



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*86 Chambers Street, Third Floor
New York, New York 10007*

February 5, 2018

By ECF

The Honorable Robert W. Lehrburger
United States District Court
Southern District of New York
500 Pearl Street, Room 702
New York, New York 10007

Re: *Cohodes v. United States of America, et al.*, 17 Civ. 8307 (KBF)

Dear Judge Lehrburger:

I represent the United States of America, Callen-Lorde Community Health Center, Meera Shah, M.D., James Braun, D.O., and Wendy Stark in the above-captioned Federal Tort Claims Act (“FTCA”) matter.¹ I write respectfully regarding the upcoming settlement conference before Your Honor, scheduled for April 23, 2018, at 10:30 am. I am available on April 23, 2018, at 10:30 am. Given Your Honor’s settlement conference rules, I respectfully request that certain other individuals be allowed to participate, or be promptly available if necessary, by phone.

First, I respectfully request that the agency attorney assigned to the case—Scott Driggs, Chief Counsel, Region VIII, Office of the General Counsel, the United States Department of Health and Human Services (“HHS”)—be allowed to participate by phone because, as per Your Honor’s individual rules, he is located more than 100 miles from the courthouse. Given that he is assigned to litigation across the United States, it would be a hardship for him to attend settlement conferences in person. Mr. Driggs can speak for the agency and will have settlement authority up to an authorized amount—one which his agency believes is the maximum amount for which it will agree to settle the case. However, the ultimate settlement authority for HHS in litigation across the United States resides in a single attorney, William Biglow, Deputy Associate General Counsel, General Law Division, Claims and Employment Law Branch. Mr. Biglow, who is located more than 100 miles from the courthouse, is not available to participate in person or by phone, but Mr. Driggs will be able to promptly reach Mr. Biglow by phone during the conference in the unlikely event that additional authority is needed. Given Mr. Biglow’s leadership and supervisory role within HHS (including having ultimate settlement authority for all claims involving HHS), it would be a hardship for him to participate in person or by phone for the duration of the conference. It is also unnecessary for Mr. Biglow to participate given that

¹ Defendants Callen-Lorde Community Health Center, Meera Shah, M.D., James Braun, D.O., and Wendy Stark are not appropriate defendants pursuant to 28 U.S.C. §§ 1346(b), 2679(a), and the Court lacks subject matter jurisdiction over any claims against those defendants.

Mr. Driggs can speak for the agency, will participate by phone with authority to settle for the highest amount that the agency believes should be authorized, and will be able to promptly reach Mr. Biglow for additional authority in the unlikely event that it is needed.

Finally, I will come to the settlement conference with an authorized amount on behalf of my Office. Ultimate authority for civil settlements of \$1 million or less² resides with a single person, Jeffrey Oestericher, Chief of the Civil Division. Mr. Oestericher is unable to participate for the duration of the conference in person or by phone, but I will come to the conference with the highest amount that my Office believes should be authorized, and I will be able to promptly reach Mr. Oestericher by phone during the conference in the unlikely event that additional authority is needed. Given Mr. Oestericher's leadership and supervisory role within my Office, it would be a hardship for him to participate in person or by phone for the duration of the conference. It is also unnecessary for Mr. Oestericher to participate given that I will come to the settlement conference with the highest amount my Office believes should be authorized, and I will be able to promptly reach Mr. Oestericher for additional authority in the unlikely event that it is needed.

Accordingly, I respectfully request that the Court endorse the aforementioned attendance plan for the settlement conference, and I thank the Court for its consideration of this request.

Respectfully submitted,

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Southern District of New York

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cc: **By ECF**
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² Settlements for more than \$1 million require approval of the United States Attorney General or the Attorney General's designee. Defendants do not view this claim as one that would settle for over \$1 million.