

Memo

To: Township Board
From: Holly Brandt, Clerk
Date: December 19, 2018 (Revised since meeting packet)
Re: Joel Hack & Wren Beaulieu-Hack Litigation vs. Charter Township of Milford

The following information outlines the substantial activity that has occurred in regard to the Joel Q. Hack, et. al. (Plaintiffs) vs. the Charter Township of Milford, et. al. (Defendants) US District Court litigation. The corresponding pleadings will be sent separately (although I may have to send them to Drop Box if they exceed the size limitation for the Township's email), and I will indicate in each email what pleading is attached. It appears that the exhibits have been filed separately from the pleadings, but I will include everything that should go together in each email.

- **November 23, 2018 – Plaintiffs filed an Emergency Motion to Remand Counts I, II, III, and IV, and the Court set a hearing date for December 12, 2018.**

In filing this Motion, Plaintiffs were seeking to have Count I and II (declaratory and injunctive relief), Count III (inverse condemnation), and Count IV (due process violation) of their Complaint remanded from the United States District Court of the Eastern District of Michigan back to the Oakland County Circuit Court, alleging that the federal court should not exercise its supplemental jurisdiction over the state law claims.

- **November 27, 2018 - Plaintiffs served Defendants with Plaintiffs' First Set of Interrogatories, Requests for Production of Documents, and Requests for Admissions to Defendants.**

Although the Township's legal counsel adamantly attempted to amicably resolve all claims with Plaintiffs, their lawyer has aggressively and recklessly pushed forward with discovery. In addition to the Interrogatories and Request to Produce, the Township has been served with subpoenas for the depositions of Township resident David Mamo and his wife, Valerie, to provide testimony on December 17, 2018. Plaintiffs' counsel has also requested the depositions of Township Supervisor Don Green, Building Official Tim Brandt, and Township engineering consultant Mike Darga (HRC). The Interrogatories and Requests for Production of Documents and Admissions is due by December 27, 2018.

- **December 4, 2018 – Defendants filed their Response to Plaintiffs Emergency Motion to Remand Counts I, II, III, and IV.**

In seeking to have the claims remanded, Plaintiffs mistakenly alleged that the federal court should not exercise its supplemental jurisdiction over the state law claims, noting that there are different standards for evaluating due process and unconstitutional taking claims under state and federal law. The Township opposed Plaintiffs' Motion to Remand based upon the position that due process rights and claims for unconstitutional taking are the same under state and federal law. In addition, Plaintiffs asserted that there were different standards for immunity, but Plaintiffs did not specifically assert any damage claims against the only individual defendants in the case, Mr. Brandt and Mr. Green, so the Township opposed Plaintiffs' Motion in that regard as well. Finally, because Plaintiffs' counsel claims that Mr. Hack suffers from emotional distress as a result of issues relating to the subject permit, the Township's legal counsel insisted on obtaining a qualified protective order allowing ex parte meetings with Mr. Hack's treating physicians, which is commonly done when a party puts their health in controversy as Mr. Hack has done.

- **December 5, 2018 – Defendants filed an *Emergency Motion for Protective Order Pursuant to Fed. R. Civ. P. 26*, which shall be heard on December 12, 2018, the same day the court has scheduled arguments on Plaintiffs' Motion to Remand.**

Plaintiffs' counsel has refused to cooperate with discovery and has scheduled depositions on dates when the Township's legal counsel is not available to attend. He insists that there is urgency to proceeding with discovery and would not abide by the Township's request to reschedule the depositions to mutually agreeable dates. Instead, Plaintiffs' counsel outright ignored the conflict and scheduled the depositions of David and Valerie Mamo on December 17, 2018, and Township engineer, Michael Darga, on December 18, 2018. The Township filed this Emergency Motion for Protective Order to seek court enforcement of attorney ethics and provide guidance in regard to discovery.

- **December 10, 2018 - Plaintiffs filed their Reply to Defendants Response to Emergency Motion to Remand Counts I, II, III, and IV, and their Response to Defendants Emergency Motion for Protective Order.**
- **December 11, 2018 - Plaintiffs filed a Joint Report of Rule 26f Conference (Discovery Plan).**
- **December 12, 2018 - Defendants filed a Motion for Summary Judgment.**

Defendants Motion for Summary Judgment ("MSJ") states that Plaintiffs' inverse condemnation claim fails because it is not ripe for review and because Defendants' actions of imposing preconditions to the construction of a residential driveway does not amount to an unlawful taking. The MSJ also states that Plaintiffs' due process claim fails because Plaintiffs lack a constitutionally protected property interest and because Defendants' actions were neither arbitrary nor capricious. And the MSJ states that the remaining claims in the Complaint for declaratory and injunctive relief, as well as Count V alleging 42 U.S.C. §§ 1983 and 1988 liability, must be dismissed because the foregoing are remedies or procedural mechanisms to vindicate rights elsewhere conferred – not substantive causes of action. Thus, without an underlying violation, Plaintiffs are not entitled to the relief sought therein.

As of the time of writing of this email, our office has not yet heard what happened at today's hearing. As stated above, both Plaintiffs' Emergency Motion to Remand Counts I, II, III, and IV and Defendants' Emergency Motion for Protective Order Pursuant to Fed. R. Civ. P. 26 were heard late this afternoon. Our office anticipates being able to provide a status report of that hearing to the Township Board at next week's meeting.

On December 12, 2018, the Township's liability defense attorney appeared before Judge Marianne Battani in the United States District Court for the Eastern District of Michigan for oral argument on

Plaintiffs' Emergency Motion to Remand the case to state court. The Township had also filed a Motion for a Protective Order to prevent the depositions of Mike Darga, David Mamo, and Valerie Mamo from going forward when legal counsel was not available to attend, which was heard simultaneously with Plaintiffs' Motion.

Before entertaining oral argument, Judge Battani inquired as to whether or not the case could be resolved. Plaintiffs' counsel asserted that the Township was unreasonable and was continually changing the requirements for construction of the driveway. The Township's legal counsel explained to the Court that it was Plaintiffs' attorney who was the primary impediment to any resolution, and the Township had offered an amicable resolution of the case. Given the position of Plaintiffs' counsel, Judge Battani proceeded with oral argument on the motions.

After lengthy oral argument, Judge Battani ultimately denied Plaintiffs' Motion to Remand. She ruled that the state and federal issues were inextricably intertwined, and that relief would not be granted without consideration of the federal claims. In regard to the Township's Motion for Protective Order, Judge Battani questioned why the Plaintiffs' attorney had proceeded to schedule depositions dates when he knew the Township's legal counsel was unavailable, and ruled that the depositions would not be allowed to proceed as scheduled. Instead, Judge Battani ordered that the subject depositions must take place between February 11 and February 15, 2019. Judge Battani also ordered that the parties engage in mediation with a neutral third-party before January 15, 2019, and possible mediators have been suggested for consideration by the Township

In regard to the Township's Motion for Summary Judgment, which was filed on December 12, 2018, the Court issued a Notice of Hearing (see attached) setting forth the following dates:

- RESPONSE DUE: January 16, 2019
- REPLY DUE: February 6, 2019
- MOTION HEARING: February 28, 2019 at 02:00 PM

On December 18, 2018, the Court issued an Order Denying Plaintiffs' Motion for Remand and Granting Defendants' Motion for Protective Order (see attached). The Court also issued a Scheduling Order (see attached), which set forth the following dates:

- Mediation to be completed by: 1/31/19
- Depositions to be Completed by: 2/15/19
- Discovery Cutoff: 5/30/19
- Dispositive Motion Cutoff: 6/15/19