

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

ADREE EDMO,

Plaintiff,

v.

IDAHO DEPARTMENT OF
CORRECTION; HENRY ATENCIO;
JEFF ZMUDA; HOWARD KEITH
YORDY; CORIZON, INC.; SCOTT
ELIASON; MURRAY YOUNG;
RICHARD CRAIG; RONA
SIEGERT; CATHERINE
WHINNERY; AND DOES 1-15,

Defendants.

Case No. 1:17-cv-00151-BLW

**ORDER SETTING JUDICIAL
SETTLEMENT CONFERENCE**

IT IS HEREBY ORDERED that a judicially supervised settlement videoconference is set in this case for **Tuesday, March 9, 2021, at 9:00 a.m. (PST) / 10:00 a.m. (MST)** to be conducted virtually by Zoom, with logistical details to be provided to the parties in advance by the Court. The Honorable Richard C. Tallman, United States Circuit Judge for the Ninth Circuit, sitting by designation, will conduct the Settlement Conference and set up the Zoom call. The Court has set the entire

day aside to complete the mediation and will continue it as long as it is deemed to be productive.

IT IS FURTHER ORDERED that each party and their counsel must come to the Settlement Conference prepared as follows:

1. Counsel for all parties must confer by telephone conference call prior to the Settlement Conference to narrow and/or resolve issues with the goal of facilitating settlement.

2. Prior to the Settlement Conference, counsel for all parties must exchange reasonable offers of settlement and be prepared to advise the Court of the offers extended and the correlating responses to each offer made.

3. At the outset of the Settlement Conference, all counsel must be prepared to state to the opposing party and its counsel the opposing party's position to the satisfaction of the opposing party and its counsel.

4. All parties and their counsel must come to the Settlement Conference prepared with a reasonable plan to resolve and fully settle the instant action. In sum, counsel and parties will be expected to participate in the Settlement Conference with a mindset, attitude, and creative approach as problem solvers.

5. Each party must prepare and submit to the Court on or before **Friday, February 26, at 5:00 p.m. (MST)**, a candid summation of its assessment of the strengths and weaknesses of its case and the strengths and weaknesses of the

opposing party's case. The **confidential** summation must be submitted *in camera* as follows, and must not be filed on ECF:

Judge Richard C. Tallman
By email to ADR@ID.uscourts.gov

Further, the Court requests that each party set forth specific reasons why the case should settle. The Court has read the relevant district and circuit court decisions. Except in unusual cases, the summation should not exceed ten pages. The summation should include a review of the facts, provable damages, estimated fees and costs to try the case and any subsequent appeal, the party's assessment of its probability of prevailing on any disputed facts, and a brief discussion of any legal authority the party contends would materially enhance its position at trial. The settlement summation should include a history of past settlement negotiations and the reasonable and realistic settlement value, if any, the party presently places on the litigation. *Failure to timely submit the summation may result in the Settlement Conference being vacated.* (See attached questionnaire, **Attachment "B,"** for requested information.)

6. All parties must be **personally present** and must be represented by lead or chief counsel authorized to participate in settlement negotiations. In the case of businesses, corporations, governmental entities, etc., a representative for every party with **full settlement authority** must be **personally present** at the

Settlement Conference. If any of the parties are appearing or defending the action under an insurance agreement, an insurance company representative **fully authorized** to settle the case must be **personally present** at the Settlement Conference.

7. Mediated settlement conferences are meant to be conducted when the participants actually engaged in the settlement negotiations have full authority to settle the case without further consultation, i.e., no need to make a phone call for further authority. In sum, all parties in this matter necessary to conduct an effective settlement conference must be personally represented by someone in attendance at the Settlement Conference with full settlement authority.

8. Counsel must be knowledgeable about the facts of the case and be prepared to candidly discuss the same with the settlement judge.

9. **Attachment “A”** is a sample outline of the usual agenda followed by the undersigned Judge.

10. All information provided to and communications with the settlement judge shall be held in confidence. All written material submitted will be returned to the submitting party upon termination of the settlement proceedings.

11. All oral statements, written documents, or other materials considered during the settlement procedure shall be held in confidence and may not be used in any way against any party to this litigation. Fed. R. Evid. 408.

12. Pursuant to District of Idaho Local Rule 16.4(b), none of the matters or information discussed during the conference will be communicated to the presiding trial judge.

IT IS SO ORDERED.



DATED: January 20, 2021

Richard C. Tallman
Richard C. Tallman
UNITED STATES CIRCUIT JUDGE

ATTACHMENT “A”

SETTLEMENT CONFERENCE AGENDA

1. Convening of the Settlement Conference by Judge Tallman.
2. Description by Judge Tallman of the purpose and procedures of the conference.
3. Discussion of the problems that divide the parties.
4. Statement by the Plaintiff’s attorney of what the Plaintiff would like to achieve in a settlement.
5. Statement by the Defendants’ attorneys of what the Defendants would like to achieve in a settlement.
6. Summary of the areas of mutual interest of the parties by Judge Tallman.
7. Exploration of options for settlement.
8. Opportunities for each of the parties and their attorneys to consult in private concerning the options.
9. Opportunities for each of the parties and their attorneys to meet with Judge Tallman in private concerning the options and the merits of their case.
10. Mediation by Judge Tallman meeting privately with each side to assist the parties and their attorneys in reaching a settlement.
11. Settlement, if the parties agree.

ATTACHMENT "B"

SETTLEMENT CONFERENCE QUESTIONNAIRE

1. Statement of facts pertinent to settlement.
2. Plaintiff's theories of recovery, if not obvious.
3. If liability not admitted, bona fide defenses and counterclaims tendered by the Defendants.
4. Damages: Plaintiff should list the specials incurred and claimed. Do not use the maximum possible figures but what is deemed reasonable and what will be presented at trial. List any special and general damages separately. Defendants should list what is claimed to be a reasonable amount where items are contested. The settlement value should specifically include an estimate of the fees and costs to be expended in trial and any further appeals.
5. Summarize the bona fide disputes regarding damages.
6. Weaknesses.
7. Plaintiff's evaluation of fair settlement.
8. Defendants' evaluation of fair settlement.
9. May the Court disclose these figures to the opposing party at the commencement of the Settlement Conference?
10. If Plaintiff recovers a judgment, is the question of apportionment of and liability among Defendants a factor affecting negotiations?
11. Are there viable sources from whom the Defendants may seek contribution?
12. Do you feel the other party has negotiated in good faith?
13. Does either party have client problems that affect these negotiations?
14. Do client and attorney disagree on the settlement value?

15. What factors not discussed above have hampered settlement negotiations?
16. State your opinion as to the bona fide chance for settlement in this matter.
17. Are there legal questions that effectively bar serious settlement negotiations?
18. Do you want Judge Tallman to give preliminary, non-binding predictions as to such rulings to assist in settlement negotiations?
19. Are mediation or arbitration of certain areas or the entire matter viable options?
20. Do Defendants want separate or joint conferences with Judge Tallman when Plaintiff is excluded?
22. Expenses of litigation:
 - To date:
 - Estimate of present to conclusion of trial and any appeals: