

New Civil Discovery Rules Seminar and Webinar

August 26, 2019
Hall of Justice, Lansing, Michigan

A 21st Century Approach: Strategic Judicial Case Management

Hon. James Alexander, 6th Circuit Court



STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Plaintiff,

HON. _____

Case No.

vs.

Defendant.

NOTICE AND ORDER TO APPEAR

TO: ALL COUNSEL OF RECORD

You are notified to appear in the chambers of the HON. _____ of the Oakland County Circuit Court, 1200 N. Telegraph, Pontiac, Michigan 48341 for a Case Management Conference _____ at _____ a.m./p.m.

At least one week prior to the Case Management Conference, the parties must submit a Joint Case Management Plan.

Counsel for Plaintiff must initiate a conference with all counsel of record for the purpose of preparing the Joint Plan. All counsel must cooperate in the preparation of the Joint Plan. Counsel for Plaintiff must file the Joint Plan. The Joint Plan¹ must address the following:

1. A **brief** description of the Plaintiff's claim(s) and a **brief** description of the Defendant's defenses. Additional paragraphs may be added to address any counterclaims, third-party claims or other additional claims in the case.
2. The parties must disclose the relief and a good faith estimate of the damages sought for all claims and counterclaims. Depending upon the relief and damages amount sought and the nature of the case, the Court may place the case on an expedited docket.
3. The basis for jurisdiction in the Business Court and whether jurisdiction is contested.
4. Whether or not venue is proper in Oakland County.
5. Whether the pleadings are complete or whether any amendments or additional pleadings/parties are required.

¹ The Joint Plan is to assist the Court in establishing an appropriate case management plan for the case. The statements made by a party in the Joint Plan shall not be admissible in evidence for any purpose.

6. A proposal for a Scheduling Order to issue in the case, addressing at a minimum the following:
 - a. The date by which any additional parties will be joined and the pleadings completed.
 - b. The date by which all discovery will be completed. The parties will be expected to discuss what type of discovery will be sought in the case.
 - c. Dates for disclosure of testimonial expert witnesses.
 - d. The date by which witness lists will be exchanged.
 - e. The date by which the parties desire to mediate/facilitate the case. The parties shall have discussed a mutually-agreeable facilitator prior to the Case Management Conference.
 - f. Whether and when the parties desire to have the case submitted to case evaluation under MCR 2.403.
 - g. The date by which all dispositive motions will be filed.
 - h. The date by which the parties will be ready for trial.
7. Any discovery issues that the parties anticipate may require Court intervention, including any issues regarding discovery of electronically stored information.
8. Be prepared to discuss the status of initial disclosures required by the Case Management Protocol as well as any issues that the parties are having with regard to the initial disclosures.
9. Whether the case is jury or non-jury.
10. Estimated length of trial.
11. Whether the parties stipulate to the entry of the Model Protective Order as attached.
- 12. The Business Court Case Management Protocol, as attached, shall be adopted as a Court Order by the Court for the governance of all cases assigned to the business court docket unless specific objections are filed by either party prior to the Case Management Conference.**
13. Any other issues that counsel desire to bring to the attention of the Court.

Counsel must be prepared to discuss the above issues at the Case Management Conference, during which a Scheduling Order will be prepared and issued.
14. The parties may consider and discuss stipulating in the Scheduling Order to a 9-day filing requirement for what are otherwise 7-day motions.

Lead counsel for all parties shall appear at the Case Management Conference. Failure of lead counsel to attend may result in sanctions. Failure to timely file the Joint Case Management Plan may result in sanctions. Attorneys of Record must also provide an email address on all future pleadings.

SO ORDERED.

Date

Judge
Oakland County Circuit Court Judge
Business Court

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

Plaintiff,

vs.

Hon.

Case No.

Defendant.

SCHEDULING ORDER

At a session of Circuit Court held in the City of
Pontiac, County of Oakland, State of Michigan on

Present: Hon. _____

The Court having conducted a Case Management Conference with counsel of record:

IT IS HEREBY ORDERED AS FOLLOWS:

1. The parties are permitted to amend their pleadings as of right up to _____. Any amendments after that date require an Order of the Court.
2. All discovery must be completed by _____.
3. The parties shall make certain initial disclosures, to the extent that such information is known and in accordance with provision 2(c)(ii) of the Business Court Case Management Protocol, within 30 days.
4. Plaintiff must disclose the identity of any testimonial experts by _____ together with a statement of the subject matter(s) to be addressed by each expert witness.
5. Defendant must disclose the identity of any testimonial experts, together with a statement of the subject matters(s) to be addressed by each expert witness, within 21 days of receipt of Plaintiff's disclosure as set forth in No. 4.

6. Witness lists must be exchanged and filed with the Court at least 60 days prior to the close of discovery.

7. All Dispositive Motions must be filed by the following date of _____.

8. All Motions in Limine must be filed and heard by no later than three weeks before trial.

9. The case is ordered into mediation/facilitation by _____. The parties may stipulate at any time to submit the case to mediation/facilitation prior to this date. The parties shall name a facilitator by _____ unless selected at the Case Management Conference. **CLIENTS WITH SETTLEMENT AUTHORITY MUST BE PRESENT AT MEDIATION/FACILITATION.**

10. The case will be submitted to case evaluation on or about _____.

11. A final pre-trial conference will be held on _____ at _____. **CLIENTS WITH SETTLEMENT AUTHORITY MUST BE PRESENT AT THE FINAL PRE-TRIAL CONFERENCE.**

12. The case is set for jury/non-jury trial on _____ at _____. The trial will last approximately _____ days.

13. A Status Conference shall be held on _____ at _____. **CLIENTS WITH SETTLEMENT AUTHORITY MUST BE PRESENT AT THE STATUS CONFERENCE.**

14. The Model Protective Order is hereby adopted.

15. **The Business Court Case Management Protocol is hereby incorporated into this Scheduling Order as an Order of the Court. The Case Management Protocol is available on the Oakland County website (oakgov.com/courts/businesscourt).**

16. Other:

Date

Judge _____
Oakland County Circuit Court Judge
Business Court

**CASE MANAGEMENT PROTOCOL
OAKLAND COUNTY CIRCUIT COURT
BUSINESS COURT CASES**

1) Governance

- a) As provided in the Notice and Order to Appear, the Business Court Case Management Protocol shall be adopted as a Court Order by the Court for the governance of all cases assigned to the business court docket unless specific objections are filed by either party prior to the Case Management Conference.
- b) The Case Management Protocol shall be discussed by the parties and the Court at the initial Case Management Conference. If objections have been raised, the objecting party must show good cause as to why a particular case should be exempted, in whole or in part, from the Case Management Protocol or why the Case Management Protocol should be modified in relation to that particular case. Any deviation from the Case Management Protocol shall be specifically described by the objecting party and alternative procedures suggested.
- c) The Case Management Protocol, including any alternative procedures acceptable to both the parties and the Court, shall be incorporated into the Scheduling Order.

2) Standing Protocols

- a. Electronic Service. All counsel of record agree to accept service of all filings and other communication via email at the address identified by the State Bar of Michigan or a single email address as otherwise directed. Service is accomplished upon transmission absent knowledge by the sender that the email was not received (*e.g.*, it is returned as undeliverable). Delivery of materials by the Court's e-filing system also constitutes service effective as of the time stamp on the document.
- b. Case Management Conference. The Court will conduct a Case Management Conference early in the case. Lead trial counsel shall attend and be prepared to discuss the case. Prior to the conference, all counsel are expected to confer regarding the following (listed below). Plaintiff's counsel shall then file a Joint Case Management Plan, identifying areas of agreement and disagreement (and as to such matters, briefly setting forth the parties' positions), at least one week prior to the scheduled conference.
 - i. Any issues with the case being assigned to the Business Court.
 - ii. Requested relief, including a good faith estimate of the amount of damages, sought in the Complaint and any Counterclaim.
 - iii. Need and time to amend pleadings or add parties.

- iv. Any intention by the parties to file initial dispositive or injunction motions and, if so, proposed timing and impact upon discovery.
- v. Need for a protective order and consent to the Court's Model Protective Order (https://www.oakgov.com/courts/businesscourt/Documents/mod-bc-pro_ord.pdf).
- vi. Timetable for case, including the following, in addition to other dates desired by any party:
 - 1. Initial disclosures as set forth in Section 2(c)(ii).
 - 2. Date for preliminary witness lists.
 - 3. Date for expert witness disclosure and/or reports.
 - 4. Date for discovery cutoff (and whether discovery shall proceed in stages).
 - 5. Date for final witness and exhibit lists.
 - 6. Whether parties stipulate to exemption from case evaluation.
 - 7. The timing of early ADR processes and the selection of a mutually acceptable neutral.

The parties shall have discussed a mutually-acceptable facilitator prior to the Case Management Conference.

- vii. Any modifications of the standard discovery protocols, below.
- viii. Any existing or anticipated discovery or other disputes and any agreed upon process(es) for resolving those disputes. The Business Court encourages the parties to resolve all discovery disputes as efficiently and as quickly as possible.
- ix. The parties will be expected to discuss discovery of electronically stored information (ESI).
- x. The parties will be expected to discuss the adoption of the Case Management Protocol, subject to any objections and/or mutually agreeable alternative procedures, as a Court Order.
- xi. The parties and the Court will discuss the need and timing for any additional conferences.

c. Standard Discovery Protocols

NOTICE: The parties shall preserve all documents, including all electronically stored information relevant or potentially relevant to the case. Any logistical, cost or other issues presented by this requirement shall be addressed at the Case Management Conference.

NOTICE: Discovery shall be proportional to the complexity and amount of

damages sought.

- i. The following provisions are suggested to the parties as a starting point in order to streamline discovery, reduce costs, and engage in meaningful ADR processes as early in the litigation as practicable. The parties may agree to additional or different protocols as long as otherwise permitted by the Michigan Court Rules or upon Court Order. The Court will consider principles of proportionality with regard to all discovery disputes.
- ii. *Initial Disclosure.* Within 30 days of the Case Management Conference, the parties shall make certain initial disclosures, to the extent that such information is known.
 - (1) *In General.* Except as exempted by the court rules, stipulation, or court order, a party must, without awaiting a discovery request, provide to the other parties:
 - (a) The factual basis of the party's claims and defenses;
 - (b) The legal theories on which the party's claims and defenses are based, including, if necessary for a reasonable understanding of the claim or defense, citations to relevant legal authorities;
 - (c) The name and, if known, address and telephone number of each individual likely to have discoverable information – along with the subjects of that information – that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
 - (d) A copy - or a description by category and location - of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;
 - (e) A description by category and location of all documents, electronically stored information, and tangible things that are not in the disclosing party's possession, custody, or control that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment. The description must include the name and, if known, the address and telephone number of the person who has possession, custody, or control of the material;
 - (f) A computation of each category of damages claimed by the disclosing party, who must also make available for inspection and copying as under MCR 2.310 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered;
 - (g) A copy of any insurance, indemnity, or suretyship agreement under which another person may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment; and
 - (h) The anticipated subject areas of expert testimony.
 - (2) *Basis for Initial Disclosure; Unacceptable Excuses.* A party must serve initial disclosures based on the information then reasonably available to the

party. A party is not excused from making disclosures because the party has not fully investigated the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.

iii. *Written Discovery.*

1. The Court will entertain motions to expand or increase the following limitations upon good cause shown, either initially in the case or later in the discovery process once a defined need is established.
2. Discovery must be served sufficiently in advance of the discovery cutoff date so as to allow the opposing party sufficient time to respond prior to the discovery cutoff. Discovery may be conducted after the discovery cutoff date by written stipulation only if the extension of time does not affect dates for any motion cutoff, settlement conference, submission of joint final pretrial order, final pretrial conference, or trial. If an extension of discovery would affect such dates, or if a party seeks adjournment of such dates for other reasons, a written motion demonstrating good cause must be filed as soon as the need for an extension or adjournment becomes apparent. Written discovery shall be served in both a PDF and Word (or native) format.
3. For any type of written discovery under MCR 2.309, 2.310 or 2.312, the parties are encouraged to agree upon any limitation on the number of interrogatories, request for admissions, and request for production, including the timing and sequencing of written discovery that will best serve the speedy, just and efficient resolution of the matter.
4. Objections shall be clear and concise. Boilerplate or "general" objections are discouraged. Responses with objections shall clearly indicate the scope of the withholding of any information or document on the basis of an asserted objection.
5. Documents identified consistent with MCR 2.309(E) shall be identified by bates number or otherwise such that it is clear which produced documents correspond to each interrogatory.
6. Any document withheld on the basis of a claimed privilege, and generated before the initiation of litigation, shall be logged to allow the opposing party and the Court to assess the prima facie assertion of privilege. The log shall be produced at the same time as the document production. The document production shall be made at the same time as the written responses. The log shall (1) state the document number (e.g. Bates number) of the document, (2) describe the nature and general subject matter of the document not produced, (3) state the date and type of document (e.g., e-mail, notes, memo, etc.), (4) state the name(s) of the author/sender, recipient, and any third parties recipients copied, or, if known, who later received copies; and (5)

state the privilege(s) asserted as to the withheld document. A log for post-litigation communications may be agreed to by the parties or requested by motion.

7. When filing a motion pursuant to MCR 2.309(C) or 2.310(C)(3), a party must state that the movant has in good faith conferred or attempted to confer with the party not making the disclosure in an effort to secure the disclosure without court action.

iv. *Depositions.*

1. The parties are encouraged to agree upon a limitation on the number and length of any depositions, including the timing, location and sequencing of those depositions that will best serve the speedy, just and efficient resolution of the matter.
2. Presumptively, depositions of Plaintiff's representatives shall take place in Oakland County at Plaintiff's counsel's office or other local location designated by Plaintiff's counsel, and Defendant's depositions shall take place in the location of the deponent's customary place of work (whether in or out of state) at Defendant's counsel's office or other local location designated by Defendant's counsel.
3. Inordinate breaks during depositions, gamesmanship, objections violative of MCR 2.306(C)(4) or uncivil behavior are inappropriate and will be subject to the imposition of sanctions by the Court.

v. *Electronic Discovery.*

Parties should be prepared to discuss e-discovery protocols and related issues in an educated manner at the Case Management Status Conference. Parties are free to agree to additional protocols governing e-discovery (*e.g.*, the Model Order utilized by the U.S. District Court, E.D. Mich).

(<https://www.mied.uscourts.gov/pdffiles/ParkerEsiOrderChecklist.pdf>).

Presumptively, all documents produced electronically shall be produced in native format and with the load files preserving all metadata.

Failure to comply with the Business Court Case Management Protocol may subject the parties to sanctions.

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT**

,

Plaintiff,

v.

Case No. _____

Hon. _____

,

Defendant.

Attorney for Plaintiff

Attorney for Defendant

STIPULATED PROTECTIVE ORDER

At a session of Court held in the City of Pontiac,
County of Oakland, State of Michigan, on

PRESENT: HONORABLE _____

Circuit Judge

Pursuant to MCR 2.302(C), the Court’s authority, and on stipulation of the parties,

IT IS HEREBY ORDERED that any party or non-party (the “producing party”) may designate information, documents, or things as “Confidential” under the following terms and conditions:

1. Any document, information, or thing may be designated “Confidential” if the producing party determines in good faith that it contains confidential or proprietary information.
2. A producing party may designate any document or other tangible information or thing

as “Confidential” by conspicuously stamping or appending the appropriate designation. In the case of a paper document, a producing party may so mark the first page of a multipage document or each applicable page. In the case of an electronic document, a producing party may append to that document the appropriate designation that does not alter the metadata associated with the document, or may place the appropriate designation mark “CONFIDENTIAL” on the outside of the medium (whether disc, hard drive, etc.) containing the document.

3. A non-producing party may also designate any document, information, or things produced during the course of this proceeding, not already designated “Confidential” as “Confidential” as if it were a producing party. The non-producing party shall accomplish such designation by notifying all parties in writing of the specific item so designated.

4. A producing party may designate documents, information, or things disclosed at a deposition as “Confidential” on the record during the deposition or, within 30 days of receiving the deposition transcript, by notifying all parties in writing of the specific item so designated or the lines and pages of the transcript that are “Confidential.” All deposition transcripts and exhibits will be deemed Confidential for a period of 30 days after the receipt of the deposition transcript.

a. If a producing party designates such materials as “Confidential” on the record, the court reporter shall indicate that fact on the cover page of the transcript that the transcript includes “Confidential” information, and shall list the pages and line numbers and/or exhibits of the transcript on or in which such information is contained, and shall bind the transcript in separate portions containing “Confidential,” and non-Confidential material. Further, during the period in which such “Confidential” information is discussed during the deposition, any

person present during the deposition who is not authorized to receive such information under Paragraph 10 below shall be excluded from that portion of the deposition.

b. A non-producing party may designate documents, information, or things disclosed at a deposition as “Confidential” in the same manner as a producing party.

5. If a party producing documents inadvertently fails to mark a document as “Confidential” for which it desires such treatment, it shall so inform the party receiving the documents forthwith, but in no event later than thirty (30) days following discovery of the inadvertent disclosure. The receiving party thereupon shall return the unmarked documents to the producing party and the producing party shall substitute properly marked documents.

6. The inadvertent or unintentional disclosure by a producing party supplying confidential discovery material, regardless of whether such discovery material was designated as “Confidential,” shall not be deemed a waiver in whole or in part of the producing party’s claim of confidentiality with respect to the discovery material disclosed, provided that the producing party making such inadvertent or unintentional disclosure notifies the receiving parties forthwith, but in no event later than thirty (30) days after it learns of such inadvertent or unintentional disclosure. If discovery material has been disclosed and is subsequently designated as “Confidential,” the disclosing party shall make good faith efforts to preserve the “Confidential” nature of such discovery material and to obtain compliance with this Order from any person to whom such discovery material was disclosed.

7. If a producing party, at the time of disclosure, inadvertently fails to identify as “Confidential” any discovery material (including, without limitation, documents, oral, visual, or

recorded information) for which it desires such treatment, and another party files the material with the Court prior to receiving notice that such material was inadvertently disclosed without the desired designation, the producing party who made the inadvertent disclosure shall be responsible for seeking appropriate relief from the Court.

8. Should any party object to a designation of any information, documents, or things as “Confidential,” the parties or the producing party shall, on an expedited basis, meet and confer in a good-faith attempt to reach an agreement regarding the status of the information, documents, or things. The parties are strongly encouraged to resolve all such objections and, if appropriate, utilize the services of a neutral to assist the parties in the resolution of the dispute. If an objection is not thereby resolved, a party may bring the dispute before the Court on an expedited basis for a determination. The party claiming the “Confidential” designation shall have the burden of proving good cause for the entry of an order maintaining the designation of the information, documents, or testimony under the terms of this Stipulated Protective Order. Until the Court makes such determination, all material designated as “Confidential” shall be treated as such.

9. All information, documents, or things produced, exchanged, or inspected in the course of this proceeding shall be used solely for the purposes of this proceeding or any other proceeding including substantially similar parties or substantially similar issues.

10. All documents, information, or things designated as “Confidential” shall be made available only to the Court’s staff and to counsel for the parties (including the paralegal, clerical, and secretarial staff employed by such counsel in connection with this case) and the following persons:

- a.** The parties and those agents and employees that are directly involved

in the prosecution or defense of this matter;

b. experts or consultants (together with their clerical staff) retained by the respective parties to assist in this case;

c. any court reporter employed in this case;

d. a witness at any deposition or other proceeding in this case;

e. a potential witness; and

f. any other person with the written consent of the parties (and any affected non-party producing party) or upon order of the Court.

11. Materials designated as “Confidential” shall not be made available to persons other than those authorized in paragraphs 9 and 10 above – even if attached to or contained within otherwise non-Confidential materials, such as transcripts, memoranda, discovery responses, or affidavits. The “Confidential” information must be removed before the remaining materials may be made available to those other persons.

12. Materials designated as “Confidential” shall not be disclosed by opposing counsel to a former employee of Plaintiff or Defendant, respectively, or to a testifying or non-testifying expert or consultant under paragraphs 9 and 10 unless and until such representative, expert, or consultant has first been supplied with and has read a copy of this Order and has executed a copy of the Confidentiality Agreement attached as Exhibit A. Current employees of Plaintiff and Defendant are not required to execute a copy of the Confidentiality Agreement, but must be advised regarding the provisions of this Protective Order.

13. Counsel shall maintain files containing materials designated as “Confidential” in a secure location. This provision shall not prevent use of an ESI vendor or host who restricts access to those persons permitted to review Confidential materials as set forth in this Order.

14. No documents, information, or things designated as “Confidential,” including that contained in pleadings, motions, briefs, declarations, or exhibits (except in sealed envelopes) shall be filed with the Court. Such sealed envelopes shall bear the case caption and shall recite a concise, non-disclosing inventory of their contents for docketing purposes. Additionally, in the case of materials or information designated “Confidential,” such sealed envelopes shall prominently bear the notice:

CONTAINS CONFIDENTIAL INFORMATION
SUBJECT TO PROTECTIVE ORDER. TO BE OPENED
ONLY BY OR AS DIRECTED BY THE COURT.

To the extent practical, only those portions of a filing with the Court that contain material designated as “Confidential” shall be filed under seal (as provided in paragraph 18) or provided to the Court for *in camera* inspection. The Court and its staff shall maintain all filings so designated pending further order or direction from the Court. Provided that no “Confidential” information is disclosed, the parties may generally refer to documents designated as “Confidential” in pleadings, motions, briefs, affidavits, or exhibits filed with the Court, without filing such pleadings, motions, briefs, affidavits, or exhibits under seal.

15. Nothing in this Order shall preclude any party or their attorneys from:

a. Showing materials designated as “Confidential” to an individual who either prepared or reviewed the document, or is shown by the document to have received the document.

b. Disclosing or using, in any manner or for any purpose, any information, documents, or things from the party’s own files that the party itself designated as “Confidential.”

c. Disclosing or using, in any manner or for any purpose, any information, document, or thing at the trial of this matter. But if a party intends to use or offer into evidence at such trial any materials designated as “Confidential,” that party must, unless otherwise ordered by the Court, so inform the producing party in a reasonable time in advance to allow the producing party to take such steps that it deems reasonably necessary to preserve the confidentiality of such information or documents.

d. Redacting information from documents produced in accordance with the discovery process, including information is irrelevant to this action and would provide the opposing party with a business advantage over the producing party if it is produced. Nothing in this sub-section limits the opposing party from challenging such redactions before this Court.

16. If either party is served with a subpoena or similar process, from any person or entity whatsoever, directing that party to produce any materials designated as “Confidential” by another party, counsel for that party shall immediately give counsel for the designating party written notice of such service so that the designating party may seek a protective order or otherwise act to protect the confidentiality of the designated materials.

17. Within sixty (60) days of the conclusion of this action, including any appeals, all originals and reproductions of any materials designated as “Confidential” shall be destroyed at the request of the opposing party; provided however, counsel for the parties may retain one complete set (including exhibits) of pleadings and motion papers filed with the Court, and one complete copy of deposition testimony given in this action, in addition to materials designated as “Confidential” in a secure location - subject to any applicable Statute of Limitations. Upon

request, counsel for the receiving party shall provide written verification to the producing party that all copies of such materials produced to the receiving party have been destroyed, other than as indicated in this paragraph. Materials designated as “Confidential” that are in the custody of the Court are excepted from the terms of this paragraph.

18. This Order does not authorize or permit the filing of any documents under seal. Pursuant to MCR 8.119, as amended, the parties are not to file documents under seal without prior Court approval. The party seeking to file any paper under seal must file and serve a motion under MCR 8.119(I) that (1) describes each item proposed for sealing; (2) states the reason sealing each item is necessary and identifies the specific interest to be protected; (3) explains why there is no less restrictive means to adequately and effectively protect the specific interest; and (4) includes a memorandum of legal authority supporting the motion. The movant may not file or otherwise tender to the Clerk any item proposed for sealing unless the Court has granted a motion brought under MCR 8.119(I).

19. If information or materials are inadvertently produced that are subject to a claim of attorney-client privilege, attorney work product or any other ground on which production of such information or materials should not be made to a party, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product or other ground for withholding production to which the producing party would otherwise be entitled. Any and all facially privileged or work product materials inadvertently produced shall be returned promptly, when discovered, in accordance with ABA Rules of Professional Conduct Formal Opinion 92-368 (1992). Any other inadvertently produced privileged materials shall be promptly returned upon the request of the producing party.

20. The terms of this Order shall remain in effect after the action and any related appeals are concluded, except that there shall no longer be any restriction on use of materials designated as “Confidential” that are used as exhibits at trial (unless such exhibits were used under seal or protective order at trial).

Date

Judge _____
Oakland County Circuit Court Judge
Business Court

Approved as to form and content:

Attorneys for Plaintiff

Attorneys for Defendant

