

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

PENINSULA TOWNSHIP, a Michigan
Municipal Corporation;

Plaintiff,

v

G. MICHAEL MEIHN;
MATTHEW T. WISE;
FOLEY & MANSFIELD, PLLP; and
GORDON REES SCULLY & MANSUKHANI, LLP;

Defendants.

File No. 24-³¹⁰⁹²² -NM


Hon.

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John F. Turck IV (P67670)
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COURT CLERK

COMPLAINT

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this Court, nor has any such action been previously filed and dismissed or transferred after having been assigned to a judge in this Court. There is another civil action, not between these parties, out of which the instant action arises. That civil action is *Wineries of the Old Mission Peninsula (WOMP) Assoc v Peninsula Township*, United States District Court for the Western District of Michigan File No. 20-cv-1008, assigned to the Hon. Paul L Maloney. That action remains pending.



John F. Turck IV (P67670)

Plaintiff, by and through its attorneys, Blaske & Blaske, P.L.C., for its Complaint says:

PARTIES, JURISDICTION & VENUE

1. This is a legal malpractice case.
2. Plaintiff Peninsula Township is a Michigan municipal corporation located in Grand Traverse County.
3. Defendant G. Michael Meihn is an attorney at law licensed to practice in the State of Michigan, and who does so in, among other places, Grand Traverse County.
4. Defendant Matthew T. Wise is an attorney at law licensed to practice in the State of Michigan, and who does so in, among other places, Grand Traverse County.
5. Defendant Foley & Mansfield, PLLP is a foreign limited liability partnership that conducts business in, among other places, Grand Traverse County.
6. At times relevant to this Complaint, Defendant G. Michael Meihn and Defendant Matthew T. Wise each was an employee or agent, actual or ostensible, of Defendant Foley & Mansfield, PLLP, and at all such times acted within the course and scope of those respective relationships.
7. Accordingly, Defendant Foley & Mansfield, PLLP is liable to Plaintiff on the basis of *respondeat superior* and/or vicarious liability, in addition to any claims of direct liability.
8. Defendant Gordon Rees Scully & Mansukhani, LLP is a foreign limited liability partnership that conducts business in, among other places, Grand Traverse County.
9. At times relevant to this Complaint, Defendant G. Michael Meihn and Defendant Matthew T. Wise each was an employee or agent, actual or ostensible, of Defendant Gordon Rees

Scully & Mansukhani, LLP, and at all such times acted within the course and scope of those respective relationships.

10. Accordingly, Defendant Gordon Rees Scully & Mansukhani, LLP is liable to Plaintiff on the basis of *respondeat superior* and/or vicarious liability, in addition to any claims of direct liability.
11. Defendants, and each of them, represented Plaintiff in *Wineries of the Old Mission Peninsula Assoc v Peninsula Township*, United States District Court for the Western District of Michigan File No. 20-cv-1008, assigned to the Hon. Paul L Maloney.
12. The events giving rise to this case occurred in Grand Traverse County.
13. Plaintiff's damages exceed the \$25,000 jurisdictional minimum of this Court.

CONCISE STATEMENT OF THE CASE

14. Plaintiff Peninsula Township ("the Township") is a township in northern lower Michigan with a rich history of natural sights, as well as a long tradition of promoting agricultural and farming activities.
15. Its first Master Plan, adopted in 1968, included protecting agricultural lands as a goal.
16. In 1972, the Township adopted the Peninsula Township Zoning Ordinances ("PTZO"), which included establishment of the A-1 Agricultural District.
17. The Agricultural District is still the same land nearly fifty years later.
18. Back then, the only vineyard/winery within the Agricultural District was Chateau Grand Traverse.

19. The A-1 zoned areas limited uses such as the production, processing and wholesale and retail sales of various agricultural products.
20. In 1991, the Township amended its Master Plan to specify further the preservation and protection of two land areas within the Township: The Agricultural Preserve Area and the Prime Scene View area.
21. In 1994, furthering these goals, the voters of the Township approved a tax increase of 1.25 mills to preserve, in perpetuity, the agricultural and open space character of the Township.
22. This direction was affirmed by the Township's voters in 2002 when they approved another millage of 2 mills for the 201 years that followed.
23. With these goals in mind, the PTZO included permits for wineries within the Township, which had options such as Farm Processing Facilities, permitting selling wine and food in accordance with agricultural regulations while permitting other bar/restaurant operations in commercial zones.
24. These established areas within the Agricultural District remain to this day and have operated to a point where eleven wineries operate within the Township

The Underlying Lawsuit: *WOMP v Peninsula Township*

25. On October 21, 2020 Wineries of the Old Mission Peninsula (WOMP) Association, a Michigan corporation, and eleven wineries in the region,¹ filed a complaint and a motion

¹ The individual wineries include 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.

for preliminary injunction against Peninsula Township (“the Township”) enjoining the Township from enforcing certain provisions of the Peninsula Township Ordinances related to the establishment and operation of wineries and food processing facilities. The plaintiffs in that lawsuit are hereinafter referred to as “the Wineries” and/or “WOMP”.

26. That lawsuit was captioned as *Wineries of the Old Mission Peninsula (WOMP) Assoc v Peninsula Township*, United States District Court for the Western District of Michigan File No. 20-cv-1008, assigned to the Hon. Paul L Maloney (“the underlying case”).
27. The Township hired Defendant Meihn and his law firm at the time, Foley & Mansfield, PLLP (“Foley & Mansfield”), to defend and protect its interests in the underlying case.
28. On October 3, 2020 Mr. Meihn and his partner, attorney Defendant Matthew T. Wise, each of Foley & Mansfield at that time, filed their respective appearances in the underlying case.
29. The trial court’s February 19, 2021 Case Management Order required the Township to disclose its experts and experts reports on or before July 14, 2021:

Disclose Name, Address, Area of Expertise and a short summary of expected testimony of Expert Witnesses (Rule 26(a)(2)(A))	Party w/BOP:	JUNE 14, 2021
	Rebuttal:	JULY 14, 2021
Disclosure of Expert Reports (Rule 26(a)(2)(B))	Party w/BOP:	JUNE 14, 2021
	Rebuttal Reports:	JULY 14, 2021

30. On June 10, 2021, the parties stipulated to amend the Case Management Order and set adjusted deadlines for disclosure of experts and expert reports. (ECF No. 71.)
31. On June 16, 2021, the Court issued an Amended Case Management Order incorporating the parties’ requested deadlines. (ECF No. 72.)

Disclose Name, Address, Area of Expertise and a short summary of expected testimony of Expert Witnesses (Rule 26(a)(2)(A))	Party w/BOP:	AUGUST 13, 2021
	Rebuttal:	SEPTEMBER 13, 2021
Disclosure of Expert Reports (Rule 26(a)(2)(B))	Party w/BOP:	AUGUST 13, 2021
	Rebuttal Reports:	SEPTEMBER 13, 2021

32. The Court ordered the Wineries to identify their experts and disclose expert reports by August 13, 2021. (*Id.*, PageID.3182; see also PageID.3183, ¶ 3 (“Deadlines for exchange of Rule 26(a)(1) disclosures, names of lay witnesses, identification of experts, voluntary exchange of documents, and disclosure of expert reports under Rule 26(a)(2), if applicable, are ordered as set forth in the table above.”).)
33. On August 13, 2021 counsel for the Wineries served Plaintiffs’ Expert Witness Disclosures, Expert Witness Report and Supplement Production of Documents Bates WOMP008228-WOMP8784 on Mr. Meihn, identifying Eric Larson, CPA as the Wineries’ damages expert.
34. The Court ordered the Township to identify its rebuttal experts and disclose expert reports not later than September 13, 2021.
35. Neither Mr. Meihn nor Mr. Wise identified a rebuttal expert by the September 13, 2021 deadline.
36. This failure to do so constituted legal malpractice by each of them.
37. Neither Mr. Meihn nor Mr. Wise disclosed an expert report by the September 13, 2021 deadline.
38. This failure to do so constituted legal malpractice by each of them.
39. On January 11, 2022 counsel for the Wineries told Mr. Meihn, while discussing confidentiality designations, “if you believed that you needed outside assistance to review the Wineries’ claim for damages you should have retained an expert witness.” (ECF No. 216-6, PageID.8240.)

40. Neither Mr. Meihn nor Mr. Wise did anything in response to that comment to seek leave of the trial court to identify one or more experts or to produce expert report(s).
41. This failure to do so constituted legal malpractice by each of them.
42. On May 25, 2022 Mr. Wise emailed the Wineries' counsel, admitting that the Township did not retain an expert to testify at trial:
- “In anticipation of his deposition and/or trial, **while we do not have a testifying expert**, we would like to be able to share these documents with a consultant and our Treasurer for further analysis.” (ECF No. 216-3 at PageID 8224; emphasis added.)
43. On June 17, 2022 attorneys Tim Diemer and Eric Conn filed in the underlying case their respective appearances on behalf of the Township, one of their main efforts being to attempt to salvage the critical expert witness problem created by Defendants.
44. Counsel for the Township deposed Mr. Larson, the Wineries' damages expert, on June 28, 2022.²
45. In Mr. Larson's August 10, 2021 expert report, he opined that the Wineries suffered approximately \$203 million in damages as a result of the Township's alleged actions.
46. At his deposition, several very significant math errors were identified in Mr. Larson's report.
47. Mr. Larson issued a supplemental report dated July 6, 2022, in which he changed his opinion to claim that the Wineries suffered approximately \$135 million in damages. (ECF No. 198.)

² Upon information and belief, counsel for the Township hired Robert Winiarski, CPA to attend Mr. Larson's deposition.

48. As part of the efforts to fix the problem created by Defendants, Mr. Conn filed a rebuttal expert report authored by Michael N. Kahaian as an exhibit to a *Daubert* motion to exclude Mr. Larson's testimony. (ECF No. 281-1.)
49. Mr. Kahaian's analysis is highly critical of Mr. Larson's damages claims, including but not limited to each of the following ways:
 - a. Mr. Larson erroneously relied on unsubstantiated representations by the wineries;
 - b. Mr. Larson failed to perform a reasonableness test;
 - c. Mr. Larson assumed a profit margin of 40% when the industry average is 7.2%, i.e. Mr. Larson used a rate that was 550% more profitable than the industry;
 - d. Mr. Larson made several other unreasonable assumptions, including but not limited to his assumptions that not only would the wineries be open 365 days a year, but that some of them would host an event every single day of the year;
 - e. Mr. Larson employed significant methodological errors, including his (1) failure to consider each winery's ability to produce/acquire the amount of wine required to generate their alleged lost sales, (2) failure to consider each winery's ability to hire and retain required staffing, (3) an unsubstantiated assumption that Plaintiffs could host multiple events simultaneously, (4) presenting lost profit elements that are duplicative of one another, (5) failure to consider mitigation, and (6) failure to discount damages to present value;
 - f. Mr. Larson failed to consider each winery's ability to hire and retain required staff;
 - g. Mr. Larson assumed that the wineries were capable of hosting small and large events simultaneously;

- h. Mr. Larson included duplicative damage elements;
- i. Mr. Larson failed to consider mitigation, i.e. actual sales from the wineries that would offset the wineries' claimed damages; and
- j. Mr. Larson failed to apply a discount rate, effectively indicating that his projects have zero risk and are 100% certain.

50. In sum, Mr. Kahaian concluded that:

“111. In reaching his conclusions, Larson relies on highly sensitive Key Inputs provided by Plaintiffs without performing any steps to assess the reasonableness of each input. To estimate Plaintiffs' gross margin Larson only relies on industry research instead of analyzing each individual Plaintiffs' operations to derive gross margins specific to their business. This is a critical oversight as gross margins can vary between businesses based on differences in overheads and operational efficiencies.

112. Furthermore, Larson's consideration of only cost of goods sold as incremental costs is inappropriate because there are costs outside of gross margin that would be required to derive Plaintiffs' alleged lost revenues. As a result of the aforementioned errors and omissions and it is my opinion that Larson's conclusions on economic damages are highly speculative, unreasonably certain, unreliable, unsubstantiated, and grossly overstated. Therefore, it is my opinion that the Larson Report cannot be relied upon as a measure of the Plaintiffs' alleged economic damages in this case.” (Kahaian report, at 32; footnote omitted.)

51. Counsel for the Wineries moved to strike Mr. Kahaian's expert report, pointing out that:

“Peninsula Township did not disclose the identity of expert witnesses or produce a report until nearly eleven months after the date agreed upon by the parties in the Amended Case Management Order and approximately two weeks before trial is scheduled in this case. Instead, counsel for the Township represented that the Township would not have a testifying expert.” (ECF No. 219, PageID.8380.)

52. Despite Mr. Diemer and Mr. Conn’s efforts to save the situation at that late hour, the trial court granted the Wineries’ motion and struck Mr. Kahaian’s “untimely and unauthorized report.” (See ECF No. 222.)
53. Counsel for the Township objected to that order striking Mr. Kahaian’s report, in response to which the trial court noted that:

“The Township’s objections are completely meritless. The Township attempts to justify its untimely expert report in two ways: “one, to offer trial testimony as a rebuttal expert and two, to offer opinions as to methodology at the *Daubert* hearing requested by the Township as alternative relief in the event Plaintiffs’ damages expert was not struck under FRE 702. ...

“First, the Township had no authority to offer Mr. Kahaian’s rebuttal expert report. The Township missed its deadline to disclose experts and file expert reports, and it never moved to amend the Case Management Order; rather, it simply filed the report without leave of the Court or the Wineries’ concurrence.
...

Second, the Township also asserts that it wanted to use Mr. Kahaian’s expert report for support during a *Daubert* hearing and that such a purpose would have been proper. However, Judge Kent appropriately denied the Township’s request for a *Daubert* hearing (see ECF No. 228). Therefore, because neither Mr. Larson nor his report will be the subject of a *Daubert* hearing, the Township’s argument that it filed the supplemental report for support at a *Daubert* hearing is moot, and this objection is also overruled.

Judge Kent’s order striking the Township’s “untimely and unauthorized” rebuttal expert report was not “contrary to law.” Therefore, the Township’s objections are overruled.” (ECF No. 284, PageID.10193-10195.)

54. Then in November 2022 counsel for the Township filed a motion to amend the Case Management Order so that it could list Mr. Kahaian an expert witness.³

³ See Defendant Peninsula Township’s Motion to Amend the Case Management Order or in the Alternative for Leave to Disclose Michael “Mick” Kahaian as an Expert Witness, filed November 2, 2022 (ECF No. 292).

55. The trial court denied that motion, finding that “the Township has failed to show good cause necessary to amend the CMO”, reasoning that:⁴

“Because the Township seeks to produce an expert for the sole purpose of rebutting the Wineries’ damages calculations – which is an issue that does not concern PTP – asserting PTP’s intervention as a reason to amend the CMO is insufficient to meet Rule 16(b)’s “good cause” standard.

Further, in the Court’s judgment, not only was the Township not diligent in disclosing an expert before the CMO’s deadline, but the Township strategically chose not to disclose an expert. The Township even acknowledges, “it cannot be said that the Township was asleep at the wheel” (ECF No. 292 at PageID.10355). The Court agrees. The Township did not inadvertently miss its deadline to disclose an expert and then diligently move to amend the CMO given its mistake. Rather, the Township specifically chose not to disclose an expert, and now that the Township has identified alleged errors in the Wineries’ damages expert’s calculations, the Township seeks to capitalize on PTP’s intervention to untimely disclose an expert (a year and three months after the Township was required to disclose any rebuttal experts). The Court will not allow the Township to do so. The Court is not aware of, nor has the Township pointed to, any authority indicating that a change in strategy equates to Rule 16(b)’s “good cause” standard.”

56. The Township Board never chose not to disclose an expert.
57. As a result of Defendants’ failure to timely list one or more experts and timely produce expert reports, the Township is now forced to bring a proverbial knife to a gunfight in the ongoing litigation, creating a critical disadvantage for it in responding to the Wineries’ grossly-inflated damages claims, and exposing the Township to far great liability than it ever would have if Defendants had complied with the standard of care.

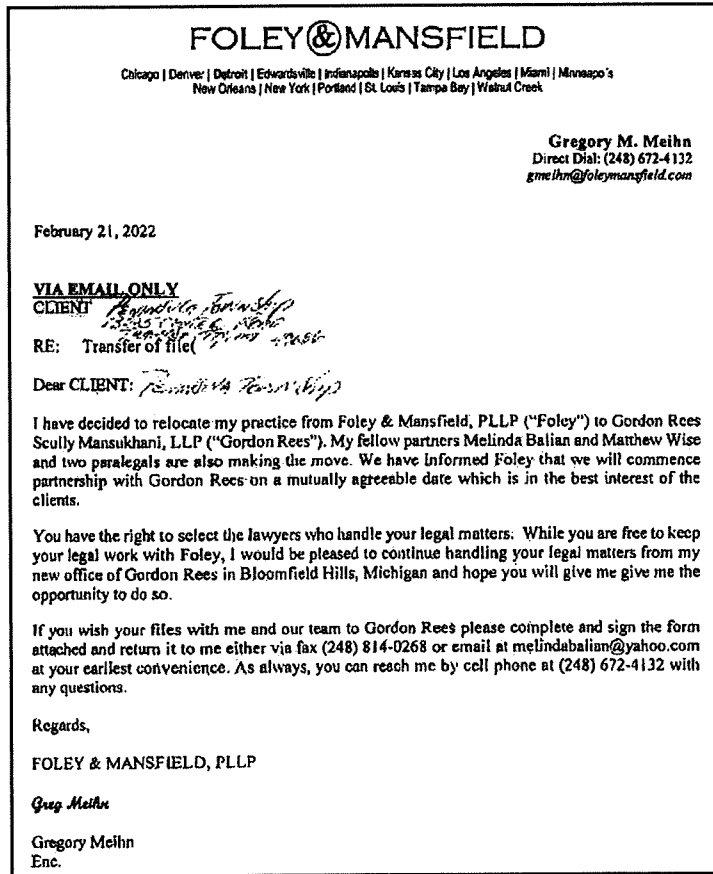
⁴ “PTP” is the acronym for Protect the Peninsula, a local group that was permitted to intervene in the underlying case after it was filed.

58. Put more specifically, the Township is now forced to defend against Mr. Larson's grossly-inflated damages claims without expert testimony, devastating the Township's ability to properly and fully protect its interests in the underlying case, which remains ongoing.
59. Another of Defendants' acts of legal malpractice was Mr. Meihn's purported agreement to settle the underlying case, in connection with a September 13, 2021 mediation, without the consent of the Township Board.
60. Board members Rob Manigold and Becky Chown attended that mediation, which was led by mediator Joe Quandt.
61. Mr. Manigold and Ms. Chown left the mediation at approximately 7:35 pm, after having rejected the Wineries' most recent round of demands.
62. After they left Mr. Meihn then apparently agreed to settle the case – without the necessary Board approval nor any indication from the Board members who had been present at the mediation that they would support it by voting in favor – at 8:15 pm, when he apparently told the mediator and counsel for the Wineries that the parties had reached a deal.
63. When the Township Board then addressed the matter at its next meeting, it rejected the settlement.
64. The Township was later sanctioned in the amount of \$17,142.48 for having done so, apparently because Mr. Meihn led the trial court to believe that the Board had agreed to the settlement at the mediation (when in point of fact it had not) but “the public went crazy” at the following Board meeting, prompting the Board to change its mind and reject the settlement.

65. Defendant Foley & Mansfield and its attorneys represented the Township in the underlying case through at least March 1, 2022.
66. On March 1, 2022 Mr. Meihn signed and filed with the trial court the Township's Reply Brief in Support of its Motion for Summary Judgment (ECF No. 147), which Mr. Meihn signed as a member of Foley & Mansfield:

Dated: March 1, 2022	By: <u>/s/ Gregory M. Meihn</u> Foley & Mansfield, PLLP 130 E. 9 Mile Rd. Ferndale, MI 48220 (248) 721-4200 gmeihn@foleymansfield.com P38939
<u>CERTIFICATE OF SERVICE</u>	
I hereby certify that on March 1, 2022, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, and I hereby certify that I have mailed by US Postal Service and sent via email to the following: none.	
	By: <u>/s/ Gregory M. Meihn</u> Foley & Mansfield, PLLP 130 E. 9 Mile Rd. Ferndale, MI 48220 (248) 721-4200 gmeihn@foleymansfield.com P38939

67. Upon information and belief, Mr. Meihn and Mr. Wise left Foley & Mansfield in the spring of 2022 to take positions at Defendant Gordon Rees Scully & Mansukhani, LLP, where they continued their representation of the Township, and where Gordon Rees' representation of the Township began.
68. On or about February 21, 2022 Mr. Meihn sent an email to Peninsula Township with a letter, on Foley & Mansfield letterhead, explaining that:



69. Another of Defendants' respective acts or omissions of legal malpractice was their violation of Magistrate Judge Kent's September 28, 2021 order to "produce any policy of insurance responsive to [the Wineries'] Request to Produce No. 22", which in turn requested "a copy of any insurance policy covering Peninsula Township's litigation expenses in this Lawsuit".
70. Upon information and belief, Defendants produced an insurance policy between the Township and Argonaut Insurance Company with a policy period commencing July 1, 2014, but did not provide any other policies.
71. In April 2023 the Township filed a motion to stay the *Wineries* lawsuit to allow the Michigan Township Participating Plan to intervene and disqualify the Wineries' counsel

because the MTPP purportedly provided an insurance policy to the Township (a policy of insurance issued by U.S. Specialty Insurance), and the MTPP was also represented by the Wineries' counsel's law firm.

72. That motion brought to light the existence of the U.S. Specialty Insurance policy.
73. The Wineries then moved to compel the production of that policy, and to sanction the Township for having failed to produce it previously.
74. The trial court granted the motion for sanctions, finding that:

“Regardless, the Township has now provided to the Wineries a copy of the U.S. Specialty Insurance policy – after the Wineries’ filed their motion for an order to show cause and for sanctions (*Id.* at PageID.15310). Thus, the Township argues that the Wineries’ motion was unnecessary (*Id.* at PageID.15313-14). The Township’s eventual untimely production of the U.S. Specialty Insurance policy does not mean the Wineries’ motion was not necessary, nor does it mean that the Wineries are not entitled to their attorney fees and costs for bringing the motion. Notably, the Township was ordered to produce copies of applicable insurance policies in September of 2021, and it did not produce all applicable policies until August of 2023. There is no legitimate way for the Township to justify this delay.” (ECF No. 493.)

75. The Wineries’ counsel sought \$13,373.20 in attorneys’ fees.
76. By order dated November 9, 2023, the trial court granted in part the Wineries’ second petition for fees, and ordered the Township to pay the Wineries \$12,993.20.

COUNT I: PROFESSIONAL NEGLIGENCE/LEGAL MALPRACTICE

77. Defendants, and each of them, owed Plaintiff the duty to provide it with such services as would attorneys of ordinary learning judgment and skill when confronted by the same or similar circumstances.

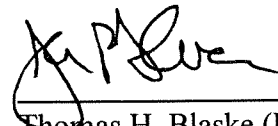
78. Defendants, and each of them, owed Plaintiff the duty to comply with the Michigan Rules of Professional Conduct.
79. Defendants breached the standard of practice or care, including but not limited to each of the following ways:
 - a. They failed to list one or more rebuttal experts, including but perhaps not limited to damages experts, in the underlying case;
 - b. They failed to produce one or more rebuttal reports, including but perhaps not limited to expert damage reports, in the underlying case;
 - c. After they realized they had missed the deadline to name rebuttal experts and produce rebuttal reports, they failed to take immediate corrective measures, including a motion for leave to name one or more such experts and to produce one or more rebuttal reports;
 - d. They compounded their legal malpractice described above by confirming to the Wineries' counsel, in May 2022, that "we do not have a testifying expert";
 - e. They failed to promptly notify the Township of their failures above so that the Township could, if it wished, hire other counsel to attempt to seek relief, i.e. seek leave from the trial court to permit it to name experts and produce expert reports;
 - f. Defendants, including but perhaps not limited to Mr. Meihn, purportedly agreed to a settlement of the underlying case without the consent of the Township, their client;
 - g. Defendants, including but perhaps not limited to Mr. Meihn, violated Magistrate Judge Kent's September 28, 2021 order by failing to produce the U.S. Specialty Insurance policy referenced above;

- h. Other acts and omissions as may be revealed by discovery.
80. As a direct and proximate result of Defendants' respective breaches of the applicable standard of practice or care, Plaintiff has been harmed and damaged, including but perhaps not limited to each of the following ways:
- a. The Township is now forced to defend the underlying case without any expert testimony, including but perhaps not limited to that of a damages expert, e.g. Mr. Kahaian, who would be able to demonstrate how grossly-inflated and speculative Mr. Larson's damages opinion is;
 - b. The Township lost the opportunity to seek leave of the trial court to identify rebuttal expert(s) and produce expert report(s) after the deadline had expired, because Defendants failed to notify the Township of their failure to meet their obligations under the trial court's case management orders;
 - c. As a result of Mr. Meihn's agreement to settle the underlying case without the Township Board's consent, the Township was sanctioned \$17,142.48, and the trial court was left with the mistaken impression that the Board pulled a bait-and-switch on the Wineries, when that simply was not the case;
 - d. As a result of Defendants' failure to comply with Magistrate Judge Kent's order regarding production of insurance policies, the Township was sanctioned \$12,993.20, again leaving the trial court with the mistaken impression that the Township Board, as opposed to its counsel (Defendants here), was intentionally withholding relevant information when, again, that was not the case; and
 - e. Damage to its reputation;

- f. An existential threat to the Township's finances, including the risk that it will have to file for bankruptcy protection in the event a verdict is awarded against it;
- g. Attorney's fees and costs spent in efforts to mitigate the effects of Defendants' legal malpractice;
- h. Interest, i.e. the time value of money; and
- i. Other damages as may be revealed by discovery and permitted by law.

WHEREFORE, Plaintiff demands judgment against Defendants, and each of them, in whatever amount it is found to be justly entitled, plus costs, interest, attorney fees, and any and all other appropriate relief permitted by law.

Dated: January 31, 2024



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