



U.S. Department of Justice

Civil Division

May 9, 2019

The Honorable David T. Schultz
United States Magistrate Judge
United States District Court
9E U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415
Schultz_chambers@mnd.uscourts.gov

Re: **Wilwal v. Nielsen**, 17-cv-2835 (DWF/DTS)

Dear Judge Schultz,

On March 12, 2019, the parties in the above-captioned case appeared before the Court and agreed to participate in a settlement conference. On March 18, 2019, the Court issued an Order for Settlement Conference, setting the date and terms for the conference. ECF No. 83. The parties have conferred and submit this joint letter to seek clarification of the terms and procedure for the conference, which is scheduled for May 23, 2019. We submit this letter well in advance of the conference, in case adjustments must be made.

A. Bifurcation of Settlement Negotiations

In their Complaint, Plaintiffs have requested both equitable and monetary relief. The parties have consulted and agree that equitable relief will be negotiated prior to the settlement conference.¹ Because any terms of equitable relief require pre-approval by multiple government

¹ The parties have been negotiating equitable relief. On April 26, 2019, the government provided Plaintiffs with its proposal concerning equitable relief. Plaintiffs are still considering the government's proposal.

agencies, the parties agree that it is best not to address equitable relief at the conference on May 23. Accordingly, with the Court's permission, only monetary damages will be negotiated at the conference.

B. Attendance at the Conference

The Court's March 18 Order states, "Each party must attend through a person who has plenary authority to change that party's settlement posture during the course of the conference. If the party representative has a limit, or 'cap' on his or her authority, this requirement is not satisfied."

In the Department of Justice, the only persons who do not have a limit on his or her authority to settle a case are the Attorney General, the Deputy Attorney General, and the Associate Attorney General. 28 C.F.R. § 0.161. Applicable to this case, the Federal Tort Claims Act Section's Branch Director and the Federal Programs Branch Director each have the authority to settle claims under their auspices for \$1 million or less, subject to certain limitations. *See* Appendix to Subpart Y immediately following 28 C.F.R. § 0.172. Because the amount at issue in this case is less than \$1 million², these Directors have authority to settle the monetary aspect of this case.

The parties have agreed, subject to the Court's concurrence, that the Directors will not attend the Settlement Conference, but will be available by telephone for discussion, if necessary. In advance of the conference, both Directors will be thoroughly briefed on the issues in the case, and will convey their settlement recommendations to the Justice Department attorneys who will

² The administrative claims filed in this case total \$900,000. Claims filed under the Federal Tort Claims Act, which are the only claims in this case subject to monetary damages, are limited to the amount of the claim presented to the federal agency. 28 U.S.C. § 2675(b). In addition, under the Equal Access to Justice Act, attorney fees are capped at \$125 per hour absent "special factor[s]." 28 U.S.C. § 2412(d)(2)(A).

be present. This is a process that is frequently used at settlement conferences, and the parties believe it will not impede settlement negotiations.

Subject to the Court's concurrence, because the agencies involved in this litigation do not have authority to settle monetary claims in litigation, agency counsel will not be present at the conference. The Justice Department attorneys will confer with agency counsel in advance of the conference.

Thank you for your attention to these matters.

/s/ Hugh Handeyside

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