

CONFIDENTIAL

August 10, 2021

Mr. Joseph M. Infante
Miller, Canfield, Paddock and Stone, PLC
99 Monroe Avenue NW, Suite 1200
Grand Rapids, MI 49503

Engagement Overview

I have been engaged by you in connection with the matter of *Wineries of the Old Mission Peninsula (WOMP) Assoc.; Bowers Harbor Vineyard & Winery, Inc.; Brys Winery, LLC; Chateau Grand Traverse, Ltd.; Chateau Operations, Ltd.; Grape Harbor, Inc.; Montague Development, LLC; OV The Farm, LLC; Tabone Vineyards, LLC; Two Lads, LLC; Villa Mari, LLC; and, Winery at Black Star Farms, LLC (collectively "the Wineries" or "the Plaintiffs") v Peninsula Township.*

I have been engaged to provide an opinion regarding the damages suffered by Plaintiffs as a result of several ordinances enacted by Peninsula Township.

The analysis performed in connection with this report was based on a review of documents provided to date in the above-captioned matter. If additional documents or other materials are provided at a future date that could have a material impact on my conclusions, I reserve the right to modify my conclusions accordingly.

Executive Summary

Wineries of Old Mission Peninsula Association (“WOMP”) is a Michigan non-profit corporation with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan.

Bowers Harbor Vineyard & Winery, Inc. (“Bowers Harbor”) is a Michigan Corporation with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Bowers Harbor is a WOMP member.

Brys Winery, LLC (“Brys”) is a Michigan limited liability company with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Brys is a WOMP member.

Chateau Grand Traverse, Ltd. (“Grand Traverse”) is a Michigan Corporation with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Grand Traverse is a WOMP member.

Chateau Operations, Ltd. is a Michigan Corporation which operates a winery under the trade name Chateau Chantal (“Chateau Chantal”) with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Chateau Chantal is a WOMP member.

Grape Harbor, Inc. is a Michigan Corporation which operates a winery under the trade name Peninsula Cellars (“Peninsula Cellars”) with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Peninsula Cellars is a WOMP member.

Montague Development, LLC is a Michigan Limited Liability Company, operating under the trade name Hawthorne Vineyards (“Hawthorne”) with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Hawthorne is a WOMP member.

OV the Farm, LLC is a Michigan limited liability company which operates a winery under the trade name Bonobo Winery (“Bonobo”) with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan.

Tabone Vineyards, LLC (“Tabone”) is a Michigan Limited Liability Company with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Tabone is a WOMP member.

Two Lads, LLC (“Two Lads”) is a Michigan Limited Liability company with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Two Lads is a WOMP member.

Winery at Black Star Farms, LLC (“Black Star”) is a Michigan Limited Liability Company with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Black Star is a WOMP member.

Villa Mari, LLC is a Michigan Limited Liability Company which operates a winery under the trade name Mari Vineyard (“Mari”) with its principal place of business in Peninsula Township, Grand Traverse County, located in the Western District of Michigan. Mari is a WOMP member.

WOMP is voluntary membership trade association of licensed winery operations located on Peninsula Township’s Old Mission Peninsula. Old Mission Peninsula’s wine industry is a specialized segment of Michigan’s larger economic community. WOMP represents the unique interests of its Winery*Chateau members Bowers Harbor, Grand Traverse, Chateau Chantal,

Hawthorne and Mari; its Farm Processing Facility members Black Star, Two Lads and Tabone and its Remote Winery Tasting Room member, Peninsula Cellars. Of Plaintiffs, only Bonobo is not a WOMP member.

WOMP's purpose is to protect and promote the Old Mission Peninsula wine industry. To that end, WOMP provides services to its members including advertising its members' services and products and organizing events at its members' locations all to increase tourist traffic for its members and for Old Mission Peninsula as a whole. WOMP also exists to harmonize and advocate for its members' interests related to Peninsula Township's insistence on continued enforcement of the illegal Winery Ordinances.

Peninsula Township is located in Grand Traverse County, Michigan, with its offices located at 13235 Center Rd., Traverse City, MI 49686.

Peninsula Township has adopted various ordinances directed at wineries located within the township which control all aspects of the business including the content of commercial speech, restrictions on the free exercise of religion, groups and organizations that may use winery facilities, hours of operation, dictating that wineries use in-township suppliers, requiring commercial speech to favor local businesses and requiring pre-approval of commercial speech.

The Peninsula Township ordinances also arbitrarily dictate the maximum number of guests a winery may have not based on objective criteria like fire code considerations or acreage, but based on the size of one local winery's dining room.

The Peninsula Township ordinances also have placed an arbitrary financial barrier to operating a winery in the township.

Peninsula Township adopted its Zoning Ordinance on June 5, 1972. The Zoning Ordinance has been amended since that time with various winery related ordinances added. Currently,

Peninsula Township's regulation of wineries is found in three section of the Zoning Ordinance: Section 6.7.2(19) Use by Right – Farm Processing Facility; Section 8.7.3(10) Winery "Chateau; Section 8.7.3(12) Remote Winery Tasting Room (collectively "the Winery Ordinances").

The following are some of the limitations placed on Farm Processing Facilities by the Winery Ordinances:

"[t]he majority of the produce sold fresh or processed has to be grown on the specific farm operation (land owned or leased for the specific farm operation) of the party owning and operating the Specific Farm Processing Facility."

"[e]ighty-five (85) percent of the produce sold fresh or processed has to be grown on Old Mission Peninsula."

"[g]rape wine that is processed, tasted and sold in a Farm Processing Facility under this section is limited to 'Old Mission Peninsula' appellation wine meaning 85% of the juice will be from fruit grown on Old Mission Peninsula."

"wine, that is processed, tasted and sold in a Farm Processing Facility under this section is limited to wine bearing a label identifying that 85% of the juice is from fruit grown on Old Mission Peninsula."

The Winery Ordinances also place a number of significant rules relating to parcel size and use of the facility for Processors. Retail space is constrained through the Winery Ordinances. In addition,

"Activities such as weddings, receptions and other social functions for hire are not allowed...."

The portion of the Wineries Ordinances that pertain to winery "chateau operations ("the Winery" Chateau Ordinance") mandates significant restrictions on the operations of the Wineries, such as:

"seventy-five (75%) percent of the site shall be used for the active production of crops that can be used for wine production, such as fruit growing on vines or trees."

"[a]ccessory uses such as facilities, meeting rooms, and food and beverage services shall be for registered guests only."

Guest activities at the winery "chateau operations are significantly limited. The only allowed guest activities are:

"Wine and food seminars and cooking classes that are scheduled at least thirty days in advance with notice provided to the Zoning Administrator."

"Meetings of 501- (C)(3) non-profit groups within Grand Traverse County but full course meals are not allowed."

"Meetings of Agricultural related groups that have a direct relationship to agricultural production provided that one month notice is given and the zoning administrator pre-approves the meeting after determining that the group has a "direct relationship to agricultural production."

Guest activities do not include weddings, wedding receptions, family reunions or the sale of wine by the glass. Further,

At a Guest Activity, if wine is served "it must be served with food and shall be limited to Old Mission Peninsula appellation wine produced at the Winery."

Capacity for any guest activity is limited as follows:

"... limited to one person per 15 square feet of rooms for Guest Activities. But in no case may the number of persons exceed 111 or the Fire Marshall maximum occupancy, whichever is less."

The capacity limitations are arbitrarily based on the capacity of one of the Plaintiff's dining room capacity (111).

Hours of operation are limited to no later than 9:30 p.m.

Alcohol sales are limited to only those that are produced on site.

Amplified music is prohibited.

Live music is prohibited.

The Wineries' kitchen facilities are prohibited from use for off-site catering events.

Damages: Lost Profits from Increased Cost of Grapes due to Requirement of Grapes Grown on the Peninsula

Costs based on actual volume of grapes purchased and the actual prices paid were compared to actual volumes of grapes purchased and costs for similar grapes purchased by producers outside of the Peninsula. The damage period utilized was five years. See **Schedule 1**.

Damages: Lost Profits from Lost Catering Revenues

The Wineries Ordinances prohibit off-site catering. The lost profits from these lost catering events was determined. The number of lost catering events, number of guests, cost per guest, and estimated profit margin were provided by the Plaintiffs, as well as profit margin data from

the Risk Management Association (“RMA”). The damage period utilized was five years. See **Schedule 2**.

Damages: Lost Profits from Limited Hours of Service

The operations of the Plaintiffs are limited to a closing time of no later than 9:30. Lost profits are based Plaintiffs’ estimates of the additional hours Plaintiffs would operate, their estimated sales per hour in those additional hours, and estimated profit margins, as well as profit margin data from RMA. The damage period utilized was five years. See **Schedule 3**.

Damages: Lost Profits from Lost Restaurant Sales

Lost profits on lost restaurant sales were based on Plaintiffs’ estimates of additional restaurant sales and related profitability, as well as profit margin data from RMA. The damage period utilized was five years. See **Schedule 4**.

Damages: Lost Profits from Lost Merchandise Sales

Lost profits on lost merchandise sales were based on the actual sales of Plaintiffs who currently sell merchandise, Plaintiffs’ profitability estimates, as well as profit margin data from RMA. The damage period utilized was five years. See **Schedule 5**.

Damages: Lost Profits from Lost Event Hosting (Small Events and Meetings)

The Wineries Ordinances significantly limit the type of events the Plaintiffs may host. The number of lost events hosted, number of guests per event, price per guest, and estimated profit margin were provided by the Plaintiffs, as well as profit margin data from RMA. The damage period utilized was five years. See **Schedule 6**.

Damages: Lost Profits from Lost Event Hosting (Large Events and Weddings)

The Wineries Ordinances significantly limit the type of events the Plaintiffs may host. Further, they do not allow for hosting weddings or wedding receptions. The number of lost events hosted, number of guests, price per guest, and estimated profit margin were provided by the Plaintiffs, as well as profit margin data from RMA. The damage period utilized was five years. See **Schedule 7**.

This report does not include an analysis of other components of damages the Wineries may have suffered, such as damages to its trade name and other intangible assets, loss of business value, value of lost potential future customers or relationships, interest, and other elements of damages which have been incurred by the Wineries but not quantified yet in this analysis. Further, it does not include damages related to ordinance provisions such as disallowing live music or amplified music.

This report is based on information provided to date. If additional information is provided at a later date that would materially impact this analysis, I reserve the right to update or supplement this report.

Basis for Testimony

My testimony will be based on my analysis as described in this report, as well as my experience as outlined in my Curriculum Vitae attached to this report.

Sources of Information

My analysis has been based primarily on the following sources of information:

- Complaint
- Cost and volume data provided by the Wineries

- Various other sales volume and profitability estimates of products provided by the Wineries
- Profitability estimates provided by *Annual Statement Studies*, Risk Management Association (“RMA”)

Conclusion

Based on the analysis stated herein, it is my opinion that the damages incurred by the Wineries as a result of the actions of Peninsula Township are at least \$203,562,344.

Total lost profits form increased grape costs	\$235,825
Total lost profits from lost catering	\$1,468,500
Total lost profits from limited hours	\$66,138,000
Total lost profits from lost restaurant sales	\$53,912,655
Total lost profits from lost merchandise sales	\$712,500
Total lost profits from lost small event hosting (small events)	\$6,883,877
Total lost profits from lost event hosting (large events and weddings)	<u>\$74,210,988</u>
TOTAL DAMAGES	<u>\$203,562,344</u>

Sincerely,



Eric J. Larson, CPA/ABV, ASA, CBA, CMA, CFE

CURRICULUM VITAE

ERIC J. LARSON, CPA/ABV, ASA, CBA, CMA, CFE
Beene Garter, LLP
56 Grandville Ave, SW
Suite 100
Grand Rapids, Michigan 49503

EDUCATION

Grand Valley State University
Bachelor of Science
Major: Economics, Minor: Applied Statistics
1996

Grand Valley State University
Master of Business Administration (MBA) – with distinction
1999

PROFESSIONAL

Certified Public Accountant (CPA) – awarded in 2006
Accredited in Business Valuation (ABV) – awarded in 2006
Accredited Senior Appraiser (ASA) – awarded in 2004
Certified Business Appraiser (CBA) – awarded in 1999
Certified Management Accountant (CMA) – awarded in 2004
Certified Fraud Examiner (CFE) – awarded in 2010

Member:

American Institute of Certified Public Accountants
American Society of Appraisers
Institute of Business Appraisers
Institute of Management Accountants
Association of Certified Fraud Examiners

Speaker:

MICPA Annual Accounting and Auditing Symposium
MICPA Small Practitioners Seminar
Several other speaking engagements including Risk Management Association, Local First, Institute for Continuing Legal Education and Grand Valley State University

Former Adjunct Faculty Member:
Grand Valley State University – Economics Department

EMPLOYMENT

Partner "CPA firm of Beene Garter LLP from 2003 to present. Responsibilities include management of forensic, valuation and litigation services department, preparation of business valuations, litigation support, economic damages, ESOP feasibility analyses, fraud detection, forensic accounting and various other financial analyses.

CPA firm of Adamy + Company, P.C. from 1998 to 2003. Responsibilities include preparation of business valuations, litigation support, economic damages, ESOP feasibility analyses and various other financial analyses.

Kawasaki Motors Corp., U.S.A., Engine Division from 1996 to 1998 in Grand Rapids. Responsibilities included supervision of administrative staff handling all sales support functions and import functions, liaison between major OEM customers and manufacturing facilities in Missouri and Japan, and inventory control.

FORENSIC, VALUATION AND LITIGATION SERVICES

Numerous forensic accounting engagements related to suspected fraud investigation, data mining and analysis, and economic damages, among others.

Several hundred business valuation and litigation support engagements. Valuations have been prepared for ESOPs, estate and gift taxation, business sale and acquisition, divorce, succession planning, corporate planning and various other purposes.

Litigation support services have included data gathering, damage analysis and computation. Cases mainly involved commercial litigation, breach of contract, shareholder disputes, fraud, personal injury and merger/acquisition disputes. Testimony provided in trial, arbitration, mediation and deposition formats.