



TWENTY-FOURTH JUDICIAL CIRCUIT

WAYNE COUNTY, WEST VIRGINIA

POST OFFICE BOX 68

WAYNE, WEST VIRGINIA 25570

JAMES H. YOUNG, JR.

Judge

Telephone

304-272-6332

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304-272-6335

June 27, 2016

Vickie "Vance" Kolata, Circuit Clerk
Logan County Courthouse
300 Stratton Street
Logan, West Virginia 25601

RE: The Bruce McDonald Holding Company, et al. vs. Addington, Inc., et al., Civil
Action No. 16-C-70

Dear Ms. Kolata:

Please find enclosed an original Protective Order in the above-referenced matter, along with a self-addressed envelope in order that **a time-stamped copy can be returned to me.** Also, please mail copies to the **Business Court Division, all attorneys of record, and the Resolution Judge in this matter.** For your convenience, I have also enclosed a list of the attorneys of record.

If you need anything further, please contact me.

Sincerely,

Diana Fields
Secretary

Enclosures

VICKIE KOLATA
CIRCUIT CLERK
LOGAN COUNTY

2016 JUN 28 A 10:03

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

THE BRUCE McDONALD HOLDING)
COMPANY, et al,)

Plaintiffs,)

v.)

ADDINGTON, INC., et al,)

Defendants.)

Case No. 16-C-70-LGN

Presiding Judge: Hon. James H. Young, Jr.

Resolution Judge: Hon. Joanna Taber

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JUN 28 A 10:03
VICKIE KOLATA
CIRCUIT CLERK
LOGAN COUNTY

PROTECTIVE ORDER

By agreement of the parties, and for good cause shown, the Court enters the following protective order pursuant to W. Va. R. Civ. P. 16(b) and 26(c).

The terms and conditions of this Protective Order shall apply to discovery in this case in order to protect sensitive business information, proprietary information, trade secrets, and other confidential information of the parties and certain non-parties.

1. DEFINITIONS

(a) "Party" means any current plaintiff or defendant in this case and any plaintiff, defendant, or other party that may be joined in this case.

(b) "Non-Party" means any person or entity not a Party who produces documents or other information or provides testimony in response to a subpoena or other process in this case.

(c) "Material" is defined as documents, electronically stored information, records, tangible materials, testimony, responses to discovery, and other information produced by a Party or Non-Party in discovery in this case.

(d) "Confidential Material" is defined as Material that any Party or Non-Party considers in good faith to be confidential information relating to: trade secrets, pricing, reserves, research, development, strategic planning, and other financial, commercial, or proprietary information, which, if disclosed, might adversely affect the competitive position or business operations of the Party or Non-Party producing such materials. Each party or Non-Party who designates information or items for protection under this Protective Order must take care to limit any such designation to specific material that qualifies under the appropriate standards.

(e) The "Designator" is any Party or Non-Party who produces Material in this case and designates the Material as "CONFIDENTIAL."

2. DESIGNATION OF MATERIALS AS "CONFIDENTIAL"

(a) Any Party or Non-Party who produces Material in the course of discovery in this case may designate such Material as Confidential Material if that Party or Non-Party believes in good faith that the Material satisfies the definition of Confidential Material, as set forth in Paragraph 1(d).

(b) The Designator shall mark the word "CONFIDENTIAL" on the face of each document and each page so designated at the time it is produced or served, or, in the case of Confidential Material contained in or on media other than paper, by affixing

such a label to the information or otherwise identifying the information as Confidential Material.

(c) In the event that a Party desires to designate specific answers or responses to interrogatories or requests for admission as Confidential Material, the Party shall insert the word “CONFIDENTIAL” in brackets at the beginning of the specific answer or response.

(d) In the case of depositions, designation of the portion of the transcript (including exhibits) which contains Confidential Material shall be made within 14 days after receipt of the transcript by stamping “CONFIDENTIAL” on the pages that contain Confidential Material and notifying all Parties in writing of the page and line numbers which have been designated as Confidential Material. In the absence of an agreement on the record or in writing, or an order of the Court to the contrary, all deposition testimony shall be deemed Confidential Material until the expiration of the aforementioned 14 days.

(e) For purposes of this case, no Party concedes that any Material designated by any other Designator as Confidential Material has been properly designated as Confidential Material. A Party shall not be obligated to challenge the propriety of the designation of Material as “CONFIDENTIAL” at the time made, and the failure to do so shall not preclude a subsequent challenge in this or any other case. If a Party challenges a designation, it shall give written notice to the Designator, and the Party and the Designator shall attempt to resolve any challenge in good faith on an informal basis (“meet and confer”). If the challenge cannot be informally resolved, the Designator shall seek appropriate protection from the Court within fourteen (14) business days of

receiving written notice of the challenge, and shall bear the burden of establishing the propriety of continued confidentiality. The Material shall continue to be treated as Confidential Material until the issue relating to the propriety of the designation has been resolved.

(f) Any Designator may, at any time, withdraw the "CONFIDENTIAL" designation of any Material produced by that Designator.

(g) The inadvertent failure to designate or withhold any Material as confidential will not be deemed to waive a later claim as to its confidential nature, or to preclude the producing Party from designating such Material as confidential at a later date in writing and with particularity. The Material shall be treated by the receiving Party as Confidential Material from the time the receiving Party is notified in writing of the change in the designation.

3. USE AND HANDLING OF CONFIDENTIAL MATERIAL

(a) Confidential Material shall be used only for purposes of preparing for and litigating this case (including any appeal) and not for any other action or other purpose.

(b) Access to Confidential Material shall be closely controlled and limited to individuals who have a demonstrable and bona fide need to review it. Confidential Material shall not be revealed or disclosed, directly or indirectly, in any manner or in any form, to any person, entity, or judicial tribunal other than:

- (1) Counsel of record and any other counsel for a Party in this case, members of their firms and associates, associate attorneys, contract lawyers, paralegals, clerical, and other

employees or agents of such counsel who are assisting in the conduct or management of this case;

- (2) In-house counsel of a Party, and paralegal, clerical, and other employees assisting in-house counsel;
- (3) Party deponents, current and former employees, officers, members, or directors of a Party or its affiliates who are assisting in the conduct of this case;
- (4) The Presiding Judge, Resolution Judge, Supreme Court Justices, court personnel, court reporters, and any jury empaneled in this case;
- (5) Third party deponents and trial witnesses in this case and their counsel for purposes of this case;
- (6) Consultants, experts, and outside litigation support personnel retained by counsel for any Party to this case to assist the Party in the case;
- (7) The person or entity that wrote or received the document or gave the testimony designated as "CONFIDENTIAL"; and
- (8) Others, if the Designator so agrees in writing or, for good cause shown, the Court so permits.

(c) Before any person described in Paragraphs 3(b)(6) and 3(b)(8) is given access to Confidential Material, the person shall review the Protective Order and agree in writing (by signing the Acknowledgement attached hereto as Exhibit A) to be bound by this Protective Order. A copy of the Acknowledgement shall be retained by counsel disclosing Confidential Material until the conclusion of this case, including all appeals.

(d) All persons who have access to Confidential Material at any time shall take all precautions necessary to prohibit access to such Confidential Material other than as provided for herein.

(e) Any summaries or copies of Confidential Material shall bear the appropriate legend set forth in Paragraph 2(b) above, and shall be subject to the terms of this Protective Order to the same extent as the information or document from which such summary or copy is made.

(f) Any party intending to present Confidential Material in the body or exhibits of any filing or submissions to this Court shall attempt to confer with the Designator as to whether the Confidential Material can be publicly filed or filed in a mutually acceptable redacted form. Absent agreement on these issues, documents that contain Confidential Material shall be filed under seal. The Court retains the right, however, to require that the Confidential Material be unsealed and filed publicly.

(g) Within sixty (60) days after final termination of this case (including any appeal), either by final judgment or settlement, all persons and entities in possession of Confidential Material shall either destroy the information and all copies thereof or return the information and all copies thereof to the Designator, at the election of the Designator. Counsel shall certify in writing upon request of the Designator that all Confidential Material and copies thereof have been handled in accordance with this paragraph.

4. GENERAL PROVISIONS

(a) Nothing contained in this Protective Order shall restrict or limit any Party's right to present Confidential Material to the Court or to a jury during a trial, to a witness during depositions, or during any other hearing in this case. The use of Confidential Material at trial shall be governed by the pretrial order.

(b) If any Party receives a subpoena or order demanding the production of any Material designated hereunder as "CONFIDENTIAL," the party receiving such subpoena or order shall promptly notify the Designator of such subpoena or order prior to production.

(c) This Protective Order shall not apply to information or tangible items obtained by means independent of production by a Party or Non-Party through discovery or other proceedings in this case. The restrictions set forth in this Protective Order shall not apply to any Material which, at the time of production, is within the public domain, or which the Designator subsequently released into the public arena.

(d) Neither this Protective Order, production or disclosure of Material under this Protective Order, nor designation or failure to designate Material under this Protective Order, shall constitute a waiver of the right of the Designator to maintain the trade secret status or confidentiality of that Material in other contexts.

(e) This Protective Order may be modified or amended by agreement of the Parties with the approval of the Court. To the extent that the Parties fail to agree on a modification proposed by any Party, nothing contained herein shall be deemed to preclude any Party from moving the Court, for good cause shown, for a ruling that modifies the Protective Order in any respect.

(f) Notwithstanding anything contained herein to the contrary, counsel shall be permitted to retain copies of all court filings, transcripts, exhibits, correspondence, and work product containing or reflecting Confidential Materials after final termination of this case; provided, however, that they shall treat such materials as confidential.


(g) This Protective Order shall not be construed as waiving any right to assert a claim of privilege or objection as to relevance, admissibility or other grounds for not producing Material, and, pursuant to W. Va. R. Evid. 502(d), disclosure of material in this case does not waive the attorney-client privilege or work-product protection in any other federal or state proceeding. Moreover, if information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved. The parties and the Court agree that this subparagraph governs the treatment of inadvertently produced privileged information and attorney work product for all discovery, including electronically stored information, and therefore replaces the final two paragraphs of Part 8 of the June 21, 2016 Scheduling Order.

(h) This Protective Order shall survive and continue to be binding after the conclusion of this case, and this Court shall retain jurisdiction to enforce the provisions of this Protective Order.

5. LIMITS OF THIS PROTECTIVE ORDER

Nothing contained in this Protective Order, and no action taken pursuant to it, shall prejudice the right of any Party to contest the alleged relevancy, admissibility, or discoverability of the Material sought. Nor shall this Protective Order prevent any party from objecting to discovery that it believes to be otherwise improper.


SO ORDERED: This 27 day of June, 2016.


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Counsel for Defendants

Exhibit A

**ACKNOWLEDGEMENT OF PROTECTIVE ORDER
AND AGREEMENT TO BE BOUND**

I hereby acknowledge that I, _____, am about to receive information that is being supplied by one or more of the parties in the case of *The Bruce McDonald Holding Company, et al v. Addington, Inc., et al*, Case No. 16-C-70-LGN, pending in the Circuit Court of Logan County, West Virginia Business Court. I understand that the information is subject to the terms of a Protective Order. I hereby certify my understanding that such information is being provided to me pursuant to the terms and restrictions of the Protective Order. I have been given a copy of said Protective Order, have read it, and agree to be bound by its terms. I understand that information and any documentary material covered by the Protective Order (which includes any notes or other record that I make of such material) shall not be disclosed to others, except those listed in paragraph 3(b) of the Protective Order and under the terms set forth therein.

Signature: _____

Print Name: _____

Date: _____