

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

MOUNTAIN STATE PIPELINE & EXCAVATING, LLC,  
Plaintiff,

vs.

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

SMITH/PACKETT MED-COM, LLC, SP WV, LLC,  
WV IL-AL INVESTORS, LLC, CARTER BANK & TRUST, and  
JARRETT CONSTRUCTION SERVICES, INC.,

Defendant;

and

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

v.

ECS MID-ATLANTIC, LLC  
Third-Party Defendant.

**ORDER ON MOTION BY JARRETT CONSTRUCTION SERVICES, INC. FOR  
PROTECTIVE ORDER, OR IN THE ALTERNATIVE, FOR *IN CAMERA* INSPECTION**

On July 29, 2021, the Court held a telephonic hearing on Jarrett Construction Services, Inc. (JCSI)'s Motion for Protective Order, or, in the Alternative, for *In Camera* Inspection (Motion for Protective Order); with the parties present telephonically through counsel;

Initially, the Court considered Travelers Insurance Company (Travelers)'s *Motion to Intervene for the Purpose of Filing a Motion for Protective Order in Response to a Subpoena*, and having consider the arguments in support, hereby GRANTS Travelers' motion.

The Court then considered JCSI's Motion for Protective Order, which pertained to a subpoena issued by MSPE to Travelers Insurance Company (Travelers) seeking documents related to JCSI. JCSI had listed 22 separate categories of documents identified by Travelers as being contained in its documents which may be protected from production as being privileged,

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confidential or sensitive and subject to production under certain conditions, as set forth below:

1. 2019-2-28 The Crossing at Southridge Bid and Project Information
2. Inactive / New Highlawn Elementary School Bid and Project Information
3. Rate Letter (Proprietary with Agent)
4. 2020-01-27 East West Apartments Bid and Project Information
5. 2020-01-29 Copy of GAI, Maintenance Bonds on East West Apartments
6. 2020-01-30 No Rate Applied for East West Maintenance Bonds
7. 2020-07-06 Glad View Apartments Bid and Project Information
8. 2020-09-14 Baltimore Gardens LP \$4.mm Bid and Project Information
9. 2020-09-15 Bentley Apartments \$3.6 MM Bid and Project Information
10. Construction background-public information-3/1/19 John H. Jarrett and Jarrett Construction Legal History, Real Estate history, Corporate Records, tax liens, UCC filings, etc.
11. Construction background-public information-Jarrett Construction website list of completed projects
12. Correspondence of Travelers with Agent and with Insured
13. Correspondence internal to Travelers and memos (Possibly proprietary and/or attorney/client-need to review)
14. BBT Note with Jarrett for \$500,000 dated 11/4/09
15. Chase Commercial Loan Invoice
16. Credit Report D&B 11/1/10
17. Credit Report D&B 3/1/19
18. Financials (Peer Group/CSAMS Financial Notes/Jarrett Construction Services Financial Statements and Accountants Review Reports/Internal Balance Sheet/Internal Profit and Loss/Centra Bank Personal Financial Statement of John Jarrett)
19. Indemnity Agreement with Travelers/GAI/
20. Jarrett Construction Schedule of Completed Contracts and Earnings from Contracts
21. Balance Sheets 2016 and 2017 from Accountant and 2019 internal
22. Revenue 2020

In its motion, JCSI argued that items identified on the list as 2 and 4 through 9 pertained to jobs other than the project in issue, and contained confidential or sensitive business information. It further argued that items listed 14 through 18 and 20 through 22 are highly sensitive commercial and financial information which includes information on a non-party (Centre Bank Personal Financial Statement of John Jarrett). JCSI moved the Court for an order, protecting Travelers

from producing documents in these categories. Alternatively, JCSI moved the Court to conduct an *in camera* inspection of the documents, and if any of the documents were deemed to be proper for production, that those documents be produced subject to the October 26, 2020 Protective Order<sup>1</sup> which was previously entered in this matter pertaining to the production of confidential documents.

The Court, having read the submissions of the parties and having heard the arguments of counsel for the JCSI, MSPE and Travelers, makes the following Findings of Fact and Conclusions of Law:

1. The Court considers JCSI's motion pursuant W. Va. R. Civ. P. 26(c) and 45.
2. The Court finds that documents listed as items 2 and 4 through 9 pertain to projects other than the project in issue and are not likely to lead to the discovery of admissible evidence. As a result, the Court **ORDERS** that documents responsive to items 2 and 4 through 9 shall be protected from production in response to the subpoena.

3. The Court finds that the documents listed as items 14 through 17 and 20 through 22 contain confidential or sensitive financial information which can be subject to a protective order under W. Va. R. Civ. P. 26(c)(7), and the Court can set the terms or conditions under which they can be produced. The Court **ORDERS** that the documents listed as items 14 through 17 and 20 through 22 be produced under the Court's previously-entered October 26, 2020 Protective Order and marked as "**CONFIDENTIAL**" prior to production, and that all parties receiving the documents comply with the requirements of the October 26, 2020 Protective Order upon receipt of these documents.

3. With regard to the documents listed as item 18, the Court **ORDERS** that those

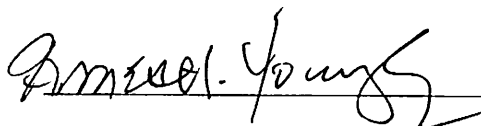
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<sup>1</sup> The Court notes that JCSI's Motion for Protective Order referenced the Protective Order as having been entered on September 26, 2020, which was erroneous.

documents be provided by Travelers to the Court for *in camera* review and further disposition by the Court.

The objections and exceptions of any party aggrieved by this order are reserved and preserved.

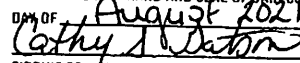

It is so **ORDERED**, this 19 day of August, 2021.



Judge James H. Young, Jr.

**PREPARED AND SUBMITTED BY:**

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STATE OF WEST VIRGINIA  
COUNTY OF KANAWHA, SS  
I, CATHY S. GATSON, CLERK OF CIRCUIT COURT OF SAID COUNTY  
AND IN SAID STATE, DO HEREBY CERTIFY THAT THE FOREGOING  
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.  
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 24<sup>th</sup>  
DAY OF August 2021  
  
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA CLERK  


Date: 8/24/21  
Certified copies sent to:  
☒ counsel of record  
☒ parties  
☐ other (please indicate)  
By: ☒ certified/1st class mail  
☐ fax  
☐ hand delivery  
☐ interdepartmental  
Other directives accomplished:  
UGA  
Deputy Circuit Clerk

Buo Ct  
D. Fields  
C. Roncaglone Tr  
C. Kinney Jr.  
C. Brumley  
R. Lockhart  
J. Victor Fknagan  
R. Sweeney