

January 29, 2021

E-FILED

The Honorable William C. Griesbach
United States Courthouse Room 203
125 South Jefferson Street
Green Bay, WI 54301-4541

Re: ADR Deadline in *Doxtator v. O'Brien, et al.*, Case No. 19-cv-137

Dear Judge Griesbach:

I write on behalf of Plaintiffs in the above captioned case to correct and clarify the record in light of the Brown County Defendants' Letter dated January 28, 2021. The Letter foments false impressions; Defendants have not made a "good faith" effort to settle (they have never even made a settlement offer), and ADR has not been completed.

The Court's initial Scheduling Order stated in relevant part:

Counsel are to confer and make a *good faith* effort to settle the case and explore various methods of alternate dispute resolution (ADR). The court will refer the case to one of the magistrate judges for mediation, at no cost to the parties, when a request is made at least ninety (90) days prior to the final pretrial conference. Alternative dispute resolution *should be completed* by June 1, 2020.

ECF 61 ¶ 14 (emphasis added). Plaintiffs attempted to meet this June 1 deadline, but Defendants refused, citing their desire for an in-person settlement conference (rather than a virtual settlement conference), which was (and remains) impracticable due to the COVID19 pandemic. See ECF 96 at 1-2. Therefore, Plaintiffs agreed to permit an extension of this June 1 deadline to November 2, 2020. Thereafter, discovery was disrupted due to the COVID19 pandemic, and Defendants again requested to extend the mediation deadline, this time so that it would follow (rather than precede) the summary judgment motion deadline. Plaintiffs again agreed to an extension, this time to February 1, 2021. ECF 100.

In December 2020, Plaintiffs asked Defendants to provide their availability for mediation in order to meet the Court's February 1, 2021 deadline. The Green Bay Defendants first responded on January 5, 2021 by asking Plaintiffs to make a counter-offer to Plaintiffs' *own* prior settlement demand (which had been in November 2019, well in advance of the prior June 1, 2020 deadline). Plaintiffs declined to bid against themselves but simply noted that they were "open to negotiation" on all terms of their settlement demand and asked whether the Green Bay Defendants intended to meet the February 1, 2021 deadline. Plaintiffs received no response for



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several days and after further requests from Plaintiffs, the Brown County Defendants then responded by re-asking Plaintiffs about their prior demand.

The Green Bay Defendants then responded on January 8, 2021 that "We will not be able to mediate the case prior to February 1, with oral arguments on February 4." No further explanation was provided. Therefore, Plaintiffs asked for clarification regarding whether the Green Bay Defendants were seeking a third extension or whether they were simply refusing to mediate. Plaintiffs further asked the Green Bay Defendants to circulate a proposed stipulation to clarify their proposal. The Green Bay Defendants did not respond (and still have not responded). The Brown County Defendants responded that they "agreed" with the Green Bay Defendants' ambiguous position.

After receiving no clarification or proposed stipulation, Plaintiffs followed up yet again to ask for that clarification and proposed stipulation in order to avoid simply violating the Court's scheduling order. The Brown County Defendants responded with yet another excuse to avoid ADR, this time that the Court's order was not mandatory because it said "should be completed" rather than "shall be completed." Plaintiffs disagreed with this assertion, and the Brown County Defendants' Letter to the Court followed.

Obviously, it is Defendants' prerogative whether or not they wish to explore ADR, and they evidently decline to do so. Plaintiffs merely write because the Brown County Defendants' Letter creates the false impression that the Parties have either completed ADR (and failed to reach settlement at that ADR) or that Defendants made a "good faith effort to settle the case." Neither is true. The Parties have never participated in ADR due to Defendants' refusal. Moreover, the Defendants' lack of responsiveness and shifting excuses to avoid even attending a mediation (including insistence on in-person ADR in the midst of a worldwide pandemic or suggestion that attending a mediation in January was impossible merely because an oral argument is scheduled for February 4) demonstrate that their effort falls short of "good faith."

Regards,

DORSEY & WHITNEY LLP

/s/ Forrest Tahdooahnippah

Forrest Tahdooahnippah
Partner

FT:jh