

IN THE CIRCUIT COURT OF LOGAN COUNTY, WEST VIRGINIA

**THE BRUCE MCDONALD HOLDING
COMPANY, et al.,**

Plaintiffs,

v.

Civil Action No. 16-C-70

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

ADDINGTON, INC., et al.,

Defendants.

ORDER

On the 11th day of July, 2017, the Court conducted a telephonic hearing concerning Plaintiffs' Motion For Immediate Protective Order and Motion to Strike Deposition Testimony.

Having considered the briefs and arguments of all parties, the Court made the following rulings:

On May 2, 2017, the Court ruled that Defendants could depose Plaintiffs' prior counsel in regard to three specific areas, defined as "knowledge at issue" in its Order of same date. In their Motion, Plaintiffs contend that counsel for the Defendants exceeded these areas in recent depositions of two prior counsel, Mr. William Herlihy, Esq. and Harry G. Shaffer, III, Esq., the transcripts of which Plaintiffs tendered to the Court for review. Defendants maintain that their questioning was proper and that the Court need not review and rule upon the questions asked in depositions at this time, but should wait and rule upon any elicited testimony as it arises in further motions and proceedings in this case.

While the Court recognizes Plaintiffs' need to preserve the attorney-client privilege during depositions of their prior counsel, the Court finds that ruling upon the issues raised Plaintiffs' Motion at this time would be premature. Weighing the Plaintiffs' need to object to questioning beyond the scope of the Order against the smooth operation of the depositions, the

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Court crafts the following solution: Nothing asked or said in the depositions of Plaintiffs' prior counsel shall be deemed a waiver of attorney-client privilege or work product privilege, and all Plaintiffs' objections to questions outside the scope of the Court's Order are preserved without need of Plaintiffs' voicing or arguing them contemporaneously during the depositions. If testimony gained from questions Plaintiffs believe to be improper is used in dispositive motions or otherwise, Plaintiffs may object and move to strike such testimony, may make motions in limine to exclude such evidence at trial, or may object as otherwise appropriate. This ruling shall apply uniformly to all depositions of Plaintiffs' prior counsel, including the deposition of Thomas Lane, Esq., who was set to be deposed at the conclusion of the telephonic hearing this day.

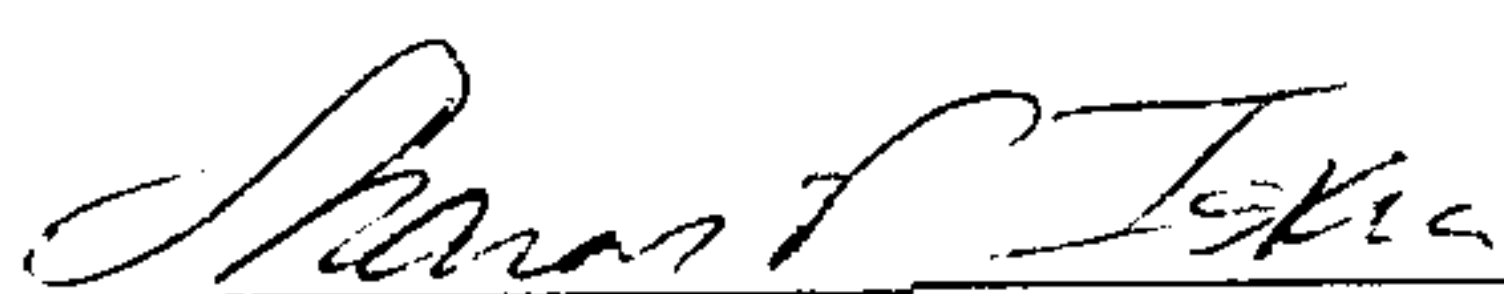
Accordingly, the Plaintiffs' Motion For Immediate Protective Order and Motion to Strike Deposition Testimony is **DENIED** as premature, and the parties are given further instructions as set forth herein. Plaintiffs' objections to this ruling are noted and preserved.

The Clerk is directed to provide a copy of this Order to counsel of record.

ENTER: this 6 day of ^{Sept} August, 2017.


Honorable James H. Young, Jr.

Prepared by:





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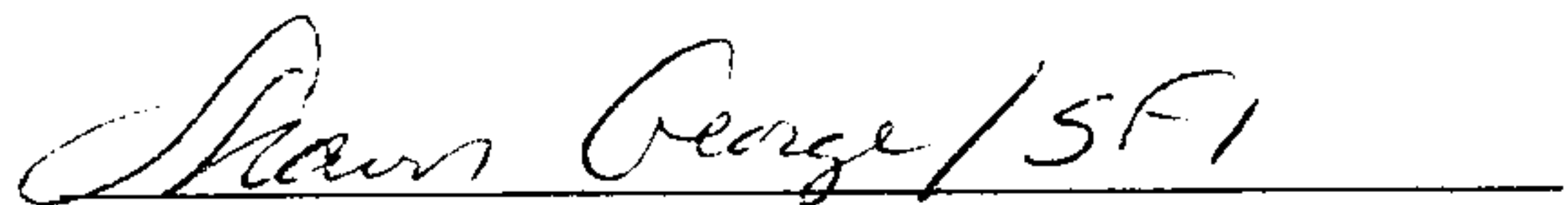
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TWENTY FOURTH JUDICIAL CIRCUIT

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JAMES H. YOUNG, JR.

Judge

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September 6, 2017

Mark McGrew, 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 Mr. McGrew:

Please find enclosed an original Order in the above-referenced matter, along with a self-addressed envelope in order that a **certified copy can be returned to me. Also, please mail certified 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

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