

UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF MICHIGAN
 SOUTHERN DIVISION

WINERIES OF THE OLD MISSION PENINSULA)	
ASSOCIATION, <i>et al.</i> ,)	
Plaintiffs,)	
)	No. 1:20-cv-1008
-v-)	
)	Honorable Paul L. Maloney
PENINSULA TOWNSHIP,)	
Defendant,)	
)	
and)	
)	
PROTECT THE PENINSULA, INC.,)	
Intervenor-Defendant.)	
_____)	

SECOND ORDER SETTING RULE 16 SCHEDULING CONFERENCE

A scheduling conference pursuant to Fed. R. Civ. P. 16 is hereby scheduled for April 21, 2023, at 1:30 p.m. before District Judge Paul L. Maloney at 174 Federal Building, Kalamazoo, Michigan. **All counsel shall appear in person.**

Matters to be Considered at the Scheduling Conference: The purpose of the scheduling conference is to review the joint status report and to explore methods of expediting the disposition of the action by: establishing early and ongoing case management; discouraging wasteful pretrial activities; establishing limitations on discovery; facilitating the settlement of a case; establishing an early, firm trial date; and improving the quality of the trial through thorough preparation.

Presumptive Limitations: In accordance with Rules 26, 30 and 33 of the Federal Rules of Civil Procedure, the Court requires the following in the absence of good cause for deviation:

Rule 26(a)(1) disclosures will be required early in the case, with a continuing duty to supplement;

Rule 26(a)(2) expert witness reports will be required before the close of discovery;

Interrogatories will be limited to 25 per side and depositions will be limited to 10 per side, each of no more than 7 hours duration.

If disclosures are required under Rule 26, the Court may preclude the calling of witnesses or the presentation of evidence as a sanction for failure to make timely and complete disclosures. See Fed. R. Civ. P. 37(c)(1).

The Court normally allows six months for discovery, but it will consider a shorter or longer period at the scheduling conference.

Meeting of Parties and Preparation of Joint Status Report: At least seven days before the Rule 16 scheduling conference, counsel shall meet to discuss the following: the nature and basis of the parties' claims and defenses, the possibilities for a prompt settlement or resolution of the case, the formulation of a discovery plan, and the other topics listed below. Plaintiffs shall be responsible for scheduling the meeting, which may be conducted in person or by telephone. After the meeting, the parties shall prepare a joint status report which must be e-filed no later than April 14, 2023.

The Court notes that Plaintiffs and Defendant Peninsula Township have already filed a Joint Status Report (ECF No. 37) prior to Intervenor-Defendant Protect the Peninsula, Inc.'s ("PTP") intervention in this matter. Due to PTP's intervention, the Court must issue an amended Case Management Order, and it requires an updated Joint Status Report to do so. However, in issuing the updated Case Management Order, the Court will consult the old Joint Status Report (ECF No. 37), any relevant prior orders (*e.g.*, ECF No. 301), and the new Joint Status Report. In preparing the new Joint Status Report, the following form shall be used:

A Rule 16 Scheduling Conference is scheduled for April 21, 2023, at 1:30 p.m., before Hon. Paul L. Maloney. Appearing for the parties as counsel will be:

[List the counsel who will attend the scheduling conference. Counsel for all parties must attend. Parties not represented by counsel must appear in person.]

1. Jury or Non-Jury: This case is to be tried [before a jury] [by the Court as a trier of law and fact.]

2. Prospects of Settlement: The status of settlement negotiations is:

[Indicate persons present during negotiations, progress toward settlement, and issues that are obstacles to settlement.]

3. PTP's Disclosures and Expert Reports:¹

(a) Fed. R. Civ. P. 26(a)(1) requires initial disclosures unless the Court orders otherwise. The parties propose the following deadline for PTP's Rule 26(a)(1) disclosures:

[Set forth a proposed deadline for PTP's initial disclosures.]

(b) PTP expects to be able to furnish the names of PTP's expert witness(es) by _____.

¹ Only PTP will be permitted to engage in Rule 26(a) disclosures. The time for Plaintiffs and Defendant Peninsula Township to disclose Rule 26(a)(1) and Rule 26(a)(2) witnesses has passed (*see* ECF No. 72). The Court has denied Defendant's untimely requests to disclose an expert witness, and it will not entertain any more such requests (*see* ECF Nos. 284, 303).

- (c) It [would] [would not] be advisable in this case to provide written expert witness reports as contemplated by Fed. R. Civ. P. 26(a)(2). PTP should provide, if required, expert reports according to the following deadline:

[Set forth the proposed deadline for PTP's expert witness reports.]

- (d) PTP agrees to make available the following documents without the need of a formal request for production:²

From PTP to Plaintiffs and Defendant by _____
[Describe documents]

- OR -

The parties are unable to agree on voluntary production at this time.

4. Discovery: The parties believe that all discovery proceedings can be completed by _____. The parties recommend the following discovery plan:

[As required by Fed. R. Civ. P. 26(f), set forth proposed plan of discovery, including subjects on which discovery may be needed and whether discovery should be conducted in phases or be limited to or focused on certain issues. Also set forth any recommendations as to limitations on discovery. Limitations may include the number of depositions, interrogatories, and requests for admissions, or limitations on the scope of discovery pending resolution of dispositive motions or alternative dispute resolution proceedings. State whether the presumptive time limits for depositions (one day of seven hours) should be modified in this case. Fed. R. Civ. P. 30(d)(1).]³

5. Disclosure or Discovery of Electronically Stored Information: The parties have discussed the production of electronically stored information and suggest that such information be handled as follows:

[State whether any party has electronically stored information that will be subject to disclosure or discovery and set forth any proposals concerning the form of production.]

6. Assertion of Claims of Privilege or Work-Product Immunity After Production:

[State whether the parties have agreed on a procedure to address claims of privilege or work product immunity for items inadvertently produced during discovery.]

7. Motions: The parties acknowledge that W.D. Mich. LCivR 7.1(d) requires the moving party to ascertain whether the motion will be opposed, and in the case of all non-dispositive motions, counsel or involved in the dispute shall confer in a good-faith effort to resolve the

² The Court notes that Plaintiffs have already served PTP with the relevant existing discovery record in this matter (ECF No. 299). If any of the existing discovery record, relevant to PTP, has yet to be provided to PTP, Plaintiffs shall do so no later than the date of the Rule 16 conference.

³ PTP may pursue discovery as to all of the remaining claims in this litigation (*see* ECF Nos. 301, 319). Defendant Peninsula Township is not permitted to pursue any discovery (*see* ECF No. 301 at PageID.10704).

dispute. In addition, all nondispositive motions shall be accompanied by a separately filed certificate.

The following dispositive motions are contemplated by each party:

[Set forth all contemplated dispositive motions.]⁴

The parties anticipate that all dispositive motions will be filed by _____.

8. Alternative Dispute Resolution: In the interest of conserving judicial resources, the parties acknowledge that the Court may require the parties to participate in some form of Alternative Dispute Resolution, if the parties agree that Alternative Dispute Resolution will be beneficial.

Indicate what discovery, if any, is needed prior to conducting alternative dispute resolution in order to make alternative dispute resolution most effective. Indicate a preferred time frame for conducting alternative dispute resolution.

The parties recommend that this case be submitted to the following method(s) of alternative dispute resolution:

[Set forth each party's position with respect to the preferred method, if any, of alternative dispute resolution. Methods used in this district include, but are not limited to, voluntary facilitative mediation (W.D. Mich. LCivR 16.3), early neutral evaluation (W.D. Mich. LCivR 16.4), and case evaluation (MCR 2.403 and W.D. Mich. LCivR 16.5).]

For the local rules regarding all forms of ADR used in this district and for lists of mediators, case evaluators and arbitrators, see the Court's website at www.miwd.uscourts.gov.

9. Length of Trial: Counsel estimate the trial will last approximately _____ days total, allocated as follows: _____ days for Plaintiffs' case, _____ days for Defendant's case, _____ days for PTP.
10. Other: Set forth any special characteristics that may warrant extended discovery, accelerated disposition by motion, or other factors relevant to the case.

The joint status report shall be approved and signed by all counsel of record. The report shall be filed by means of the Court's CM/ECF system.

Designation of Magistrate Judge: A United States Magistrate Judge has been designated to assist in the processing of this case and is invested by the powers conferred under 28 U.S.C. § 636(b)(1)(A).

⁴ With respect to the dispositive motion schedule, the Court expects the parties to abide by the parameters the Court set forth in ECF No. 301 at PageID.10704.

Case Manager: Any questions concerning this Order or the scheduling conference should be directed to Amy Redmond, Case Manager to United States District Judge Paul L. Maloney, (269) 337-5700.

Sanctions: The failure of a party to participate in submission of the joint status report or to appear or participate in the Rule 16 scheduling conference may result in the imposition of any of the sanctions allowed by Rule 16(f), including dismissal of the action or entry of default, as appropriate.

IT IS SO ORDERED.

Dated: February 22, 2023

/s/ Paul L. Maloney
Paul L. Maloney
United States District Judge