

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

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.

PROTECTIVE ORDER

The Court having made various rulings with regard to discovery and disclosure of
documents has ruled on the parties providing financial and other documents under a Protective

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Order. The Court Orders the following with regard to all financial and other documents provided in discovery:

I. DISCOVERY PHASE

A. If a party, or a non-party producing information in this civil action, or an attorney for the party or non-party, has a good faith belief that certain documents or other materials (including digital information) subject to disclosure pursuant to a request or court order, are confidential and should not be disclosed other than in connection with this action and pursuant to this Protective Order, the party, non-party, or attorney shall clearly mark each such document or other material as “**CONFIDENTIAL**.” If it comes to the attention of the producing party that a document or other material was inadvertently not marked as “**CONFIDENTIAL**,” such will not be deemed to waive a later claim as to its confidential nature, or to stop the producing party from designating such information as confidential at a later date in writing and with particularity. The information shall be treated by the receiving party as confidential from the time the receiving party is notified in writing of the change in the designation. If it comes to the attention of the designating individual or entity that a document or other material has been improperly marked as “**CONFIDENTIAL**,” the designating individual or entity must promptly notify all parties that the erroneous designation is being withdrawn and must replace the improperly designated document or material with a copy that is not marked “**CONFIDENTIAL**.”

B. 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 with the designating individual or entity. If they are unsuccessful, the party or attorney challenging the “**CONFIDENTIAL**” designation shall do so by filing an appropriate motion.

C. No party or attorney or other person subject to this 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 Protective Order. Court personnel are not subject to this Protective Order while engaged in the performance of their official duties.

D. Deposition testimony may be designated as “**CONFIDENTIAL**” by a statement on the record that the testimony is “**CONFIDENTIAL**” or by providing written notice to the parties and court reporter within 30 days of receipt of the transcript of the specific page and line numbers to be designated and treated as “**CONFIDENTIAL**.”

E. 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 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; *provided, however*, that testimony regarding such document or other material shall be designated “**CONFIDENTIAL**” in accordance with Paragraph I(D) of this Protective Order.

F. 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:

1. Provide a copy of this Protective Order to the person to whom disclosure is made;
2. Inform the person to whom disclosure is made that s/he is bound by this Protective Order;

3. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;

4. 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; and

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

II. POST-DISCOVERY PHASE

A. If any party, non-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 case. 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.

B. Within thirty days after the conclusion of the action, each party shall gather the “**CONFIDENTIAL**” materials, copies thereof, and related notes and memoranda, including materials given by that party to any other individual, and shall return them to the party, non-party, or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order, unless: (1) the document has been offered into evidence or filed without restriction as to disclosure; or (2) the parties agree to destruction in lieu of return; or (3) that

counsel may retain a copy of any confidential material for their file, provided it is maintained as confidential and destroyed in accordance with counsel's file retention policy; or, 4) as to documents bearing the notations, summations, or other mental impressions of a receiving party or the party's expert witness or consultant, that party elects to destroy the documents and certifies to the producing party that it has done so. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product, including drafts of preliminary reports submitted by an expert or consultant, which includes information produced as "CONFIDENTIAL," so long as that work product does not duplicate verbatim substantial portions or the text or images of confidential documents or materials. Any such work product retained by an attorney shall continue to be "CONFIDENTIAL" and shall be subject to this Protective Order. The attorney may use his or her work product in other litigation provided that the attorney does not use or disclose the confidential documents.

This Order applies to all financial and other documents provided in this proceeding, whether provided prior to or after the entry of this Order, and this Order shall apply to all future documents provided until otherwise ordered by the Court.

It is so **ORDERED**.

The Clerk is directed to transmit a copy of this Order to all counsel of record herein.

Enter this 20 day of August, 2021.

ORDER

ENTER: James H. Young, Jr.

HONORABLE JAMES H. YOUNG, JR.

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: 6/6/21
Deputy Circuit Clerk

B. G. Fields
R. Roncaglione Jr.
C. Kinney Jr.
C. Brumley
R. Lockhart
J. Flanagan
R. Sweetney

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. 24
GIVEN UNDER MY HAND AND SEAL OF SAID COURT THIS 24
DAY OF August 2021
Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA ukd