

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

WINE AND BEVERAGE MERCHANTS
OF WEST VIRGINIA, INC.; ATOMIC
DISTRIBUTING COMPANY;
BEVERAGE DISTRIBUTORS, INC.;
PHILLIP JAY SHIFFLETT; JO'S GLOBE
DISTRIBUTING COMPANY; and
MARTIN DISTRIBUTING COMPANY,

Plaintiffs,

v.

MOUNTAIN STATE BEVERAGE, INC.;
MOUNTAIN EAGLE, INC.; NORTHERN
EAGLE, INC.; WILLIAM J. RUCKER, JR.;
SCOTT PARKES; and JOHNSON
BROTHERS LIQUOR COMPANY,

Defendants.

Case No.: 17-C-91

Judge James H. Young, Presiding Judge
Judge Paul T. Farrell, Resolution Judge

FILED
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HANCOCK COUNTY, WV

STIPULATED PROTECTIVE ORDER

IT IS HEREBY ORDERED:

1. This Stipulated Protective Order establishes procedures for designating and handling confidential information disclosed in discovery. The parties agree to use them judiciously, and only where there is a real possibility of material prejudice to a party's business interests.
2. This Stipulated Protective Order shall apply to all information, documents, and tangible things subject to discovery in this action, that are in the possession, custody, or control of a party, or of a non-party witness, and that are believed to contain or embody a party's trade secret, proprietary, or other confidential or highly confidential information. By way of example, and not limitation, confidential and highly confidential information may include, or may be included in, documents, tangible things, transcripts, audio, audiovisual and stenographic

recordings, answers to interrogatories and other responses to discovery requests, pleadings, briefs, summaries, notes, abstracts, motion, drawings, and any instrument which comprises, embodies, or summarizes material which any party or non-party reasonably and in good faith considers confidential or proprietary. Confidential and highly confidential information may also include information revealed during depositions upon oral examination.

3. Nothing in this Stipulated Protective Order, nor any failure by any party to challenge a designation by another party of any information as confidential or highly confidential, shall be construed as an admission or agreement that any specific information is or is not confidential, proprietary, or a trade secret, or is or is not subject to discovery, or is or is not admissible as evidence.

4. Any party or non-party may designate as "CONFIDENTIAL" any information of that party, regardless of form, including but not limited to, research, development, commercial, or business information, which such party reasonably and in good faith believes contains or reflects proprietary information the disclosure of which would materially prejudice the party's business interests. The "CONFIDENTIAL" designation extends to both the material so designated and to the substance of the information so designated and excerpts, studies, compilations or similar documents containing or compiled from said information. With limited exceptions described below, "CONFIDENTIAL" information is intended to be viewed only by a party's attorneys and certain limited representatives of a party.

5. Any party shall be entitled to designate certain limited categories of confidential information as extremely sensitive in nature and requiring special treatment. Information and documents requiring such treatment shall be identified upon disclosure by the legend "HIGHLY CONFIDENTIAL." "HIGHLY CONFIDENTIAL" information is strictly limited to sensitive

business and technical information affecting current and future aspects of any party's ongoing businesses, the disclosure of which to any party who competes or in the future reasonably may be expected to compete with any party would prejudice any party in the operation of such ongoing businesses. With limited exceptions described below, "HIGHLY CONFIDENTIAL" information is intended to be viewed only by a party's attorneys and not by a party or any other representative of a party.

6. "CONFIDENTIAL" information and "HIGHLY CONFIDENTIAL" information is not intended to include any information that is or was public knowledge, or subsequently becomes public knowledge, through no violation of this Stipulated Protective Order

7. Materials may be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" in the following manner:

a) By imprinting "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" on the document or otherwise indicating in a reasonable and discernible manner the designation;

b) By imprinting the word "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" next to or above any answer to an interrogatory, response to a request for production, response to a request for admission, or other discovery response;

c) With respect to deposition testimony, in the manner set forth in paragraph 11 of this Stipulated Protective Order.

8. Information designated "CONFIDENTIAL" shall not be discussed, revealed or disclosed in any manner or form to any person other than the following "Permitted Recipients":

a) Counsel of record for each party, and members and associates of their firms, and employees of those firms assigned to assist counsel in the prosecution, defense, or settlement of this litigation;

b) Inside counsel of a party and that party's internal paralegals, secretaries, and clerical staff assigned to assist in the prosecution, defense or settlement of this litigation;

c) The parties' experts and consultants and the secretarial and clerical staffs of such experts and consultants (hereinafter "experts"), upon the condition that the experts, for themselves and their staff members, shall agree in writing to be bound by the terms of this Stipulated Protective Order, as set forth in **Exhibit A**;

d) The officers and employees of the parties who are responsible for or directly involved in the prosecution or defense of this litigation for the purpose of the prosecution or defense of this litigation;

e) A witness at any deposition or other proceeding in this litigation, provided that, as to witnesses not otherwise entitled to see "CONFIDENTIAL" information under the terms of this paragraph, the disclosing party has made a good faith effort in advance of the disclosure to have the witness agree to be bound by the applicable terms of this Stipulated Protective Order. Such good faith effort shall include: (1) providing a copy of this Stipulated Protective Order to the witness sufficiently in advance of the deposition for the witness and his or her counsel to review and consider it; (2) advising the witness on the record that the "CONFIDENTIAL" information is subject to this Stipulated Protective Order; (3) asking the witness to agree under oath to maintain the confidentiality of such information in accordance with the terms of the Stipulated Protective Order; and (4) asking the witness to sign **Exhibit A** hereto. In the event that a witness refuses to execute **Exhibit A**, such witness shall be informed that he or she nevertheless is bound by all of the terms of this Stipulated Protective Order and may only use "CONFIDENTIAL" and "HIGHLY CONFIDENTIAL" information in accordance herewith;

f) A witness in any private interview conducted by a party to this litigation, provided that (i) such witness shall first have read this Stipulated Protective Order and agreed to be bound hereby by executing **Exhibit A** hereto, and (ii) such witness shall not be permitted to retain a copy, or any notes or other memorializations, of any such "CONFIDENTIAL" information;

g) Any court having jurisdiction over proceedings in this litigation or over individuals subject to this Stipulated Protective Order;

h) Any court reporter or typist recording or transcribing testimony in this litigation;

i) Clerical and ministerial service providers, such as outside copying and e-discovery support personnel, retained by the parties or their counsel; and,

j) Witnesses who (i) are currently employed by any party and have been demonstrated either (A) to have participated in the preparation of such "CONFIDENTIAL" information, or (B) currently to have legitimate right of access to such "CONFIDENTIAL" information, or (ii) were formerly employed by any party and have been demonstrated to have participated in the preparation of such "CONFIDENTIAL" information while so employed by any party.

9. Information designated as "HIGHLY CONFIDENTIAL" shall not be discussed, revealed, or disclosed in any manner or form to any person other than the following "Permitted Recipients":

a) Those persons described in paragraph 8(a) above;

b) Those persons described in paragraph 8(c) above, upon the condition that such experts, consultants, officers and employees have agreed in writing to be bound by the terms of this Stipulated Protective Order as set forth in **Exhibit A**;

c) Witnesses not otherwise entitled to see "HIGHLY CONFIDENTIAL" information may see "HIGHLY CONFIDENTIAL" information at a deposition or other proceeding in this litigation, or in a private interview conducted by a party to this litigation, only when (i) the designating party consents to or the Court orders such disclosure, and (ii) the procedures set forth in paragraph 8(e) are satisfied and the witness has executed **Exhibit A** hereto, provided however that such consent shall not be unreasonably withheld and, in the event that consent is not granted, the parties agree jointly and promptly to apply the Court to resolve the dispute;

d) Those persons and the Court described in paragraph 7(g)-(j).

10. Each party who obtains an executed copy of **Exhibit A** hereto from any person or entity to whom "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL" information is or may be disclosed shall be under an affirmative obligation to preserve and maintain such **Exhibit A**.

11. With respect to depositions, the parties shall proceed as follows:

a) Any party may use "HIGHLY CONFIDENTIAL" information at a deposition. Only persons authorized to receive "HIGHLY CONFIDENTIAL" information may attend the portions of the depositions pertaining to "HIGHLY CONFIDENTIAL" information and/or in which "HIGHLY CONFIDENTIAL" information will be disclosed.

b) Counsel for any party may designate testimony at a deposition as "HIGHLY CONFIDENTIAL" during the course of any deposition, provided that such testimony

qualifies for protection under this Stipulated Protective Order. Such designation may be made in response to a question, prior to any responsive testimony being given. If such a designation is made, any person not authorized to receive "HIGHLY CONFIDENTIAL" information shall be excluded from the deposition until testimony regarding "HIGHLY CONFIDENTIAL" matters has been concluded.

c) If any party objects to the designation of testimony as "HIGHLY CONFIDENTIAL," the objection may be noted for the record but persons not authorized to receive "HIGHLY CONFIDENTIAL" information shall nevertheless be excluded from the deposition until testimony regarding "HIGHLY CONFIDENTIAL" matters has been concluded. After the deposition the objecting party may contest the designation before the Court, and may seek to examine the witness further on "HIGHLY CONFIDENTIAL" subjects as decided by the Court.

d) A party or non-party may designate testimony or information disclosed during a deposition as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by (a) designating testimony or information on the record during the deposition, or (b) notifying the other parties in writing within thirty (30) days following receipt of the transcript or other method for recording the testimony permitted by West Virginia R. Civ. P. 30(b)(3) (collectively referred to hereafter as "recordings") of those portions of the recording to be so designated. All deposition recordings not specifically designated as "HIGHLY CONFIDENTIAL" on the record shall be treated as "CONFIDENTIAL" for a period of thirty (30) days following receipt of the recording. The portions of the recordings designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at or after the deposition shall be subject to the terms of this Stipulated Protective Order.

12. Except as agreed in writing by the designating party, information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be maintained in confidence, and in a secure and safe area, by the Permitted Recipient(s) to whom it is disclosed; may be used by such Permitted Recipient(s) only for the purposes of this litigation and for no other purpose; and may be disclosed by such Permitted Recipient(s) only to another Permitted Recipient in accordance with this Stipulated Protective Order. All Permitted Recipients shall exercise due and proper care with respect to the storage, custody, and use of all information so designated.

13. Unless otherwise ordered by the Court or agreed to in writing by the parties, any documents, deposition recordings, or other information hereafter filed with the Court, including but not limited to pleadings, memoranda, deposition notices, interrogatories, requests for document production, subpoenas, and responses thereto containing, paraphrasing or summarizing information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall be filed under seal. Any party may, however, file a copy of such pleadings in the public record with the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information redacted.

14. Any party may at any time request in writing from any other party approval for the release or disclosure, either generally or to an identified person or persons, of information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" or file under seal. Upon receipt of such request, the parties shall confer in a good faith as to the status of the subject information and its disclosure. If the parties are unable to agree, the party seeking disclosure may move the Court for an Order permitting disclosure and the burden to sustain the designation shall be on the designating party.

15. Any such party that moves the Court for an Order permitting disclosure of information designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall have first complied with the procedure set for in the foregoing paragraph.

16. Before any "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL" information is offered as evidence, the proponent of the evidence shall provide opposing counsel with two (2) business days' advance notice (unless fewer than 2 days' notice of the hearing has been given, in which case notice shall be given as far in advance of the hearing as is possible), and will attempt to resolve with opposing counsel a means to protect the confidentiality of the information therein. If those attempts are unsuccessful, the party who designated the evidence as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" shall request the Court to take such steps as may be appropriate under the circumstances to protect the confidentiality of the information contained therein. The advance notice provisions of this paragraph 15 shall govern only evidence to be introduced or used during live Court hearings, and not "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL" information that is filed under seal in support of a motion or pleading.

17. Subject to the provisions herein, if another court, administrative agency, or any other person subpoenas or orders production of "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL" information that a party has obtained under the terms of this Stipulated Protective Order, such party shall immediately notify the producing party of the pendency of such subpoena or order, shall object to such production on the basis of this Stipulated Protective Order, and shall use reasonable efforts to afford the producing party an opportunity to be heard by the court, administrative agency, or other body prior to any disclosure of "CONFIDENTIAL" information or "HIGHLY CONFIDENTIAL" information.

18. The inadvertent or unintentional disclosure by the designating party of information considered to be "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL," regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of a party's claim of confidentiality, either as to the specific information disclosed or as to the subject matter thereof. Any such inadvertently or unintentionally disclosed information not designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" at the time of its disclosure shall be designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" as soon as reasonably possible after the supplying party becomes aware of the erroneous disclosure, and shall thereafter be treated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" by the receiving individual(s).

19. The inadvertent or unintentional disclosure or production of any privileged information or materials or other materials exempt from production by any party shall not constitute a waiver or impairment of any claim of privilege or exemption (including under the attorney-client privilege or work product doctrine) concerning any such materials or the subject matter thereof. Any such party shall have the right to re-designate as privileged or exempt any material or information that it produces or has produced. If an inadvertent or unintentional disclosure or production occurs, the privileged materials, together with all copies, shall be returned to the producing party as soon as practicable after demand of the producing party or after discovery by any receiving party.

20. In the event any person or party subject to this Stipulated Protective Order violates or threatens to violate any term of this Stipulated Protective Order, the aggrieved party may immediately apply to the Court to obtain injunctive relief against any such person violating or threatening to violate any of the terms of this Stipulated Protective Order. In any such

proceeding no person subject to the provisions of this Stipulated Protective Order shall assert as a defense that the aggrieved party possesses an adequate remedy at law.

21. The parties and any other person subject to the terms of this Stipulated Protective Order, including Permitted Recipients, agree that the Circuit Court of Hancock County, West Virginia and Business Court Division, has jurisdiction over all persons producing or receiving documents for the purpose of enforcing this Stipulated Protective Order. Any person, including Permitted Recipients, who has been made aware of the terms of this Stipulated Protective Order and furnished with "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" information shall be bound by the terms hereof, whether or not such person has signed **Exhibit A** hereto.

22. The provisions of this Agreement shall survive the termination or conclusion of this litigation.

23. Within 120 days after final conclusion of all aspects of this litigation, all information designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" and all copies of same (other than exhibits of record) shall be returned to the designating party or destroyed, unless the designating party agrees in writing to some other disposition. Each party shall confirm in writing that all documents have been returned to the designated party or destroyed and that no copies have been retained or remain in the possession of the non-designating party. Notwithstanding the foregoing, attorney work product and briefs, pleadings, written discovery responses, recordings of testimony and exhibits thereto, evidence adduced at trial, and other court papers prepared or used in this litigation need not be returned or destroyed, but shall remain subject to the provisions of this Stipulated Protective Order.

24. This Stipulated Protective Order is subject to amendment by further stipulation of the parties.

25. This Stipulated Protective Order shall bind all persons given notice of this Stipulated Protective Order.

Respectfully submitted:

BAILEY & GLASSER, LLP

By: 

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J.C. Distributing Company, LLC,
Phillip Jay Shifflett, Jo's Globe
Distributing Company, and Martin
Distributing Company*

It is so **ORDERED**.

DATED: July 5, _____, 2018

The Clerk is directed to send copies of this Order to counsel of record.

Respectfully submitted:

PIETRAGALLO GORDON ALFANO
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By: 


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J. Rucker, Jr., Scott Parkes, and Johnson
Brothers Liquor Company*

A TRUE COPY

Attest:


Clerk, Circuit Court, Hancock County

Deputy


JAMES H. YOUNG, JR., JUDGE

EXHIBIT A

1. I, _____ have read the foregoing Stipulated Protective Order entered in the action entitled *Wine and Beverage Merchants of West Virginia, Inc., et al. v. Mountain State Beverage, Inc., et al.*, Case No. 17-C-91, pending in the Circuit Court of Hancock County, West Virginia, and the West Virginia Business Court Division ("Litigation"), and agree to be bound by its terms with respect to any documents, information, or materials that are furnished to me as set forth in the Stipulated Protective Order.

2. I will not directly or indirectly disclose to anyone who is not otherwise permitted to receive them under this Stipulated Protective Order any documents, information, or materials designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

3. I hereby consent to the jurisdiction of the Circuit Court of Hancock County, West Virginia, and the West Virginia Business Court Division, with regard to any proceedings to enforce the terms of this Stipulated Protective Order.

4. I hereby agree that any documents, materials or information furnished to me will be used by me only for the purposes of this Litigation and for no other purpose, and will be returned to the person who furnished such documents, materials, or information to me.

Signature

Date