

# Parties in Pentegra MEP Lawsuit Decline Presence of Advisory Jury at Upcoming Trial

A final pretrial conference for the case is scheduled for November 26.

Reported by [REMY SAMUELS](#)

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No settlement has been agreed in a lawsuit filed against Pentegra Retirement Services and the board of directors of its defined contribution plan, and the attorneys representing both parties have jointly requested that the upcoming trial not include an advisory jury.

According to the [joint filing](#) on Tuesday, the plaintiffs—represented by law firm Schlichter Bogard LLP—and Pentegra—represented by Groom Law Group—believe there is “no meaningful time saving merit” to including an advisory jury.

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The parties had been directed by U.S. District Judge Philip M. Halpern, presiding in U.S. District Court for the Southern District of New York, to file a letter setting forth their positions on using an advisory jury for the non-jury aspect of the trial. A district court is typically able to empanel an [advisory jury](#) to hear all or part of a case, and the district court is free to reject its verdict.

However, the parties argued that empaneling an advisory jury is “the exception,” not the rule.

## Pretrial Conference Set for Late November

The parties have already spent more than six months developing proposed jury instructions on Count I of the lawsuit, the filing states, arguing that an advisory jury would require the parties to craft additional proposed instructions to address issues unique to Count II.

A second verdict form would also be needed, “further taxing the parties’ resources in preparing for a trial that could begin in just 10 days’ notice,” the filing states.

Halpern ordered on Wednesday that a final pretrial conference be scheduled for November 26 at the White Plains, New York, courthouse.

Andrew Oringer, a partner in Wagner Law Group, said in an email response that it appears Halpern may have been inclined to leave the jury empaneled to give non-binding advice to the judge on multiple tough issues, notwithstanding that those issues may be outside of the scope of the jury’s responsibility.

“In some cases, the issues are technical legal issues, and it seems that both litigants agree that the task of bringing the jury up to speed would be inefficient at best, that what the jury might come up with might not be overly helpful anyway, and that, in any event, the issues are for the judge to decide,” Oringer says.

## Case Was Filed in 2020

The lawsuit, *Imran Kahn et al. v. Board of Directors of Pentegra Defined Contribution Plan et al.*, was initially filed in September 2020. Participants of the plan alleged in the lawsuit that the company engaged in self-dealing and failed to ensure the payment of only reasonable fees by the plan. The complaint further alleged that, in 2010, thousands of

dollars of plan assets were used to make payments to the Ritz-Carlton Naples, Florida, and the New York Palace Hotel, “presumably for the defendants’ personal benefit.”

The lawsuit has a complex procedural history, but the core of the plaintiffs’ complaint remains allegations that in retaining Pentegra as a service provider, the defendants failed to ensure that the fees paid by the plan were reasonable for the services received. The defendants’ attempt to dismiss the lawsuit was denied by the judge in March 2022.

According to Halpern’s pre-trial order, filed on Wednesday, the case will be tried in two parts. The first part will be tried to a jury and will address liabilities and damages on Count I. The second part will be a bench trial and will address equitable relief on Count I, as well as liability and equitable relief on Count II.

In Count I, the plaintiffs allege that Pentegra breached its fiduciary duties by causing the plan to pay unreasonable fees for services rendered to the plan. John Pinto, president of Pentegra’s board, and Pension Services Inc. are named further liable as co-fiduciaries for the fiduciary breach committed by the board of directors, the filing states. The plaintiffs are seeking damages related to Count I ranging from \$33 million to \$115 million.

On Count II, the participants accuse Pentegra of committing prohibited transactions by causing the plan to retain PSI and pay plan assets to PSI. The plaintiffs are seeking to recover up to \$157 million on this claim. They also seek affirmative equitable relief related to the future management and operation of the plan.

Pentegra’s defense that the contract between PSI and the plan for the provision of services was necessary for the operation of the plan will also be tried. Pentegra argued that “no more than reasonable compensation was paid.”

The plaintiffs’ claim that Pentegra breached its fiduciary duties by causing the plan to pay unreasonable investment management fees, as well as their claim that the board and its individual members failed to monitor PSI, will not be tried.

Attorneys from Groom Law and Schlichter Bogard did not immediately respond to requests for comment.

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