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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WINERIES OF THE OLD MISSION
PENINSULA ASSOCIATION, a Michigan
Nonprofit Corporation, et al,

Plaintiffs,

v.

CASE NO: 1:20-CV-1008

PENINSULA TOWNSHIP, a Michigan
Municipal Corporation,

Defendant.

* * * *

MOTION HEARING

* * * *

BEFORE: THE HONORABLE PAUL L. MALONEY
United States District Judge
Kalamazoo, Michigan
December 2, 2021

APPEARANCES:

APPEARING ON BEHALF OF THE PLAINTIFFS:

JOSEPH M. INFANTE
STEPHEN M. RAGATZKI
Miller Canfield
99 Monroe Avenue, N.W., Suite 1200
Grand Rapids, Michigan 49503

APPEARING ON BEHALF OF THE DEFENDANT:

GREGORY M. MEIHN
MATTHEW T. WISE
Foley & Mansfield
130 East 9 Mile Road
Ferndale, Michigan 48220,

1 Kalamazoo, Michigan

2 December 2, 2021

3 at approximately 10:16 a.m.

4 PROCEEDINGS

10:16:22 5 THE COURT: This is File Number 20-1008; Wineries
6 of Old Mission Peninsula vs. Peninsula Township. This
7 matter is before the Court on the plaintiffs' motion for
8 sanctions. The record should reflect that Attorneys Infante
9 and Ragatzki represent the plaintiff. Attorneys Meihn and
10:16:42 10 Wise represent the defendant. The Court is ready to
11 proceed.

12 Mr. Infante, you may proceed, sir.

13 MR. INFANTE: Thank you, Judge. Here? Podium?

14 THE COURT: Whichever you're comfortable with.

10:16:52 15 MR. INFANTE: Masks off?

16 THE COURT: That would be helpful to 72-year-old
17 ears.

18 MR. INFANTE: I prefer it as well. You never know.
19 Judge Kent --

10:17:04 20 MR. MEIHN: We are fine with that on this side,
21 too. We will keep ours on until it's our time.

22 THE COURT: Whatever you're comfortable with.

23 MR. INFANTE: Judge Kent wants them on, Judge Green
24 wants them off.

10:17:14 25 THE COURT: I appreciate the members of our bench

1 have different points of view on that.

2 MR. INFANTE: Yup. That's why I want to know what
3 yours is.

4 Judge, first of all, good to be back in your
10:17:23 5 courtroom. I was commenting I haven't been here since June
6 of '20 is the last time I've been in your courtroom. You
7 were my first in-person hearing after COVID started and
8 probably my last for about nine months.

9 THE COURT: Okay.

10:17:38 10 MR. INFANTE: Nice to be back in here.

11 THE COURT: Well, this Court was only down for
12 about two months.

13 MR. INFANTE: You weren't down -- and then our
14 hearing hit, yes, we were right in here. Nice to be back.

10:17:48 15 Judge, I'm going to make my presentation hopefully
16 very short and very simple. We don't plan to call any
17 witnesses. We don't think witnesses are necessary for this
18 issue. Really I just want to kind of talk through what
19 happened here, you know, how we got to this position. You
10:18:07 20 know, I and my clients believe that we were misled in this
21 process which caused them to expend a lot of needless, you
22 know, time and money on a mediation process which did not --
23 which was not as it was represented to us.

24 And to back up, we had our first mediation session,
10:18:27 25 I believe it was February or March of this year was our

1 first mediation session with Joe Quandt from Kuhn Rogers up
2 in Traverse City. We picked him because he was, you know,
3 more local to Traverse City, and the parties were all there.
4 We did it in-person at his offices. But before we even got
10:18:47 5 to that mediation, a hiccup occurred because the defendants,
6 the Township, demanded that this third-party, the
7 intervenors, Protect the Peninsula, they demanded that they
8 have a seat at the table as well. And so that actually
9 almost, you know, caused the mediation to stop. We had them
10:19:07 10 sign a confidentiality agreement. We allowed them to
11 participate, at this point, they were still potential
12 intervenors. Now your Honor has denied their motion to
13 intervene. But that session went nowhere.

14 MR. MEIHN: Your Honor, may I just briefly -- I
10:19:21 15 never, ever want to interject when someone is arguing, I
16 don't think it's proper unless there is real need.

17 You set an order that specifically talked about
18 showing of bad faith from September 14th through the
19 October 6th date. What happened seven months earlier, what
10:19:42 20 was engaged -- eight months earlier, first of all, was not
21 only improper, but it's outside the scope of what your order
22 is. And if we are going to go down that road of talking
23 about the history, then we need to go down all the way back
24 to the filing of the Complaint and the meetings that were
10:19:58 25 held before that. And I don't think that is the scope of

1 this. So I would ask the Court to confine the parties to
2 your requirement, which is show me the bad faith from
3 September 14th through October 6th as it relates to that
4 term settlement document.

10:20:15 5 THE COURT: Well, I think the timeline is
6 essentially in the papers. From my notes, it appears as
7 if -- and either counsel can correct me if I'm wrong during
8 the course of their argument, but it looks to me like the
9 mediation process -- and I don't necessarily need to get
10:20:35 10 into the details, but the mediation process started in
11 February or March of this year. It was decided that it
12 would go attorneys only in June. A proposal went across the
13 table from the Township to plaintiff, it was in August -- or
14 maybe it was the other way around. Anyway, a proposal
10:21:02 15 became the basis for continuing mediation, and 25 hours of
16 mediation over five sessions, success is met September 8th.
17 So do I need to know anything else about what happened
18 before that?

19 MR. INFANTE: I just think it's helpful to have the
10:21:23 20 full story, Judge, and that's why I'm trying to make it
21 brief.

22 MR. MEIHN: I don't think there is anything else to
23 add. You were right. The defendants had reached out and
24 tried to sculp a way to get back into the settlement process
10:21:35 25 by doing that. But I don't think it's appropriate to go

1 beyond that process, because if that is the case, again we
2 are using -- I'm concerned about going inference upon
3 inference upon inference and then finally ending up with
4 what happened between September 14 and October 6.

10:21:54 5 THE COURT: It appears to me that while there might
6 have been some hiccups, the mediation process proceeded in
7 regular fashion between March and September, with ultimate
8 success using the mediator, so and -- so let's start with
9 September 8 and move from there.

10:22:21 10 MR. INFANTE: Just, your Honor, September 13 was
11 the last date.

12 THE COURT: Okay. Thank you. No. You're right.
13 September 13.

14 MR. INFANTE: The only thing --

10:22:28 15 THE COURT: Success was declared September 8, I
16 think, but the final mediation session was the 13th, or am I
17 wrong about that?

18 MR. INFANTE: Success was declared at 8:15 p.m. on
19 September 13, because I looked at my watch.

10:22:40 20 MR. MEIHN: And I would agree with Mr. Infante, he
21 is correct, your Honor, September 13 at 8:15.

22 MR. INFANTE: I can tell you that my clients and I
23 walked across the street to a bar called Brady's. We had a
24 celebratory drink after about, you know, 12 hours of
10:22:53 25 mediation.

1 THE COURT: All right. Go ahead, Mr. Infante.

2 MR. INFANTE: The only thing I do need to correct
3 that wasn't defendant who asked -- or it wasn't the
4 plaintiffs who asked defendants to come back to mediation.

10:23:03

5 It was defendants who asked plaintiffs to come back to
6 mediation, but that's important because they got us back
7 into that room, essentially under false pretenses, because
8 we were not -- we were not willing to do what we did in
9 March, which was unproductive and a waste of time. And so
10:23:20 10 they needed to get us back in the room, because we had
11 wasted a lot of time before. That is the only thing I
12 wanted to clear up.

13 THE COURT: Okay. Go ahead.

10:23:30

14 MR. INFANTE: 8:15 p.m. on September 13th, the
15 mediator, Joe Quandt, came into the conference room where I
16 and my clients were present. There were four, I believe, in
17 person. The rest we had a Zoom or a Teams meeting set up
18 and they were all participating by video conference, all 11
19 of the plaintiff wine /REUS were present. He walked in. He
10:23:48 20 said, "The Township has agreed to your last counter
21 proposal. The case is settled. Mr. Infante, will you
22 please," and then there was an email that circulated, which
23 the agreement was that I would draft the term sheet -- that
24 I would draft the term sheet.

10:24:07

25 I can tell your Honor, I tried to draft it that

1 night. I was too tired. I got up early the next morning,
2 went down to my hotel lobby -- I found a hotel. That's an
3 important piece here, because there was a town board meeting
4 the next night to rubber stamp the settlement. I stayed so
10:24:24 5 that my clients could also sign. So I found a hotel room, I
6 walked out, made a phone call, found a hotel room, got a
7 hotel, stayed the night. Got up the next morning, 7:00
8 o'clock in the morning or so, started drafting the term
9 sheet, emailed it to Mr. Quandt and Mr. Meihn that morning.
10:24:42 10 Mr. Quandt actually sent an email to the counsel, said where
11 are you guys on the term sheet? And I said I'll have it
12 soon. I emailed it around -- I had a typo, I had to fix it.
13 Mr. Meihn said I'll wait for the final version. I sent the
14 final version to him, I believe it was at 11:59 in the
10:25:00 15 morning or so, 11:49 in the morning, according to my notes.

16 I then proceeded -- I can tell you I went and
17 played nine holes of golf with one of my clients. And
18 Mr. Meihn and I had a -- he asked for a -- we asked set up a
19 telephone conference at 4:00 o'clock that day to discuss the
10:25:19 20 term sheet, just to see if he had any edits. I can tell you
21 that I took that conference call from the Traverse City
22 Country Club in the bar area with Mr. Meihn. And he said,
23 you know, in essence, he said, "I have no edits. The
24 settlement agreement looks good, it incorporates our
10:25:36 25 settlement. I'll see you tonight."

1 At 7:00 o'clock that night, I believe it was 7:00
2 o'clock that night, the town board had a meeting. They
3 had -- and I believe it was a special meeting to discuss --
4 no, it was a regular meeting, I apologize. This was added
10:25:51 5 to the agenda. And word had gotten out that the parties had
6 reached a settlement and -- but no one knew what the terms
7 were. And so this meeting went on for several hours, and
8 there was a public comment period where members from Protect
9 the Peninsula had rallied their troops, and there was an
10:26:14 10 hour, an hour and a half of ranting and raving about
11 mysterious settlement terms that nobody had ever seen,
12 telling the town board, you know, do the right thing, stay
13 the fight, fight this to the end. Comments of oh, I know
14 Judge Maloney, he will never rule against us in this case.
10:26:33 15 I've practiced in front of him, several attorneys, retired
16 attorneys, you know, got up and rallied the troops and said
17 certain things. And then the town board went into -- or I
18 should back up.

19 Before the meeting started, I was sitting in the
10:26:50 20 front row and I walked up to Mr. Meihn, who was sitting at
21 the -- they have sort of a horseshoe table, and I said,
22 "Greg, anything you need from me? Do you need me to say
23 anything? Do you need my client to say anything?" And his
24 response was, quote, this is a quote, "It's a done deal." I
10:27:07 25 sat back down. My clients were with me. I said, "It's a

1 done deal. They are going to sign it, they are going to
2 vote on it, rubber stamp it, and we are going to agree
3 tonight." They went into closed session for maybe an hour,
4 milled around. Most people left. My clients, we all
10:27:25 5 stayed, we milled around outside and waited. Came back, and
6 the vote was to table the issue for a later meeting. And
7 there was a second vote to have an information session at
8 St. Joseph's Church, which was a larger venue, to inform the
9 public or to discuss the settlement. I don't remember what
10:27:47 10 the exact terms of the vote were. And then the hearing, the
11 meeting was adjourned. Just adjourned without date.

12 And I can remember I went to Mr. Meihn and I used
13 some colorful language, which I won't repeat here,
14 basically, you know, what happened? Why wasn't this signed?
10:28:09 15 And the response was, "Well, I was missing Warren." They
16 were missing one of the town board members. They had six
17 and they didn't have seven, and he said, "I need Warren.
18 They want Warren to weigh in." I believe Mr. Warren is
19 Warren Wahl, who is a local attorney in the Traverse City
10:28:27 20 area.

21 Proceeded after that, the Township scheduled this
22 formal, this hearing at -- meeting at St. Joseph's Church.
23 I remember talking to Mr. Meihn to say, you know, what is
24 going to happen at this meeting? Should you and I give a
10:28:46 25 joint presentation to the public to alleviate their concerns

1 here? Because no one's seen this settlement. I mean the
2 term sheet is, you know -- I have the signed copy, my
3 clients have all signed it, it's sitting in my home office
4 in an envelope, but no one's ever seen it besides counsel
10:29:07 5 sitting here, Mr. Manigold, the Township supervisor is
6 sitting back there, he's seen it, but nobody else has seen
7 it. I said to Mr. Meihn, let's do joint presentation, let's
8 do a Power Point. Let's talk about -- you know, let's just
9 talk about the settlement agreement. Let's just get it out
10:29:23 10 in the open. We are going to sign it, it's agreed to.
11 Let's just talk about it. He refused and he gave a, you
12 know, his own Power Point presentation to talk about really
13 the allegations in the Complaint. He just walked through
14 the counts. I asked for time to speak to address the public
10:29:40 15 to alleviate concerns about the settlement agreement. I was
16 denied giving a spot to speak, and they said I could have
17 three minutes like everybody else. That was it.

18 And then this meeting went on for two hours. There
19 were several hundred people there. There were people
10:29:59 20 waiting outside. The Protect the Peninsula did a good job
21 of rallying their troops, and for two hours of ranting and
22 raving, the town board didn't say anything. People came to
23 the podium and just, you know, made wild accusations about
24 what was in this settlement agreement, you know, rampant
10:30:20 25 speculation that the wine /REUS are going to start opening

1 nightclubs. More lawyers talked about how well they know
2 you. And you know, that, oh, I've looked into this and I
3 know that, you know, they will never win this case. A few
4 people made veiled threats to the town board that if they
10:30:39 5 agreed to the settlement, they wouldn't get reelected.

6 But people came out and supported the wineries. I
7 remember a young farmer who was crying, crying there at the
8 prospect of the Township continuing in its ways and not
9 resolving this lawsuit. You know, there were several young
10:30:58 10 farmers there who spoke positively about this settlement
11 agreement. They went into closed session again, and after
12 10 minutes, 15 minutes, very quick, they came out and they
13 voted 7-0 to reject, you know, to not sign our settlement
14 agreement, which is interesting because at least three of
10:31:18 15 those people were in our mediation sessions. At least three
16 of them were there, and throughout the five mediation
17 sessions, they had multiple -- different people attended
18 different sessions, to my knowledge. I wasn't in that room
19 obviously, and I don't know who participated on the phone,
10:31:37 20 but those people were there. There were at least three that
21 were there. Mr. Manigold was there for all of them, to my
22 knowledge, and yet he still voted against the settlement
23 agreement that we negotiated over 25 hours. So what
24 changed? How was there any change?

10:31:54 25 And the only change that could happened, it really

1 was these public meetings which would allow the public to,
2 you know, scream and holler and rant and rave, and
3 apparently they decided that the political pressure was too
4 much and they were going to go back on their agreement.

10:32:10

5 THE COURT: Mr. Infante, help me with the date
6 here. The Township meeting which Township board voted was
7 the 6th of October. The public hearing was the same day?

8 MR. INFANTE: The same day.

10:32:26

9 THE COURT: Preparatory of the regular Township
10 meeting; is that --

11 MR. INFANTE: It was a special meeting. Help me
12 with the timeline. September 13 was the last mediation
13 session, ended at 8:15 at night. The following day,
14 September 14, was a regular town board meeting at 7:00
15 o'clock. And this was, I think, tacked on at the end of the
16 agenda, it was the last addenda item.

10:32:38

17 MR. MEIHN: That is correct. We agree.

10:32:51

18 MR. INFANTE: Which was an interesting process,
19 because the public was all there for the winery lawsuit
20 issue, but they sat through the 30 or 40 minutes of
21 business. And then they had a special town board meeting on
22 October 6 at St. Joseph's Church in an annex room, I think
23 the capacity was 200. Fire marshal was there, the
24 firefighters were there counting heads. They opened the
10:33:12 25 windows and people looked in through the windows. That was

1 October 6.

2 MR. MEIHN: That is also correct, your Honor. We
3 agree with that.

4 MR. INFANTE: At the end of this session, they came
10:33:20 5 out and said no, we are not going to sign the settlement
6 agreement. I had a signed -- I had gone around that day and
7 collected signatures. Drove around the peninsula to all of
8 my clients and collected signatures that day on the
9 settlement agreement. I had the signed copy from our end
10:33:36 10 ready to go that day. You know, we were there, we were
11 ready to sign.

12 And then I think the most probably egregious piece
13 of this to me is the comments that were made afterwards, and
14 the reason that the Township stated that they were not going
10:33:58 15 to sign the settlement and Brad Bickel, the Township
16 supervisor, said we are not going to sign it because the
17 wine /REUS insisted on an all or nothing deal. Implying
18 that, you know, we wanted everything or no deal whatsoever.
19 But I won't go into the, you know, the agreement. The
10:34:18 20 implication that was to pacify the public. It put the
21 public against the wine /REUS. For some reason, and I
22 actually explained this to Judge Kent when we were in front
23 of him I believe two weeks ago. It wasn't an all or nothing
24 deal. What it said was, there's 20 issues in this case, and
10:34:38 25 what I told to Mr. Meihn before we got into to mediation

1 was, we are not going to settle Issue 1 and then later
2 settle Issue 2 and then later settle Issue 3. We are going
3 to, you know, reach a, you know, temporary agreement on
4 three items. The first day we addressed three items, we got
10:34:59 5 a deal on three items. That was contingent on the next day
6 where we came back and we got a deal on three items, and
7 then we got a deal on three items. And then the last day of
8 mediation, the fifth session, we reached an agreement on the
9 last three or four issues. So we resolved all 15 or 20
10:35:16 10 issues in the case, and then the settlement became
11 effective. Because I'm not going to settle three issues.
12 I'm not going to settle, say, our three strongest issues and
13 leave our three weakest issues. And that was the
14 explanation for how we went through the settlement
10:35:31 15 agreement. It wasn't this, you know, all or nothing
16 process. It wasn't going to be a piecemeal process.

17 So Judge, the wine /REUS, you know, we were forced
18 to waste lots of time and money here, because the Township
19 just didn't negotiate in good faith, they didn't act in good
10:35:50 20 faith. We came to an agreement, and they refused to sign
21 it. We think there needs to be, you know, some repercussion
22 for that. So we are just asking for our costs and fees for
23 that period of time.

24 I know your Honor has already ruled that before
10:36:05 25 September 13 is out the window, but from September 14 to

1 October 6, we believe that we are entitled to our costs and
2 fees for that period of time, which would be attorneys fees,
3 you know, travel costs for me to go back and forth to
4 Traverse City, hotel costs, those things.

10:36:23 5 THE COURT: Thank you, counsel.

6 MR. INFANTE: Unless your Honor has any
7 questions --

8 THE COURT: Not at the moment.

9 MR. INFANTE: Thank you, Judge.

10:36:28 10 THE COURT: I'm sure I'll come back to you.

11 MR. INFANTE: I'm sure you will.

12 THE COURT: Thank you.

13 Go ahead, Mr. Meihn. Good morning.

14 MR. MEIHN: Good morning, your Honor. With sincere
10:36:37 15 apology, I will tell you in honesty that on my calendar, it
16 said Kalamazoo. I will tell you honestly I am a member of
17 the air museum out here and I'm here often, so I know this
18 place well, and I just drove right to Grand Rapids, and
19 thank God the U.S. Marshal told me he is not here. So I
10:37:01 20 apologize to you and to Mr. Infante for being late.

21 THE COURT: That's fine.

22 MR. MEIHN: All right. Now --

23 THE COURT: I was worried whether you got the memo
24 that I have been here since 2007.

10:37:13 25 MR. MEIHN: Well, Judge, I happen to have had a

1 number of cases with you through this process.

2 THE COURT: That's all right, counsel. I
3 appreciate the apology. No problem. Go ahead.

4 MR. MEIHN: But I get it, I get it. Even with the
10:37:25 5 federal bar, the pro bono program, you and I have had some
6 fun a while back.

7 So let me start off this, this is a very hard
8 argument for me to make. It's very hard because I've been
9 doing this, as we all have, for a lot of years. And I have,
10:37:45 10 through being parts of the Ethics Committee of the State of
11 Michigan and the bar commissions and many other experiences
12 I've had, there are things that are very important. Truth
13 and honesty is the most important ones. And what is
14 wonderful about this Court compared to other courts, and I'm
10:38:03 15 not going to mention them, this Court has a way of requiring
16 people to do the things they say they are going to do, to be
17 prompt, unlike us today, and to provide the arguments and
18 stuff in their hearings, that the Court makes prompt
19 decisions. So it's a really fun place to be because there
10:38:25 20 is an easy expectation.

21 And with all of that said, I have to tell you,
22 Judge, that even in the presentation that has gone on here,
23 your edict of don't go into the 408 stuff has been violated,
24 just as it was violated in their motion for enforcement of
10:38:45 25 settlement and for sanctions. And so I'm just going to go

1 where they have gone, but not beyond that, but I will tell
2 you I am disappointed. I am almost at the point of anger to
3 the false narratives that are intentionally brought to this
4 Court to try to fix attorneys getting in the way of
10:39:13 5 settlement, because that's what this is about.

6 So the false narrative is the motion for settlement
7 enforcement was brought on this alleged statement I've made,
8 which they have never were made, and we are going to talk
9 about them, and the alleged statement that Mr. Quandt made.
10:39:29 10 And you just heard it again here today, which was violative
11 of your rule, because that was allegedly said during the
12 mediation session.

13 I presented to the Court, I waived my
14 confidentiality rights and presented Mr. Quandt's letter of
10:39:48 15 exactly what he was told by us he was to do. Mr. Quandt
16 also provided a same letter to Mr. Infante, and Mr. Infante
17 has yet to provide that letter to the Court. Now, I have
18 not seen it, but I will tell you that I would wager that
19 that letter says quite the opposite of what Mr. Infante is
10:40:18 20 arguing to this Court. And Mr. Infante had that letter back
21 on November 12 or earlier and has yet to bring it to the
22 Court, but yet stands before you and argues that this is
23 what the mediator said, and that's why I wanted that
24 evidentiary hearing to have you do that. So I will tell you
10:40:37 25 that I request the Court to compel that letter to be

1 provided, because it will unveil, peel the onion back of the
2 false narrative that started the foundation of why we are
3 even here. That is the issue.

4 We are here on a false narrative that there was a
10:40:58 5 settlement agreement based upon my comments and based upon
6 the mediators. And I've given you an affidavit. He has no
7 documents of anything that he has said, but I'm about ready
8 to show you how his oral statements are so far off. But the
9 false narrative with regard to the mediator was first a
10:41:17 10 violation of 408, violation of the confidentiality, and it's
11 why we have filed a Rule 11 letter, and we intend to pursue
12 sanctions, and why we asked you, when you made the decision
13 on the settlement, to give us sanctions based upon this.
14 Now, you didn't address it, so I naturally would assume,
10:41:34 15 based upon my experience with you, that you've decided that
16 that was something you weren't going to entertain. I would
17 ask at the end of this hearing that you entertain that
18 again. I would ask also that you request, you demand that
19 letter, because that will clarify the false narrative that
10:41:52 20 brings us here.

21 Now, let's talk about these comments that were
22 made. He said we misled him. Was not as represented to us
23 of how the mediation was going to go. It was important for
24 us to get them back into the room. Sure, it was. We'd like
10:42:08 25 to settle the case. We want to settle the case. And here

1 is what we did. I know, and I know you know, your Honor,
2 and your experience is, there are sometimes where you take a
3 case that has eight issues and you say, let's get into the
4 room and talk about three, get those resolved, then we can
10:42:27 5 talk about the next three, get those resolved, and talk
6 about the next three. That's one way to go about dealing
7 with a very contentious issue. And the emails that you have
8 been provided in the original motion said exactly that. All
9 I suggested, let's get in what issues are we going to talk
10:42:45 10 about, Mr. Meihn, these three. Now, where did that take us?
11 We went to the meeting, we talked about the three. At the
12 end of that first session, we are told for the first time,
13 well, you know what, we said we would come in here and talk
14 with you about the issues and break them down. We are no
10:43:08 15 longer going to do that. They imposed, at that time after
16 we have started the mediation, that it's going to be an all
17 or nothing. Whatever that term sheet turns out to be, your
18 team doesn't get a right to break it apart, to separate it
19 apart, to say we will agree to this and not agree to that.
10:43:27 20 So that was a last minute change after we already had an
21 agreement.

22 So if you want to talk about someone or a group of
23 people who engaged in inappropriate and false settlement
24 processes, it was WOMP, it was the wineries, in all due
10:43:45 25 respect, Judge, it was Mr. Infante. As he stood here today

1 -- and if you look at his writings, he's admitted three
2 times now in his pleadings, yes, it was an all or nothing.
3 Yes, we changed it to be an all or nothing, because we
4 didn't want to piecemeal it. That's not how we started the
10:44:04 5 mediation. Because we tried that back in March, and you
6 know what happened back in March, we got a laundry list.
7 And we just walked out, because it wasn't going to work that
8 process.

9 So the words of misleading, the words of not as
10:44:17 10 represented, we went in as exactly, Judge, as it was
11 represented. And at the end of the day when we thought we
12 had it, you know what we said to them? Let's get this to
13 the board right now, because they have got a meeting that
14 night, and we can get this thing approved or not get it
10:44:35 15 approved, but we can move forward. We were told it's an all
16 or nothing, so come back. So we were compelled and
17 convinced by the mediator to come back. Let's stay the
18 course. Let's not lose sight of this if we've got three
19 issues we may be able to get approved, let's go to the
10:44:52 20 others, and let's go to the others, and let's go to the
21 others. Let's do our good faith instead of getting up and
22 walking out. We should have walked out, Judge. I should
23 have gotten up and said you violated your word, Mr. Infante,
24 you violated why we were there. But I didn't. I followed
10:45:08 25 the direction that I expected you would have expected from

1 me is get in there and try to get this done, and that's what
2 we did.

3 And yes, we spent the five days of meetings and the
4 25 hours. And yes, we had on occasion two board members, on
10:45:23 5 occasion three. And yes, I would get on the phone with
6 other board members during the process outside of the
7 meeting and tell them what is going on. But here is the key
8 that you pointed out so wonderfully in your writing, we had
9 open meetings act issue, so we could not discuss these
10:45:43 10 settlement terms in the context of our people. We could
11 only get the two or three people to try to find terms that
12 they believe would be in a form that we could either get
13 acceptance or we could get a counter proposal to make this
14 go. So please understand that this misleading, this not as
10:46:05 15 represented to us, is a facade, Judge, and it pains me to
16 have to do that.

17 Now, let's move on to the next thing. This rubber
18 stamped. If you would be kind enough to hand the Judge our
19 exhibits. We have agreed that, your Honor, these exhibits
10:46:23 20 are part of the thing. We don't have to do foundational
21 exhibits or anything else. So he talks about this 8:00
22 o'clock at night on the 13th going across and having a bar.
23 We had a deal, all of this stuff. Judge, it's not true.
24 Let's see what really happened.

10:46:39 25 If you go to Exhibit B for a moment. September

1 14th email, down at the bottom, it says "Joseph Infante" at
2 the top. September 14th, not the 13th, Judge, that he said
3 to you we got a deal and we are having a drink at a bar and
4 I'm -- all this stuff. It's the 14th, and it's at 9:27 a.m.
10:47:05 5 he says, "See attached. We can fill in the standard
6 agreement terms once the operated terms are agreed upon."
7 Doesn't say we agreed upon the operated terms. It doesn't
8 say as we agreed. Doesn't say rubber stamp. Doesn't say
9 anything of that nomenclature. This is still -- and here is
10:47:26 10 so crucial -- "pending review from my clients, and may be
11 missing items, though I think I covered everything." So
12 they hadn't even approved it on the 14th as they talked
13 about it on the 13th, and it hadn't even been placed in
14 writing. So the argument is false again.

10:47:48 15 Now, if we go back then to Exhibit A, it's a
16 September 14th email also at 12:05. This is after I'm
17 saying to Infante, give me the darn agreement, give me the
18 darn agreement, I got to get it to the board because we have
19 a meeting tonight and I would like them to consider it.
10:48:10 20 12:05 says, this is Mr. Infante, "I would also like to
21 discuss the mechanics of the meeting." Next sentence, "Our
22 expectation is the town board would go into closed session
23 to discuss and vote on the settlement terms sheet, but that
24 the term sheet and its terms would not be discussed openly
10:48:28 25 public." Now again, 12:05, talking about we would go in and

1 vote on this. The board would vote. There is no comment
2 here, Mr. Meihn, you agreed that it's a done deal, it's a
3 rubber stamp. He is admitting here that he knows that that
4 is what the board is going to do.

10:48:47 5 Now let's go down the next step, what happened on
6 September 14th. He talks about all, they just went into
7 closed session and came out and it was confusing. And his
8 words were something about we need to inform the public.
9 That's why we are going to have another meeting. None of
10:49:04 10 that is true.

11 Look at Exhibit C, and if you go to Page 9 of 9.
12 And if you go down one, two, three, four, five, six, seven,
13 eight lines, it says, "Bickel moved to schedule a closed
14 session meeting on the proposal brought by the Negotiating
10:49:26 15 Committee to discuss the terms and conditions of the
16 settlement proposal. The proposal requires the input of the
17 full board --" There was one board missing, member missing
18 -- "with the trustees. Wahl absent. And board members
19 unable to fully review the proposal handed to them today."
10:49:42 20 So they got the proposal. By the time it got to me and to
21 them, it was around 2:00 or 3:00 o'clock. Now they are
22 working, just like you and I, your Honor, and someone sends
23 a proposal to you this morning and you are here, you are not
24 being able to look at it. So at the time of the board
10:49:57 25 meeting, the three board members said wait a minute, this is

1 the first time I've seen it and I'm not going to rule on
2 this with just these hours left to be able to do it. I need
3 time to review. So that's why it was adjourned. That's
4 what the public said. It was adjourned because full board
10:50:15 5 members weren't there, and they want to review it.

6 Now, let's go one step further. He talks about,
7 Mr. Meihn, it's a rubber stamp; Mr. Meihn, this is going to
8 get done. Let's go to Exhibit D for a moment, Judge.

9 Exhibit D in the middle starts off with "Greg, where are

10:50:35 10 we?" This is September 15th now after the board meeting,
11 okay? "I need an update from you. You said you were going
12 to call me at 2:00 o'clock." Go down one more email now at
13 9:00. "Greg, please keep me informed of your progress

14 today. As you might expect, pitch forks are coming out on
10:50:52 15 my end. You know and I know this deal is the best interests
16 of anyone --" and I know what he meant to say, best
17 interests for everyone -- "and if I want to keep it
18 together, we need to work fast." Now, go up to the top, my

19 response, "I'm still engaged with my team, Joseph. I have
10:51:11 20 nothing to report yet. I'm in Kansas tomorrow, but will

21 return on Friday. Expect to have a meeting Monday as the
22 office is not open." All right. So let's stick with that
23 for a moment and then let's jump to E. 5:55 p.m. on the

24 15th, okay? The day after the board meeting. "Of course I
10:51:30 25 will keep you informed --" This is me, the first email. "I

1 do not agree about the Township going back on its words.
2 While I do not share your thoughts, I am thankful for your
3 efforts on this matter. As you know, the board acts through
4 its board. I have seven members. The decision was not made
10:51:45 5 to make the vote yesterday without the seven members for a
6 number of reasons that I'm sure you understand, not the
7 least of which involves allowing the emotions to die down
8 and all members to vote."

9 Next paragraph, sorry about the language, your
10:52:01 10 Honor. "I am busting my ass on this for the betterment of
11 you, your clients, and the residents of the Township and the
12 board. Please stop the rhetoric. We are both working for
13 the same result, an amicable settlement that meets the needs
14 of them." So what this email shows on the 15th, Judge, is
10:52:17 15 not rubber stamp, not a comment that says we are done, not
16 anything of the nature, not even the comment that he made
17 after the meeting. What this is saying is the words that
18 were said. This is the first time I talked with him. I did
19 not talk with him after the meeting. I did not. This is
10:52:35 20 what I talked with him about. And I told him again, the
21 seven members need to vote and the emotions need to die down
22 and they needed to review it.

23 All right. Now, let's go further one more time,
24 and here is the telling part. Exhibit F. Here is his
10:52:53 25 response. First of all, before you look at it, the response

1 doesn't say we had a settlement, what's going on? Why is
2 this taking time? How could this not get done right away?
3 We have got a settlement. Because he knows that there
4 wasn't. There never was a settlement. There was a
10:53:09 5 settlement term sheet to be reviewed. So here's what he
6 says. "Greg, I believe you are doing everything you can on
7 this and have client personalities and pressures to deal
8 with. You and I are on the same page. I also have client
9 pressures," etcetera, etcetera. Okay. So again, nothing in
10:53:26 10 here about it's a done deal, nothing in here you said this
11 outside, you said this to me orally, you said this. He has
12 nothing but his oral testimony, which I refute.

13 Now, let's jump to the timeline here for a moment,
14 September 28. That is Exhibit G. He is correct. And I'll
10:53:48 15 go through these fast. He says, "Can we set up a time to
16 discuss the meeting next week and the Township's
17 expectations of what is to occur at the meeting?" And he is
18 exactly right. He called, he thought it would be good idea
19 if we both made a presentation so there would be a full kind
10:54:04 20 of explanation to the public of what is really trying to be
21 done here. But of course we couldn't discuss the settlement
22 terms, so it didn't make sense to have that discussion,
23 because the settlement terms would be confidential. And as
24 you read the email before, you are not to discuss those
10:54:21 25 settlement terms outside of the public. In fact, if you go

1 back for a moment real quick -- I don't need you to do that,
2 Judge, just for you to make a note of this -- he states back
3 on Exhibit A, it says, "Our expectation is the board will go
4 into close session to discuss the vote, but the term sheet
10:54:45 5 and its terms would not be discussed openly or provided."

6 So when he tries to give this empathy argument that, wow, I
7 wanted to talk with the board and the board would not allow
8 me to do so. After I spoke with the board about doing it,
9 there was nothing he could talk about, because the

10:55:02 10 settlement terms, per his language, per his direction, were
11 not to be disclosed at all, at any time, for any reason. So
12 he was denied the opportunity to talk at the meeting until
13 it was public comment, and he was specifically given the
14 front row seat, he was specifically allowed to be the first
10:55:22 15 speaker.

16 Now, I have provided you the video, and I have the
17 jump drive here today, and the language of what happened in
18 the video is -- and I'm just going to jump through it, but I
19 will leave the jump drive for the Court. What is

10:55:38 20 interesting is, is that my language, after I get up and
21 explain to the public what the complaint is and what the
22 process and what is going on, I say, the board's going to go
23 back and make a decision. They are either going to accept,
24 they're either going reject and do a counter-proposal, or
10:55:55 25 they're going to do some other process in that regard. So

1 that's what is going to happen in close. And I went on and
2 discussed with him what the complaint terms were. And he is
3 also right in this regard. There were 160-plus people
4 including people sticking their heads through the windows,
10:56:11 5 I'm not kidding you. It was fairly fun, but fairly
6 important to all of it. And he is also right in this
7 regard. 50 percent or more of the people that came
8 supported the wine /REUS in a settlement. They didn't know
9 what they were supporting, because they never heard the
10:56:30 10 settlement terms, right, but they were supporting the wine
11 /REUS and they wanted a settlement. But here is what they
12 did. They said we want to be part of it because some of us
13 farmers, who are also wine /REUS or provide stuff to the
14 wine /REUS, we want rights, too. We want to see what is
10:56:47 15 going on. We want to be part of the process. The other
16 half, which he would call the PTP, but they are more than
17 just the PTP, people who didn't want to approve a settlement
18 agreement that they didn't even know what it was argued that
19 they would like to be involved in the process. All right.

10:57:06 20 And so the board, after all of that, hours and
21 hours and hours of listening to people, and it was very
22 enlightening to the board, from what I can see, they learned
23 much more, they did because remember, Judge, these things
24 that we are doing here in front of you and the ultimate
10:57:24 25 decisions you are going to make on the ordinance and its

1 validity is akin to an amendment to the ordinance. And what
2 happens when amendments are sought in ordinance, it goes
3 through a Planning Commission, a notice of hearing, public
4 input, then a final thing, and then it goes to the board.

10:57:41 5 This process, which I do not deny them the right to do so,
6 was an attempt to avoid the public input, to avoid the
7 public process, and to get the Court to decide issues on
8 federal and on preemption issues. I don't deny them that
9 opportunity. I probably would have done that myself had I

10:57:59 10 been on their side. But this time now, the public, who is
11 so enraged, they want to be part of it. So 50 of the winery
12 supporters and 50 of the anti-winery supporters supporting
13 the same thing, they want a settlement. They just don't
14 know what it is.

10:58:14 15 So the board goes back into closed session and
16 comes out, it wasn't 10 or 15 minutes, in fact, it was much
17 longer than that. But let's go to J for a moment. And
18 again, let's look at what the board said, not what Infante
19 said they said. The board did not say -- and you would go
10:58:38 20 to Page 2 for a moment. The board did not say that it's
21 changing its mind or doing something different or the world
22 is going to look different or the settlement agreements are.
23 They didn't say any of that. What they said, if you go to 4
24 -- Number 4, and then right down below that, "It's moved by
10:59:00 25 Bickel to reject the settlement proposal as presented due to

1 the fact it's an all or nothing proposal. Further, direct
2 the Negotiating Committee to approach the plaintiffs to form
3 a Citizens Committee to work through the issues raised by
4 WOMP in a public process that will end the lawsuit as a
10:59:19 5 community decision." That was seconded, and then it was
6 unanimous.

7 So what they did is, they first thought, without
8 violating the closed meeting requirements, in my discussions
9 with individuals before going into closed meeting, they had
10:59:39 10 issues about how this would operate. They had objections to
11 other things. They wanted to be able to present back
12 something that was other than this document, and they wanted
13 to continue this. And I had to inform them -- and if you
14 had Mr. Quandt here today, which I understand you did not
11:00:02 15 want to do so, but with all due respect, the mediation
16 confidentiality process has been blown apart, had been blown
17 apart because we waived it and he waived it, but he is not
18 showing you the letter from Quandt. And there is a reason,
19 Judge, there is a reason. But let's just, in this part, so
11:00:20 20 they went back, and because the directive was made, this is
21 an all or nothing, you don't get to modify or change, they
22 decided the best approach for them was as provided in the
23 memo, that keep this process going, form a Citizens
24 Committee and move forward. And by the way, they formed a
11:00:38 25 Citizens Committee, and by the way, there were three seats

1 open for the WOMP to sit on that committee to go over the
2 terms of the settlement once that Citizens Committee was
3 completed and we had permission from Mr. Infante.

4 Now, two of the things and I'll be done. If we go
11:01:01 5 to K for a moment, Judge. We talk about this idea that I've
6 made all of these statements about it's a done deal, which
7 they never were made and which you have nothing before you,
8 but other than it wasn't said to him, because you have my
9 emails that said exactly the opposite. But look at the
11:01:23 10 October 7th email, it says, "Joe, for the first time --"
11 this is after the board meeting now -- "for the first time
12 in my career, I was unable to predict the board's decision
13 last night. I thought they may reject the deal, wanted to
14 make a counter-offer on some of the items regardless of your
11:01:38 15 directive to Joseph Quandt that the items could not be
16 piecemeal. I suspect they were influenced by a number of
17 people on both sides of the issues wanting to be involved in
18 carving out a solution to our problem. In evidence you hear
19 it on Friday but will call you to see what your thoughts are
11:01:53 20 on our Citizens Committee." I called him, I haven't gotten
21 any response. Have not gotten any response from any of the
22 people to join that process.

23 And if you look at Exhibit L -- I won't read it,
24 it's just more emails to me about, hey, the first Citizens,
11:02:09 25 second paragraph, "Committee occurred on October 27th. As

1 you know, it's to provide a counter-proposal for settlement
2 and to engage on the ordinance." They want to make a
3 settlement. They want to make a counter-proposal, the
4 Citizens Committee. "Please let me know if your clients
11:02:25 5 wish to participate." Silence, crickets. No email, no
6 phone call.

7 Go to M for a moment, if you would. M is just
8 briefly is the Quandt email or letter that talks about what
9 we engaged in. So one can say that words are made, but
11:02:48 10 that's not what they intended, or piecemeal whatever it was.
11 But here is the issue, Judge, words mean everything in this
12 business that we have. There is a saying, I think one of
13 the senators, I can't remember his name, that everybody is
14 entitled to their opinions, but there is only one set of
11:03:07 15 facts. And in this case, there is one set of facts here,
16 and the facts are in this book, and the remaining facts are
17 in the hands of Mr. Quandt to the extent that the Court were
18 to inquire.

19 The board engaged hard into the settlement
11:03:25 20 discussions. They took time out to be in person in the
21 meetings in Traverse City. There were meetings -- a town
22 meeting to do so, but the deal changed in the middle of the
23 process by WOMP, not by the Township. And as a result of
24 that deal changing, instead of walking away, we stayed with
11:03:52 25 it. Because I knew if I faced you, which about seven years

1 ago I did, and your comment was, "finish the settlement
2 discussions, then we can discuss it later." So that's what
3 I did.

4 Now I have here today Mr. Rob Manigold from
11:04:12 5 Peninsula Township. He is the supervisor. I will simply,
6 to make this fast, if the Court permits, and if Mr. Infante
7 wants that, Mr. Manigold will testify as to what the minutes
8 on September 14th say is true, that the reason, and only
9 reason they didn't make a decision was what the minutes say,
11:04:34 10 because they did not get the proposal in time to review it,
11 and because they wanted the other board member.

12 Mr. Manigold will also testify that he was informed
13 at the mediation by Mr. Quandt that this was changing to an
14 all or nothing, and he wanted to walk out. And it took
11:04:57 15 everything I had to hang onto his shoelaces to say no, we
16 can get a deal.

17 So with all due respect, your Honor, I've done my
18 best to stay in that lane of professionalism, but this whole
19 process that brought us to you, which was the motion for
11:05:16 20 enforcement or sanctions, was premised upon a false
21 narrative, an intentional one, and one which Mr. Infante
22 knew was false. Once he even asked Mr. Quandt for a letter,
23 but never saw fit to stop this process, never saw fit to
24 call me and say, well, you know, maybe you're right, maybe
11:05:36 25 Quandt didn't tell us that, I just understood that to be.

1 He could have had that understanding, but that's not what
2 Mr. Quandt said. But that does not give rise -- does not
3 give rise to bad faith, Judge. What it gives rise to is the
4 parties had worked hard. We also have spent lots of time
11:05:56 5 and money in this process. And we even then created a
6 process that will get this done, which is the Citizens
7 Committee. And so I'm asking the Court to not only deny the
8 sanctions that is being requested for the motion, but we ask
9 in our motion for our own sanctions because the motion was
11:06:16 10 filed in bad faith and we are asking the Court, based upon
11 these facts, that there is no basis for any bad faith of us.

12 And so I will ask Mr. Infante, do you wish me to
13 call Mr. Manigold for the things that I offered, or is it
14 fine that what I've said is offered and we don't have to
11:06:36 15 have him take the stand.

16 MR. INFANTE: Just documents are sufficient. We
17 don't need Mr. Manigold.

18 MR. MEIHN: That doesn't answer the question, sir.
19 I made an offer of proof of what Mr. Manigold would say.
11:06:48 20 I'm asking you, is that offer of proof okay or do you want
21 Mr. Manigold to spend the next hour saying those things?
22 That's all.

23 MR. INFANTE: I mean, Judge, if we are going to get
24 into what happened during mediation, I don't think he can
11:07:01 25 testify more than me.

1 MR. MEIN: Nope.

2 MR. INFANTE: Nope. If we are going to get into
3 what was said during a closed session, I think he is going
4 to waive attorney/client privilege, and that would be
11:07:09 5 interesting as well. I don't -- we don't need Mr. Manigold
6 to talk about what happened or what was said to him in the
7 mediation session, because you already said we are not
8 getting into that, which violates 408 anyway, and if we are
9 going to get into what was discussed in a closed session
11:07:27 10 with counsel by the Township, I mean if they want to waive
11 the privilege, sure.

12 MR. MEIHN: Judge, he is throwing up things, none
13 of that did I say, none of that have I proposed. So I will
14 go back, because either I'm not clear or Mr. Infante is not
11:07:42 15 hearing it.

16 I gave an offer of proof that Mr. Manigold would
17 testify as to what the motion in the minutes says and how
18 that motion occurred. I gave an offer of proof on September
19 14th that he would indicate to the Court what the directive
11:08:02 20 was and how that motion was made in the minutes. He is
21 simply going to confirm that these minutes reflect the
22 emotions that were made by the board because you heard
23 Mr. Infante talk all over the world about what the board
24 said. That's all I want him to do. So if he wants -- I
11:08:22 25 agree the documents speak for themselves. I just want the

1 offer of proof that Mr. Manigold would say these are
2 accurate documents.

3 THE COURT: As far as I'm concerned -- Have the
4 minutes been approved?

11:08:31 5 MR. MEIHN: Yes, sir.

6 THE COURT: Okay. As far as I'm concerned, it's a
7 public document.

8 MR. MEIHN: Got it. Thank you.

9 THE COURT: Okay.

11:08:36 10 MR. MEIHN: Thank you, your Honor.

11 THE COURT: All right.

12 Mr. Infante, go ahead.

13 MR. INFANTE: Thank you, Judge.

14 It was a lot of time spent calling me a liar, and
11:08:56 15 I've practiced long enough in the Western District of
16 Michigan that I don't think I need to address that. I don't
17 appreciate it, but I don't think I need to address it. I'll
18 just move on.

19 I'll move to, I guess, careful what you wish for.

11:09:12 20 I do have a letter from Joe Quandt. I had a conference with
21 him when I was up there for a deposition, and I said to him,
22 because I provided this Court with declaration about what
23 Mr. Quandt said to me during -- that at the end that we had
24 a settlement, and he provided a letter to Mr. Meihn where he
11:09:31 25 used the words "allegedly" implying that I was inaccurate in

1 my declaration, which is what Mr. Meihn seized on, that I
2 was misrepresenting to this Court because Mr. Quandt used
3 the words "allegedly." I did waive confidentiality to the
4 statement that he provided to me. He asked that I do that,
11:09:48 5 and he provided me a letter, and I have it for the Court.
6 He says, "I can confirm that during the mediation session, I
7 did make a statement to you and your client after the last
8 round of negotiations that among the representative parties
9 participating in the mediation, there appeared to be a
11:10:07 10 consensus on the terms of settlement."

11 MR. MEIHN: Can I have a copy of that letter,
12 because there's many more paragraphs?

13 MR. INFANTE: Your Honor, would you like a copy?

14 MR. MEIHN: Please, your Honor.

11:10:20 15 THE COURT: Okay.

16 MR. INFANTE: Your Honor, that statement is what
17 led to everything following, and that is the important piece
18 of this. We had a settlement.

19 Now, looking at, you know, Mr. Meihn, I want to try
11:10:45 20 to make this as brief as possible, walked through some of
21 these exhibits, you know, that we were working toward a
22 signed written agreement. Well, of course we were. Of
23 course we were working toward a signed agreement. We had an
24 oral deal. You can have an oral settlement agreement. We
11:11:00 25 had an oral settlement agreement that the parties wanted to

1 reduce to writing. The only way to reduce it to writing is
2 to have one of the attorneys draft a first draft to reduce
3 that oral agreement to writing. That's what exhibit --
4 their Exhibit B is. I reduced it to writing, and I
11:11:19 5 circulated it. Of course, it's, I mean, settlement
6 agreements, even if you settle and you have an oral
7 agreement, you're still going to go back and forth on the
8 language of that settlement agreement. That happens every
9 single time. It doesn't mean you don't have a settlement
11:11:32 10 agreement. It doesn't mean you don't have an oral
11 agreement, because if there was any controversy or any
12 dispute of what was written down was the, you know -- if
13 what I initially wrote, Mr. Meihn says no, that's wrong, it
14 doesn't mean we don't have an agreement, because then we
11:11:49 15 just go back to Joe Quandt, because he has notes, and said
16 what were the exact words we used on this peace. That's
17 what you do in every settlement. The fact that I had to
18 reduce it to writing and send him a draft didn't mean we had
19 a deal. We had an oral deal. And we had Joe Quandt's notes
11:12:05 20 if there was any disagreement there.

21 Looking at -- Mr. Meihn said I made a false
22 statement to the Court regarding this meeting at
23 St. Joseph's Church. But if you look at Exhibit C, right
24 under the paragraph that he highlighted, a paragraph he
11:12:25 25 didn't highlight, it says, "Chown moved to schedule a

1 meeting within the next few weeks at a sufficiently large
2 local venue to allow full public participation to learn
3 about and speak on the allegations leveled in the Complaint,
4 seconded by Bickel, voting unanimously." That was the
11:12:43 5 meeting. The fact that they rolled this town board meeting
6 in the highlighted paragraph into the public meeting, that
7 was on them, that's what they did. So there was this large,
8 you know, town board meeting open to the public to talk
9 about the lawsuit.

11:13:01 10 Mr. Meihn says that there is no evidence before the
11 Court that he ever said it's a done deal. I didn't hear him
12 specifically say that he never said it's a done deal,
13 because I don't know that Mr. Meihn will ever get to that
14 point, but --

11:13:16 15 MR. MEIHN: I'll say it now.

16 MR. INFANTE: But you do have my declaration, your
17 Honor. I did provide a declaration to the Court where he
18 said to me, "It's a done deal." I know the exact space it
19 happened. I can tell you it happened somewhere between
11:13:28 20 probably 6:45 and 7:00 p.m. on September 14 in the Peninsula
21 Township town hall. Mr. Meihn was sitting two chairs in
22 from the left when I went to talk to him. I can tell you
23 the exact position.

24 Mr. Meihn mentions Rule 11. I think counsel's
11:13:50 25 under the very common misconceptions of actually how Rule 11

1 works. A Rule 11 letter is not appropriate. Under Rule 11,
2 in order to seek sanctions under Rule 11, a motion has to be
3 provided under Rule 5 to counsel. No motion was ever
4 provided to me. So Rule 11 sanctions are inappropriate. He
11:14:10 5 has not complied with the rule.

6 The last thing I want to talk about, your Honor, is
7 this Citizens Committee. This is something that I missed.
8 I meant to talk about this Citizens Committee, because this
9 is one of the crazier things that I have ever seen. One of
11:14:24 10 the crazy things that happened. So the town board voted to
11 create a Citizens Committee to negotiate a settlement with
12 the wine /REUS. That was their purpose. The Protect the
13 Peninsula folks were given three seats, three seats were
14 left to citizens who wanted to join, and then three seats
11:14:46 15 were left open for the wine /REUS. I'm not sure how the
16 wineries can be part of a Citizens Committee to negotiate
17 with themselves. Doesn't really make much sense. But if
18 you look at Exhibit 11 to what Mr. Meihn provided you, I
19 want to call your attention to the middle paragraph.

11:15:04 20 MR. MEIHN: There is no 11.

21 MR. INFANTE: I'm sorry L, L.

22 MR. MEIHN: That's okay. I want to make sure the
23 Court can look at the right one.

24 MR. INFANTE: If you see in the middle paragraph,
11:15:15 25 "The first meeting of the Citizens Committee set for October

1 27, 2021, at 10:00 a.m. The Citizens Committee's purpose,
2 as you know, is to provide a counter-proposal for settlement
3 and to engage on the ordinance in general." This is the
4 important part, which really doesn't make any sense. "The
11:15:31 5 Citizens Committee is empowered with full settlement and
6 resolution power." So what is really interesting about that
7 is, the Township has said that we can only act through an
8 open meeting, and we can only settle through an open
9 meeting, that's why we didn't have a settlement here,
11:15:48 10 because we didn't have an open meeting. But then out of the
11 other side of their mouth they are saying we created this
12 citizen committee and we delegated them with "full
13 settlement and resolution power." What is it? Which one is
14 it? Am I negotiating with the Township board or am I
11:16:07 15 negotiating with a Citizens Committee made up of this
16 activists group protecting the peninsula? Who am I
17 negotiating with? Who has authority here, because now
18 they're talking out of both sides of their mouth. And I can
19 tell you that the first meeting of this Citizens Committee
11:16:23 20 was live-streamed, and I watched it. I watched this live
21 stream. And it was about as off the rails as you would
22 think it would be, but Mr. Meihn participated in that first
23 meeting. And he told this Citizens Committee that if this
24 Court, or when this Court requires the party to engage in a
11:16:42 25 settlement conference, it will be the Citizens Committee

1 that will attend that settlement conference on behalf of
2 Peninsula Township and not the town board. How does it
3 work, Judge? Who do I negotiate with? Who is going to be
4 in front of you in this case? I mean Mr. Meihn actually
11:17:04 5 said at the meeting, and I don't represent you, Citizens
6 Committee. So, now is he the wrong attorney to be sitting
7 here? Is he the wrong party here? Who is the party here?
8 We need to know. And this is the runaround that we have
9 been getting in this case is, you know, who's on first? I
11:17:22 10 don't know.

11 So Judge, you made -- you ruled that we don't have
12 a settlement. And we are proceeding -- summary judgment
13 briefing is due December 15, we have two -- we have three
14 depositions to finish, two to start, they were scheduled for
11:17:40 15 next week, one to finish, and we are going to file for
16 summary judgment.

17 But we shouldn't have gotten to this point. We
18 settled. We are asking for the Court to award us our costs
19 and fees incurred in this sideshow that we engaged in.

11:17:57 20 But the last thing I'll ask your Honor is, we still
21 think this case should settle. We have a settlement
22 agreement that I think Mr. Meihn would agree is probably
23 good for all sides. He and I had conversations, and we said
24 this is a good settlement for all sides. I think Mr. Meihn
11:18:13 25 would probably agree and tell the Court he agrees. It's a

1 good settlement. And we have that document written.

2 I would ask that your Honor send us to a settlement
3 conference with Judge Kent now as opposed to waiting I think
4 we are scheduled for June or July. Trial in this case I
11:18:30 5 think is set for August of next year. Just send to us Judge
6 Kent. We had a hearing with Judge Kent two weeks ago, and
7 this issue came up, and he said, I would be happy to have a
8 settlement conference with all of you. You know Judge Kent,
9 he'd dig into it and he would have this thing done.

11:18:46 10 THE COURT: I've had Judge Kent say that on many of
11 my cases.

12 MR. MEIHN: And the funny part, Judge --

13 THE COURT: Did he say that with a straight face or
14 was he smiling?

11:18:55 15 MR. INFANTE: He was very serious. He --

16 MR. MEIHN: Judge, just 15 seconds. But I would
17 agree with him, Judge Kent has said it from the beginning of
18 any of the battles that we've had, that this case should be
19 settled. And I don't think any of the lawyers sitting here,
11:19:10 20 me standing here, Mr. Infante, would disagree with you that
21 the case shouldn't settle. The problem is, Judge, that the
22 lawyers got into the way of this process. And sometimes the
23 lawyers need to step out and let the process happen. And so
24 when we couldn't get Mr. Infante and his team out of this,
11:19:32 25 take our proposal or nothing, then the only way to start it

1 again was this Citizens Committee. With all due respect,
2 Judge, one could talk about what is a Citizens Committee,
3 what it's going to do, what -- with all due respect, attend
4 a darn meeting and find out. We are ready to answer the
11:19:53 5 questions.

6 THE COURT: How does a Township board delegate to a
7 Citizens Committee full settlement and resolution power?

8 MR. MEIHN: Easily.

9 THE COURT: Tell me how.

11:20:05 10 MR. MEIHN: Because there is board members.

11 THE COURT: They can't speak on behalf of the
12 Township in this Court, can they?

13 MR. MEIHN: We are talking two different things
14 here, your Honor. If you're talking about speaking before
11:20:16 15 this Court --

16 THE COURT: Presumably I would have to dismiss the
17 case if there's a settlement, right?

18 MR. MEIHN: They would never speak to this Court,
19 the Citizens Committee, but they were empowered to speak
11:20:27 20 with Mr. Infante and his team to have a group of citizens
21 together empowered to come up with a solution.

22 THE COURT: What does "resolution power" mean?

23 MR. MEIHN: It means they come up with a resolution
24 to resolve this matter. And by the way, Judge, when it's
11:20:45 25 made up of three farmers, three wineries --

1 THE COURT: I don't care who it is. I don't care
2 who it is. How does the Township board delegate this
3 responsibility to somebody else?

4 MR. MEIHN: The way they delegate any of the
11:20:58 5 responsibilities for people to get a resolution that's
6 brought to them. Does this ultimately--

7 THE COURT: Let's go back to September 13th at
8 8:15, final mediation session. Mediator says something
9 along the lines the case is settled. The details of which
11:21:17 10 I'm not sure are terribly relevant. Mr. Infante is given
11 the responsibility of drafting the final settlement terms
12 for review. Am I right so far?

13 MR. MEIHN: You are correct so far, other than it's
14 a term sheet.

11:21:34 15 THE COURT: The term sheet, thank you.

16 Mr. Infante drafts the term sheet, sends it to you,
17 it gets reviewed by someone, obviously yourself. And if I
18 understood the papers correctly, there are no edits from the
19 Township at that point in time.

11:21:56 20 MR. MEIHN: Not from the Township, but the WOMP was
21 still waiting for their view on whether or not this
22 reflected their understanding. If you read that email, it
23 says, and I quote -- hang on for a moment, please.

24 "This is still pending review from my clients, and
11:22:20 25 may be missing items and things I think cover anything."

1 And I simply say, "I await the final document from you." So
2 when he --

3 THE COURT: And you got -- you received it, right?

4 MR. MEIHN: Yes.

11:22:34 5 THE COURT: And then you signed off on behalf of
6 the Township saying no edits, right?

7 MR. MEIHN: I didn't sign off. I said I have no
8 changes to the term sheet.

9 THE COURT: And I totally appreciate the fact that
11:22:46 10 the Township board needs to approve the settlement, that's
11 their job.

12 MR. MEIHN: Correct.

13 THE COURT: They are the defendant, the Township
14 board's got to approve it. I appreciate the fact that there
11:22:58 15 was one member missing on the 14th, they wanted a full
16 compliment of the Township board members to be there.
17 That's -- apparently this was after a closed session.
18 That's entirely appropriate, too. That's within the
19 discretion of the Township board to do that. Then we get to
11:23:16 20 the special meeting on the 6th, and the settlement is
21 rejected seven to zero, including the members that
22 participated in the negotiating session.

23 MR. MEIHN: Absolutely, yes, sir.

24 THE COURT: All right. Now, why shouldn't you or
11:23:33 25 why shouldn't the Township pay Mr. Infante's attorney fees

1 and costs between September 13th at 8:15 in the evening and
2 October 6th when the settlement is rejected?

3 MR. MEIHN: Because he should be paying mine.

4 THE COURT: No.

11:23:50 5 MR. MEIHN: Here is why.

6 THE COURT: No, no, no.

7 MR. MEIHN: If you could give me a moment.

8 THE COURT: Go ahead. I'll give you the
9 opportunity. Why?

11:23:55 10 MR. MEIHN: Because we did not impose a restriction
11 on the term sheet on how it was to be reviewed.

12 THE COURT: Well now, wait a minute. I thought
13 that discussion was prior to September 14.

14 MR. MEIHN: It was, your Honor.

11:24:10 15 THE COURT: Okay. Well, then that's -- Isn't that
16 operative at the time that you're signing off saying no
17 edits from the Township?

18 MR. MEIHN: Well, wait a minute. Whoa. So here is
19 my concern, Judge. And I understand where you are going,
11:24:23 20 but please give me just a second.

21 THE COURT: I'm give you the opportunity, but you
22 can tell that I'm having difficulty understanding the
23 argument.

24 MR. MEIHN: I can. And so here's where we are at.

11:24:33 25 What you're really saying is then, by staying in the

1 mediation process, once it was changed by WOMP and good
2 faith -- Judge, you shake your head like that. This was
3 very important.

4 THE COURT: It got changed before. If I -- I
11:24:49 5 appreciate there was shifting sand.

6 MR. MEIHN: Yes.

7 THE COURT: Okay. After you started the mediation
8 process, there was shifting sand.

9 MR. MEIHN: Yes.

11:24:57 10 THE COURT: Mr. Infante's taken -- has described
11 his position in terms he wanted, for lack of a better term
12 -- my term, not anybody else's -- a global settlement as
13 opposed to dealing with the piecemeal issues one at a time
14 or three at a time or whatever the number was.

11:25:11 15 MR. MEIHN: Yes, sir. We are all in agreement.

16 THE COURT: That's all before September 14th,
17 right?

18 MR. MEIHN: That is all before September 14th. But
19 the members, the four members that weren't part of the
11:25:21 20 meeting, did not get presented until the 14th that this was
21 an all or nothing. And then by the time that the 6th --
22 because it was in the document -- we didn't get the term
23 sheet until the 14th, Judge, and so the members who got it
24 on the 14th, seeing -- the ones that weren't part of the
11:25:40 25 meeting -- seeing that it was an all or nothing, on the 6th

1 they had the right and the discretion, Judge, to decide that
2 if it's all or nothing, given what we have heard from the
3 public of their wanting to be involved, then we are changing
4 our mind. They have the right to change their mind at any
11:26:00 5 time.

6 THE COURT: I totally agree with you that they have
7 the right to change their mind. But the issue before the
8 Court is whether, given that change of mind from
9 September 14, Mr. Infante's client is entitled to his legal
11:26:15 10 fees and his costs in that period of time. That's what I'm
11 focused on.

12 MR. MEIHN: Yes.

13 THE COURT: In that period of time. Township
14 board, they are elected representatives of the Township,
11:26:26 15 they can change their mind, but that change of mind has
16 implications. And the question is, under those
17 circumstances, recognizing that the Township board has got
18 the authority to change their mind.

19 MR. MEIHN: I'm with you.

11:26:41 20 THE COURT: I appreciate that. But that doesn't
21 resolve the issue of whether your client, given the change
22 of mind is -- should pay plaintiff's attorney fees and costs
23 during that period of time. Post --

24 MR. MEIHN: I get it.

11:26:58 25 THE COURT: Post September 13, 8:15 p.m.

1 MR. MEIHN: No, I get it now. I get exactly where
2 you're at.

3 THE COURT: You see where I'm focused?

4 MR. MEIHN: I get it. And there is two things. I
11:27:07 5 will learn here out that when there is a change in this
6 mediation process that goes on, I will have my clients walk
7 out every time, because it put us in the position that
8 you're now telling me that you're contemplating sanctions
9 for this period of time where the board members decided,
11:27:25 10 after the first time seeing it, and seeing it's all or
11 nothing, some of them, they are not willing to do it. And
12 as all -- all of a sudden you think that that is somehow bad
13 faith. It's not. Also, why it's not bad faith is they got
14 to listen to the wine /REUS talk. 165 people talked, and if
11:27:46 15 their view is swayed to do something different like engage
16 us and let's make some modifications to the terms, that's
17 not bad faith, and that's where you have to go on this, your
18 Honor.

19 THE COURT: I'll say it again. The Township
11:27:58 20 board's got the right to change their mind.

21 MR. MEIHN: Right.

22 THE COURT: Okay. But given the settlement
23 agreement -- settlement terms drafted on the 14th, legal
24 representation on behalf of the Township says no edits, and
11:28:15 25 then the board exercises their authority on the 6th to say

1 7-0, including the board members that were included in the
2 negotiating sessions, nobody votes for this.

3 MR. MEIHN: What I -- can I understand this so I
4 can walk away with knowledge on this, I think I understand
11:28:33 5 you. So if the town board on the 14th, instead of
6 adjourning it for the 6th so that the members could review
7 the terms, they should have rejected it at that time and not
8 caused Mr. Infante to incur whatever he incurred from the
9 14th to October 6th, because the October 6th is just an
11:28:56 10 extension of the September 14th meeting, Judge. That's all
11 it is.

12 So if you think of this from a logical perspective,
13 because I get where you're at now, and I understand where
14 you're at. I just slightly disagree, with all due respect,
11:29:10 15 that the decision is not a bad faith decision, because if
16 they would have done it on the 14th, it would not have been,
17 looking at your order, any consideration of bad faith. If
18 they had walked out after the second session, it would not
19 have been bad faith. Where is their -- Where is their
11:29:30 20 consideration for their willingness to stay in the game and
21 try to make it work. They just got in a position, Judge,
22 with all due respect on the 14th they couldn't do it; on the
23 6th, which should be considered the same as the 14th, they
24 got into a position where they felt that with all of the
11:29:48 25 things that they were hearing for the first time, that they

1 needed to give the citizens an opportunity to participate in
2 this resolution. And that is what this is.

3 THE COURT: And that clearly, vis-a-vis the
4 plaintiff, that's clearly a shift in ground, correct?

11:30:06 5 MR. MEIHN: Yes. And there is --

6 THE COURT: I mean up until that time, the
7 plaintiff was entitled to assume that their legal
8 representative and those members of the board that attended
9 the mediation sessions spoke for the Township subject to --
10 I get you -- the final approval of the board. But clearly
11 it's a shift in ground inconsistent with the settlement
12 terms of September 14 --

13 MR. MEIHN: So if it would --

14 THE COURT: -- as of October 6th.

11:30:39 15 MR. MEIHN: So if it would have been a 4-3 vote,
16 there would be different -- How is a 4-3 vote different
17 than a 7-0 vote?

18 THE COURT: Well, I can tell you what, the two or
19 three members who appeared before or participated in the
11:30:52 20 Township sessions --

21 MR. MEIHN: Yes, sir.

22 THE COURT: -- and voted no, that's problematic, in
23 my opinion.

24 MR. MEIHN: Well, if you take what was going on,
11:31:03 25 this process was not -- again, remember on the 14th,

1 Mr. Infante didn't even have his clients in an agreement
2 with the term sheet. And the reason is, is that the
3 parties, through their attorneys, were proposing things that
4 they believed they could promote and sell to their clients.

11:31:23 5 On the 14th, Infante sends a letter to me saying here's my
6 draft of the term sheet, I think I got it, but my client's
7 haven't approved. Now, that's a shift in position. Now,
8 they ultimately approve, but he says his clients haven't
9 approved. It's right there. And then so then when it's
11:31:43 10 provided to me --

11 THE COURT: Had his clients approved it as of the
12 time of the Township meeting on the 14th?

13 MR. MEIHN: Got it. And that's all I'm saying is,
14 all right, the 14th, his clients haven't approved it and
11:31:54 15 then they do. On the 6th, my clients don't approve it.

16 THE COURT: So there was no change coming from the
17 plaintiff?

18 MR. MEIHN: There was the change -- The change
19 ultimately was, was what before the board, yes, there was no
11:32:07 20 change there.

21 THE COURT: Okay.

22 MR. MEIHN: All I'm saying, though, just as the
23 plaintiffs were entitled to change the term sheet, as they
24 did, from what was discussed during mediation, that was
11:32:19 25 presented to us, because they needed their clients'

1 permission and add the items. Because remember, it says,
2 "Pending review from my clients and may be missing items
3 though I, I think I've covered everything." All right so --

4 MR. INFANTE: Judge, he keeps misrepresenting. If
11:32:36 5 you look at our Exhibit 13, the email from 11:49 that day
6 says, "Attached is the updated term sheet. This should be
7 good for final review. We agreed --"

8 MR. MEIHN: We are not disagreeing about that. My
9 point -- That's not the point.

11:32:50 10 THE COURT: Go ahead.

11 MR. MEIHN: The point is for, your Honor, saying we
12 shifted in our position and we are entitled to do so, but
13 that comes with a cost or consequence from the 14th.

14 THE COURT: Absolutely.

11:33:01 15 MR. MEIHN: I get that. And what I am struggling
16 with, and then I will be done is, how can a term sheet which
17 is produced that's then been reviewed with things fixed,
18 added, corrected, and presented to me. And I look at it and
19 says this reflects the things that had come out, and then
11:33:22 20 the board sees it for the first time, because they have
21 never seen the term sheet, and they are also then told,
22 remember, this is take it or leave it, they are entitled to
23 make a change in their position. And it's not bad faith to
24 do that. I know you are saying they can. You just think
11:33:40 25 that by a 7-0.

1 THE COURT: I don't think -- I -- He is entitled
2 to his sanctions -- the motion for sanctions. He is
3 entitled to his attorney fees from September 14th through
4 the October 6th date, plus his costs. That's my ruling.

11:33:58 5 MR. INFANTE: Judge, can I make one clarification?
6 I did not travel back to Grand Rapids until the 7th, I had
7 to stay the night because the meeting was late at night,
8 extend it to be the 7th.

9 THE COURT: I'm granting the motion. The next
11:34:09 10 piece is for Mr. Infante to file with the Court, within two
11 weeks, the proposal for attorney fees and costs. Mr. Meihn
12 will have the opportunity to reply to it, and then we will
13 move on from there. But I'm going to grant the motion.

14 MR. INFANTE: Thank you, Judge.

11:34:28 15 MR. MEIHN: Are you going to at some point, or
16 should I consider the ruling that you are not granting our
17 request for costs and fees?

18 THE COURT: Well, I'll review that one more time
19 and we will get an order out on it.

11:34:41 20 MR. MEIHN: Thank you. And last but not least,
21 just for clarification, we do have that December 15 motion
22 for summary disposition on the commerce clause issue due.
23 We plan on filing our own summary disposition on those
24 issues. I suspect that they are. Now, what I can -- I know
11:34:56 25 what the Court rules say --

1 THE COURT: That's a little tight.

2 MR. MEIHN: Understood.

3 THE COURT: Yes.

4 MR. MEIHN: I can understand what the Court rules
11:35:02 5 say, and so I'm not advocating changing the December 15th,
6 but if the Court would do that, that's great. But what I'm
7 really trying to get clarification, we are going to file a
8 motion for summary disposition, he is going to file a motion
9 for summary disposition, and then we are each going to reply
11:35:17 10 and possibly sur reply, that process. Is that acceptable to
11 you? Because, in other judges in your district have
12 indicated that --

13 THE COURT: It would be nice if all the Article
14 IIIs were on the same page, right?

11:35:31 15 MR. MEIHN: Yes. And I just don't want you to
16 reject it, and Mr. Infante is on the way with his kids and
17 he sees he's got to join it. Is it permissible for both of
18 us to file our motions for summary disposition and then
19 respond to each others, or do you want whomever files first,
11:35:46 20 the other one is going to have to respond? How do you want
21 that to go, your Honor?

22 THE COURT: Excellent question. Go ahead.

23 MR. INFANTE: I expect we both will file for
24 summary judgments, and then both will respond, because the
11:35:56 25 arguments I mean --

1 THE COURT: Then the question becomes, what sort of
2 timeline do we need?

3 MR. MEIHN: Yes.

4 MR. INFANTE: Yes.

11:36:02 5 THE COURT: In part.

6 MR. INFANTE: Timeline, typical timeline is
7 probably fine.

8 THE COURT: But what about the deadline for filing?
9 We got a hearing set for the 15th and I -- this is not going
11:36:13 10 to get done by then obviously.

11 MR. INFANTE: Well, we would like to keep the
12 deadline as is because we -- I've already -- Judge, I've
13 been writing this motion summary for a long time. I have
14 it, you know, I've been writing this motion already. I
11:36:26 15 would like to keep the December 15 deadline for filing.

16 MR. MEIHN: My problem is, we have got these
17 depositions next week and the transcripts coming in, and we
18 are going to be in that process where that 15th is going to
19 come and go and the briefs aren't going to be there. So I
11:36:43 20 don't know that that is the appropriate timeline for --

21 THE COURT: So from your perspective, Mr. Meihn,
22 the motion that you want to file is discovery sensitive?

23 MR. MEIHN: Yes.

24 THE COURT: Okay.

11:36:57 25 MR. MEIHN: Absolutely.

1 THE COURT: And how many depositions do we have left, and
2 are they scheduled?

3 MR. MEIHN: Three.

4 MR. INFANTE: Two and a half.

11:37:04 5 MR. MEIHN: Two and a half, yes, he's right. We
6 didn't finish one, your Honor.

7 MR. INFANTE: And they are, you know, we have
8 deposed the important people.

9 THE COURT: Okay. But you got two and a half to
11:37:16 10 go?

11 MR. INFANTE: They are scheduled for next Wednesday
12 is Randy Mielnik, who is the former planner. Next Friday is
13 Mr. Mein's deposition, and then the following week is
14 supposed to be a gentleman by the name of Grant Parsons,
11:37:30 15 board member of Protect the Peninsula. Don't get me started
16 on why we are deposing him. The Township put him up as one
17 of their witnesses. We started his deposition and are
18 probably two hours into his, probably has -- depending on
19 how verbose he is, two hours left.

11:37:51 20 MR. MEIHN: That's before we ask questions. And
21 the problem with Mr. Grant Parsons is, Number 1, he is a
22 lawyer, so you know how we like to talk. And Number 2, he
23 is the architect of the very ordinance we are talking about.
24 So when he says these are the important people have been
11:38:10 25 deposed and finished, they have not been. We are talking

1 about the 1990s, 1980s and the 2000s.

2 THE COURT: So if I -- Let me just throw out a
3 date and we will take it from there. If I said the third
4 week --

11:38:25 5 Third week of January is Martin Luther King?

6 COURT CLERK: Yes.

7 THE COURT: If I said the day after Martin Luther
8 King, which is the 18th, for your motion, is that good?

9 MR. MEIHN: That's perfect.

11:38:41 10 THE COURT: Okay. We will take it from there.

11 MR. MEIHN: And what about Mr. Kent -- I'm sorry, I
12 can't believe I just said that.

13 THE COURT: Judge Kent.

14 MR. MEIHN: Judge Kent.

11:38:49 15 MR. INFANTE: I'm telling.

16 MR. MEIHN: Would you entertain, as you go back and
17 look at this stuff that you've been presented today, I
18 didn't want to say mess, but it is, you go back and look at
19 this stuff and you consider the sanctions we are asking for
11:39:03 20 on the motion and the sanctions you've granted for the
21 limited period for Mr. Infante, you know that I believed
22 that the dump the whole process and agree didn't work, and I
23 believe the piecemealing it up did work, did have an ability
24 to move the place until the shifting sand, and so I do
11:39:35 25 believe that a mediation with Judge Kent who would push the

1 lawyers out of the process and get them out of these rules
2 of, well, it's all or nothing or piecemeal, and work this
3 thing the way it should be worked given the environment that
4 we have here, I think is probably appropriate, because we
11:39:58 5 are never going to get to a settlement. You are going to
6 make a decision, and when you do, if you make the decision
7 we hope that you do, on both preemption and the commerce
8 clause, nothing changes. If you make the decision that
9 there are some parts on the commerce clause or preemption
11:40:15 10 that are not appropriate, really nothing changes there other
11 than the Township has to go back and modify its ordinance,
12 because the Court cannot direct an ordinance. So it's a
13 mess. And I'm pleading with you for some help on how we can
14 get beyond the lawyering process in this case and get to the
11:40:37 15 parties actually sitting down and going through these eight
16 issues. There were only eight.

17 THE COURT: Well, in light of the formulation of
18 the Citizens Committee, I'm a little bit puzzled as to who
19 Judge Kent talks to from the defendant's side of the case.

11:40:59 20 MR. MEIHN: We can modify anything we need to do.
21 We didn't have Judge Kent as a selection because, with all
22 due respect, there are times that Mr. Infante and I do not
23 talk. Had I known he wanted to do Judge Kent after the
24 motion -- excuse me, after the October 6th didn't work, and
11:41:14 25 we were struggling to find a way to bring everybody

1 together, that's all the Citizens Committee was about, was
2 to get the lawyers the heck out, stop this well, it's got to
3 be this way or not, and talk what you really want. What do
4 you really want? With all due respect, Judge, we have asked
11:41:32 5 that question: What do you really want? And many times we
6 have had plaintiffs come to certain members of the Township
7 and say we would like to resolve this and we have to push
8 them back and say you can't talk. We can't get to what do
9 you really want the way we are doing it. And if we don't
11:41:52 10 get there in a way with Judge Kent or someone else that you
11 think can do that, and pull us away, we are going to --
12 their effort is going to be not effective.

13 THE COURT: Well, let me ask the question whether
14 the pendency of the motions for summary judgment are going
11:42:14 15 to impair a settlement discussion. My experience in this
16 court as well as state court is that the pendency of
17 disposition motions impede settlement because, well, we have
18 got a motion that's clearly going to be granted by the
19 judge, so we are not interested in talking. I'm not
11:42:37 20 interested in going through that process. So if the summary
21 dispo motions are going to be pending, and that is going to
22 impact the positions of one or both of the parties, then I
23 think it's a useless exercise to get together with Judge
24 Kent until the motions are resolved.

11:42:55 25 MR. MEIHN: We can do that, but I think the flip of

1 the coin works the other way sometimes, and I think it works
2 here. There has been shown a desire on both sides to
3 resolve, and if you had the time, which I know you don't,
4 and you watch that video of 200 people standing up and
11:43:12 5 talking about we want this resolved, we want this resolved
6 including wineries, I think that the filing of the motions,
7 ours in March (sic.) and if they are doing theirs in March,
8 and hanging them over the head of the people that we have to
9 make move this along, I think works to our betterment, not
11:43:31 10 to our detriment.

11 MR. INFANTE: Judge, we actually have a summary
12 judgment motion that's been pending since February. We
13 moved summary judgment on preemption, that's actually been
14 hanging out there. It's not an impediment to settlement.

11:43:46 15 Candidly, my clients will be in Judge Kent's
16 chambers tomorrow if you ordered it. We went through
17 mediation with summary judgment motion pending. In my
18 preference, and Mr. Meihn and I, you can see we don't often
19 see eye to eye, but we are on the same page here, settlement
11:44:04 20 conference with Judge Kent immediately. My recommendation
21 would be we do it before the end of the year.

22 MR. MEIHN: Absolutely.

23 THE COURT: You agree with that?

24 MR. MEIHN: Absolutely.

11:44:16 25 THE COURT: All right. Get your -- That's fine.

1 Then I'll order it.

2 MR. MEIHN: It has to be in an order from you.

3 THE COURT: Counsel, that I can do.

4 MR. INFANTE: Judge, the only thing I will add to

11:44:26 5 that is, we will not do a settlement conference with the
6 Citizens Committee, we will do it with the Township board.

7 THE COURT: That, of course, given their
8 appearance --

9 MR. MEIHN: I will. This is what -- What I would
11:44:37 10 like to do again. This is lawyers getting into the way of
11 it.

12 If you just order it, we will get there, we will
13 have the people we believe we need to get the case settled
14 with the authority, but we don't need to be -- again, this
11:44:51 15 is lawyers getting into the way of this process, Judge, and
16 so just please order it, and we will get it done. If you
17 want to have people with authority that need to be in the
18 order, that's great.

19 THE COURT: I suppose I could order the Township
11:45:05 20 board to post a meeting pursuant to the Open Meetings Act in
21 the Grand Rapids courthouse.

22 MR. INFANTE: That's how I've seen it done. Town
23 board has an open meeting in Judge Kent's courtroom.

24 THE COURT: Somewhere in the federal building in
11:45:21 25 Grand Rapids.

1 MR. MEIHN: What do we do if there's a hundred some
2 people?

3 THE COURT: I'm sorry, sir?

4 MR. MEIHN: What do we do, your Honor, if there's a
11:45:28 5 hundred and some people that show? We need to plan on that.
6 I like that. Open meetings here --

7 THE COURT: Settlement conference by its definition
8 is not on the record. So I don't know what individuals who
9 appear would do, other than to sit in the courtroom and see
11:45:46 10 what happens.

11 MR. MEIHN: Right. But when you do an Open Meeting
12 Act settlement conference, it's essentially the
13 communication that goes back and forth by the Magistrate,
14 Magistrate Kent will be in a manner where there will be the
11:46:00 15 board, with not violating the rule, and then there will be
16 whatever group of people that are there. Now, they are not
17 going to be part of that, but I'm just saying from a room
18 perspective, we should count on where we select that area to
19 occur. That's all I'm saying.

11:46:14 20 THE COURT: Okay. Well, here is what I would like
21 you to do is provide to Ms. Redmond your dates that you
22 cannot show up between now and three weeks from now.

23 MR. MEIHN: Got it.

24 THE COURT: Which would be the -- that's Christmas,
11:46:37 25 I guess, or close to it.

1 MR. INFANTE: The only -- I can provide my dates.
2 I have 11 parties that I represent, I need to make sure that
3 I'll have to -- If we can, get a couple dates.

4 THE COURT: I just want your dates where you know
11:46:52 5 you can't show.

6 MR. INFANTE: Or I can't show. Thank you, Judge.

7 THE COURT: Either -- the Township board has got to
8 be at some Michigan Township Association meeting or
9 something like that, that date is out. We just need the
11:47:09 10 dates that -- because I don't want to set a date and then
11 have to turn the crank again on a date because one or more
12 of the individuals who need to be there can't be there. So
13 if you could get your blackout dates to Ms. Redmond from
14 the -- and, of course, the goal here is to get the
11:47:27 15 individuals who need to be there there. If you can get the
16 blackout dates for those, you know, to get the parties
17 there, then we can get it set. And if there is some
18 indication that there are going to be a whole lot of people
19 showing up, maybe Judge Kent could borrow one of the Article
11:47:54 20 III judges' courtrooms and at least allow people to sit in
21 the spectator area of the courtroom and await proceedings.
22 But you know, the settlement conference is going to be
23 handled in a manner which Judge Kent feels comfortable with.

24 MR. INFANTE: Perfect.

11:48:12 25 MR. MEIHN: Thank you, your Honor. And we will do

1 that today.

2 Will you be able to do that today?

3 MR. INFANTE: Sure.

4 MR. MEIHN: Could I get a phone number, email -- I

11:48:22 5 can get that after, off the record. Sorry.

6 MR. INFANTE: Thanks, Judge.

7 THE COURT: That's all for today. Thanks.

8 COURT CLERK: All rise, please.

9 Court is adjourned.

11:48:31 10 (At 11:48 a.m., proceedings concluded.)

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C E R T I F I C A T E

I, Kathleen S. Thomas, Official Court Reporter for the United States District Court for the Western District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a true and correct transcript of proceedings had in the within-entitled and numbered cause on the date hereinbefore set forth; and I do further certify that the foregoing transcript has been prepared by me or under my direction.

/s/

Kathleen S. Thomas, CSR-1300, RPR
U.S. District Court Reporter
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Kalamazoo, Michigan 49007