

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

FILED

2021 APR 21 AM 8:40

CATHY S. GATSON, CLERK
KANAWHA COUNTY CIRCUIT COURT

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

Civil Case No.: 20-C-350
Presiding: Judge Young
Resolution: Judge Farrell

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 ENFORCE SUBPOENA AND DUCES
TECUM SERVED ON MCGRUFF AND GREG GORDAN, AND TO COMPEL
DOCUMENT PRODUCTION, AND MOTION FOR CONTEMPT,
AND TO RECOVER ATTORNEYS FEES AND COSTS AND ORDER DENYING
MCGRUFF AND GORDON'S CORRESPONDING MOTION FOR RULE 45 SANCTIONS

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On April 5, 2021, this matter came before the Court pursuant to Mountain State Pipeline & Excavating, LLC's Motion to Enforce Subpoena and Duces Tecum Served on McGriff Insurances, Inc. and Greg Gordon, and to Compel Document Production from McGriff Insurance Services, Inc. and From Greg Gordon, and MSPE's Motion for Contempt, and to Recover MSPE's Attorneys' Fees and Costs, as well as McGriff Insurance Services, Inc. and Greg Gordon's Corresponding Motion for Rule 45 Sanctions against MSPE. The Court has reviewed the Motions, Response, and Reply and Finds and Orders as follows:

1. On September 2, 2020, MSPE served McGriff Insurance Services, Inc. and its agent, Greg Gordon with a Subpoena Duces Tecum for their appearance at a deposition scheduled for September 23, 2020 and for production of documents.
2. On September 2, 2020, MSPE filed two Notices of Depositions for McGriff and Greg Gordon and served them on all parties.
3. MSPE contends that McGriff and Gordon are improperly withholding documents, specifically documents relating to the Traveler's Surety Bonding, underwriting files, contractor questionnaire, and surety applications. MSPE additionally contends that none of the Court-ordered documents are privileged or protected. MSPE additionally contends that the Order Denying JCSI Motion for Protective Order and Motion to Quash includes that McGriff and Gordon as well as their client JCSI to comply, fully, and completely, without delay. MSPE also contends that McGriff's authorized agent failed to appear at the deposition scheduled for September 23, 2020 at 10:00 a.m.

4. McGriff and Gordon contend that MSPE failed to file and serve proof of service of the Subpoena with the Court, as required by Rule 45(b)(3) and Rule 5(b) of the West Virginia Rules of Civil Procedure.
5. McGriff and Gordon additionally contend that MSPE failed to provide notice of the Subpoena Duces Tecum to JCSI because MSPE was using the Rule 45 subpoena to seek potentially sensitive and confidential documents and materials from its client, JCSI, and said documents were already the subject of an ongoing discovery dispute between MSPE and JCSI.
6. On September 16, 2020, counsel for McGriff and Gordon, pursuant to Rule 45(d)(2)(B), objected to the records request in the subpoena.
7. McGriff and Gordon contend that MSPE failed to follow the procedure outlined in Rule 45(d)(2)(B), specifically that “the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.”
8. On September 23, 2020 at approximately 8:15 a.m., a hearing was held that dealt with the issue of the subpoenas served on McGriff and Gordon. Neither counsel for McGriff and Gordon, nor the nonparties themselves were provided notice of this hearing.
9. McGriff and Gordon contend that they were not planning to appear at the depositions or produce the documents with the understanding that they were within the protection of Rule 45(d)(2)(B).

10. McGriff and Gordon contend that counsel for MSPE threatened them with contempt if they did not appear with the records custodian. McGriff and Gordon contend that they did appear at a deposition on September 23, 2020 at 1:00 pm. They further contend that they presented all counsel present with a thumb drive containing all documents in McGriff's and/or Gordon's possession that were responsive to the Subpoenas. They further contend that in a subsequent Order of the Court, the Court found that the documents McGriff was forced to produce were confidential and ordered that they be subject to a protective order in this matter.

11. The Court finds that the October 14, 2020 Order states that "the depositions may proceed as noticed as soon as practicable, The Court GRANTS the request of JCSI that any financial records of JCSI produced by Greg Gordon or McGriff Insurance be subject to a protective order."

12. The Court further finds that McGriff and Gordon appeared for the deposition at 1:00 pm and provided all documents in McGriff's and/or Gordon's possession that were responsive to the Subpoenas.

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

1. That Mountain State Pipeline & Excavating, LLC's Motion to Enforce Subpoena and Duces Tecum Served on McGriff Insurances, Inc. and Greg Gordon, and to Compel Document Production from McGriff Insurance Services, Inc. and From Greg Gordon, and MSPE's Motion for Contempt, and to Recover MSPE's Attorneys' Fees and Costs is hereby **DENIED**.

2. That McGriff Insurance Services, Inc. and Greg Gordon's Corresponding Motion for Rule 45 Sanctions against MSPE is hereby DENIED.

All accordingly which is ORDERED and DECREED.

Enter this 16 day of April, 2021.

ORDER
ENTER:

James H. Young, Jr.

HONORABLE JAMES H. YOUNG, JR.

Date: 4/32/2021
Certified copies sent to:
☒ Council of record
☒ Parties
☒ Other (please indicate)
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Bus Ct

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