

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

**FILED**

2023 SEP -8 PM 4:34

CATHY S. GATSON, CLERK  
KANAWHA COUNTY CIRCUIT COURT

**MOUNTAIN STATE  
PIEPLINE & EXCAVATING, LLC,  
a West Virginia Limited Liability Company,**

**Plaintiff/Counterclaim Defendant/Crossclaimant,**

**v.**

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

**SMITH/PACKETT MED-COM, LLC,  
a Virginia Limited Liability Company, and  
Sole Manager-Member of Defendant 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.**

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## **ORDER**

On May 4, 2023, came the parties, by their respective counsel, and presented several discovery motions, including Motions to Compel depositions, production of documents, protective orders, vacation of discovery deadlines, and more complete answers of discovery. The Court-Appointed Discovery Commissioner held a hearing to address those issues and any other discovery disputes the parties choose to bring before the Commissioner.

After hearing the parties' arguments, having reviewed the voluminous motions, memorandums in support, exhibits and briefs submitted with regard to the same, the Discovery Commissioner makes the following recommendations and the Court, having reviewed and considered the Discovery Commissioner's proposal, hereby ADOPTS and ORDERS the following:

1. The current Scheduling Order in this case is hereby vacated.
2. The Court ORDERS all discovery to be completed by August 4, 2023 and directs the Discovery Commissioner to work with the parties and the Court to create a new scheduling order.
3. All Motions for Summary Judgment are denied without prejudice and can be resubmitted at the appropriate time in compliance with the new scheduling order.
4. The Order dated April 19, 2021, signed by Judge Young, creating confidentiality of documents and things so designated by counsel is the Order that will govern this case.
5. The 102 documents requested by Defendant ECS MID-ATLANTIC, LLC are hereby ORDERED to be produced by June 5, 2023. They will be produced on CD, will be considered confidential and marked as such and served on all parties.

6. Plaintiffs will identify by letter to the Defendants Jarrett Construction Services, Inc. (JCSI) the 15 or so documents that were previously served in some sort of redacted fashion by Friday, May 12<sup>th</sup>, 2023. The Defendants will then obtain the originals of the redacted documents if they exist and send them to the Discovery Commissioner who will copy and send them on to Plaintiffs' counsel.

7. By Wednesday, May 10, 2023, all parties will notify Bo Sweeney, attorney for Defendant JCSI, the names and categories of depositions that remain to be taken.

8. Plaintiffs will identify by letter to Defendant Smith Packett, et al., with specificity which documents Plaintiffs are requesting, within five (5) days of receipt of the letter Smith Packett, et al., will respond accordingly with copy to the Discovery Commissioner.

9. The Court ORDERS the Discovery Commissioner to conduct a telephonic hearing on scheduling the depositions on May 11, 2023, at 11:00 a.m.

10. The party noticing the deposition of an expert shall bear the cost of the deposition by advancing the cost of the travel and four hours of deposition time at the expert's normal hourly rate. Any cost for requested review of/or compiling of documents, exhibits, etc., and any additional deposition time will be paid to the expert within two weeks of the conclusion of the deposition. Any disputes about the charges will be brought to the attention of the Discovery Commissioner.

11. Motions to Compel answers of more definite statements will be sent to the Discovery Commissioner by Monday, May 15, 2023. A subsequent hearing, if necessary, will be held by the Discovery Commissioner to address these disputes.

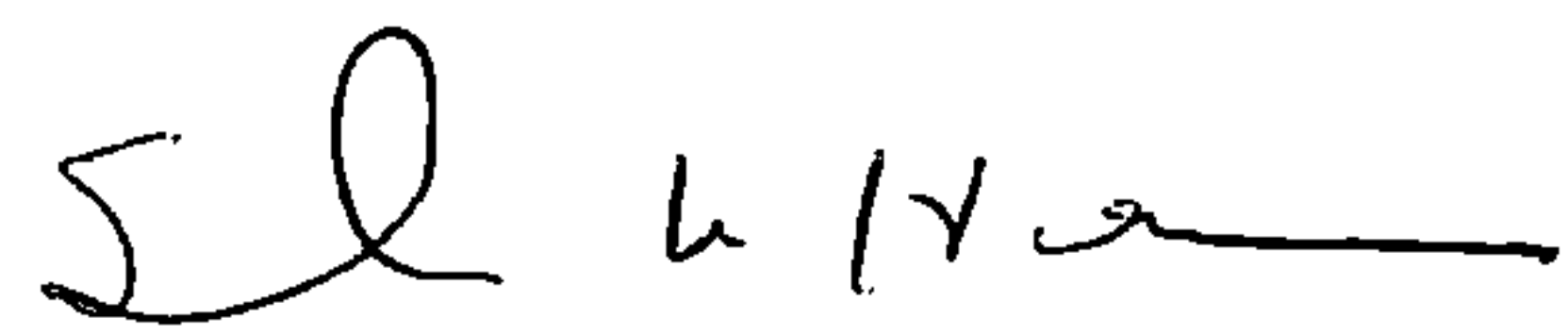


12. All objections to the Recommendations of the Discovery Commissioner and this Order are hereby preserved.

IT IS SO ORDERED, this 27<sup>th</sup> <sup>August</sup> day of May, 2023.

  
HON. MARYCLAIRE AKERS, JUDGE

Prepared by:

  
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