CASE MANAGEMENT PROTOCOL
OAKLAND COUNTY CIRCUIT COURT
BUSINESS COURT CASES

1) Purpose

   a) The Case Management Protocol applies to all cases assigned to the Business Court.

   b) If any party believes there is good cause why a particular case should be exempted, in whole or in part, from this protocol, that party may raise such issues with the Court.

   c) The Case Management Protocol shall be discussed by the parties and the Court at the initial Case Management Status Conference. At that time, counsel will be asked to discuss what modifications of the protocol, if any, are desired and stipulate to the entry of the agreed upon protocol which shall become the Order of the Court. If the parties are unable to agree on all the terms of the protocol, the Court will enter an Order deemed appropriate for the management of the case. All Orders entered by the Court are subject to modification for good cause shown in accordance with the Court's other policies regarding modifications and adjournments of scheduled dates.

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 Wiznet also constitutes service effective as of the time of filing.

   b) Case Management Status Conference. The Court will conduct a case management status conference early in the case. Lead trial counsel is expected to attend and be prepared to discuss the case. Prior to the conference, all counsel are expected to confer regarding the following and 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 prior the scheduled conference.

      i) Any issues with the case being assigned to the Business Court.

      ii) Need and time to amend pleadings or add parties.

      iii) Any intention by the parties to file initial dispositive or injunction motions and, if so, proposed timing and impact upon discovery.

iv) Need for a protective order and consent to the Court's standard order (https://www.oakgov.com/courts/businesscourt/Documents/mod-bc-pro_ord.pdf).

v) Timetable for case, including the following, in addition to other dates desired by any party:

(1) Date for initial disclosures (see below)
(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.

vi) Any modifications of the standard discovery protocols, below.

vii) 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.

viii) The parties and the Court will discuss the need and timing for any additional conferences.

c) Standard Discovery Protocols

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 date of the filing of a responsive pleading by the last-served defendant, parties shall make the following initial disclosures, to the extent that such information is known:

(1) 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.
(2) A copy or 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.
(3) An identification of the nature and categories of claimed damages then known by the disclosing party, with the amount of the damages then

known. The disclosing party must make available for inspection and copying 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 damages suffered.

(4) For inspection and copying under MCR 2.310, any insurance agreement under which an insurer 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.

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) or produced pursuant to MCR 2.310 shall be identified by bates number or otherwise such that it is clear which produced documents correspond to each interrogatory or document request.

(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.