

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

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

v.

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 DEEM CERTAIN FACTS AND ISSUES
AS ADMITTED IN MSPE’S 1ST SET OF REQUESTS FOR ADMISSIONS (NO. 2),
MSPE’S 2ND SET OF REQUESTS FOR ADMISSIONS (NOS. 1-116), AND MSPE’S
3RD SET OF REQUEST FOR ADMISSIONS (NOS. 1-34) TO ECS, AND MOTION TO
STRIKE, AND FOR SANCTIONS, ATTORNEYS’ FEES AND COSTS

Civil Case No.: 20-C-355
Presiding: Judge Young
Resolution: Judge Farrell

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

473-
476

On April 5, 2021, this matter came before the Court Mountain State Pipeline & Excavating, LLC's Motion to Deem Certain Facts and Issues as Admitted in MSPE's 1st Set of Request for Admissions (No. 2), MSPE's 2nd Set of Request for Admissions (Nos. 1-116), and MSPE's 3rd Set of Request for Admissions (Nos. 1-34), and MSPE's Motion to Strike, and for Sanctions, Attorneys' Fees and Costs Due to ECS's Discovery Misconduct. The Court has reviewed the Motion, Response, and the discovery requests and Finds and Orders as follows:

1. On July 30, 2020, MSPE filed a First (1st) Set of Requests for Admission to ECS, containing two requests.
2. On August 31, 2020, ECS responded to the First (1st) Set of Requests for Admission, answering No. 1 and objecting to No. 2 as cumulative and duplicative of No. 1.
3. On November 2, 2020, MSPE filed a Second (2nd) Set of Requests for Admission, containing 116 requests.
4. On November 13, 2020, MSPE filed a Third (3rd) Set of Requests for Admission, containing 34 requests.
5. After the filing of this Motion, on February 19, 2021, MSPE filed a Fourth (4th) Set of Requests for Admissions to ECS, containing 53 requests.
6. MSPE has filed a total of 205 requests for admission to ECS. ECS has responded to two, leaving 203 requests unanswered.

7. MSPE contends that Request for Admission No. 2 from the 1st Set and all unanswered Requests for Admissions should be deemed admitted due to ECS's failure to respond in an effort to dodge and evade liability.
8. ECS contends that it responded sufficiently to the 1st Set of Requests for Admission, including No. 2, in which ECS stated their objection in the response. ECS further contends that the sheer volume of the rest of the Requests for Admission, 203 including the requests from the 4th Set of Requests for Admission is burdensome, oppressive, or embarrassing. ECS further contends that MSPE is attempting to further circumvent the forty interrogatory limit by making requests for admissions from interrogatory style questions. ECS has filed a Motion for Protective Order to relieve ECS of responding to the unanswered Requests for Admission.
9. The Court finds that ECS sufficiently responded to the 1st Set of Request for Admissions; therefore, the 1st Set of Request for Admission, No. 2 is not deemed unanswered.
10. The Court further finds that pursuant to Rule 26(b)(1) and Rule 26(c), MSPE's requests for admission to ECS are excessive, duplicative and some can be found in referenced documents.
11. The Court further finds that the sheer volume of requests are oppressive and burdensome.
12. The Court further finds that there is no evidence of discovery misconduct on the part of ECS to support a Motion to Strike, Sanctions, Attorneys' fees or costs.

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

1. That Mountain State Pipeline & Excavating, LLC's Motion to Deem Certain Facts and Issues as Admitted in MSPE's 1st Set of Request for Admissions (No. 2), MSPE's 2nd Set of Requests for Admissions, (Nos. 1-116), and MSPE's 3rd Set of Request for Admissions (Nos. 1-34), and MSPE's Motion to Strike, and for Sanctions, Attorneys' Fees and Costs Due to ECS's Discovery Misconduct is hereby **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: _____
Certified copies sent to:
☒ Court of record
☐ Parties
☒ Other (please indicate) _____
By: _____
☒ Certified/first class mail
☐ Fee
☐ Hand delivery
☐ Interdepartmental
Original copies accomplished:
R. Allen
Deputy Circuit Clerk

Bus Ct
C. Kinney
J. Flanagan
R. Sweeney
L. Lockhart
C. Roncaglione