

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Wolfeboro, N.H.

v.

Civil No. 12-cv-130-JD

Wright-Pierce, Inc.

NOTICE OF MEDIATION

Mediation will be held on Monday, April 14, 2014, at 11:00 a.m., at the Warren B. Rudman United States Courthouse, 55 Pleasant Street, Concord, New Hampshire. **THE ATTORNEYS WHO WILL BE LEAD COUNSEL DURING THE TRIAL OF THE CASE SHALL APPEAR AT THE MEDIATION WITH THE PARTIES AND WITH THE PERSON OR PERSONS HAVING FULL AUTHORITY TO NEGOTIATE AND TO SETTLE THE CASE ON ANY TERMS.**

At the mediation, the parties, by counsel, shall give a brief (10-15 minute) presentation outlining the factual and legal highlights of their case. Then separate, confidential caucuses will be held with each party and the party's representative(s). Attached is an outline for counsel to review with the parties prior to the mediation to make the best use of the time allotted.

ANY FAILURE OF THE TRIAL ATTORNEYS, PARTIES OR PERSONS WITH AUTHORITY TO ATTEND THE MEDIATION OR TO PARTICIPATE IN GOOD FAITH

**RESULT IN SANCTIONS (TO INCLUDE THE FEES AND COSTS EXPENDED BY THE
OTHER PARTIES IN PREPARING FOR AND ATTENDING THE MEDIATION) .**

SO ORDERED.



Handwritten signature of Landya B. McCafferty, U.S. District Judge, written in black ink over a horizontal line.

Landya B. McCafferty
U.S. District Judge

Date: April 13, 2014

cc: Rhian M.J. Cull, Esq.
John W. Dennehy, Esq.
Daniel Miville Deschenes, Esq.
Patricia B. Gary, Esq.
Kelly Martin Malone, Esq.
Mary E. Maloney, Esq.
Seth Michael Pasakarnis, Esq.

MEDIATION CONFERENCE PREPARATION OUTLINE

Experience shows that in negotiations the party who is best prepared usually obtains the most satisfactory result. Mediation conferences can be conducted more efficiently if all parties and counsel are prepared. The following are some areas to consider in order to increase the effectiveness of your mediation conference.

A. FORMAT

1. Parties with ultimate settlement authority must be personally present.
2. The court will use a mediation format, including private caucusing with each side; the judge may address your client directly.

B. ISSUES

1. What issues (in and outside of this lawsuit) need to be resolved?
2. What are the strengths and weaknesses of each issue? What is your most persuasive argument? What is your opponent's most persuasive argument?
3. What remedies are available?
4. Is there any ancillary litigation pending/planned which affects case value?
5. Do you have enough information to value the case? If not, how are you going to get more information before the mediation conference?
6. Do attorney's fees, other expenses, or liens affect settlement? Have you communicated this to the other side? Why not?

C. **AUTHORITY**

1. Are there outstanding liens? Have you verified amounts and whether they are negotiable? Do we need to include a representative of the lien holder? If so, contact the court immediately.
2. Is there valid insurance coverage? In what amount? If coverage is at issue, or the amount/type affects settlement value, have you notified the other side? Do we need to include the representative from more than one company/carrier? If so, notify the court immediately.

D. **NEGOTIATIONS**

1. Where did your last discussion end? Are you sure?
2. Should you have any discussions before the mediation conference to make it proceed more efficiently?
3. What value do you want to start with? Why? Have you discussed this with your client?
4. What value do you want to end with? Why? Have you discussed this with your client? Is it significantly different from values you have placed on this case at other times? How do you explain to the other party the change in value?
5. Is there confidential information which affects case value? Why can't/won't/ shouldn't it be discussed? How can the other side be persuaded to change value if it doesn't have this information?
6. What happens if you don't settle the case at the mediation conference? What is your best alternative to a negotiated settlement? Why?

7. What are the transactional costs to continue this litigation?

E. **CLOSING**

1. If settlement is reached, do you want it on the record?
2. Have you discussed settlement formats with your client? Does the client understand structured settlements, annuities, Rule 68 offers of judgment?
3. How soon could checks/closing documents be received?
4. If settlement is not reached, and further discovery is needed, what is your plan for continued settlement discussions? Do you want court involvement in these talks?