

**IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

FILED  
2021 APR 21 AM 8:41  
CATHY S. BROWN, CLERK  
KANAWHA COUNTY CIRCUIT COURT

MOUNTAIN STATE PIPELINE & EXCAVATING, LLC,  
Plaintiff/Counterclaim Defendant/Crossclaimant,

v.

Civil Case No.: 20-C-350

Presiding: Judge Young

Resolution: Judge Farrell

SMITH/PACKETT MED-COM, LLC,  
a Virginia Limited Liability Company, and  
Sole Manager-Member of Defendants SP WV, LLC,  
Defendant/Counterclaimant; and

SP WV, LLC,  
a Virginia Manager-Managed Limited Liability Company and  
“Pass Through Entity” acting as the Sole Member of  
Defendant WV IL-AL Investors, LLC  
Defendant/Counterclaimant; and

WV IL-AL INVESTORS, LLC,  
a Virginia Member-Managed Limited Liability Company,  
Defendant/Counterclaimant; and

JARRETT CONSTRUCTION SERVICES, INC.,  
a West Virginia Limited Liability Company,  
as Construction Manager at Risk,  
Defendants/Counterclaimant; and

CARTER BANK & TRUST,  
Defendant; and

JARRETT CONSTRUCTION SERVICES, INC.,  
Third-Party Plaintiff,

v.

ECS MID-ATLANTIC, LLC,  
Third-Party Defendant/Crossclaim Defendant.

**ORDER DENYING MSPE’S MOTION TO COMPEL DISCOVERY RESPONSES TO  
ECS, MOTION TO STRIKE, AND IN THE ALTERNATIVE TO EXCLUDE**

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On April 5, 2021, this matter came before the Court pursuant to Mountain State Pipeline & Excavating, LLC's Motion to Compel Full Complete, and Meaningful Discovery Responses by ECS Mid-Atlantic, LLC In Response to Plaintiff's 1<sup>st</sup> Set of Interrogatories and Request for Production of Documents, and MSPE's Req. for Admission, No. 2, Motion To Strike, and In the Alternative To Exclude. The Court has reviewed the Motion, Supplemental Motions, Responses, and the discovery requests and Finds and Orders as follows:

PLAINTIFF'S 1<sup>ST</sup> SET OF INTERROGATORIES

1. On August 7, 2020, MSPE served a 1<sup>st</sup> Set of Interrogatories on ECS.
2. On November 20, 2020, ECS responded to the 1st Set of Interrogatories.
3. On November 5, 2020 and December 22, 2020, MSPE filed a Motion to Compel Discovery Responses from ECS and a Supplemental Motion to Compel, respectively.
4. MSPE contends that the responses to the 1st Set of Interrogatories are deliberately and arrogantly incomplete, evasive, and non-responsive to avoid and evade liability and to interpose delay.
5. ECS contends that the interrogatories, while numbered 1-19, include 45 questions, including the subparts. ECS further contends that the conjunctive grammar used by MSPE create over 100 separate requests, which exceed the amount allowable under the *West Virginia Rules of Civil Procedure*. ECS further contends that its answers and objections to said interrogatories are sufficient and proper.

6. The Court has reviewed the Plaintiff's 1<sup>st</sup> Set of Interrogatories and finds as follows:
- a. Including the subparts, the Court finds that the requested interrogatories go beyond the number of requests permitted by the Rules. Additionally, there has been no request from MSPE to exceed the permitted number of requests.
  - b. ECS objects to Interrogatory No. 1, pursuant to attorney-client privilege and/or work product doctrine. ECS provides that the entity ECS Mid-Atlantic, LLC answers these interrogatories. This Court finds this response and objection sufficient.
  - c. ECS objects to Interrogatories 3, 4, 6, stating that the information sought has not been determined but will be provided pursuant to the Court's scheduling order or by agreement with counsel. This Court finds these responses and objections sufficient.
  - d. ECS objects to Interrogatories 8, 9, 10, 11, and 19, stating that these interrogatories constitute "contention interrogatories," which they may have to provide after the opportunity to avail itself to discovery. The Court finds these responses and objections sufficient.
  - e. ECS objects to Interrogatory 13, stating the request is overly broad and not reasonably calculated to lead to discovery of relevant or admissible evidence. ECS also states the request seeks proprietary information. The Court finds that the voluminous amount of information sought for



a 10-year period is overly burdensome and excessive. Therefore, the Court finds the objection to this interrogatory is proper.

- f. ECS objects to Interrogatory No. 14, stating that the request is overly broad and that ECS is unsure what is meant by “explain” all communication. ECS additionally states that all known communication was provided to MSPE in response to Request for Production of Documents #9. The Court finds ECS’s response and objection sufficient.
- g. ECS has provided an answer to Interrogatory No. 15. The Court finds this answer to be a sufficient response to the request.
- h. ECS has provided an answer to Interrogatory No. 16. ECS additionally states that the information sought in this request is a restatement of information from written documents. The Court finds this answer to be a sufficient response to the request.
- i. ECS has provided an answer to Interrogatory No. 17, which includes another request to explain a written statement in a report. The Court finds this answer to be a sufficient response to the request.
- j. ECS has provided an answer to Interrogatory No. 18. The Court finds this answer to be a sufficient response to the request.
- k. On January 14, 2021, MSPE filed its 2<sup>nd</sup> Set of Interrogatories, (Nos. 1-4).
- l. February 16, 2021, ECS served its responses to MSPE’s 2<sup>nd</sup> Set of Interrogatories, (Nos. 1-4).

- m. MSPE contends that ECS's responses to MSPE's 2<sup>nd</sup> Set of Interrogatories are evasive and non-responsive.
- n. The Court finds that MSPE's first set of interrogatories exceeded the number of requests permitted by the Rules. Additionally, there has been no request from MSPE to exceed the permitted number of requests. Therefore, any additional interrogatories would go beyond the amount allowed under the Rules.

**WHEREFORE**, it is **ORDERED** and **ADJUDGED** that MSPE's Motion to Compel Discovery Responses to MSPE's 1<sup>st</sup> Set of Interrogatories and 2<sup>nd</sup> Set of Interrogatories is hereby **DENIED**.

#### PLAINTIFF'S 1<sup>ST</sup> SET OF REQUEST FOR PRODUCTION OF DOCUMENTS

1. On August 7, 2020, MSPE served a 1<sup>st</sup> Set of Request for Production of Documents on ECS.
2. On September 11, 2020, ECS responded to the 1<sup>st</sup> Set of Request for Production of Documents.
3. MSPE contends that ECS has failed to disclose relevant and necessary documents it believes are in the possession of ECS.
4. ECS contends that MSPE received all ECS documents in its possession pertaining to the subject property on September 11, 2020. ECS further contends that it has lost many documents due to a ransomware attack. ECS states that the actual responses to Request for Production of Documents were served on January 7, 2021.

5. The Court finds that there is not sufficient evidence to find that ECS is withholding the requested documents.

**WHEREFORE**, it is **ORDERED** and **ADJUDGED** that MSPE's Motion to Compel Discovery Responses to MSPE's 1<sup>st</sup> Set of Request for Production of Documents is hereby **DENIED**.

PLAINTIFF'S 1<sup>ST</sup> SET OF REQUESTS FOR ADMISSION, NO. 2

1. MSPE contends that ECS's response to Request for Admission No. 2 fails to admit or deny the request.
2. ECS contends that it has fully responded to Request for Admission No. 2 by objecting to the cumulative and duplicative nature of the request. ECS further contends that the request was just requesting that ECS admit that a certain statement was listed on page 2 of a document. Said document was previously admitted under Request for Admission No. 1 as a complete and accurate copy.
3. The Court finds that Request for Admission No. 2 is cumulative, duplicative, and the information sought can be obtained from the document itself.

**WHEREFORE**, it is **ORDERED** and **ADJUDGED** that MSPE's Motion to Compel Discovery Responses to MSPE's 1<sup>st</sup> Set of Requests for Admission, No. 2 is hereby **DENIED**. The Court further denies MSPE's Motion to Strike, and in the Alternative to Exclude, in Limine.

It is, therefore, **ADJUDGED** and **ORDERED**:

1. That Mountain State Pipeline & Excavating, LLC's Motion to Compel, Full, Complete, and Meaningful Discovery Responses by ECS Mid-Atlantic, LLC in



Response to Plaintiff's 1<sup>st</sup> Set of Interrogatories and Request for Production of Documents, and MSPE's Request for Admission, No. 2, Motion to Strike, and in the Alternative to Exclude, In Limine is **DENIED**.

All accordingly which is ORDERED and DECREED.

Enter this 19 day of April, 2021.

ORDER  
ENTER:

*James H. Young, Jr.*  
HONORABLE JAMES H. YOUNG, JR.

4/22/2021  
Date: 4/22/2021  
Certified copies sent to:  
☒ court of record  
☐ parties  
☐ other (please indicate)  
By: ☒ certified/first class mail  
☐ fax  
☐ hand delivery  
☐ interdepartmental  
Other (specify and initialed):  
*L. Allen*  
Deputy Circuit Clerk

*Bus Co*  
*C. Kinney*  
*J. Maragan*  
*R. Sweney*  
*P. Lockhart*  
*C. Roncagione*