adam
<Adam.Bartrom@btlaw.com<<mailto:Adam.Bartrom@btlaw.com>>> wrote:

Counsel,

On April 24, 2018, Ivy Tech sent 17 dates in May and June on which the mediator and Ivy Tech were available. On May 20, 2018, Plaintiff's counsel responded with open dates which included the mutually available date of June 29th. On that same day, Ivy Tech's counsel identified that mutually available date, however Plaintiff's counsel insisted that the date not be provided on the mediator's office. To date, Plaintiff has not identified any other available dates. Our mediation deadline in this case is July 11th. Ivy Tech is very concerned that Plaintiff's unwillingness to commit to a date over the last two months has put the parties in jeopardy of not complying with that date. As such, Ivy Tech is requesting that Plaintiff either confirm that June 29th is available for mediation or provide all other available dates between now and the mediation deadline.

As far as the mutually selected mediator, Ivy Tech sees no reason to change the mediator. Judge Nuechterlein is a respected former federal magistrate judge who has handled many Title VII cases. There is no reason to change the mutually-agreed upon, court-appointed mediator weeks before the mediation deadline.

We look forward to hearing from you soon on this issue.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

EXHIBIT “8”

Bartrom, Adam

From: Bartrom, Adam
Sent: Wednesday, June 27, 2018 8:54 AM
To: Kate Quisenberry; Daniel H. Pfeifer; Julia Cuson; DJ Healey (Healey@fr.com); 'ahmad@fr.com'; Karrie Wheatley (wheatley@fr.com); Clagg, Jason
Subject: RE: Proposed Mediation Dates/Mediator Change

Kate,

Thanks for your email. I am resending the email below that we sent out last night around 4:45pm EST but we had system connectivity glitches yesterday afternoon.

Ivy Tech is not interested in changing the mutually agreed upon mediator to Gene Duffin. Ivy Tech also disagrees that the use of Judge Nuechterlein will "likely be fruitless." As Ivy Tech informed Plaintiff's counsel on June 19th (and other times before), Judge Nuechterlein is a respected former federal magistrate judge who has handled many Title VII cases. There is no reason to change the mediator who has an expertise in the subject matter weeks before the mediation deadline. And while there is no need to rehash Ivy Tech's correspondence from June 19th, Ivy Tech has been seeking a mediation date from the Plaintiff since at least April 24, 2018. However, it was not until Ms. Green's deposition on June 20th that Plaintiff's local counsel informed Ivy Tech that he was only available on July 2nd and the afternoon of July 3rd (neither of which were any of the 17 dates which Ivy Tech provided to the Plaintiff on April 24th). Additionally, Ivy Tech has been soliciting an initial settlement demand from Plaintiff since shortly after Fish Richardson entered their appearance in this matter almost a year ago. To date, Ivy Tech has not received such a demand.

Your statement that it is inappropriate for Judge Nuechterlein to be the mediator because he was previously assigned to this case and "entered rulings" is a bit misleading. First, Ivy Tech assumes that Fish Richardson reviewed the Court docket either before or upon taking on this case in August 2017 and was familiar with it. In reviewing the docket, it is readily apparent that Judge Nuechterlein was the original magistrate assigned to this case in August 2014. Second, the rulings that Judge Nuechterlein entered amounted to an initial extension of time for Ivy Tech in September 2014 and an initial extension of time for the Plaintiff in October 2014. These were not substantive rulings on dispositive motions, but rather routine procedural rulings on unopposed requests. Third, as Plaintiff's local counsel is most certainly aware, it is regular practice for federal magistrate judges in this district to conduct judicial settlement conferences. Thus, had Judge Nuechterlein been a part of this case following its remand in May 2017, in all likelihood, he would have presided over a settlement conference with the parties. Put simply, that Judge Nuechterlein granted two unopposed extensions 4 years ago does not make it inappropriate for him to mediate this matter now.

We have contacted Judge Nuechterlein's office and he is unavailable on July 2nd and 3rd. He is available on July 10th, however Ivy Tech's general counsel will be out of the state on that day on a pre-planned vacation. So in a good effort to resolve this issue, Ivy Tech sees two options:

1. Ivy Tech outlines its efforts to the Court to comply with the mediation deadline in this matter but explains that it is no longer possible to meet that deadline and seeks additional time to conduct the mediation with Judge Nuechterlein; or
2. Ivy Tech will agree to utilize Anthony Stites of Barrett McNagny in Fort Wayne (<https://www.barrettlaw.com/our-people/anthony-m-stites>) on July 2nd. This meets the deadline and complies with the date identified by Plaintiff's local counsel as one of the only two on which he is available before the deadline.

Please let us know which of these options Plaintiff would prefer by the end of the day today, so necessary arrangements can be made.

Thanks,
Adam

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

From: Kate Quisenberry [mailto:quisenberry@fr.com]
Sent: Monday, June 25, 2018 6:33 PM
To: Bartrom, Adam; Daniel H. Pfeifer; Julia Cuson
Subject: Proposed Mediation Dates/Mediator Change

Adam,

I am following up to help tie up loose ends on mediation, as discussed by you and Dan at Ms. Green's deposition last week.

Before Ms. Green's deposition last week, Dan proposed July 2nd and July 3rd as dates for our mediation. Dan is not available on June 29th. (Ms. Healey's medical condition does not permit her to travel for the mediation now, so the mediation has to be based on Dan's schedule).

You stated that you would have to speak with your client and get back to us regarding those dates. Please confirm that one of these dates is acceptable, or propose an alternative. As you know, our mediation deadline in this case is July 11th.

I am also repeating Dan's point about using Judge Nuechterlein acting as our mediator, and his offer for an alternative. Since hiring co-Counsel in South Bend, Dan has made clear that mediation with Judge Nuechterlein will likely be fruitless. But we have also learned that while Ms. Hively was pro se in the case, Judge Nuechterlein presided in the lawsuit and entered rulings. We believe it is inappropriate for Judge Nuechterlein to participate in this mediation under these circumstances.

Dan spoke with Judge Gene Duffin, and he is available on July 2nd and July 3rd. Ms. Hively is hoping for a good faith attempt at mediation, and we strongly believe mediating with Judge Duffin will be more likely to result in a productive mediation.

Please confirm mediation with Judge Duffin on July 2nd or 3rd.

Best,

Kathryn A. Quisenberry :: Associate :: Fish & Richardson P.C.

713 654 5355 direct :: 832 788 9276 mobile :: quisenberry@fr.com

fr.com :: Bio :: LinkedIn :: Twitter

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

EXHIBIT “9”

Bartrom, Adam

From: Bartrom, Adam
Sent: Tuesday, July 03, 2018 2:10 PM
To: DJ Healey
Cc: Daniel H. Pfeifer; Kate Quisenberry; Julia Cuson; Raisa Ahmad; Karrie Wheatley; Clagg, Jason; Desarai Smith
Subject: RE: Proposed Mediation Dates/Mediator Change

Counsel,

Ivy Tech cannot agree to Plaintiff's last minute proposal for the following reasons:

- (1) neither proposal involves the court-appointed mediator (and Ivy Tech has consistently informed the Plaintiff that it is not interested in changing mediators);
- (2) neither proposed mediator has substantial experience mediating Title VII cases (rather their bios reveal substantial experience with state court personal injury cases and/or criminal matters: <http://www.cvllms.com/>); and
- (3) the timing of the proposals are either too short notice or after the Court's imposed deadline. Ivy Tech cannot meaningful prepare for a mediation on 1 day of notice and Ivy Tech will not agree to conduct a mediation after the deadline without permission of the Court.

Ivy Tech gave careful thought to selection of Mediator Nuechterlein when the parties agreed to use him on November 17, 2017. Specifically, Ivy Tech wanted a mediator who was both well-versed with federal court procedure and the jurisprudence of Title VII. Mediator Nuechterlein checks both boxes and is well respected. Plaintiff's counsel has not cited any viable reason to switch from the previously agreed mediator other than a repeated and vague claim that the mediation would be "fruitless" or a "waste of time." Plaintiff has also withheld available dates as part of a play to switch the mediator to a state court, personal-injury oriented mediator with whom Dan Pfeiffer regularly mediates his many personal injury cases. Ivy Tech has repeatedly laid out its concerns with Plaintiff's tactics in this regard and its concern that the parties would not be able to meet the mediation deadline based upon the tactics. Unfortunately, that is the exact situation that we are in.

Adam Bartrom | Partner
Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316



Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |
Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [mailto:Healey@fr.com]
Sent: Tuesday, July 03, 2018 10:16 AM
To: Bartrom, Adam
Cc: Daniel H. Pfeifer; Kate Quisenberry; Julia Cuson; Raisa Ahmad; Karrie Wheatley; Clagg, Jason; Desarai Smith
Subject: Re: Proposed Mediation Dates/Mediator Change

We propose mediation with Judge Shewmaker on the morning of July 13th in Dan's office.

We could also make the afternoon of July 6 with Judge Duffin at Dan's office.

Danielle Joy "DJ" Healey

713-385-6566

On Jul 2, 2018, at 2:45 PM, Bartrom, Adam
<Adam.Bartrom@btlaw.com> wrote:

If you have a proposal, send it and we'll review.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [mailto:Healey@fr.com]
Sent: Monday, July 02, 2018 5:27 PM
To: Bartrom, Adam
Cc: Daniel H. Pfeifer; Kate Quisenberry; Julia Cuson; Raisa Ahmad; Karrie Wheatley; Clagg, Jason
Subject: Re: Proposed Mediation Dates/Mediator Change

We again disagree with how you have characterized things, and continue to believe the parties can work this out

Danielle Joy "DJ" Healey

713-385-6566

Sent from my handheld device.

On Jul 2, 2018, at 1:59 PM, Bartrom, Adam

<Adam.Bartrom@btlaw.com<mailto:Adam.Bartrom@btlaw.com>><mailto:Adam.Bartrom@btlaw.com>>
wrote:

DJ,

The emails in this matter very clearly demonstrate Ivy Tech's efforts to get this mediation scheduled.

Also, June 29th was not unilaterally pre-ordained. It is a date that you stated that you were available. To call it otherwise now is not truthful.

You stated that mediation would be based upon Dan's schedule. Other than today, the only available date that Dan provided is tomorrow, July 3rd. Obviously a mediation cannot happen on such short notice. Plaintiff has not provided any other dates despite numerous requests by Ivy Tech. It is now impossible to get a mediation scheduled between now and the deadline on July 11th. Ivy Tech is not refusing to discuss this issue – the problem is that there is nothing left to discuss because there is no way to conduct a mediation prior to the deadline.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330

Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: DJ Healey [mailto:Healey@fr.com]

Sent: Monday, July 02, 2018 4:31 PM

To: Bartrom, Adam; Daniel H. Pfeifer; Kate Quisenberry; Julia Cuson; Raisa Ahmad; Karrie Wheatley; Clagg,

We disagree as to both your characterization of the facts and your refusal to discuss a resolution.

Ivy was willing to do the mediation on July 2 rather than the date it unilaterally pre-ordained, June 29; and was willing to do so with a different mediator from the one previously selected.

It seems both parties have shown that they are willing to use a different mediator than the one originally selected, and that a different day other than June 29 is acceptable.

It seems to be common sense that if the parties want to mediate that an acceptable date and mediator can be found.

So we note your refusal to discuss the issue and request Ivy Tech reconsider its positions on both talking and on mediating.

From: Bartrom, Adam
<Adam.Bartrom@btlaw.com<mailto:Adam.Bartrom@btlaw.com><mailto:Adam.Bartrom@btlaw.com>>
Sent: Monday, July 02, 2018 3:25 PM
To: Daniel H. Pfeifer
<Dpfeifer@pilawyers.com<mailto:Dpfeifer@pilawyers.com><mailto:Dpfeifer@pilawyers.com>>; DJ Healey
<Healey@fr.com<mailto:Healey@fr.com><mailto:Healey@fr.com>>; Kate Quisenberry
<quisenberry@fr.com<mailto:quisenberry@fr.com><mailto:quisenberry@fr.com>>; Julia Cuson
<jic@pilawyers.com<mailto:jic@pilawyers.com><mailto:jic@pilawyers.com>>; Raisa Ahmad
<ahmad@fr.com<mailto:ahmad@fr.com><mailto:ahmad@fr.com>>; Karrie Wheatley
<wheatley@fr.com<mailto:wheatley@fr.com><mailto:wheatley@fr.com>>; Clagg, Jason
<Jason.Clagg@btlaw.com<mailto:Jason.Clagg@btlaw.com><mailto:Jason.Clagg@btlaw.com>>
Subject: RE: Proposed Mediation Dates/Mediator Change

Counsel,

Ivy Tech is unaware of what is left to discuss regarding mediation. Ivy Tech has attempted to schedule this mediation with the Plaintiff since April 23, 2018. Plaintiff has failed to cooperate in those efforts including instructing Ivy Tech not to notify the mediator of a date on which all parties were available prior to the mediation deadline. Plaintiff also rejected both options provided by Ivy Tech below. At this point, no mediation can occur before the July 11th deadline because the mediator is unavailable on June 2 and 3 (the only two dates provided by Dan) and Dan is unavailable on July 10th. None of this is the fault of Ivy Tech.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330
Fax: (260) 424-8316

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: Daniel H. Pfeifer [mailto:Dpfeifer@pilawyers.com]
Sent: Monday, July 02, 2018 8:18 AM
To: DJ Healey; Bartrom, Adam; Kate Quisenberry; Julia Cuson; Raisa Ahmad; Karrie Wheatley; Clagg, Jason
Subject: Re: Proposed Mediation Dates/Mediator Change

I am available this morning and late this afternoon.

From: DJ Healey<mailto:Healey@fr.com>
Sent: July 02, 2018 8:07 AM
To: Bartrom, Adam<mailto:Adam.Bartrom@btlaw.com> ; Daniel H. Pfeifer<mailto:Dpfeifer@pilawyers.com>
; Kate Quisenberry<mailto:quisenberry@fr.com> ; Julia Cuson<mailto:jic@pilawyers.com> ; Raisa
Ahmad<mailto:ahmad@fr.com> ; Karrie Wheatley<mailto:wheatley@fr.com> ; Clagg,
Jason<mailto:Jason.Clagg@btlaw.com>
Subject: RE: Proposed Mediation Dates/Mediator Change

I think we should talk about the mediation issue.

From: DJ Healey
Sent: Wednesday, June 27, 2018 9:06 AM
To: Bartrom, Adam
<Adam.Bartrom@btlaw.com<mailto:Adam.Bartrom@btlaw.com><mailto:Adam.Bartrom@btlaw.com>>;
Daniel H. Pfeifer
<Dpfeifer@pilawyers.com<mailto:Dpfeifer@pilawyers.com><mailto:Dpfeifer@pilawyers.com>>; Kate
Quisenberry <quisenberry@fr.com<mailto:quisenberry@fr.com><mailto:quisenberry@fr.com>>; Julia Cuson
<jic@pilawyers.com<mailto:jic@pilawyers.com><mailto:jic@pilawyers.com>>; Raisa Ahmad
<ahmad@fr.com<mailto:ahmad@fr.com><mailto:ahmad@fr.com>>; Karrie Wheatley
<wheatley@fr.com<mailto:wheatley@fr.com><mailto:wheatley@fr.com>>; Clagg, Jason
<Jason.Clagg@btlaw.com<mailto:Jason.Clagg@btlaw.com><mailto:Jason.Clagg@btlaw.com>>
Subject: Re: Proposed Mediation Dates/Mediator Change

So in other words you are turning down Dan's offer to talk to discuss the problem?

Danielle Joy "DJ" Healey
Fish & Richardson P.C.
LyondellBasell Building
1221 McKinney St., Suite 2800
Houston, Texas 77010
healey@fr.com<mailto:healey@fr.com><mailto:healey@fr.com>
713-385-6566 mobile
713-653-5130 office

From: Bartrom, Adam

<Adam.Bartrom@btlaw.com<mailto:Adam.Bartrom@btlaw.com><mailto:Adam.Bartrom@btlaw.com>>

Sent: Wednesday, June 27, 2018 8:59 AM

To: Daniel H. Pfeifer; Kate Quisenberry; Julia Cuson; DJ Healey; Raisa Ahmad; Karrie Wheatley; Clagg, Jason

Cc: Julia Cuson

Subject: RE: Proposed Mediation Dates/Mediator Change

Thanks Dan – Ivy Tech understands your position that Plaintiff is rejecting both of Ivy Tech’s proposals. Ivy Tech will proceed accordingly.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330

Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: Daniel H. Pfeifer [mailto:Dpfeifer@pilawyers.com]

Sent: Wednesday, June 27, 2018 9:34 AM

To: Bartrom, Adam; Kate Quisenberry; Julia Cuson;

Healey@fr.com<mailto:Healey@fr.com><mailto:Healey@fr.com>;

ahmad@fr.com<mailto:ahmad@fr.com><mailto:ahmad@fr.com>;

wheatley@fr.com<mailto:wheatley@fr.com><mailto:wheatley@fr.com>; Clagg, Jason

Cc: Julia Cuson

Subject: Re: Proposed Mediation Dates/Mediator Change

Neither option is acceptable as the “notification” to the Court (unilaterally by you) would undoubtedly be self-serving and possibly misleading. I have never heard of this attorney in Ft. Wayne and would not mediate with someone with whom I have no experience. A simple joint Motion to extend the mediation deadline would be acceptable. I am not available July 10 as it is my birthday and I will be out of town. I can still make myself available July 2 and 3 but since your delay in responding, other matters have been put on my calendar. I can, however, rearrange. I do have at least one other case that I am involved with besides this one. I am available by phone if you would like to discuss.

From: Bartrom, Adam<mailto:Adam.Bartrom@btlaw.com>

Sent: June 27, 2018 8:54 AM

To: Kate Quisenberry<mailto:quisenberry@fr.com> ; Daniel H. Pfeifer<mailto:Dpfeifer@pilawyers.com> ;

USDC INND: case 3:14-cv-01791-JD-MGG document 65-9 filed 07/03/18 page 8 of 10
Julia Cuson <mailto:jic@plawyers.com> , <mailto:Healey@fr.com> , <mailto:ahmad@fr.com> ;
<mailto:wheatley@fr.com> ; Clagg, Jason <mailto:Jason.Clagg@btlaw.com>
Subject: RE: Proposed Mediation Dates/Mediator Change

Kate,

Thanks for your email. I am resending the email below that we sent out last night around 4:45pm EST but we had system connectivity glitches yesterday afternoon.

Ivy Tech is not interested in changing the mutually agreed upon mediator to Gene Duffin. Ivy Tech also disagrees that the use of Judge Nuechterlein will “likely be fruitless.” As Ivy Tech informed Plaintiff’s counsel on June 19th (and other times before), Judge Nuechterlein is a respected former federal magistrate judge who has handled many Title VII cases. There is no reason to change the mediator who has an expertise in the subject matter weeks before the mediation deadline. And while there is no need to rehash Ivy Tech’s correspondence from June 19th, Ivy Tech has been seeking a mediation date from the Plaintiff since at least April 24, 2018. However, it was not until Ms. Green’s deposition on June 20th that Plaintiff’s local counsel informed Ivy Tech that he was only available on July 2nd and the afternoon of July 3rd (neither of which were any of the 17 dates which Ivy Tech provided to the Plaintiff on April 24th). Additionally, Ivy Tech has been soliciting an initial settlement demand from Plaintiff since shortly after Fish Richardson entered their appearance in this matter almost a year ago. To date, Ivy Tech has not received such a demand.

Your statement that it is inappropriate for Judge Nuechterlein to be the mediator because he was previously assigned to this case and “entered rulings” is a bit misleading. First, Ivy Tech assumes that Fish Richardson reviewed the Court docket either before or upon taking on this case in August 2017 and was familiar with it. In reviewing the docket, it is readily apparent that Judge Nuechterlein was the original magistrate assigned to this case in August 2014. Second, the rulings that Judge Nuechterlein entered amounted to an initial extension of time for Ivy Tech in September 2014 and an initial extension of time for the Plaintiff in October 2014. These were not substantive rulings on dispositive motions, but rather routine procedural rulings on unopposed requests. Third, as Plaintiff’s local counsel is most certainly aware, it is regular practice for federal magistrate judges in this district to conduct judicial settlement conferences. Thus, had Judge Nuechterlein been a part of this case following its remand in May 2017, in all likelihood, he would have presided over a settlement conference with the parties. Put simply, that Judge Nuechterlein granted two unopposed extensions 4 years ago does not make it inappropriate for him to mediate this matter now.

We have contacted Judge Nuechterlein’s office and he is unavailable on July 2nd and 3rd. He is available on July 10th, however Ivy Tech’s general counsel will be out of the state on that day on a pre-planned vacation. So in a good effort to resolve this issue, Ivy Tech sees two options:

1. Ivy Tech outlines its efforts to the Court to comply with the mediation deadline in this matter but explains that it is no longer possible to meet that deadline and seeks additional time to conduct the mediation with Judge Nuechterlein; or
2. Ivy Tech will agree to utilize Anthony Stites of Barrett McNagny in Fort Wayne (<https://www.barrettlaw.com/our-people/anthony-m-stites><<https://www.barrettlaw.com/our-people/anthony-m-stites><<https://www.barrettlaw.com/our-people/anthony-m-stites>>>)) on July 2nd. This meets the deadline and complies with the date identified by Plaintiff’s local counsel as one of the only two on which he is available before the deadline.

Please let us know which of these options Plaintiff would prefer by the end of the day today, so necessary arrangements can be made.

Adam Bartrom | Partner

Barnes & Thornburg LLP

Direct: (260) 425-4629 | Mobile: (260) 403-3330

Fax: (260) 424-8316

<image001.gif>

Atlanta | Chicago | Dallas | Delaware | Indiana | Los Angeles |

Michigan | Minneapolis | Ohio | Washington, D.C.

From: Kate Quisenberry [mailto:quisenberry@fr.com]

Sent: Monday, June 25, 2018 6:33 PM

To: Bartrom, Adam; Daniel H. Pfeifer; Julia Cuson

Subject: Proposed Mediation Dates/Mediator Change

Adam,

I am following up to help tie up loose ends on mediation, as discussed by you and Dan at Ms. Green's deposition last week.

Before Ms. Green's deposition last week, Dan proposed July 2nd and July 3rd as dates for our mediation. Dan is not available on June 29th. (Ms. Healey's medical condition does not permit her to travel for the mediation now, so the mediation has to be based on Dan's schedule).

You stated that you would have to speak with your client and get back to us regarding those dates. Please confirm that one of these dates is acceptable, or propose an alternative. As you know, our mediation deadline in this case is July 11th.

I am also repeating Dan's point about using Judge Nuechterlein acting as our mediator, and his offer for an alternative. Since hiring co-Counsel in South Bend, Dan has made clear that mediation with Judge Nuechterlein will likely be fruitless. But we have also learned that while Ms. Hively was pro se in the case, Judge Nuechterlein presided in the lawsuit and entered rulings. We believe it is inappropriate for Judge Nuechterlein to participate in this mediation under these circumstances.

Dan spoke with Judge Gene Duffin, and he is available on July 2nd and July 3rd. Ms. Hively is hoping for a good faith attempt at mediation, and we strongly believe mediating with Judge Duffin will be more likely to result in a productive mediation.

Best,

Kathryn A. Quisenberry :: Associate :: Fish & Richardson P.C.
713 654 5355 direct :: 832 788 9276 mobile ::
quisenberry@fr.com<mailto:quisenberry@fr.com><mailto:quisenberry@fr.com>
fr.com<http://fr.com><http://www.fr.com<http://www.fr.com>> ::
Bio<http://www.fr.com<http://www.fr.com>> ::
LinkedIn<http://www.linkedin.com<http://www.linkedin.com>> ::
Twitter<http://twitter.com/fishrichardson<http://twitter.com/fishrichardson>>

This email message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized use or disclosure is prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product privilege by the transmission of this message.

CONFIDENTIALITY NOTICE: This email and any attachments are for the exclusive and confidential use of the intended recipient. If you are not the intended recipient, please do not read, distribute or take action in reliance upon this message. If you have received this in error, please notify us immediately by return email and promptly delete this message and its attachments from your computer system. We do not waive attorney-client or work product