

Memo

To: Township Board
From: Holly Brandt, Clerk
Date: January 16, 2019
Re: Belle Terre Litigation – Milford Hills Properties/RPL of Michigan vs. Charter Township of Milford

In regard to Case No. 2017-162642-CZ, concerning the Milford Hills litigation, please be advised that the parties participated in court ordered Case Evaluation on January 3, 2019. No public awards or orders have been issued as a result of that evaluation.

As indicated last month, facilitation is also an option currently being considered to resolve this dispute. If facilitation is not pursued, the parties will need to schedule expert depositions and prepare for trial.

Attorney Elowsky's description of Case Evaluation and Facilitation:

Case evaluation is mandatory in all Michigan cases of this nature, so while discovery is occurring during a lawsuit, the circuit court will mail a notice of case evaluation to all named parties, as it did in regard to the present matter (scheduled for January 3, 2019). Each party is required to submit a case evaluation brief or summary, with supporting documentation, to the mediation tribunal within 14 days of the case evaluation hearing. The summaries usually contain a statement about how the situation occurred, what damages exist, and the legal reasoning for why the plaintiff is entitled or not entitled to compensation. The panel that hears the case evaluation consists of three attorneys. Evaluators are assigned to cases randomly by the court.

Because case evaluation is a tool for settlement, nothing said or used in the case evaluation process, including statements made during the case evaluation hearing, are admissible in court or publicly disclosable. Typically, the plaintiff's attorney begins and gives the panel a brief background of the case. The attorney

will highlight his or her client's claims, damages, and why his/her client is entitled compensation. After the plaintiff concludes, defense counsel (the Township) will then put forward its reasoning as to why the plaintiff is not entitled to the compensation he or she seeks. During the entire hearing process, which usually lasts less than an hour, the panel will ask questions to the attorneys.

Within 14 days after the hearing, the panel will make an evaluation and notify the attorney for each party of the evaluation award. In reality, the evaluation award is almost always made on the hearing date itself, immediately after the parties have concluded their arguments and discussion. The award is then distributed to the lawyers present for the case evaluation hearing. Within 28 days of the panel's award, the parties must file a written acceptance or rejection of the panel's evaluation with the ADR clerk. The parties do not hear about the other party's decision until after the 28-day period expires. If both sides accept the case evaluation award, the case settles for that amount and the matter does not proceed any further through the court.

Most cases do not settle at case evaluation because one side rejects the case evaluation panel's award. In fact, only approximately 15% of cases settle from both sides accepting the case evaluation award. It is important to note, however, that there are potential repercussions for rejecting the case evaluation panel's award. Under MCR 2.403(O)(1), if a party has rejected a case evaluation and the action proceeds to verdict, that party must pay the opposing party's actual costs unless the verdict is more favorable to the rejecting party than the case evaluation. Under the rules, the verdict is considered more favorable to a defendant if it is more than 10 percent below the evaluation, and is considered more favorable to the plaintiff if it is more than 10 percent above the evaluation. In essence, this means if a plaintiff rejects an evaluation and a judge/jury issues a verdict, the plaintiff must pay the other party's actual costs if it doesn't beat the case evaluation number by 10%. These costs, commonly known as case evaluation sanctions, can include attorney fees, deposition costs, filing fees and expert fees.

Facilitation, which is also being considered by the parties, is an entirely separate process, and both procedures stand-alone from an actual trial. Settlement can occur through case evaluation, facilitation, or other agreement between the parties, or the court could dispose of the matter through summary judgment, which could be motioned by either or both parties. If the matter is settled or disposed of in any way, actual trial becomes unnecessary and would not occur.