



IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN RE: MOUNTAIN STATE UNIVERSITY LITIGATION Civil Action No. 12-C-9000

THIS DOCUMENT APPLIES TO ALL CASES

SECOND PROTECTIVE ORDER

1. The entry of this Second Protective Order is made in view of the plaintiffs' request for updated financial information from Defendant Charles H. Polk ("Polk") for use at a future mediation. Accordingly, any updated financial information disclosed by Polk to the plaintiffs is hereby protected and governed by this Second Protective Order.

2. If a party or an attorney for a party has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a discovery or other request, are confidential and should not be disclosed other than in connection with this action and pursuant to this Second Protective Order, the party or attorney shall mark each such document or other material as "**CONFIDENTIAL**" in the top or bottom margin of the document and on each subsequent page. The producing party shall avoid placing the "Confidential" mark over any actual text or language that appears on the documents.

3. If a party or an attorney for a party disputes whether a document or other material should be marked "**CONFIDENTIAL**," the parties and/or attorneys shall attempt to resolve the dispute themselves. If they are unsuccessful, the party or attorney challenging the "**CONFIDENTIAL**" designation shall do so by filing an appropriate motion.

3. No party or attorney or other person subject to this Second Protective Order shall distribute, transmit, or otherwise divulge any document or other material

which is marked “**CONFIDENTIAL**,” or the contents thereof, except in accordance with this Second Protective Order. Court personnel are not subject to this Second Protective Order when engaged in the performance of their official duties.

4. Any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, may be used by a party, or a party’s attorney, expert witness, consultant, or other person to whom disclosure is made, only for the purpose of this action. Nothing contained in this Second Protective Order shall prevent the use of any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, at any discovery deposition taken in this action.

5. If a party or attorney wishes to disclose any document or other material which is marked “**CONFIDENTIAL**,” or the contents thereof, to any person actively engaged in working on this action (e.g., expert witness, paralegal, associate, consultant), the person making the disclosure shall do the following:

- a. Provide a copy of this Second Protective Order to the person to whom disclosure is made;
- b. Inform the person to whom disclosure is made that s/he is bound by this Second Protective Order;
- c. Require the person to whom disclosure is made to sign an acknowledgement receipt of this Second Protective Order;
- d. Instruct the person to whom disclosure is made to return any document or other material which is marked “**CONFIDENTIAL**” at the conclusion of the case, including notes or memoranda made from “**CONFIDENTIAL**” material;

e. Maintain a list of persons to whom disclosure was made and the “**CONFIDENTIAL**” materials which were disclosed to that person; and

f. At the conclusion of this action, gather the “**CONFIDENTIAL**” materials, copies thereof, and related notes and memoranda, and return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Second Protective Order.

6. If any party or attorney wishes to file, or use as an exhibit or as evidence at a hearing or trial, any “**CONFIDENTIAL**” document or material, s/he must provide reasonable notice to the party that produced the document or material. The parties and/or attorneys shall then attempt to resolve the matter of continued confidentiality by either (a) removing the “**CONFIDENTIAL**” marking, or (b) creating a mutually acceptable redacted version that suffices for purposes of the cases. If an amicable resolution proves unsuccessful, the parties and/or attorneys may present the issue to the court for resolution. The proponent of continued confidentiality will have the burden of persuasion that the document or material should be withheld from the public record in accordance with Rule 26 of the West Virginia Rules of Civil Procedure.

It is so **ORDERED**.

ENTER: January 29, 2014.

/s/ Alan D. Moats
Lead Presiding Judge
Mountain State University Litigation