THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM DORCHESTER COUNTY
Maite Murphy, Circuit Court Judge

RECEIVED

Jun 13 2024

S.C. SUPREME COURT

Innovative Waste Management, Inc., Respondent,

v.

Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products GP, LLC, Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products L.P., Dunhill Products GP, LLC, and Henry Wuertz are the Appellants.

Appellate Case No. 2023-001045

APPENDIX – VOLUME II

David B. Marvel
PO Box 22734
Charleston, SC 29413
(843) 853-4877

Attorney for the Appellants

Wm. Michael Gruenloh
63 Moultrie Street
Second Floor
Charleston, SC 29403
(843) 577-0027

Frederick John Jekel
PO Box 11067
Columbia, SC 29211
(803) 765-2383

Attorneys for the Respondent

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Mike Gruenloh, Esq. | 9 Broad Street Suite C | Charleston, SC 29401
Phone: 843 474-1890 | Facsimile: 843 577-0721 | www.gruenlohlaw.com

[Quoted text hidden]

David B. Marvel < dave@prennermarvel.com> Thu, Mar 14, 2013 at 5:11 PM
To: william gruenloh <mike@gruenlohlaw.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>

Sorry I haven't had a chance to look at it. Will have it back to you in the morning
[Quoted text hidden]

David B. Marvel < dave@prennermarvel.com> Fri, Mar 15, 2013 at 6:47 AM
To: Patrick Aulton Chisum <patrick@gruenlohlaw.com>
Cc: william gruenloh <mike@gruenlohlaw.com>

Mike. I don't want to agree in a court order that $500 is reasonable compensation for this type of discovery dispute. I recommended that to the client as a courtesy but I don't want it to ever appear to anyone else that it was imposed as a sanction against them or me. That being said, I'm willing to write you that check today. So please remove that portion from the Order and let me know when you can send someone by to pick it up. Thanks.
[Quoted text hidden]

<IWM M2C Consent Order0001.pdf>

Mike Gruenloh < gruenlohlaw1@gmail.com> Fri, Mar 15, 2013 at 8:32 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>, william gruenloh <mike@gruenlohlaw.com>

I don't understand that. It is a sanction not a "courtesy" and it is what we agreed to. Why would we leave out a part of our agreement from the Order?
[Quoted text hidden]
[Quoted text hidden]

David B. Marvel < dave@prennermarvel.com> Fri, Mar 15, 2013 at 8:39 AM
To: Mike Gruenloh <gruenlohlaw1@gmail.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>, william gruenloh <mike@gruenlohlaw.com>

The agreement was that we would pay you. I didnt agree to a sanction, and I don't agree it's sanctionable conduct. That being said I understand you and your client's frustration at the situation. As a practical matter that portion of our agreement will already be consummated by the time the order is transmitted to the court, so I fail to see why it matters to you.
[Quoted text hidden]

David B. Marvel< dave@prennermarvel.com> Fri, Mar 15, 2013 at 9:41 AM
To: Mike Gruenloh <gruenlohlaw1@gmail.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>, william gruenloh <mike@gruenlohlaw.com>

Mike – I have executed the attached modified Consent Order on discovery. I have also written the attached check. The originals of both are here waiting for pickup at your soonest convenience. Alternatively I could have someone run them to your office later, but based on your previous correspondence I thought you might want them sooner rather than later. Please let me know if you have any questions, comments, or concerns.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

From: Mike Gruenloh [mailto:gruenlohlaw1@gmail.com]
Sent: Friday, March 15, 2013 8:32 AM
To: David B. Marvel
Cc: Patrick Aulton Chisum; william gruenloh
Subject: Re: IWM Consent Order

[Quoted text hidden]

2 attachments

12-1227 Consent Order on Motion to Compel.pdf
45K

IOLTA check 2381 to Gruenloh.pdf
20K

william gruenloh< mike@gruenlohlaw.com> Fri, Mar 15, 2013 at 10:21 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>

My practice is to include every part of the agreement between the parties in the Consent Order. The payment your client agreed to make to my firm is clearly part of the agreement and is in response to our request that the court award sanctions for the failure to comply with the rules of procedure which resulted in my firm having to engage in motion practice. Hopefully, we will not be back before the court on discovery related issues but if the payment of my time becomes an issue we will put the correspondence and our understanding on the record and let the court decide if it was a courtesy. We'll have someone by your office to pick up the Order and check today.

I'm glad we were able to avoid a trip to Dorchester today and look forward to receiving your client's responses next Wednesday

Gruenloh Law Firm
Mike Gruenloh, Esq. | 9 Broad Street Suite C | Charleston, SC 29401
Phone: 843 474-1890 | Facsimile: 843 577-0721 | www.gruenlohlaw.com

[Quoted text hidden]

william gruenloh< mike@gruenlohlaw.com> Fri, Mar 15, 2013 at 10:22 AM
To: Trevor Threet <trthreet@charlestonlaw.edu>

[Quoted text hidden]

Gruenloh Law Firm

Mike Gruenloh, Esq. | 9 Broad Street Suite C | Charleston, SC 29401
[Quoted text hidden]

2 attachments

- **12-1227 Consent Order on Motion to Compel.pdf**
  45K
- **IOLTA check 2381 to Gruenloh.pdf**
  20K

PRENNER • MARVEL, P.A.
ATTORNEYS AT LAW
PROCTORS IN ADMIRALTY
[illegible]

DANIEL L. PRENNER
DAVID B. MARVEL (SC, GA)
KENNETH G. GOODE, JR.

PHONE: (843) 722-7851
FACSIMILE: (843) 722-7861
www.prennermarvel.com

March 15, 2013

BY HAND

William M. Gruenloh, Esq.
Gruenloh Law Firm, LLC
9 Broad Street, Suite C
Charleston, South Carolina 29401

RE: Innovative Waste Management, Inc. v. Crest Energy Partners Group
Case No: 2012-CP-18-1227

Dear Mike,

I have enclosed the original executed Consent Order on Plaintiff's Motion to Compel along with our firm's trust account check No. 2381 in the amount of $500 made payable to your firm as attorneys for Innovative Waste Management, Inc.

I appreciate your courtesy on the Motion to Compel, and note that the payment herewith is made by my client Crest Energy Partners GP, LLC, as a courtesy to your client noting that the delays in formulating our responses to your discovery related to the business operations and relationships of and between my clients, which are only tangentially related to the issues presented by this case.

Pursuant to our agreement we will respond to outstanding discovery by next Wednesday, and I look forward to moving this matter forward. If you have any questions, comments, or concerns, please do not hesitate to call.

Sincerely,

David B. Marvel

DBM/sp
Enclosures

Crest Responses

David B. Marvel <dave@prennermarvel.com> Wed, May 1, 2013 at 6:33 PM
To: Mike Gruenloh <mike@conegruenloh.com>
Cc: "Pendleton, Sarah" <sarah@prennermarvel.com>

Mike I have attached hereto a pdf containing all of the responses to interrogatories, updated responses to Crests's requests for production, documents produced pursuant to the hearing of April 1, 2013, and several sets of production logs, which are sorted by Bates No., Date, and transaction so that they are hopefully helpful. You will note they are unsigned, as I am not in a position to put pen to paper. However they are sealed in a pdf, and bates stamped todays date. Please accept this affirmation in lieu of a true signature. For the sake of good order, I will sign them and get hard copies to you following my return to Charleston. As I previously advised, I am available next week if you want to meet regarding this case.

Best regards

Dave B. Marvel

Prennier Marvel, P.A.

636 King Street

Charleston SC 29403

ph

fax

Crest disc resp May 1 2013.pdf
/116K

Gruenloh
Law Firm

9 Broad Street · Suite C
Charleston, South Carolina 29401

Wm. Michael Gruenloh

DELIVERED VIA EMAIL ONLY

David B. Marvel
Prenner Marvel
630 King Street
Charleston, South Carolina 29401

May 3, 2013

Re: IWM v. Crest et. al.

Dear Mr. Marvel:

I am in receipt of your clients' discovery responses which were served via email on May 1, 2013. I write to bring to your attention certain deficiencies in your clients' discovery responses and to request that these deficiencies be supplemented within the next seven (7) days. Please consider this a good faith attempt to resolve a discovery dispute without court action. As a general matter, none of the responses are signed. Please forward the original signed responses.

Requests for Production

We have yet to receive responses to Requests to Produce 11 and 13 for Defendant Bridge. Likewise we have not received responses to Requests to Produce 11, 13 and 14 for Girardeau. Finally we have not received responses to Requests to Produce 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21 and 22 for Wuertz. These requests for production were all referred to in Plaintiffs' Amended Motion to Compel and are the requests for production referred to in the second paragraph of the consent order to which we previously agreed. Please supplement your responses accordingly.

Also, Request to Produce 3 propounded upon each defendant seeks the production of all documents referred to in answering the interrogatories. I request that you supplement your responses to this request to produce in light of your client's review of documents in answering the interrogatories. Specifically, I request that you produce any documents referred to for the purpose of answering Interrogatories 6 and 7 to Girardeau and Bridge, 9 and 10 to Wuertz and 6 to Crest.

Interrogatories

Interrogatory 6 to Bridge and Girardeau request whether they had any business dealings with certain companies while they were employed by Plaintiff and, if so, request a

(843) 474-1890 (office) · (843) 577-0721 (fax) · www.gruenlohlaw.com · mike@gruenlohlaw.com

description of such business and the names, addresses and telephone numbers of any persons who you dealt with at such businesses. Defendants fail to answer the interrogatory with any particularity as to business dealing with each listed entity and fail to provide the names addresses and telephone numbers of any persons who they dealt with at the listed companies. Please supplement your response accordingly.

Interrogatory " to Bridge and Girardeau requests whether they had any business dealings with certain companies since they have been employed by Defendant Crest and or Dunhill and, if so, request a description of such business, the income any defendant derived as a result of such business and the names, addresses and telephone numbers of any persons who they dealt with at such companies. Defendants simply refer Plaintiffs to their response to Interrogatory 6. This is inappropriate considering the requests seek different information from different timeframes. Moreover, the responses fail to provide the names addresses and telephone numbers of any persons who defendants dealt with at the listed companies and the income derived from such business by any defendant. Please supplement your response accordingly.

Interrogatory 6 to Crest requests whether it currently conducts any business or has an existing business relationship with certain companies and, if so, please describe such business or business relationship; indicate the month and year that such relationship began, state the names, addresses and telephone numbers of the persons at such company with whom you conduct business and state the amount of income that such business has generated for you or any other Defendant in this litigation since April 2010. Defendants fail to answer the interrogatory with any particularity as to business dealing with each listed entity, fails to provide the names addresses and telephone numbers of the persons who it dealt with at the listed companies and fails to provide the income derived from such business since April 2010. Please supplement your response accordingly.

Interrogatory 9 to Wuertz requests whether he had any business dealings with certain companies prior to April 2010 and, if so, requests a description of such business and the names, addresses and telephone numbers of any persons who you dealt with at such businesses. Wuertz fails to answer the interrogatory with any particularity as to business dealing with each listed entity, fails to provide the names addresses and telephone numbers of the persons who he dealt with at the listed companies. Please supplement your response accordingly.

Interrogatory 10 to Wuertz requests whether he had any business dealings with certain companies since April 2010 and, if so, request a description of such business, the income any defendant derived as a result of such business and the names, addresses and telephone numbers of any persons who they dealt with at such companies. Wuertz simply refers Plaintiffs to his response to Interrogatory 9. This is inappropriate considering the requests seek different information from different timeframes. Moreover, the responses fail to provide the names addresses and telephone numbers of any persons who Wuertz dealt with at the listed companies and the income derived from such business. Please supplement your response accordingly.

Interrogatory 13 to Bridge and Girardeau requests the compensation that was offered for each job listed by Defendants. Defendants fail to provide any information regarding compensation. To the extent that Defendants seek to reference their financial statements or tax returns as answer to this question, such reference is inadequate as this request seeks all compensation including benefits and privileges offered as compensation. Please supplement your response accordingly.

Interrogatory 14 to Bridge and Girardeau requests the compensation defendants are currently being paid for their present employment. Defendants fail to provide any information regarding compensation. To the extent that Defendants seek to reference their financial statements or tax returns as answer to this question, such reference is inadequate as this request seeks all compensation including benefits and privileges offered as compensation. Please supplement your response accordingly.

Given the past history of your clients' abuse of the discovery process we will be seeking all available remedies and sanctions in the event yet another motion to compel is necessary.

Respectfully,

s-Mike Gruenloh

Wm. M. Gruenloh

Gruenloh
Law Firm

9 Broad Street · Suite C
Charleston, South Carolina 29401

Wm. Michael Gruenloh

DELIVERED VIA EMAIL ONLY

David B. Marvel
Premier Marvel
630 King Street
Charleston, South Carolina 29401

June 25, 2013

Re: IWM v. Crest et. al.

Dear Mr. Marvel:

As you know, the Court granted Plaintiffs' motion to compel and ordered your client to respond to the discovery requests referenced in our motion no later than July 1, 2013. I wrote to you on May 3rd requesting that you supplement your discovery responses to comply with the Court's Order. As of today's date, your clients have not supplemented their discovery responses and I yet to receive a signed copy of the draft discovery responses you provided on May 1, 2013.

Please provide the final signed discovery responses for your clients by July 1st and let me know whether you intend to supplement your responses, specifically interrogatory nos. 6 and 7 to Bridge and Girardeau, nos. 9 and 10 to Wuertz and no. 6 to Crest. The responses are plainly insufficient as detailed in my May 3rd letter. Your May 15th letter indicates that you believe Judge Dickson somehow limited the response that was required on those discovery responses. I have no recollection of that and it is not reflected in the Court's Order. If I have not heard from you on this issue by July 2nd I will assume that no supplement is forthcoming and will request a conference with the Court in advance of filing another motion to compel.

Finally, please advise whether you have been able to obtain deposition dates in August for Henry Wuertz, Mr. Fisher and the Crest 30(b)6 witness.

Respectfully,

s Mike Gruenloh

Wm. M. Gruenloh

(843) 474-1890 (office) · (843) 577-0721 (fax) · www.gruenlohlaw.com · mike@gruenlohlaw.com

william gruenloh <mike@gruenlohlaw.com> Thu, Jul 18, 2013 at 12:28 PM
To: "David B. Marvel" <dave@premiermarvel.com>
Cc: patrick <patrick@gruenlohlaw.com>
Bcc: Fritz Jekel <fritz@j-dlaw.com>

David,

I understood that you were going to send over the transcript of the MTC arguments as you indicated it was your position the court limited the scope of what your clients' were required to answer and produce. As you know the order does not provide for any such limitation. I am available to confer on the discovery issues raised in my June 25 today or anytime Monday. If I have not heard from you by then I'll ask for another conference with the court.

GRUENLOH LAW

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Marvel 6.25.13.pdf
123K

william gruenloh <mike@gruenlohlaw.com> Mon, Jul 22, 2013 at 9:56 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: patrick <patrick@gruenlohlaw.com>
Bcc: Fritz Jekel <fritz@j-dlaw.com>

David

I have written to you a number of times since the April MTC hearing requesting full answers on interrogatories 6 and 7 to Bridge and Girardeau, 9 and 10 to Wuertz and 6 to Crest. Also, RFP#3 to all defendants requires the production of documents referred to in answering these interrogatories. You have indicated that Judge Dickson ordered some limited answer to these interrogatories. I reviewed the transcript of the hearing and I disagree. At the top of page 37 onto page 38 Judge Dickson orders the interrogatories to be answered in full. Please let me know by Wednesday whether you are willing to provide full answers as the court ordered. Also, I note that Judge Dickson requested a scheduling order. Previously we discussed NTB October. Let me know your thoughts on a scheduling order and lets get one submitted that we can both live with.

[redacted]

David B. Marvel <dave@prennermarvel.com> Mon, Jul 22, 2013 at 10:03 AM
To: william gruenloh <mike@gruenlohlaw.com>
Cc: patrick <patrick@gruenlohlaw.com>

Mike, read p. 35 lines 15-20. That certainly tempers what you requested, and I think we provided the information that the Judge indicated was appropriate in the interrogatory. If you think that's not what we did, let me know.

Best regards,

[redacted]

Charleston, South Carolina 29403

[redacted]

Fax [redacted]

dave@prennermarvel.com

From: [redacted] [mailto:[redacted]] **On Behalf Of**william gruenloh
Sent: Monday, July 22, 2013 9:56 AM
To: David B. Marvel
Cc: patrick
Subject: Re: IWM

[Quoted text hidden]

william gruenloh <mike@gruenlohlaw.com> Mon, Jul 22, 2013 at 10:53 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: patrick <patrick@gruenlohlaw.com>

David,

I read that and I disagree that the court limited its ruling as you suggest. Let me know by Wednesday if you intend to supplement the responses with full answers including any and all documents referred to in determining the answers to these interrogatories. Thanks.

GRUENLOH LAW

[redacted]

william gruenloh <mike@gruenlohlaw.com> Wed, Jul 31, 2013 at 3:11 PM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: patrick <patrick@gruenlohlaw.com>
Bcc: Fritz Jekel <fritz@j-dlaw.com>

Thanks for your time today. I've attached a proposed scheduling order that I believe represents what we discussed. If you are in agreement please sign it and send the original back to us and we will present it to the Court. Also, please see my email below regarding the discovery responses we believe are deficient. Please let me know your final word on this. As we discussed, if you believe the requests are vague let me know and I will do what I can to provide clarification.

GRUENLOH LAW

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2 attachments

Gruenloh-Law-Signature-Symbol.jpg
560K

IWM Scheduling Order Draft.docx
29K

william gruenloh <mike@gruenlohlaw.com> Mon, Aug 5, 2013 at 11:30 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: patrick <patrick@gruenlohlaw.com>
Bcc: Fritz Jekel <fritz@j-dlaw.com>

David

Is the scheduling order I sent to you last Wednesday agreeable? If so I will have a runner come by to pick up the signed copy. If not please let me know what changes you suggest so we can get this submitted. Also, I have not heard back from you on your final position regarding the deficiencies we have identified in your clients' responses to interrogatories 6 and 7 to Bridge and Girardeau, 9 and 10 to Wuertz and 6 to Crest and RFP #3 to all defendants. Please let me know.

GRUENLOH LAW

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---------- Forwarded message ----------
From: **william gruenloh** <[redacted]>
[Quoted text hidden]

2 attachments

Gruenloh-Law-Signature-Symbol.jpg
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WM Scheduling Order Draft.docx
29K

David B. Marvel <dave@prennermarvel.com> Mon, Aug 5, 2013 at 11:35 AM
To: william gruenloh <mike@gruenlohlaw.com>
Cc: patrick <patrick@gruenlohlaw.com>

[redacted]

Will follow up on discovery. Waiting for Don Michel to tell me whether I am going to trial this afternoon or tomorrow.

Best regards,

[redacted]

Fax (

dave@prennermarvel.com

Gmail

IWM

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Wed, Aug 14, 2013 at 11:18 AM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>

David,

Please copy Fritz Jekel on all future correspondence as he has entered an appearance for IWM.

We served supplemental RFPs on all defendants on July 3rd. Responses were due on August 8 and we have not received anything. Please consider this our attempt to confer with you on this matter prior to filing a motion to compel.

Also, I have yet to receive available deposition dates for H. Wuertz, Mr. Fisher, Crest's 30(b)6 witness and Girardeau and Bridge. Finally, you have not responded to my many requests that you give us your final position on the discovery issues we raised with respect to rogs 6 and 7 to Girardeau and Bridge, rogs 9 and 10 to Wuertz, rog 6 to Crest and RFP #3 to all defendants. If you don't intend to amend the responses please say so.

If we have not heard from you on these issues by Monday, August 19th we will issue depo notices with dates of our choosing and will file another MTC.

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Wm. Michael Gruenloh, Esq.
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Fritz Jekel <fritz@j-dlaw.com> Thu, Aug 15, 2013 at 4:29 PM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, "David B. Marvel" <dave@prennermarvel.com>
Cc: Patrick Chisum <patrick@gruenlohlaw.com>

David, your copy of the notice of appearance was returned to my office today because the address we used- 90 Queen street which is on your website is incorrect. I will be forwarding the copy to the King Street address tomorrow but how about update that website.

dave@prennermarvel.com

From: Fritz Jekel [mailto:fritz@j-dlaw.com]
Sent: Thursday, August 15, 2013 4:30 PM
To: Wm. Michael Gruenloh; David B. Marvel
Cc: Patrick Chisum
Subject: RE: IWM

[Quoted text hidden]

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Thu, Aug 15, 2013 at 5:28 PM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>

Dave

Sarah from your office called me yesterday to ask for proposed dates for the depositions. October 3-4 or October 7-9 work for us for depositions of H. Wuertz, Mr. Fisher, Patricia Waters and Crest's 30(b)6 representative. I expect we will need two days. Please let me know by Monday whether you and the witnesses are available on those dates. As, to your question regarding the subpoenas, we expect to receive additional responses shortly and will be happy to allow you to inspect the documents when they arrive. We have already provided you with the responses received from Shell, Macqueary Trading and Colonial Pipeline.

I would appreciate an answer to the discovery issues raised in my August 14th email by Monday as well.

GRUENLOH LAW

[Quoted text hidden]

David B. Marvel <dave@prennermarvel.com> Thu, Aug 15, 2013 at 6:13 PM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Fri, Aug 16, 2013 at 12:28 PM
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Patrick Chisum <patrick@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>

I can meet Monday or Tuesday but have depos the rest of the week. Please let us know what you want to meet about

Also, please confirm that October 7-9 are good depo dates and we will issue the notices. We will also want depo dates for Girardeau and Bridge in Charleston. We can do those October 3, 4 or October 29 - 11/1. We probably can do them in a single day if necessary.

We have copied you on correspondence to the court regarding the subpoenas and provided copies of the subpoenas when they were issued. I'm not sure why you don't have copies in your file. As you know, we had to get the subpoenas domesticated in a number of foreign jurisdictions, including Canada. Again, we will continue provide documents as they are received.

Do you intend to provide a response to the discovery issues raised in my August 14th letter?

GRUENLOH LAW
Wm. Michael Gruenloh, Esq.
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F
E
W

[Quoted text hidden]

David B. Marvel <dave@prennermarvel.com> Fri, Aug 16, 2013 at 12:42 PM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>
Cc: Patrick Chisum <patrick@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>

Let me try to clear Tuesday. We just need a conference call. You aren't the only one who wants to conduct discovery, so if those are your only available dates in October we may need to revisit that scheduling order. Our agenda should be to figure out what discovery we need, try our best to schedule it, and get a plan for either resolving or trying this case

Mike, I'm not suggesting that you didn't copy me on the subpoenas or correspondence to the court. I assume that if you haven't received a response to a subpoena, you sent (or received) a letter/fax/email regarding the reason why you did not receive a response. Depending on the nature of it, I am not sure you have an obligation to copy me on such correspondence. However, I think you do if it discusses or modifies the scope of any response, and regardless I would appreciate the courtesy of a copy of anything

you send relating to a Rule 45 subpoena. If you aren't following up on the subpoenas, I think you have an obligation to advise me of that as well

I don't have a letter from you dated August 14. Of this year anyway. Please re-transmit and I will respond to that and regarding Oct 7-9 on Monday.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

From: Wm. Michael Gruenloh [mailto:mike@gruenlohlaw.com]
Sent: Friday, August 16, 2013 12:28 PM
To: David B. Marvel
Cc: Patrick Chisum; Fritz Jekel; Pendleton, Sarah
Subject: Re: IWM

[Quoted text hidden]

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Fri, Aug 16, 2013 at 1:00 PM
To: "David B. Marvel" <dave@prennermarvel.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>

See below for a copy of the email that I sent to you on August 14th. Please give me your response by Monday, August 19th.

GRUENLOH LAW

Wm. Michael Gruenloh, Esq.
T
F
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A

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CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are intended solely for the addressee named in this message. This communication is intended to be and to remain confidential and subject to applicable attorney/client privilege. If you are not the intended recipient of this message, or if this message has been addressed to you in error, do not read any further. Please immediately advise the sender by reply e-mail that this message has been inadvertently transmitted to you and delete this e-mail from your system.

IRS Circular 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

[Quoted text hidden]

Gruenloh-Law-Signature-Symbol.jpg
560K

David B. Marvel <dave@prennermarvel.com> Fri, Aug 16, 2013 at 1:09 PM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, "Pendleton, Sarah" <sarah@prennermarvel.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>, Patrick Chisum <patrick@gruenlohlaw.com>

I did receive your email. I thought when you said letter you meant letter. I will respond to that as well. Thanks.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

Ph. (843) 722 7250

Fax (843) 722 7260

dave@prennermarvel.com

From: Wm. Michael Gruenloh [mailto:mike@gruenlohlaw.com]

FILED - RECORDED
2013 AUG 27 AM 10: 09
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT F

UNITED STATES DISTRICT COURT
for the
Southern District of Texas

INNOVATIVE WASTE MANAGEMENT, INC.,
Plaintiff,

v.

CREST ENERGY PARTNERS GROUP, LLC, CREST ENERGY PARTNERS L.P., et al.
Defendant.

Civil Action
No. 2:11-cv-01023-RMG

FILED - RECORDED
2013 AUG 27 AM 10:09
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

ORAL DEPOSITION OF
RODNEY S. BRIDGE
FEBRUARY 2, 2012

ORAL DEPOSITION OF RODNEY S. BRIDGE, produced as a witness at the instance of the PLAINTIFF, and duly sworn, was taken in the above-styled and numbered cause on the 2nd of February, 2012, from 9:07 a.m. to 12:54 p.m., and continuing at 2:54 p.m. to 3:37 p.m., before Mona S. Whitmarsh, CSR, RPR, in and for the State of Texas, reported by machine shorthand, at the offices of Stratos Legal Services, L.P.; 4295 San Felipe, Suite 125; Houston, Texas, pursuant to the provisions stated on the record or attached hereto.

about the payment that was to have been received for this trade?

MR. MARVEL: Object to the form.

A No.

Q (BY MR. GRUENLOH) So your testimony is that you just set the deal up by the use of your contacts; and then you stepped away from it?

MR. MARVEL: Object to form.

A I wouldn't say, "stepped away from it."

Q (BY MR. GRUENLOH) Explain to me why you wouldn't say that.

A I mean, I was involved with Gerry and the deal. I -- Gerry was the lead on the deal. I did any kind of -- anything to do to help the deal go through or anything he needed me to do.

Q I asked you earlier about where you stored your contacts for Shell, and you indicated at your office at IWM. When you left IWM for the last time on April 19th, did you take that notebook that you were referring to earlier with you?

A Yes.

Q All right. Aside from Mr. Fred Goodson, what other contact information was in that notebook?

A Everything I work on.

Q Everything that you worked on for my client's

company? For IWM?

A Personal stuff when I was -- you know, personal stuff is involved in those notebooks, too.

Q Let me ask you a specific question then: When you left your office at IWM for the last time on April 19th, you took a notebook with you, correct?

A Correct.

Q All right. And did that notebook have all of the contact information in it that you used to conduct business on behalf of my client's company?

A Yes.

Q Have you used that notebook and those -- that contact information in any way after April 19th, 2010?

MR. MARVEL: Object to form.

A Yes.

Q (BY MR. GRUENICH) In what way?

A In conducting business.

Q For what company?

A Crest Energy.

Q Have you been successful at doing that?

MR. MARVEL: Object to form.

A What's your definition of "success"?

Q (BY MR. GRUENICH) Have you made a profit for your company by using these contacts and that information that was contained in that notebook?

A Yes.

Q Can you tell me what order of magnitude?

MR. MARVEL: Object to form.

A I don't understand that question.

Q (BY MR. GRUNLOH) Can you tell me how much money you have made for your new company by using the information --

A I have no idea.

Q Is it millions?

A I have no idea.

Q Is that knowable?

A I am sure once --

MR. MARVEL: Object to form.

A -- the numbers are calculated. I don't know.

Q (BY MR. GRUNLOH) Well, is it knowable or not?

A I'm sure it is.

Q Now, when you went over to Dunhill on April 20th, 2010, did you continue to trade with Shell? Strike that.

When you went over to Dunhill on April 20th, 2010, did you continue to conduct business with Shell?

A Yes.

Q Can you give me the names of the contacts that you conducted business with at Shell in, let's say, the first six months of 2010 while you were at Dunhill?

like the real four horsemen, I guess.

MR. MARVEL: Off the record.

(OFF-THE-RECORD DISCUSSION.)

Q (BY MR. GRUENICH) All right. So I asked you for your list of clients earlier and your counsel objected and you said that you believe that that was proprietary information.

How about -- can you give me a list of the refineries that your company does business with now?

MR. MARVEL: Same objection.

I'll instruct you not to answer. That's confidential information.

Q (BY MR. GRUENICH) Do you believe that the list of refineries that your company does business with is confidential information?

A I mean, it can be public knowledge. I mean...

Q How would we find that out?

A Go to the EPA website, type in Envirofacts.

Q Type in what, I'm sorry?

A EPA website, Envirofacts, punch in 2011. That will give you a list of every refinery in the United States.

Q And will it tell us who does business with whom?

A No.

Q You are not willing to tell me today, based upon your counsel's instructions, who your company does business with in terms of refineries, are you?

A Correct.

Q All right. Can you tell me if your company holds any management contracts with any refineries?

A I think that's proprietary information.

MR. MARVEL: Let me explain what I think he asked. I mean, it's his question; but I think he was asking you do you know if your company has any management contracts with any refinery, period. Yes-or-no question.

A That's a proprietary question.

MR. CREW: You can answer it.

MR. MARVEL: I am not suggesting that you know or don't.

THE WITNESS: Okay.

A Yes.

MR. MARVEL: It's either "yes" or "no" and --

Q (BY MR. GRUNLOH) It does?

A Yes.

Q How many?

MR. MARVEL: That may be proprietary.

A Proprietary.

Q (BY MR. GRUENLOH) Your counsel has told you that it's proprietary --

A I think everything you are asking is proprietary --

Q I see.

A -- when it comes to asking me about if we manage a refinery.

Q Let's change subjects then. How about --

MR. MARVEL: Object to relevancy as well.

Q (BY MR. GRUENLOH) How about the method by which your company disposes of water?

MR. MARVEL: That would be trade secret.

A Trade secret.

Q (BY MR. GRUENLOH) You are not willing to tell me that today?

A No.

Q Okay.

MR. MARVEL: Just -- I've sort of been doing this haphazardly; but when I raise these objections, let's include for the future that that's a relevance objection as well.

Q (BY MR. GRUENLOH) Aside from the notebook that we talked about earlier -- strike the "aside" part. New question.

The notebook that we talked about earlier that

you maintained in your office at IWM, that had the list of contacts, clients and trading partners, right?

A It wasn't a list.

Q What was it?

A My notes.

Q And it contained contact information and other information regarding clients and trading partners, correct?

A Correct.

Q Do you still have that notebook?

A Yes.

Q Where is it?

A It's in my desk.

Q Your desk where?

A In Houston.

Q Here in Houston?

A Uh-huh.

Q All right. When we take a break today to take Mr. Wuertz' deposition, you are going to come back after that deposition is over; and we are going to conclude your deposition today. Can you bring that notebook with you?

MR. GRFW: No.

A No.

Q (BY MR. GRUENICH) Why not?

MR. CREW: Let's go off the record.

MR. GRUENLOH: No. Let's stay on the record.

MR. MARVEL: Let's go off the record, and then we will put it back on.

MR. CREW: We are going to excuse him -- go out of the room -- because I am going to make an objection here or I am going to talk to Dave and Dave can make the objection, however we are going to handle it.

(Reporter's Note: Mr. Bridge left the conference room.)

(OFF-THE-RECORD DISCUSSION.)

MR. MARVEL: Let's go back on the record.

MR. GRUENLOH: I want to get the judge on the line.

MR. CREW: We are going to give it to you --

MR. GRUENLOH: This is outrageous.

MR. MARVEL: Why don't we do this.

MR. GRUENLOH: This is outrageous.

MR. MARVEL: We haven't even looked at it yet.

MR. GRUENLOH: Outrageous.

MR. MARVEL: Okay. All right. Call him.

Q Now, I believe you have already testified that you did not store the information that's in this notebook on the computer system, correct?

MR. MARVEL: Object to form.

A No.

Q (BY MR. GRUENICH) Okay. Now, on April 19th do you remember about what time you left IWM?

A I don't recall.

Q Did you fly out to Houston that night, or did you fly out to Houston the following morning?

A Tuesday morning.

Q Was it nighttime when you left the building for the last time at IWM?

A Yes.

Q Can you tell me approximately what time?

A Probably around 11:00.

Q 11:00 p.m.?

A Uh-huh.

Q Was there anybody at the building while you were cleaning out your belongings and took the notebook and the telephone that we have talked about?

A No.

Q And I believe we have already discussed the fact that you did not tell Mr. Lloyd when you spoke with him on the 19th that you were leaving his employ,

A Sure.

Q You testified earlier that you and Mr. Girardeau had no discussions regarding the fact that you were leaving Innovative Waste Management prior to your arrival in Houston; is that correct?

MR. MARVEL: Object to form.

A Correct.

Q (BY MR. GRUENICH) And when was the first time that you and Mr. Girardeau -- well, let me ask this: Did you and Mr. Girardeau ever get together and discuss this claim that you have made for outstanding wages?

A Since this lawsuit?

Q Well, have you ever? Let's start there.

A What do you mean by "have you ever"?

Q Have you and Mr. Girardeau ever gotten together and talked about your wage claim?

A I don't know.

Q Did you and Mr. Girardeau get together and talk about a wage claim prior to your employment with Dunhill?

A No.

MR. GRUENICH: Let's mark this as 31.

(EXHIBIT 31 WAS MARKED.)

Q (BY MR. GRUENICH) All right. Sir, I'm showing you Exhibit No. 26 --

A Okay.

Q -- and Exhibit No. 31, and we are going to do that side-by-side thing that we did before. Okay?

A Okay.

Q If you look at "Please forward" on Exhibit No. 26 or and "Please forward" on Exhibit No. 31 on, can you tell me: Aside from the addresses, are those exactly the same?

A Similar.

Q What is the difference?

A Russ -- I mean, excuse me, Gerry talks about the opportunities Russ gave him, yada, yada, yada.

Q Right. I'm just talking about your wage claim here where it says, "Please forward" on your e-mail and the rest of the paragraph and on his e-mail it says, "Please forward" and the rest of the paragraph. Look at those two paragraphs and tell me, sir: Aside from the address, are those exactly the same?

A They look similar.

Q No, no, no.

My question is: Aside from the address, are those exactly the same?

A Yes.

MR. GRUNNOW: Let's take a short break. I want to go through my notes.

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	FILED - RECORDED 2014 MAY -1 PM 4:04 CASE NO. 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff,	CHERYL CANNAN CLERK OF COURT DORCHESTER COUNTY
versus	**NOTICE OF MOTION AND MOTION TO QUASH AND FOR PROTECTIVE ORDER**
CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE Defendants.	

TO: DAVID MARVEL, ESQUIRE, ATTORNEY FOR DEFENDANTS CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., & HENRY WUERTZ AND FIRST CITIZENS BANK AND TRUST C/O JOHN MARSHALL MOSSER

PLEASE TAKE NOTICE that the undersigned attorney, appearing on behalf of, Innovative Waste Management, Inc., and C. Russ Lloyd, in the above-entitled action, will move the Presiding Judge of the First Judicial Circuit, in the Dorchester County Courthouse, St. George, South Carolina, on the tenth (10) day after service hereof or as soon thereafter as counsel may be heard, at a time and place as is convenient to the Court and counsel, for an order quashing the Defendant's subpoena served upon First Citizens Banks and Trust c/o John Marshall Mosser in the above captioned case, on the ground that subpoena is overbroad, the information and documents requested are confidential and private relating to the financial information and history of Innovative Waste Management, Inc. (aka Innovative Resource Management) and C. Russ Lloyd and are not reasonably calculated to lead to the discovery of admissible evidence, are.

Pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, the undersigned hereby moves for a protective order to prohibit the Defendant's subpoena served upon First

Citizens Banks and Trust in the above referenced case, for good cause shown, as justice requires such an order to protect the parties from the release of private financial information and documents.

This motion may also be supported by a memorandum of law which may be filed and served prior to the hearing.

Respectfully Submitted

GRUENLOH LAW FIRM
Counsel for the Plaintiff

By: _____

Wm. M. Gruenloh SCBAR # 12418
Patrick Aulton Chisum SCBAR #100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 474-1890
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

Date: April 30, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of **NOTICE OF MOTION AND MOTION TO QUASH AND FOR PROTECTIVE ORDER** in the above matter was served on the below named parties and/or their respective counsel and /or agents by sending a true and accurate electronic copies of the same via email and mail.

FILED - RECORDED
2014 MAY -1 PM 4:04
CHERK OF COURT
CLERK OF COURT
DORCHESTER COUNTY

David B. Marvel
636 King Street
Charleston, SC 29403
Attorney for Defendants

Ryan Neville
John Massalon
97 Broad Street
Charleston, SC 29401
Attorney for Defendant Bridge

By: _____

Patrick Aulton Chisum, SCBAR# 100571
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 474-1890
(843) 577-0721 (facsimile)

Date: April 30, 2014
Charleston, South Carolina

PRENNER + MARVEL, P.A.
ATTORNEYS AT LAW
PROCTORS IN ADMIRALTY
[illegible] KING STREET
CHARLESTON, SOUTH CAROLINA 29403

DANIEL L. PRENNER
DAVID B. MARVEL (SC, GA)
KENNETH G. GOGGE, JR.

PHONE (843) 722-7250
FACSIMILE (843) 722-7260
www.prennermarvel.com

FILED - RECORDED
2014 MAY -1 PM 4:04
CHERYL [illegible]
CLERK OF COURT
DORCHESTER COUNTY

April 28, 2014

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED
Custodian of Records
First Citizens Bank and Trust
c/o John Marshall Mosser as Registered Agent for First Citizens Bank & Trust
1314 Park Street
Columbia, South Carolina 29201

RE: Innovative Waste Management, Inc. v. Crest Energy Partners GP, LLC, et al
Case No: 2013-CP-18-2937

Dear Sir/ Madam:

Enclosed please find for service upon First Citizens Bank and Trust a Subpoena *duces tecum* in the above captioned case. Please note this Subpoena asks that you provide our office with certain records **on or before May 12, 2014**. We would prefer to receive these records electronically if you are able to transmit them via email. In the event you are able to transmit them electronically, please send them to sarah@prennermarvel.com.

Please notify our firm in advance if the cost of producing these records will exceed $100.00.

Please do not hesitate to contact me with any questions or concerns.

Sincerely,

Sarah G. Pendleton
Legal Assistant

/sp
Enclosure
Cc w/enc: William M. Gruenloh, Esquire
Frederick John Jekel, Esquire
Ryan Neville, Esquire

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF DORCHESTER

Innovative Waste Management, Inc., Plaintiff

v.

Crest Energy Partners GP, LLC, et al, Defendant

SUBPOENA IN A CIVIL CASE

Case Number: 2013-CP-18-2937

Pending in Dorchester County

TO: Custodian of Records
First Citizens Bank and Trust
John Marshall Mosser as Registered Agent
1314 Park Street
Columbia, South Carolina 29201

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects):

Any and all account records for any and all accounts in the name of Innovative Waste Management, Inc, Innovative Resource Management, or C. Russ Lloyd, and any other accounts for which C. Russ Lloyd is a signatory, from January 1, 2009 through December 31, 2011.

PLACE	DATE AND TIME: **On or before May 12, 2014, 5:00 PM**
Prenner Marvel, PA 636 King Street Charleston, South Carolina 29403	

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number

Date: 4/28/2014

Print Name

SCCA 254 (05/2011)

Clerk of Court/Issuing Officer's Signature Date Print Name

Pro Se Litigant's Name, Address and Telephone Number

PROOF OF SERVICE

SERVED	DATE 9/18/2023 Custodian of Records First Citizens Bank and Trust John Marshall Mosser as Registered Agent 1314 Park Street Columbia, South Carolina 29201	FEES AND MILEAGE TENDERED TO WITNESS ☑ YES ☐ NO AMOUNT $
SERVED ON First Citizens Bank and Trust		MANNER OF SERVICE Certified Mail Return Receipt Requested
SERVED BY Sarah G. Pendleton		TITLE Legal Assistant

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on____

Sarah Pendleton
SIGNATURE OF SERVER

636 King Street
Charleston South Carolina 29403
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d).

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
1ST JUDICIAL CIRCUIT

CASE NO.: 2012-CP-08-1227

INNOVATIVE WASTE MANAGEMENT, Plaintiff.

vs.

CREST ENERGY PARTNERS GP, L.L.C. CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE, Defendant.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

FILED - RECORDED
2014 MAY -1 PM 4:04
CHERYL D. COURT
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney:	Defendant's Attorney:
Patrick Aulton Chisum, Bar No. 100571 Address: 192 East BayStreet, Suite 202 Charleston, SC 29401 Phone: 843-474-1890Fax 843-577-0721 E-mail: Patrick@Gruenlohlaw.comOther:	_____, Bar No. _____ Address: _____ Phone: _____ Fax_____ E-mail: _____Other: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: NOTICE OF MOTION AND MOTION TO QUASH AND FOR PROTECTIVE ORDER
Estimated Time Needed: 15 Court Reporter Needed: ☐ YES/☒ NO

SECTION II: Motion/Order Type

☑ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☑ Plaintiff/☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF DORCHESTER)	CASE NO: 2012-CP-18-1227
)	
INNOVATIVE WASTE MANAGEMENT,)	
INC.,)	
)	
Plaintiff,)	**NOTICE OF MOTION AND MOTION TO QUASH AND FOR PROTECTIVE ORDER**
)	
vs.)	
)	
CREST ENERGY PARTNERS GP, LLC,)	
CREST ENERGY PARTNERS, L.P.,)	
DUNHILL PRODUCTS GP, LLC,)	
DUNHILL PRODUCTS L.P., HENRY)	
WUERTZ, EDWARD H. GIRARDEAU,)	
And RODNEY BRIDGE.)	
)	

FILED - RECORDED
2014 DEC -5 PM 2:05
CHERYL S. COURT
CLERK OF COURT
DORCHESTER COUNTY

TO: WM. M. GRUENLOH AND PATRICK AULTON CHISUM, ATTORNEYS FOR INNOVATIVE WASTE MANAGEMENT, INC.

PLEASE TAKE NOTICE that the undersigned attorney, appearing on behalf of all Defendants named in the above-entitled action, will move the Presiding Judge of the First Judicial Circuit, in the Dorchester County Courthouse, St. George, South Carolina, on the tenth (10) day after service hereof or as soon thereafter as counsel may be heard, at a time and place as is convenient to the Court and counsel, for an order quashing the Plaintiff's subpoenas served upon AT&T Wireless, Margavio & Schmidt, CPA and Wells Fargo Bank, N.A. c/o Subpoena Processing Department in this present matter, copies of which are attached hereto as Exhibit A, B, and C, on the ground that the subpoenas are overly broad, not properly issued in accordance with the Uniform Interstate Depositions and Discovery Act, S.C. Code 15-47-10 *et seq.*, in violation of the Right to Financial Privacy Act, 35 U.S.C. 3201 *et seq.*, and are otherwise not reasonably calculated to lead to the discovery of admissible evidence. The Defendants would

further contend that the requested information is confidential, private and unreasonable intrusive into the Defendants' personal and financial information.

Pursuant to Rule 26 of the South Carolina Rules of Civil Procedure, the undersigned moves on behalf of all Defendants for a protective order prohibiting the Plaintiff's subpoenas served upon AT&T Wireless, Margavio & Schmidt, CPA and Wells Fargo Bank, N.A. c/o Subpoena Processing Department, for good cause shown, in pursuit of justice and to protect the private and financial information of the Defendants.

This motion may also be supported by memorandum of law which may be filed and served prior to the hearing.

RESPECTFULLY SUBMITTED:

PRENNER MARVEL, P.A.

David B. Marvel
Kenneth G. Goode, Jr.
636 King St.
Charleston, South Carolina 29403
Ph. (843) 722-7250
Fax (843) 722 7260
dave@prennermarvel.com
ATTORNEYS FOR DEFENDANTS
AND THIRD PARTY PLAINTIFFS

December 4, 2014
Charleston, South Carolina

CERTIFICATE OF MAILING

I hereby certify that a copy of the foregoing pleading was mailed to all counsel of record in this proceeding this 4th day of December, 2014.

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC,
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, Defendant

Case Number: 2010-CP-18-1227

Pending in DORCHESTER County

TO: AT&T Wireless
3 AT&T Plaza 208 South Akard Street, 14th Floor-M Dallas, TX 75202

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY | COURTROOM

DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION | DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attached Exhibit A

PLACE
Griemloh Law Firm
192 East Bay Street, Suite 202
Charleston, SC 29401
(843) 577-0721 (fax)

DATE AND TIME December 19, 2013, 5:00PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES | DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TO TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

I HEREBY CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature | Date 11/18/14 | Patrick Ashton Chisum, Print Name

Attorneys for Plaintiff, Patrick Ashton Chisum, Was Attached Concerned, Esq., 192 East Bay Street, Suite 202 Charleston, SC 29401 (843) 577-0721

SC (2013-001719) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

EXHIBIT A

Clerk of Court Issuing Officer's Signature Date Print Name
Pro Se Litigant's Name, Address and Telephone Number

PROOF OF SERVICE

SERVED	DATE 11/18/14	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON	AT&T	MANNER OF SERVICE Certified Mail
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on 11/18/14

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45 South Carolina Rules of Civil Procedures Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

1) "Any and all records concerning incoming & outgoing calls, usage records, LUDS, incoming & outgoing text messages including the actual texts for customer Rodney Bridge, including but not limited to the cellular telephone number (713) 962-1373, during the time period of March 1, 2010 to May 1, 2014.

2) "Any and all records concerning incoming & outgoing calls, usage records, LUDS, incoming & outgoing text messages including the actual texts for customer Gerry Giradeau, including but not limited to the cellular telephone number (713) 962-1040, during the time period of March 1, 2010 to May 1, 2014.

3) "Any and all records concerning incoming & outgoing calls, usage records, LUDS, incoming & outgoing text messages including the actual texts for customer Dunhill Products LP, including but not limited to the cellular telephone number (713) 962-1373, during the time period of March 1, 2010 to May 1, 2014.

STATE OF _____)
COUNTY OF _____) AFFIDAVIT

PERSONALLY appeared before me _____ . _____ who being duly sworn, deposes and says:

1. I am the Records Custodian for: _____ . _____

2. I have reviewed the records in this office relative to Rodney Bridge, Gerry Giradeau, and Dunhill Products LP.

3. The attached records are all of the records of this office meeting the following description:

   See attached Exhibit A.

4. All of the attached records are copies of records, which are kept in the ordinary course of business by this office.

_____ _____

Sworn to and subscribed before me,
THIS ____ day of _____ , 2014

_____ (SEAL)
Notary Public of South Carolina
My Commission Expires: _____

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC.
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Case Number: 2010-CP-18-1227

CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C. DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU,

Pending in DORCHESTER County

TO: Margavio & Schmidt CPA
1101 Dealers Ave. New Orleans, LA 70123

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attached Exhibit A

PLACE	DATE AND TIME
Gruenloh Law Firm 192 East Bay Street, Suite 202 Charleston, SC 29401	December 19, 2014, 5:00PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS SUIT IS HEREBY DIRECTED TO RULE 30(b)(6) SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SET FORTH FOR EACH PERSON DESIGNATED THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED SHALL TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

If this SUBPOENA is issued in connection with Rule 45(c)(3)(A)(iii) that a trade or other confidential research, development, or commercial information not be disclosed or that certain matters not be described, or that a designated book, paper, document or tangible thing not be produced or inspected, or Rule 45(c)(3)(B)(i) that a trade secret or other confidential research, development, or commercial information not be disclosed, or Rule 45(c)(3)(B)(ii) that an unretained expert's opinion or information not be disclosed, or Rule 45(c)(3)(B)(iii) that certain matters not be described, or that a designated book, paper, document or tangible thing not be produced or inspected, a copy of the SUBPOENA has been given to all parties.

Attorney/Party Officer's Signature

11-7-2014
Date

Patrick Aubert Gruenloh
Print Name

Attorney for Patrick Patrick Aubert Gruenloh, Gruenloh Gruenloh Law Firm, 192 East Bay Street, Suite 202, Charleston, SC 29401 (843) 577-[illegible]

EXHIBIT B

SCCA 0241 (2010)

See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page

Clerk of Court/Issuing Officer's Signature | Date | Print Name

Pro Se Litigant's Name, Address and Telephone Number

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐ YES ☐ NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- i fails to allow reasonable time for compliance; or
- ii requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person; except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- iv subjects a person to undue burden.

(B) If a subpoena

- i requires disclosure of a trade secret or other confidential research, development, or commercial information; or
- ii requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or
- iii requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person;

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

EXHIBIT A

"Any and all documents, including but not limited to tax returns, working papers, and P&L statements that pertain to Henry Wuertz, Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., and Dunhill Products L.P. from January 2009 to present date."

Counsel of Record

Wm. M. Gruenloh
Patrick Aalton Chisum
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 474-1890
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)
Counsel for Plaintiff Innovative Waste Management, Inc., and Third Party Defendant C. Russ Lloyd

David Marvel
636 King Street
Charleston, SC 29403
(843) 722-7250
(843) 722-7260 (facsimile)
Counsel for Defendants

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC.
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CREST ENERGY PARTNERS GP, L.L.C., CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C. DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU

Case Number: 2010-CP-18-1227

Pending in DORCHESTER County

TO: Wells Fargo Bank N.A. c/o Subpoena Processing Department
MAC S3928-020 P.O. Box 29728 Phoenix, AZ 85038

[ ] YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY | COURTROOM

DATE AND TIME . AM

[ ] YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION | DATE AND TIME . AM

[X] YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attached Exhibit A

PLACE
Griemloh Law Firm
192 East Bay Street, Suite 202
Charleston, SC 29401

DATE AND TIME December 19, 2014 5:00 PM

[ ] YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES | DATE AND TIME . AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS ACTION IS HEREBY DIRECTED TO RULE 30(b)(6) SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, AND SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION.

TO DATE A COPY OF THIS SUBPOENA WAS ISSUED IN COMPLIANCE WITH RULE 45(b)(1) AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature — 11/18/14 Date — Patrick Sutton Chisolm Print Name

Attorney for Plaintiff, Patrick Sutton Chisolm, Wm. Michael Griemloh, Esq. 192 East Bay Street, Suite 202 Charleston, SC 29401 (843) 577-[illegible]

EXHIBIT C

SC[illegible] 2011)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

Clerk of Court/Issuing Officer's Signature Date Print Name

Pro Se Litigant's Name, Address and Telephone Number

PROOF OF SERVICE

SERVED	DATE 11/18/14	FEES AND MILLAGE TENDERED TO WITNESS
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON	WELLS FARGO	MANNER OF SERVICE CERTIFIED MAIL
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on

SIGNATURE OF SERVER

192 E BAY ST. STE 203 Charleston SC 29401

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedure, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it

i. fails to allow reasonable time for compliance; or

ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

iv. subjects a person to undue burden.

(B) If a subpoena

i. requires disclosure of a trade secret or other confidential research, development, or commercial information; or

ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party; or

iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

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(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

Exhibit A

1) "Any and all documents relating to the banking transactions of Crest Energy Partners GP, L.L.C. from December 2008 to present date, including but not limited to :
   a. All documents pertaining to all open or closed checking, savings, NOW, Time, or other deposit or checking accounts held in the name of, for the benefit of, or under the control of (corporate name), including but not limited to:
   b. Retained copies of signature cards
   c. Corporate board authorization minutes or partnership resolution.
   d. Bank statements
   e. Canceled checks
   f. Deposit tickets
   g. Retained copies of items deposited
   h. Retained copies of credit and debit memos
   i. Forms 1099, 1089, or back-up withholding documents.

2) "Any and all documents relating to the banking transactions of Crest Energy Partners LP from December 2008 to present date, including but not limited to :
   a. All documents pertaining to all open or closed checking, savings, NOW, Time, or other deposit or checking accounts held in the name of, for the benefit of, or under the control of (corporate name), including but not limited to:
   b. Retained copies of signature cards
   c. Corporate board authorization minutes or partnership resolution.
   d Bank statements
   e Canceled checks
   f. Deposit tickets
   g. Retained copies of items deposited
   h. Retained copies of credit and debit memos
   i. Forms 1099, 1089, or back-up withholding documents

3) "Any and all documents relating to the banking transactions of Dunhill Products GP, L.L.C. from December 2008 to present date, including but not limited to :
   a. All documents pertaining to all open or closed checking, savings, NOW, Time, or other deposit or checking accounts held in the name of, for the benefit of, or under the control of (corporate name), including but not limited to:
   b. Retained copies of signature cards
   c. Corporate board authorization minutes or partnership resolution.
   d. Bank statements
   e. Canceled checks
   f Deposit tickets
   g. Retained copies of Items deposited
   h. Retained copies of credit and debit memos
   i. Forms 1099, 1089, or back-up withholding documents

4) "Any and all documents relating to the banking transactions of Dunhill Products, L.P., from December 2008 to present date, including but not limited to :
   a. All documents pertaining to all open or closed checking, savings, NOW, Time, or other deposit or checking accounts held in the name of, for the benefit of, or under the control of (corporate name), including but not limited to:
   b. Retained copies of signature cards
   c. Corporate board authorization minutes or partnership resolution.
   d. Bank statements
   e. Canceled checks
   f. Deposit tickets
   g. Retained copies of items deposited
   h. Retained copies of credit and debit memos
   i. Forms 1099, 1089, or back-up withholding documents

5) "Any and all documents relating to the banking transactions of Henry Wuertz from December 2008 to present date, including but not limited to :
   a. All documents pertaining to all open or closed checking, savings, NOW, Time, or other deposit or checking accounts held in the name of, for the benefit of, or under the control of (corporate name), including but not limited to:
   b. Retained copies of signature cards
   c. Corporate board authorization minutes or partnership resolution.
   d. Bank statements
   e. Canceled checks
   f. Deposit tickets
   g. Retained copies of items deposited
   h. Retained copies of credit and debit memos
   i. Forms 1099, 1089, or back-up withholding documents

STATE OF _____)
COUNTY OF _____) AFFIDAVIT

PERSONALLY appeared before me _____ who being duly sworn, deposes and says:

1. I am the Records Custodian for: _____

2. I have reviewed the records in this office relative to Crest Energy Partners GP, L.L.C. Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products L.P., and Henry Wuertz.

3. The attached records are all of the records of this office meeting the following description:

   See attached Exhibit A.

4. All of the attached records are copies of records, which are kept in the ordinary course of business by this office.

_____

Sworn to and subscribed before me.
THIS day of _____, 2014

_____ (SEAL)
Notary Public of South Carolina
My Commission Expires: _____

$25.00 MB

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
) FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)
) CASE NO.: 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC.) **MOTION AND ORDER INFORMATION**
)
vs.) **FORM AND COVERSHEET**
)
CREST ENERGY PARTNER, LLC, et al.)
Defendant.)

2014 DEC -5 PM 2:05
CLERK OF COURT
DORCHESTER COUNTY

Plaintiff's Attorney:	Defendant's Attorney:
WILLIAM M. GRUENLOH, Bar No. _____ Address: 9 Broad Street, Suite C Charleston, South Carolina 29401 Phone: 843-577-0027 Fax _____ E-mail: _____Other: _____	David B. Marvel, Bar No. 68803 Kenneth G. Goode, Jr. Bar No.: 100368 Address: 636 King Street Charleston, South Carolina 29403 Phone: 843-722-7250 Fax843-722-7260 E-mail: dave@prennermarvel.com Other: kennyg@prennermarvel.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Quash
Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff/☒ Defendant — 12/4/14 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by:____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	CASE NO. 2012-CP-18-1227 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO QUASH**
CREST ENERGY PARTNERS, L.P. and EDWARD H. GIRARDEAU Defendants and Third Party Plaintiffs, vs. INNOVATIVE WASTE MANAGEMENT, INC. and C. RUSS LLOYD Plaintiff and Third Party Defendant,	

FILED
2012 APR -6 PM 12: 31
CLERK OF COURT
DORCHESTER COUNTY

NOW COMES the Plaintiff Innovative Waste Management (hereafter "Plaintiff"), by and through its undersigned counsel, who hereby moves this Honorable Court to deny Defendants Crest Energy Partners GP, LLC and Crest Energy Partners, L.P. (hereinafter "Crest"); Dunhill Products GP, LLC and Dunhill Products L.P. (hereinafter "Dunhill"); Henry Wuertz; and Edward H. Girardeau's (hereinafter "the Defendants") Motion to Quash and for a Protective Order. The Plaintiff is entitled to the requested relief because the Subpoenas in question are valid properly served and do seek relevant information.

SUBPOENAS AT ISSUE

Plaintiff has issued two subpoenas at issue in this matter. The first was served on Wells Fargo Bank, located in Phoenix, Arizona, seeking information on the defendants Crest, Dunhill, and Henry Wuertz for the time period of 2008 to the present. Wells Fargo Bank was identified as Crest, Dunhill, and Wuertz's banking institution.

The second subpoena was issued to the accounting firm of Margavio and Schmidt, CPA (hereinafter "Margavio"), located in New Orleans, Louisiana. Margavio was identified as an accounting firm doing work for Crest, Dunhill, and Wuertz. The subpoena served on Margavio was issued out of the 24th Judicial District Court, Parish of Jefferson in Louisiana. The subpoena seeks information relative to taxes returns, working papers, and profit and loss statements for the Defendants since 2008. Margavio has never indicated that it cannot or will not provide the requested information.

Contrary to the bald assertion in Defendants' motion that the subpoenas were not served in accordance with the South Carolina Interstate Deposition and Discovery Act, S.C. Code Ann. §15-47-100 (1976), Plaintiff maintains the subpoenas were properly served. The act specifies a procedure for obtaining subpoenas for service on out of state entities. Plaintiff maintains that it complied with all South Carolina, Louisiana, and Arizona laws on this issue. Should this Court find, however, that the subpoenas are procedurally defective, such defects can be remedied and the Plaintiff would request leave to correct such defect and reserve the subpoenas upon their respective parties.

The Right to Financial Privacy Act, 12 U.S.C.A. § 3401 et seq. (hereinafter the "Act") (improperly identified in Defendants' Motion as 35 U.S.C.A. § 3201), is not implicated in the

current action. The Right to Financial Privacy Act only prohibits the Government from obtaining personal financial information on account holders. The Act spells out the prohibition as:

> **(a) Release of records by financial institutions prohibited**
> No financial institution, or officer, employees, or agent of a financial institution, may provide to any Government authority access to or copies of, or the information contained in, the financial records of any customer except in accordance with the provisions of this chapter.
>
> **(b) Release of records upon certification of compliance with chapter**
> A financial institution shall not release the financial records of a customer until the Government authority seeking such records certifies in writing to the financial institution that it has complied with the applicable provisions of this chapter.

12 U.S.C.A. § 3402. The Plaintiff in this case utilized proper subpoenas to obtain the financial information. The act specifically allows disclosure of financial information if requested with a valid subpoena. Further, the Act states:

> A Government authority may obtain financial records under section 3402(2) of this title pursuant to an administrative subpoena or summons otherwise authorized by law only if--(1) there is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; (2) a copy of the subpoena or summons has been served upon the customer or mailed to his last known address on or before the date on which the subpoena or summons was served on the financial institution together with the following notice which shall state with reasonable specificity the nature of the law enforcement inquiry . . .

12 U.S.C.A. § 3405. However because the Plaintiff is not a governmental authority the act has no application. The Defendants raising the Act is evidence of the Defendants purposeful obfuscation of relevant evidence, and the Defendants should be sanctioned for such frivolous argument.

THE INFORMATION SOUGHT IS RELEVANT

Plaintiff's attempt to obtain financial discovery in the current action has been ongoing for years with little response by Defendants. As the Court is no doubt aware, the present action centers around the sale of oil related products, the failure to pay an invoice, and the wrongful acquisition of business accounts by the defendants. Plaintiff has alleged that such actions were accomplished through fraud and misrepresentation and resulted in the loss of future profits for the plaintiff.

Plaintiff has produced an expert report detailing the plaintiff's claimed losses in excess of Twelve Million Dollars ($12,000,000.00). Plaintiff served discovery requests on the defendants seeking to determine if there was insurance to cover such claims as well as request about personal and corporate financial information. Specifically plaintiffs served the following:

> 18. Set forth any and all real and personal property owned, whether individually, collectively, or otherwise owned and including with other third-parties, including but not limited to the following:
>
> a. Any and all domestic or offshore bank accounts, including checking, savings, money market, or otherwise, in the name of Defendants, including without limitation balances, names of accounts, location of accounts, holder of accounts, etc;
>
> b. Any and all certificated of deposits, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by Defendants, membership interest in any and all limited liability companies, partnership interest in any and all partnerships, and any and all interest in any other form or business entity, including joint ventures, whether domestic or offshore, detailing without limitations and with particularity percentage of ownership, amount of revenue generated for each entity;
>
> c. Any and all titles to vehicles, mobile homes, or water craft owned by Defendants, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
>
> d. Any and all deeds, Mortgages, Notes, Contracts of Sale, and Settlement or closing statements relating to any real estate transactions involving Defendants.
>
> e. Any and all real property, including without limitation (county, state, jurisdiction), whether domestic or offshore;

See Plaintiff's Interrogatories to Defendant Wuertz; Plaintiff's Interrogatories to Defendant Bridge; Plaintiff's Interrogatories to Defendant Girardeau. The defendants objected to the requests initially and several hearings on the requests were held.

Defendants claim that the discovery sought in the subpoenas is irrelevant, overbroad, and an undue burden on the Defendants' financial privacy. Plaintiff vehemently disagrees. As an initial

matter, the parties have entered a Consent Confidentiality Order in the action that protects from public disclosure of the financial information in question. As such, there is no threat of public disclosure of the information. Similarly, on two prior occasions this Court has heard motion to compel responses to detailed discovery concerning the Defendants' financial condition. On both occasions the Court found that the requested financial discovery was relevant but allowed the defendant to respond only with production of a current financial statements as opposed to detailed responses. See Orders Dated June 2013, Attached as Exhibit A; Order Dated September 2013, Attached as Exhibit B. Likewise, the September 2013 Order states unequivocally that nothing in the Order should preclude the plaintiff from conducting additionally discovery on the topic of the Defendants financial condition. This is precisely the information that the subpoenas in question are seeking.

The discovery sought has been made necessary by the Defendants' failure to provide complete responses to discovery requests and their failure to have information available on these topics at deposition. For example after the lawsuit was initiated the defendants sold some assets referred to as the Sierra Marine deal. The deal was for over Sixty Million Dollars ($60,000,000.00), but no documentation regarding what happened to those monies has been provided. Mr. Wuertz claimed under oath that of the proceeds he received only Four Hundred Thousand Dollars ($400,000.00) and that such monies were put back into the business. Indeed Mr. Wuertz.testified:

Q. Do you still own equity in Sierra Marine?
A. No, I do not.
Q. When did you sell that?
A. In July of 2013.
Q. How much did you sell it for?
A. I don't know, it was totaled with other assets.
Q. Are you able to give me an estimate?
A. Well, I didn't sell it, the group sold it.
Q. Are you able to give me an estimate for how much the group sold it for?
A. The net number or the gross number?

Q. The net number.
A. I have no idea.
Q. How about the gross number?
A. Somewhere around 60 million.
Q. All right. Do you -- 60 million?
A. Yes.
Q. All right. And what happened to that money?
A. It was distributed amongst the partners and the debt was retired.
Q. Did you take home any money from that transaction?
A. Very little.
Q. How much?
A. 400,000.
Q. Do you still own equity in Crescent Terminals?
A. No, I do not.
Q. When was that sold?
A. Same time.
Q. And same question I had before you, how much was it sold for?
A. It was a package, it was part of the 60 million.
Q. All right. And the $400,000 that you took home in the Sierra Marine deal, was that included for Crescent Terminals?
A. That is correct.

See Deposition of Henry Wuertz, taken May 2014, 13:3-14:15. The subpoenas seek information to verify the testimony of Mr. Wuertz. As to the Four Hundred Thousand Dollars received from the sale, Mr. Wuertz noted the following:

Q. Sure. And you testified in your last deposition that you took home about $400,000 from that transaction?
A. Yes.
Q. What happened with that money? Where is it today?
A. Spent.
Q. What did you spend it on?
A. Put it back in my business.
Q. Which business are you talking about?
A. Crest Energy.
Q. Is it your testimony that you made a capital contribution of approximately $400,000 to Crest Energy?
A. Sure. Over a year or two period; yes.
Q. Is there anything else that you did with that $400,000 that was proceeds from the sale of those facilities?
A. Not that I can think of.

See Deposition of Henry Wuertz, taken November 2014, 14:13-15:6. The information sought in the subpoenas is to verify if any of the testimony about putting capitol back into the entities is accurate.

The Defendants produced a financial declaration from April of 2013 for defendant Wuertz (attachment C), a financial declaration for Crest from 2012 (attachment D), as well as the corporate entities tax returns for 2011, 2012 and 2013. Interestingly the personal financial statement of Wuertz does not indicate his salary from the corporate defendant and he is not sure exactly what it is either:

Q. (MR. GRUENLOH) Are you able to tell me what your personal net income was for any year since 2008?
A. Personal net income, no, not really. I'm sure it's between four and 500,000 a year.
Q. Have you done your taxes for 2013 yet?
A. I may have.
Q. Do you know one way or another?
A. '13, no, not '13, I probably did '12 -- no, we're in '14?
Q. Yes, sir.
A. I probably did '12, '13's probably not completed yet.
Q. Do you know what your personal net income was for 2012?
A. I'm going to guess 400,000.
Q. Do you have an accountant that handles that for you?
A. Yes.
Q. What's the accountant's name?
A. Stephanie Margavio.

See Deposition of Henry Wuertz, Taken May 2014, 19:19-20:13. Again the subpoenas seek to obtain confirmation of what Mr. Wuertz's net income from the defendant entities are.

Likewise the tax returns alone are incomprehensible, and the accountant's working papers are needed to verify certain transactions and losses. The 2010 returns show a gross income of negative Fifteen Million Dollars ($15,000,000.00), the 2011 returns show a gross income of One Hundred Thrifty Two Thousand Dollars ($132,000.00), the 2012 returns show gross income of negative Nine Million Dollars ($9,000,000.00), and the 2013 returns show a gross income of

negative Two Million Six Hundred Thousand Dollars ($2,600,000.00). Additionally, the 2012 return lists a line item denoted as "other income" with a loss of Nine Million Four Hundred Thirty Seven Thousand Dollars ($9,437,000.00). The tax returns are in stark contrast to the financial statement produced for Crest Energy from 2012 that shows assets of over Twenty Seven Million Dollars ($27,000,000.00). As was noted by Mr. Wuertz:

> Q. All right. You told me a moment ago that last year you experienced a nine million dollar loss. This year, you're expecting somewhere in the neighborhood of a five million dollar loss. When was the last time that Crest made money?
> (MR. MARVEL) Object to form.
> A. Don't remember. Probably two years ago.
> (BY MR. GRUENLOH:)
> Q. If you lost nine million dollars last year, how is it that you've been able to stay in business?
> A. We've borrowed money from our factor.
> Q. Who did you -- who have you borrowed money from?
> A. Crown Financial.
> Q. What's the outstanding amount of that debt?
> A. Right now, probably about $17 million. Could be more.
> Q. Are there any other loans that you have outstanding?
> A. Possibly a few.
> Q. Are there any that you're aware of that you can remember, as you sit here today?
> A. Not that I -- not right now. Say -- but I'm saying it could be more than $17 million. It could be $21 million.
> Q. Do you know what the net worth of your company is today?
> A. Probably negative ten, fifteen. Somewhere around there.
> Q. What do you base that on?
> A. The debt that I owe and potential deals that I have against it.

See Deposition of Henry Wuertz, taken November 2014, 28:24-30:6. These losses could not be explained by Mr. Wuertz, who indicated one would need to be an accountant to understand. Mr. Wuertz testified:

> Q. All right. And then -- I'm trying to tell whether -- you have an at-risk carryover, $2,000,575 -- excuse me -- $559 and zero cents. Can you tell me what that is? Do you know what that is?
> A. I'm not an accountant.

See Deposition of Henry Wuertz, taken November 2014, 68:20-24. The returns state dramatic losses that have not been identified in any financial statement, and the discovery sought is necessary to get a complete picture of the Defendants' financial condition.

CONCLUSION

Plaintiff has established that the subpoenas were properly served and that the information sought is relevant and protected from public disclosure. Plaintiff has alleged considerable losses as a result of the Defendants' actions. Plaintiff has sought to discover the money Defendants have made as a result of business stolen from Plaintiff as well as discovery on the Defendants' individual financial condition. The responses from the parties have been sparse and what has been produced is only partly comprehensible. Plaintiff maintains that the subpoenas seeks information that it is relevant to monies made by the parties as a result of the transactions, their ability to satisfy a judgment, and to verify undocumented testimony by the parties under oath. As a result, the defendants Motion to Quash and for a Protective Order should be denied.

Respectfully Submitted,

By: _____

Frederick Jekel, Esq., SCBAR #66491
Jekel-Doolittle, LLC
210 Wingo Way #201
Mount Pleasant, SC 29464
(843) 654-7700
(888) 567-1129 (facsimile)

And
Wm. M. Gruenloh SCBAR # 12418
192 East Bay Street, Suite 202
Charleston, South Carolina 29401
(843) 577-0027
(843) 577-0721 (facsimile)

Date: April 3, 2015
Mt. Pleasant, South Carolina

CERTIFICATION

I hereby certify that on this 31st day of April 2015, a true copy of the foregoing was sent to the following via e mail to the following:

David Marvel
Prenner Marvel, P.A.
636 King St.
Charleston, SC 29403-4808

2015 APR -6 PM 12:31
CLERK OF COURT
DORCHESTER COUNTY

Frederick J. Jekel

2015 APR -6 PM 12: 32
CLERK OF COURT
DORCHESTER COUNTY

ATTACNMENT C

2015 APR -6 PM 12:32
CLERK OF COURT
MONROE COUNTY

Personal Financial Statement
Henry Wuertz
As of April 29, 2013

ASSETS:			LIABILITIES:		
Checking and Savings	$150,000.00				
UBS - IRA	$184,000.00		Mortgage - Ivanhoe	$512,000.00	
Charles Schwab - 401K	$500,000.00		Car Loan	$50,000.00	
			Boat Loan - Canyon Bay	$19,401.23	
Total Cash		$834,000.00			
			TOTAL LIABILITIES		$581,401.23
Residence 4510 Ivanhoe	$800,000.00		NET WORTH		$4,766,278.98
Total Real Property		$800,000.00	TOTAL LIABILITIES AND NET WORTH		$5,347,680.21
2012 Porsche Panamera	$85,000.00				
Total Automobiles		$85,000.00			
2008 Grand Bay	$65,000.00				
Total Marine		$65,000.00			
Equity - Crest Energy Partners	$2,611,815.49				
Equity - Cierra Marine	$248,390.32				
Equity - Crescent Terminals	$503,474.40				
Art	$50,000.00				
Household Goods	$150,000.00				
Total Personal Property		$3,563,680.21			
TOTAL ASSETS		$5,347,680.21			

Crest Discovery Responses 130501 -91

DEPOSITION EXHIBIT 10
PENDAD 800-631-6989

RECORDED
2015 APR -6 PM 12: 32
CLERK OF COURT
DORCHESTER COUNTY

ATTACNMENT D

Balance Sheet
As of 12/31/2012

Crest Energy Partners, LP (GLP)

Assets			
Current Assets			
	Cash	$ -4,185.55	
	Investments Icon Bond	$ 100,000.00	
	Accounts Receivable	$ 7,245,968.40	
	Allowance For Doubtful Accts	$ -31,772.29	
	Prepaids	$ 1,940,169.85	
	Inventory - Blendstock	$ 16,310,539.15	
	Total Current Assets:		$ 25,560,715.56
Fixed Assets			
	Automobiles	$ 6,213.05	
	Airplane	$ 127,044.89	
	Equipment	$ 212,912.54	
	Furniture & Fixtures	$ 59,424.23	
	Marine Vessel	$ 1,377,877.31	
	Leasehold Improvements	$ 342,164.21	
	Equipment - Piping/Hoses	$ 21,500.00	
	Accum Depreciation	$ -684,347.18	
	Total Fixed Assets:		$ 1,462,789.05
Other Assets			
	Deposits	$ 2,275.84	
	Notes Receivable	$ 181,750.00	
	Total Other Assets:		$ 184,025.84
	Total Assets:		$ 27,207,534.45
Liabilities			
Current Liabilities			
	Accounts Payable - Trade	$ 7,391,546.96	
	Notes Payable - Insurance	$ 74,207.05	
	Total Current Liabilities:		$ 7,465,754.01
Long Term Liabilities			
	Notes Payable - Crown	$ 15,569,964.95	
	Total Long Term Liabilities:		$ 15,569,964.95
	Total Liabilities:		$ 23,035,718.96
Equity			
	Partner Capital	$ 4,171,815.49	
	Total Equity:		$ 4,171,815.49
	Total Liabilities & Equity:		$ 27,207,534.45

2015 APR -6 PM 12: 32
CLERK OF COURT
DORCHESTER COUNTY
RECORDED

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G/L Date: 4/23/2013

Page: 1
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Crest Discovery Responses 130501 -90

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff,	)	CASE NO. 2012-CP-18-1227
vs.	)	**PLAINTIFF'S THIRD MOTION TO COMPEL**
CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	)	

NOW COMES Plaintiff Innovative Waste Management, Inc., (hereinafter "IWM") by and through its undersigned counsel, and hereby submits this Motion to Compel, pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, on the grounds that Defendants Crest Energy Partners GP, L.L. C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products L.P., Henry Wuertz and Edward H. Girardeau, have failed to produce certain financial information as previously ordered by this Court.

I. BACKGROUND

This case has been on appeal since May 2015 and was recently remanded back for trial. Prior to that, The Plaintiff sought the disclosure of certain financial discovery from the Defendants. The Plaintiff requested the financial information because 1) it has suffered a $12 million loss as a result of Defendants conduct, 2) there is mounting evidence of Defendants' intentional and punitive conduct, and 3) Defendants now claim that they are not collectible. This Court has ordered that the financial information should be disclosed but Defendants have not

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

complied. This is only the most recent example of what has been a longstanding pattern of discovery abuse by Defendants. (See Affidavit of Counsel attached as Exhibit 1)

A. The Court's Prior Rulings Requiring the Production of Defendants' Financial Information

1. The August 22, 2013 Ruling on Plaintiff's 1st Motion to Compel Production of Defendants' Financial Information

On October 2, 2012 Plaintiff served Defendants with Plaintiff's First Requests for Production and Interrogatories, including requests for Defendants' past and current financial information. The Defendants did not respond to any of the discovery requests and, on January 31, 2013, Plaintiff filed its First Motion to Compel. On March 15, 2013, on the eve of the hearing of Plaintiff's First Motion to Compel, counsel entered into a Consent Order under which Defendants agreed to provide discovery responses by March 20, 2013 and to pay Plaintiffs attorneys fees related to the motion to compel. The Defendants failed to comply with the Consent Order and Plaintiff filed an Amended Motion to Compel. The Court granted that motion on August 22, 2013 and ordered Defendants to produce sworn, certified financial statements.

2. The October 13, 2013 Ruling on Plaintiff's Second Motion To Compel

The Defendants failed to comply with the August 22, 2013 Order requiring them to produce financial information and Plaintiff was forced to file a second Motion to Compel. On October 13, 2013 the Court again ordered Defendants to provide their financial information and sanctioned the Defendants $2000.00 for their failure to comply the Court's prior orders.

3. The April 6, 2015 Ruling On Defendants' Motion to Quash

In March 2015 the Plaintiff issued subpoenas to Defendants' bank (Wells Fargo) and accountant (Margavio and Schmidt) requiring the production of Defendants' bank and accountant records from 2009 to the present date. Defendants filed a Motion to Quash. At the

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

hearing on Defendants' Motion to Quash, Defendants argued that the scope of Plaintiff's subpoenas was overbroad because Plaintiff was seeking current records and most of the transactions referred to in the complaint occurred between 2009 and 2012. Plaintiffs argued that the records were relevant because 1) there was sufficient evidence to make a prima facia showing of Defendants liability and punitive conduct and 2) Defendants were claiming they were not collectible despite records showing they had recently been profitable to the tune of tens of millions in annual profit. The Court denied Defendants' Motion to quash and found that bank and accountant records from 2009 through the present were relevant and should be disclosed. (See Orders attached as Exhibit 2)

B. Defendants Have Failed to Provide Updated Financial Statements and Have Refused to Cooperate in the Disclosure of Their Financial Records.

On March 27, 2019 the Plaintiff wrote to Defendants' Counsel and requested that Defendants provide updated financial statements pursuant to SCRCP 26(e). Also, Plaintiff issued a subpoena in Louisiana for Margavio & Schmidt seeking information through the present date (Defendants' accountant had previously provided information up to 2013) and requested Defendants' Counsel to sign a consent order necessary for the domestication of the Wells Fargo subpoena in Texas. The time period specified for the subpoenas was January 2009 though the present and Plaintiff referred Defendants to the Court's prior orders when making these requests. Plaintiff requested an immediate response if Defendants were unwilling to comply with its requests. (See Correspondence attached as Exhibit 3)

In response, a motion to quash the Margavio and Schmidt subpoena was filed in Louisiana. As for the financial statements and the Wells Fargo subpoena, Defense Counsel advised that he would get back to Plaintiff regarding those issues prior to the April 22, 2019

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

teleconference scheduled with the Court. Defendants' Counsel did not provide any response on those issues prior to the April 22nd teleconference.

During the April 22nd teleconference with the Court, Plaintiff's Counsel referenced the prior orders directing the disclosure of Defendants' financial information and requested that Defendants be ordered to provide updated financial statements. Also, in light of Defendants' failure to cooperate with the bank (Wells Fargo) subpoena and third party efforts to prevent the accountant (Margavio And Schmidt) subpoena, Plaintiff requested that Defendants be ordered to provide executed authorizations for the production of the records or simply obtain and produce the records themselves. In response, Defense Counsel advised the Court that he required until May 6, 2019 to provide an answer to Plaintiff's requests.

May 6, 2019 came and went with no response from Defense Counsel. Plaintiff's Counsel advised Defendant's Counsel of the missed deadline and, on May 7, 2019 Defense Counsel sent the attached letter. (See May 7, 2019 Letter attached as Exhibit 4) Therein, Defense Counsel argues that Defendants have no duty to supplement the financial statements that were provided six years ago. He also refuses to provide authorizations for the bank and accountant records, essentially arguing that Defendants do not have the ability to authorize the release of their own banking and accounting records. Defendants' Counsel did offer to provide a financial statement that is currently being constructed for use in Defendant Henry Wuertz's Federal trial in which he was indicted for dumping 50,000 pounds of toxic waste from his fuel refinery into a federally protected bayou in Texas. However, as of the date of this filing, no financial statement or production date has been provided.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

II. ARGUMENT

The issues before the Court are 1) whether Defendants must supplement their discovery responses to provide updated financial statements and 2) whether Defendants should be ordered to provide executed authorizations for the production of their bank and accounting records.

A. The Defendant's Have a Duty to Supplement The Financial Statements Pursuant to SCRCP 26(e).

SCRCP 26(e) imposes an ongoing duty to supplement discovery responses when the discovery requests are made pursuant to SCRCP 33 and/or 34. SCRCP 26(e) In this case, the discovery requests for Defendants' financial information were interrogatories and requests for production made pursuant to SCRCP 33 and 34 and, as such, the responses must be supplemented. Moreover there is a pressing need for the financial statements to be updated immediately.

First, the information previously provided is six years old. Given the sophistication of the Defendants, information that is six years old tells us nothing about their current wealth and income. Second, some of the Defendants are facing multiple judgments and criminal prosecution. It is unknown what effect this will have upon Plaintiff's priority in collecting upon any verdict but, as a result of the delay in the these proceedings, the Defendants have had an opportunity to prepare for judgments. Finally, there have been substantial admissions made by Defendants and a co-defendant whistleblower, Rodney Bridge, that have previously been outlined for this Court. These facts, along with Defendants own documents clearly establish Defendants' liability and a prima facia case of intentional/punitive conduct. Juxtaposed against these factors is the Plaintiff's economic loss of over $12 million caused by these Defendants' conduct. The updated financial information is relevant, necessary and has been previously

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

ordered to be produced. Plaintiff respectfully requests that the Court order Defendants to produce updated sworn, certified financial statements without further delay.

B. Defendants Should Be Ordered to Provide Executed Authorizations or Produce Their Own Bank and Accountant Records.

This Court previously ordered that subpoenas for Defendants' banking and accounting records from 2009 through the present were relevant. The subpoenas at issue now, likewise, require production though the present date. Defendants argue that the subpoenas should be limited in scope to 2009 through April 6, 2015 – the date of the Court's Order denying Defendants' Motion to Quash. This argument ignores the fact that the Defendants' collectability and their wealth for the purposes of punitive damages were the arguments presented and weighed by the Court in ordering the production of current financial records showing Defendants' wealth and income. Given the sophistication and volatility of these defendants, six-year-old information tells us nothing about their current wealth and income. To allow the Defendants to limit the production to April 6, 2015 – a date which has no significance other than the date the Order denying Defendants' Motion to Quash was signed – would be a complete abdication of the purpose of the discovery. Likewise, third parties in foreign jurisdictions should not be permitted to use procedural means to prevent document productions ordered by this Court.

The Plaintiff has spent thousands of dollars and many lawyer hours seeking these records. Likewise, the Court has now spent its time and resources on this issue on multiple occasions. The Plaintiff respectfully requests this Court to order the Defendants to provide executed authorizations for the release of its own bank and accounting records from 2009 to the present or, in the alternative, produce the records themselves.

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III. CONCLUSION

This is the third Motion to Compel that Plaintiff has been forced to file regarding Defendants' financial records and the the third time that a motion has been necessary due to the Defendants disregard of a court order. The attached affidavit details Plaintiff's Counsel's time spent on the issues set out herein. (See Exhibit 1) Plaintiff respectfully requests the Court to order Defendants to do the following within ten (10) days of the Court's Order:

1) **Produce updated, sworn, certified financial statements for each Defendant, and**

2) **Provide executed authorizations for the production of the Wells Fargo and Margavio and Schmidt records from 2009 through the present date or, in the alternative, produce the records themselves, and**

3) **Pay Plaintiff's attorneys fees and costs related to re-litigating these issues, and**

4) **For any other relief deemed appropriate.**

Respectfully Submitted,

By: s/Wm. M. Gruenloh
Wm. M. Gruenloh
SCBAR # 12418
Attorney for the Plaintiff
67 Moultrie Street, 2nd Floor
Charleston, South Carolina 29403
(843) 577-0027
mike@gruenlohlaw.com

and

Frederick "Fritz" Jekel
SCBAR #66491
LEVENTIS & RANSOM
PO Box 11067
Columbia, SC 29211
803-765-2383
Fritz@j-dlaw.com

Date: May 14, 2019
Charleston, South Carolina

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

GRUENLOH LAW

DELIVERED VIA EMAIL ONLY TO dave@marvel.lawyer

March 27, 2019

Re: IWM v. Wuertz

Dear David:

As you may recall, Judge Dickson ordered that each defendant provide a certified financial statement. Please provide an updated financial statement for each defendant.

Also, attached is a consent order for the domestication of a subpoena for Defendants' Wells Fargo financial records. The court previously denied your motion to quash this subpoena and ordered the records produced. If your client is willing to produce his bank records that would obviously save time and money. Otherwise, please sign the consent order so we can get the subpoena served on Wells Fargo in Texas.

If you are unable or unwilling to produce the updated financial statements and sign the attached consent order please let us know immediately.

Respectfully,

Wm. M. Gruenloh

[illegible] • CHARLESTON, SOUTH CAROLINA [illegible]
[illegible] OFFICE • [illegible] FAX • WWW.GRUENLOHLAW.COM

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	) IN THE COURT OF COMMON PLEAS))	
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff, vs. CREST ENERGY PARTNERS GP, L.L.C., CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C., DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE Defendants.	) CASE NO. 2012-CP-18-1227))))))))))) **CONSENT ORDER**	

This matter comes before the Court on a motion by Plaintiff, Innovative Waste Management, Inc., with the consent of the Defendants, for an Order to domesticate subpoenas for the production of documents and oral depositions in the State of Texas.

NOW THEREFORE, upon motion of the Plaintiffs and without the objection of the Defendants, Plaintiff's Motion for an Order Authorizing the Domestication of an out of State Subpoena is hereby **GRANTED.**

IT IS ORDERED, ADJUDGED and DECREED that the Dorchester County Court of Common Pleas authorizes the Clerk of Court of Travis County, Texas to issue a valid and binding subpoena for the production of documents and 30(b)(6) Corporate Representative Deposition to Wells Fargo, National Association in connection to the above-captioned action.

IT IS SO ORDERED!

_____
Judge Maite Murphy
Dorchester County Court of Common Pleas

Date: _____, 2019
St. George, South Carolina

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WE SO MOVE:

For the Plaintiffs: _____
Wm. Michael Gruenloh, Esq.
Patrick Aulton Chisum, Esq.

WE SO CONSENT:

For the Defendants: _____
David Marvel, Esq.
Kenneth Goode, Esq.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

GRUENLOH LAW

DELIVERED VIA US MAIL

Jefferson Parish Clerk of Court
Attn: Mary Najolia
PO Box 10
Gretna, LA 70054

March 26, 2019

Re: Innovative Waste Management v. Crest Energy Partners, GP, L.L.C. *et al.*
Docket No.: 2012-CP-181227

Dear Ms. Najolia:

The above referenced matter is currently pending in the Dorchester County Court of Common Pleas in St. George, South Carolina. It is our desire to serve a subpoena upon an entity located in Jefferson Parish, Louisiana. Enclosed you will find one original and two copies of the South Carolina Subpoena. I have also enclosed the contact information for all counsel of record, a self-addressed, stamped envelope, and a check in the amount of $350.00 that represent the appropriate filing fee. Please domesticate the enclosed subpoena and return it to our office for service.

If you have any questions or concerns, please don't hesitate to contact our office.

Respectfully,

Ryan W. Jones

Ryan W. Jones
Paralegal

CC: David Marvel (Email Only)

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Counsel of Record

Wm. M. Gruenloh
Patrick Aulton Chisum
67 Moultrie Street, Second Floor
Charleston, South Carolina 29403
(843) 577-0027
(843) 577-0721 (facsimile)

And

Frederick Jekel, Esq.,
Jekel-Doolittle
1913 Bull Street
Columbia, South Carolina 29201
(843) 654-7700
(888) 567-1129 (facsimile)
Counsel for Plaintiff Innovative Waste Management, Inc., and Third Party Defendant C. Russ Lloyd

David Marvel
Post Office Box 22734
Charleston, SC 29413
(843) 722-7250
(843) 722-7260 (facsimile)
Counsel for Defendants

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC,
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU,

Case Number: 2010-CP-18-1227

Pending in DORCHESTER County

TO: Margavio & Schmidt CPA
1101 Dealers Ave. New Orleans, LA 70123

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attached Exhibit A

PLACE	DATE AND TIME April 19, 2019, 5:00PM
Gruenloh Law Firm 67 Moultrie Street, Second Floor Charleston, SC 29403	

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	3/26/2019 Date	Wm. Michael Gruenloh Print Name

Attorney for Plaintiff, Patrick Aulton Chisum, Wm. Michael Gruenloh, Esq. 67 Moultrie Street, Second Floor Charleston, SC 29403 (843) 577-0027

SCC [illegible]011) (See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on next page)

Clerk of Court/Issuing Officer's Signature | Date | Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE	☐YES ☐ NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or
ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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EXHIBIT A

Any and all documents, including but not limited to tax returns, working papers, and P&L statements that pertain to Henry Wuertz, Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., and Dunhill Products L.P. from June 3, 2015 to the present date.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Re: Innovative Waste Management v. Crest Energy Partners, L.L.C, et al

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Apr 16, 2019, 5:07 PM

to David

I'd love to have a working relationship based upon some level of trust but that has not been my experience in this case. You understand that we want updated financial information for the defendants and why we want it. If you want to reset the dynamic, then produce updated financial statements that include sufficient information for us to verify the accuracy of the statements (names and locations of banks and assets).

We need the consent order because Travis County requires it in addition to the court order denying your motion to quash. I had not realized the draft subpoena to WF wasn't attached. It is now. We already dismissed Rodney. I guess my new paralegal used an old form. We amended the complaint to reflect Goldstein's rulings on your MTD. What ruling do you believe is inconsistent with the amended complaint?

gruenlohlaw.com
Wm. Michael Gruenloh, Esq.
Partner
T 843.577-0027
F 843.577.0721
E mike@gruenlohlaw.com
A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

****

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA

ISSUED BY THE CIRCUIT COURT IN THE COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT, INC,
Plaintiff

v.

SUBPOENA IN A CIVIL CASE

CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU

Case Number: 2010-CP-18-1227

Pending in DORCHESTER County

TO: Wells Fargo Bank N.A. c/o CSC
211 East 7th Street, Suite 620 Austin, TX 78701

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See Attached Exhibit A

PLACE	DATE AND TIME
Gruenloh Law Firm 67 Moultrie Street, Second Floor Charleston, SC 29403	April 19, 2019 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

3/26/2019

Attorney/Issuing Officer's Signature — Date — Wm. Michael Gruenloh, Print Name

Attorney for Plaintiff, Patrick Aulton Chisum, Wm. Michael Gruenloh, Esq. 67 Moultrie Street, Second Floor Charleston, SC 29403 (843) 577-0027

Clerk of Court/Issuing Officer's Signature | Date | Print Name

Pro Se Litigant's Name, Address and Telephone Number :

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TENDERED TO WITNESS
	PLACE Wells Fargo Bank, N.A. c/o CSC 211 East 7th Street, Suite 620 Austin, TX 78701	☐YES ☐ NO AMOUNT $

SERVED ON	MANNER OF SERVICE
SERVED BY	TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on _____ 201____

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

i. fails to allow reasonable time for compliance; or
ii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
iii. requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
iv. subjects a person to undue burden.

(B) If a subpoena:

i. requires disclosure of a trade secret or other confidential research, development, or commercial information, or
ii. requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
iii. requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person,

the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

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EXHIBIT A

For the purposes of these document requests "you" is intended to mean you individually or any company in which you owned an interest, were a manager or were employed by between the time period January 1, 2008 and the present.

1. Produce all records of any and all business transactions between you and Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge between the time period January 1, 2008 and the present.

2. Produce all records of any and all business transactions between you and Innovative Waste Management (also known as Innovative Resource Management) between the time period January 1, 2008 and the present.

3. Produce all correspondence between you and Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge between the time period January 1, 2008 and the present.

4. Produce an accounting of all money paid to Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge by you between the time period January 1, 2008 and the present and indicate
   (a) What transaction the proceeds are related to;
   (b) The type of product sold, brokered or purchased or type service provided and by whom, and
   (c) Provide a summary of the transaction sufficient to inform the other party of the nature of the transaction.

5. Produce an accounting of all money paid by Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge to you between the time period January 1, 2008 and the present and indicate
   (a) What transaction the proceeds are related to;
   (b) The type of product sold, brokered or purchased or type service provided and by whom, and
   (c) Provide a summary of the transaction sufficient to inform the other party of the nature of the transaction.

6. Produce a list of all business affiliations or associations between you and Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge which currently exist or which existed anytime between January 1, 2008 and the present.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

7. Produce any and all documents which set out the existence or nature any and all business affiliations or associations between you and Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge which currently exist or which existed anytime between January 1, 2008 and the present.

8. Produce all records of any and all business transactions between you and Crest Energy Partners GP, L.L.C, Crest Energy Partners L.P., Dunhill Products GP, L.L.C, Dunhill Products L.P., Henry Wuertz, Edward H. Girardeau, or Rodney Bridge between the time period January 1, 2008 and the present.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

DAVID B. MARVEL
Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia
www.marvel.lawyer

May 7, 2019

By Email
Wm. Michael Gruenloh
Gruenloh Law Firm
67 Moultrie Street, Second Floor
Charleston, SC 29403

RE: Innovative Waste Management, Inc. v. Crest Energy Partners
Case No: 2012-CP-18-1227

Dear Mike,

I hope this letter finds you well. I am writing to follow-up our status conference with Judge Murphy. Thank you for your patience awaiting this response.

Judge Dickson's Order of June 3, 2013 stated "[i]n lieu of detailed responses to Plaintiff's Interrogatories and Requests for Production which seek information related to the income and wealth of the Defendants, each Defendant shall provide a sworn or certified financial statement indicating its/his net worth." In my opinion, Judge Dickson's use of the singular does not require supplementation beyond that initial production.

Nonetheless, I believe you are aware that Henry Wuertz is facing trial in an environmental discharge case. It appears that a defendant's ability to pay a fine is relevant in that matter, and an accountant has been engaged to prepare a financial statement that I suspect will be more detailed than the form that we previously used. As I recall, you did not contemporaneously object to that document. We are willing to produce that statement/report to you when it is in final form, which will be in the next couple of weeks.

Judge Murphy's Order of April 6, 2015 directed you to re-issue subpoenas to Margavio & Schmidt and Wells Fargo limited in scope to 2009 to the date of the Order. Your current subpoena is broader in scope than Judge Murphy's Order, and it is my understanding that Margavio & Schmidt complied with the 2015 subpoena and Judge Murphy's Order. I have asked you for confirmation of that fact. Moreover, their objection to your recent subpoena is based on several factors that were not the subject of my 2015 Motion to Quash and are based on Louisiana and/or Federal tax law. We are therefore not able to consent on behalf of that entity.

The Crest/Dunhill entities are no longer conducting business and it is my understanding that they only hold certain contingent assets, namely the counter-claims in this case. Accordingly, there is nothing for those entities to produce to you.

Likewise, neither Wuertz nor any of the entities have conducted business with Wells Fargo in several years, and therefore we cannot execute a release relating to your proposed subpoena. I can confirm that we will raise no further objection to the Wells Fargo subpoena here or in Harris County should you chose to pursue it.

I propose that you wait to review the financial statement that we propose to produce, which should confirm and may enhance my comments above. If you feel the need to request details relating to that document, I will remain willing to discuss that request at that time.

As always, we request a copy of any subpoena response.

Finally, you indicated several weeks ago that you may be able to propose a resolution of Gerry's claims and the claims against him. Awaiting that, I have not asked him for comment on these matters, but I would be happy to if you think his financial statement would be helpful. We believe that his claim and the claims against him were to be resolved by way of mutual dismissal, which had nothing to do with Crest Energy Partners' inability to fund the settlement.

I am hopeful that we can work to prevent the majority of the issues that plagued the case previously, and perhaps an actual resolution will present itself. If you have any questions or comments, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,

David B. Marvel

/DBM

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
	)	CASE NO. 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC.	)	
Plaintiff,	)	
versus	)	**AFFIDAVIT OF WM. MICHAEL GRUENLOH**
CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU	)	
Defendants.	)	

1. My name is Wm. Michael Gruenloh, Esq., I am counsel for the Plaintiff in the above captioned action, I have never been accused or convicted of a felony, I am of sound mind, I am over the age of eighteen (18) and have personal knowledge of the facts herein.

2. This matter originated as *Innovative Waste Management v. Crest Energy Partners Group, LLC, Dunhill Products Group, LLC, Henry Wuertz, Steven Frietsch, Edward H. Girarduau and Rodney Bridge* 2:11-cv-01023-RMG filed in the South Carolina District Court. While the case was in federal court, Defendants routinely delayed discovery responses or provided deficient answers forcing the Plaintiff to file a Motion to Compel.

3. Defendants pattern of discovery abuse has continued in this case. On October 2, 2012 Plaintiff served Defendants with Plaintiff's First Request for Production and Interrogatories including requests for Defendants' financial information from 2009 and their current wealth and income.

4. The Defendants did not respond to that discovery and, on January 31, 2013, Plaintiff filed its First Motion to Compel.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

5. On March 15th, 2013, on the eve of the hearing of Plaintiff's First Motion to Compel, Plaintiff entered into a Consent Order with Defense Counsel Marvel under with Defendants agreed to provide "responses to all outstanding discovery requests on or before Wednesday, March 20, 2013" and in which Defendants agreed to pay for Plaintiff's Counsel's time spent pursuing Defendants' discovery responses.

6. The Defendants failed to comply with the March 15, 2013 Consent Order and Plaintiff filed an Amended Motion to Compel that was argued and granted by the Court on August 22, 2013. The Court again ordered Defendants to provide their financial information to Plaintiffs, including current financial statements.

7. The Defendants failed to comply (for a third time) with the Court's August 22, 2013 Order and Plaintiff was forced to file Plaintiff's Second Motion to Compel.

8. On October 13, 2013, after hearing Plaintiff's Second Motion to Compel, the Court again ordered Defendants to provide their financial information and sanctioned the Defendants for failure to comply with the Court's prior orders by requiring the Defendants to pay the Plaintiff's attorney fees and costs.

9. In March 2015 Plaintiffs issued subpoenas to Defendants' bank (Wells Fargo) and accountant (Margavio and Schmidt) requiring the production of Defendants' financial records from 2009 to the present date. Defendants filed a Motion to Quash. After hearing the matter, the Court denied Defendants' Motion to Quash, finding that Defendants' bank and accountant records through the present were relevant and should be disclosed.

10. In April 2015 the Defendants agreed to settle this case but breached the settlement agreement. The case was dismissed and Plaintiff appealed that dismissal. In February 2019, the case was remanded back to this Court for trial.

ELECTRONICALLY FILED - 2019 May 15 10:31 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

11. On March 27, 2019 Plaintiff wrote to Defendants requesting that they update their sworn certified financial statements pursuant to this Court's August and October 2013 rulings and also requested Defendants' cooperation in domesticating the Wells Fargo subpoena authorized in the Court's April 2015 ruling.

12. Defendants have refused to comply with Plaintiff's requests as outlined in Plaintiff's Third Motion to Compel and continued their pattern of discovery abuse.

13. Since March 27, 2019 I have personally spent six and ½ hours pursuing the discovery sought in Plaintiff's Third Motion to Compel – all of which would not have been necessary had Defendants complied with the rules of procedure and the Court's prior orders as outlined herein and in Plaintiff's Third Motion to Compel. My standard hourly billing rate is $300/hr.

I SWEAR THAT ALL STATEMENTS HEREIN ARE TRUE AND ACCURATE.

Wm. Michael Gruenloh, Esq.

SWORN TO AND SUBSCRIBED before me,
The undersigned on this 13th day of May 2019

NOTARY PUBLIC FOR THE
STATE OF SOUTH CAROLINA
My Commission Expires: 7/11/2027

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS CASE NO: 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC., Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS, L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE, Defendants.	)	

DEFENDANTS' MEMORANDUM IN RESPONSE TO PLAINTIFF'S THIRD MOTION TO COMPEL

This matter was before the Court on June 5, 2019, following Plaintiff Innovative Waste Management, Inc.'s Motion to Compel Defendants to produce certain financial information. Defendant Rodney Bridge has been dismissed from the case. The remaining Defendants note for the record that they have and continue to attempt to comply with the Plaintiff's discovery requests, but are unable to do so in the form requested by the Plaintiff, as addressed herein.

Despite having conduced eight years of discovery in this matter and in the previously dismissed case filed in the United States District Court for the District of South Carolina, Plaintiff apparently fails to discern the salient fact that Crest Energy Partners GP, LLC and Dunhill Products GP, LLC, are (or were) the same entity, subject only to a formal name change that happened to occur about the time of the events that are the subject of this lawsuit. Likewise, Dunhill Products, L.P. simultaneously changed its name to Crest Energy Partners, L.P. See Exhibit A. Therefore, to the extent Plaintiff seeks separate documents or information from the "Dunhill", entities, there is no such information, and there is no person who can certify such

information. Defendants have stated on the record on multiple occasions that any liability of the Dunhill entities is the liability of the Crest entities, and there is no discernable reason why Plaintiff appears to think otherwise.

Undersigned counsel wants the record to be clear that he has attempted to comply with, and even exceed, Plaintiff's requests by offering to provide the Plaintiff 1) an accountant's certified financial statement for Defendant Henry Wuertz, 2) a sworn financial statement of Defendant Edward Girardeau, and 3) the Internal Revenue Service's records relating to the entity defendants, provided directly to Plaintiff's counsel. None of the entity defendants are actively conducting business or holding assets. Therefore, they have no financial information to disclose or any active principal to certify that information. For that reason, the undersigned agreed to give plaintiff access to those defendants' IRS records, under the theory that such records are by their very nature sworn financial declarations of income and wealth. Conversely, the failure of these entities to file returns are absences which establish the lack of income and/or assets.

The Court should also be informed that Plaintiff has never subpoenaed the accounting records of any Defendant other than Henry Wuertz. Mr. Wuertz' personal accountant, Margavio & Schmidt, has no accounting duties relating to any of the entities. Plaintiff is, or should be, aware of this because the entity defendants produced their relevant tax data to Plaintiff's counsel long ago. Margavio & Schmidt moved to quash Plaintiffs subpoena in the jurisdiction where the subpoena was issued, and that court granted its motion. See Exhibit B.

In 2013, Judge Dickson heard and resolved the issue of what financial records the Defendants were required to produce. See Exhibit C. A transcript of that proceeding was previously provided to the Court, and is attached hereto as Exhibit D. With all due respect to this Honorable Court, that ruling is the law of the case and it is beyond the scope of the Dorchester

Court of Common Pleas' authority to Order the Defendants to execute an authorization that effectively overrules not only that ruling but also an Order of the 24th District Court for the Parish of Jefferson, Louisiana.

To the extent the Plaintiff seeks attorneys' fees, any award would be inappropriate under Rule 37(b), SCRCP, and would be unjust under Rule 37(a)(4). The Court's April 6, 2015 Order on Defendants' Motion to Quash only directed the Plaintiff to "re-issue the subpoenas in compliance with [that] order." See Exhibit E. The only party that failed to comply with that order was the Plaintiff. There is no evidence in the record that any of the Defendants have failed to comply with that Order, or any other order issued by this Court since 2013. Moreover, when the Plaintiff requested that the Defendants supplement and/or update their previous financial disclosures, Defendants not only agreed to do so, they offered to provide a more thorough response than what the Plaintiff and this Court believed to be adequate.

The record must reflect that the defendants have not only agreed to provide the information requested by the Plaintiff, they have offered the Plaintiff more comprehensive information than the Court's previous Orders have required. Defendant's efforts in that regard were communicated to the Court immediately prior to and during the hearing on June 5, 2019. See Exhibit F. Accordingly, there is nothing more for the Court to compel, or reason for the Plaintiff to file motion after motion on the issue.

Defendants consent to Court's entry of the Order attached hereto as Exhibit G, which not only fulfills but exceeds the Plaintiff's request for financial discovery. For all of the reasons stated herein and previously argued, Defendants respectfully request that this Honorable Court issue that Order forthwith.

RESPECTFULLY SUBMITTED:

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 853-4877
Fax (843) 380 3025
dave@marvel.lawyer

June 11, 2019
Charleston, South Carolina

Texas Secretary of State

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number: 800129005
Entity Type: Foreign Limited Partnership
Original Date of Filing: September 25, 2002
Entity Status: Forfeited existence
Formation Date: N/A
Tax ID: 11136486757
FEIN: 113648675

Name: Crest Energy Partners, L.P.
Address: 7026 Old Katy Rd Ste 201
Houston, TX 77024 USA
Fictitious Name: Crest Group, L.P.
Jurisdiction: DE, USA
Foreign Formation Date: August 2, 2002

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES

Name	Name Status	Name Type	Name Inactive Date	Consent Filing #
Dunhill Products, L,P,	Prior	Legal	September 25, 2002	0
Dunhill Products, L.P.	Prior	Legal	August 13, 2010	0
Crest Group, L.P.	Inactive	Fictitious	January 29, 2016	0
Crest Energy Partners, L.P.	Inactive	Legal	January 29, 2016	0

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	800128893	**Entity Type:**	Foreign Limited Liability Company (LLC)
Original Date of Filing:	October 2, 2002	**Entity Status:**	Forfeited existence
Formation Date:	N/A		
Tax ID:	11136486716	**FEIN:**	113648671

Name:	Crest Energy Partners GP, LLC
Address:	7026 OLD KATY ROAD STE 249 Houston, TX 77024 USA
Fictitious Name:	Crest Group GP, LLC
Jurisdiction:	DE, USA
Foreign Formation Date:	July 31, 2002

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES

Name	Name Status	Name Type	Name Inactive Date	Consent Filing #
Dunhill Products GP, LLC	Prior	Legal	August 13, 2010	0
Crest Group GP, LLC	Prior	Fictitious	August 13, 2010	0
Crest Energy Products GP, LLC	Prior	Legal	August 13, 2010	0
Crest Energy Partners GP, LLC	Inactive	Legal	January 29, 2016	0

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- Texas Homeland Security
- Where the Money Goes
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- Texas Veterans Portal

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634

D1

24TH JUDICIAL COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 744-568 **DIVISION "P"**

INNOVATIVE WASTE MANAGEMENT, INC.

VERSUS

CREST ENERGY PARTNERS GP LLC, ET AL.

FILED
Jun 10th 2019
DEPUTY CLERK

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

The Motion to Quash Subpoena *Duces Tecum* to Margavio & Schmidt, CPAS ("Margavio") filed on April 17, 2019 came for hearing on May 28, 2019.

PRESENT: Marcus K. Pierre, attorney for Margavio & Schmidt, CPAS;

After hearing the arguments of counsel and reviewing the pleadings on file in conjunction with the matter brought this Court, and for reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Quash is **GRANTED**.

Signed in Gretna, Louisiana this 10 day of June, 2019.

HON. JUDGE LEE V. FAULKNER

NOTE TO CLERK:
Please notify all counsel of record

June 7, 2019
I, HEREBY CERTIFY THAT ALL COSTS INCURRED IN THIS MATTER HAVE BEEN PAID.
DEPUTY CLERK

24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

SIGNED: HON. LEE V. FAULKNER, JR. - DIVISION: P - 06/10/2019 09:45:16 - CASE:744-568 - ID:30042

RULE 9.5 CERTIFICATE

I CERTIFY that pursuant to Uniform District Court Rule 9.5, I circulated a copy of this Judgment for comment to opposing counsel on 30th day of May, 2019, by electronic mail. Opposing counsel has no objection to this proposed Judgment.

I have allowed at least five (5) working days before presentation to the Court.

Certified this 6th day of June , 2019.

Respectfully submitted,

Salvador J. Pusateri T.A. (#21036)
Marcus K. Pierre (#38372)
PUSATERI, JOHNSTON, GUILLOT & GREENBAUM
1100 Poydras Street – Suite 2250
New Orleans, Louisiana 70163
Telephone: (504) 620-2500
Facsimile: (504) 620-2510
Salvador.Pusateri@pjgglaw.com
Marcus.Pierre@pjgglaw.com
ATTORNEYS FOR MARGAVIO & SCHMIDT, CPAS

24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

June 5, 2019

The Honorable Maite Murphy
P.O. Box 802
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Re: Innovative Waste Management v. Crest Energy Partners, *et al.*
Case No.: 2012-CP-18-1227

Dear Judge Murphy,

I hope this letter finds you well. I am writing in advance of the hearing on the Plaintiff's Motion this morning to provide the Court with an update of our efforts, with hope that this will streamline the proceedings.

To clarify several comments in the Plaintiff's Motion, the individual defendants Wuertz and Girardeau have agreed to provide updated personal financial statements in accordance with Judge Dickson's June 3, 2013 order. As the Motion and my letter attached to it indicated, Defendant Wuertz is in the process of having outside accountants prepare a statement of his finances for submission in a Louisiana proceeding. It is my understanding that the certified information in this document will be significantly more expansive than what we previously submitted to Plaintiff's satisfaction in this matter. I was informed yesterday that the accountants are working to complete their work this week and I expect to have a copy to provide by the end of next week.

Defendant Girardeau has significant health problems and is currently in the hospital. He believes that he will be discharged tomorrow or Friday, and he intends to complete a sworn personal financial statement as soon as he is able to return home.

None of the named corporate defendants are currently conducting operations and they have no hard assets. I have taken the liberty of submitting requests (Form 4506-T) to the Internal Revenue Service for the transcripts of any return filed by those entities from 2015 to the present. The IRS will transmit those transcripts directly to Mr. Gruenloh, and I ask that he provide me with copies of those documents once they are received.

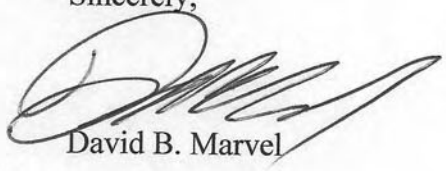
As for the Plaintiff's requests relating to the out of state subpoenas, Margavio & Schmitt filed a motion to quash in Louisiana state court arguing points of Louisiana law and

Marvel Et Al., LLC - P.O. Box 22734 - Charleston, South Carolina 29413 -843.853.4877

procedure. That firm did, in fact, comply with your April 6, 2015 Order. While that Order denied our Motion to Quash, the order directed the Plaintiff to reissue the subpoenas in accordance with the order, which never happened. The Order did not direct Defendants to do anything, and it would appear that Order is sufficient for submission to the Courts of Harris County, Texas if the Plaintiff intends to pursue any records from Wells Fargo.

Thank you for your attention to this matter. I look forward to appearing before you this morning. With best regards, I remain

Sincerely,



David B. Marvel

/DBM
Cc: Wm. Michael Gruenloh

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS CASE NO: 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC., Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS, L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE, Defendants.	)	**ORDER**

This matter came before the Court June 5, 2019 on Plaintiff Innovative Waste Management, Inc.'s Motion to Compel Defendants Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, to produce certain financial information. The Court having considered all filings, argument, and proffers of Counsel hereby Orders Defendants to sign such authorizations as Wells Fargo may require to produce documents responsive to the Plaintiff's Subpoena request. Defendants shall provide updated financial statements, either sworn by the individuals or certified by the entities' principals or accounting professionals, establishing their wealth and income to Plaintiff within twenty-one (21) days of this order. Plaintiff's request for attorneys' fees shall remain under advisement and be subject to separate Order of the Court, pending compliance with this Order.

IT IS SO ORDERED!

June _____, 2019
_____, South Carolina

_____
The Honorable Maité Murphy
Circuit Court Judge

ELECTRONICALLY FILED - 2019 Jun 25 1:02 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA) COUNTY OF DORCHESTER)	IN THE COURT OF COMMON PLEAS CASE NO: 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC.,) Plaintiff,) vs.) CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS, L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE,) Defendants.)	

DEFENDANTS' MEMORANDUM IN RESPONSE TO PLAINTIFF'S THIRD MOTION TO COMPEL

This matter was before the Court on June 5, 2019, following Plaintiff Innovative Waste Management, Inc.'s Motion to Compel Defendants to produce certain financial information. Defendant Rodney Bridge has been dismissed from the case. The remaining Defendants note for the record that they have and continue to attempt to comply with the Plaintiff's discovery requests, but are unable to do so in the form requested by the Plaintiff, as addressed herein.

Despite having conduced eight years of discovery in this matter and in the previously dismissed case filed in the United States District Court for the District of South Carolina, Plaintiff apparently fails to discern the salient fact that Crest Energy Partners GP, LLC and Dunhill Products GP, LLC, are (or were) the same entity, subject only to a formal name change that happened to occur about the time of the events that are the subject of this lawsuit. Likewise, Dunhill Products, L.P. simultaneously changed its name to Crest Energy Partners, L.P. See Exhibit A. Therefore, to the extent Plaintiff seeks separate documents or information from the "Dunhill", entities, there is no such information, and there is no person who can certify such

ELECTRONICALLY FILED - 2019 Jun 25 1:02 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

information. Defendants have stated on the record on multiple occasions that any liability of the Dunhill entities is the liability of the Crest entities, and there is no discernable reason why Plaintiff appears to think otherwise.

Undersigned counsel wants the record to be clear that he has attempted to comply with, and even exceed, Plaintiff's requests by offering to provide the Plaintiff 1) an accountant's certified financial statement for Defendant Henry Wuertz, 2) a sworn financial statement of Defendant Edward Girardeau, and 3) the Internal Revenue Service's records relating to the entity defendants, provided directly to Plaintiff's counsel. None of the entity defendants are actively conducting business or holding assets. Therefore, they have no financial information to disclose or any active principal to certify that information. For that reason, the undersigned agreed to give plaintiff access to those defendants' IRS records, under the theory that such records are by their very nature sworn financial declarations of income and wealth. Conversely, the failure of these entities to file returns are absences which establish the lack of income and/or assets.

The Court should also be informed that Plaintiff has never subpoenaed the accounting records of any Defendant other than Henry Wuertz. Mr. Wuertz' personal accountant, Margavio & Schmidt, has no accounting duties relating to any of the entities. Plaintiff is, or should be, aware of this because the entity defendants produced their relevant tax data to Plaintiff's counsel long ago. Margavio & Schmidt moved to quash Plaintiffs subpoena in the jurisdiction where the subpoena was issued, and that court granted its motion. See Exhibit B.

In 2013, Judge Dickson heard and resolved the issue of what financial records the Defendants were required to produce. See Exhibit C. A transcript of that proceeding was previously provided to the Court, and is attached hereto as Exhibit D. With all due respect to this Honorable Court, that ruling is the law of the case and it is beyond the scope of the Dorchester

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Court of Common Pleas' authority to Order the Defendants to execute an authorization that effectively overrules not only that ruling but also an Order of the 24th District Court for the Parish of Jefferson, Louisiana.

To the extent the Plaintiff seeks attorneys' fees, any award would be inappropriate under Rule 37(b), SCRCP, and would be unjust under Rule 37(a)(4). The Court's April 6, 2015 Order on Defendants' Motion to Quash only directed the Plaintiff to "re-issue the subpoenas in compliance with [that] order." See Exhibit E. The only party that failed to comply with that order was the Plaintiff. There is no evidence in the record that any of the Defendants have failed to comply with that Order, or any other order issued by this Court since 2013. Moreover, when the Plaintiff requested that the Defendants supplement and/or update their previous financial disclosures, Defendants not only agreed to do so, they offered to provide a more thorough response than what the Plaintiff and this Court believed to be adequate.

The record must reflect that the defendants have not only agreed to provide the information requested by the Plaintiff, they have offered the Plaintiff more comprehensive information than the Court's previous Orders have required. Defendant's efforts in that regard were communicated to the Court immediately prior to and during the hearing on June 5, 2019. See Exhibit F. Accordingly, there is nothing more for the Court to compel, or reason for the Plaintiff to file motion after motion on the issue.

Defendants consent to Court's entry of the Order attached hereto as Exhibit G, which not only fulfills but exceeds the Plaintiff's request for financial discovery. For all of the reasons stated herein and previously argued, Defendants respectfully request that this Honorable Court issue that Order forthwith.

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RESPECTFULLY SUBMITTED:

s/ David B. Marvel
David B. Marvel (SCB 68803)
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 853-4877
Fax (843) 380 3025
dave@marvel.lawyer

Submitted June 11, 2019
Efiled June 25, 2019
Charleston, South Carolina

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	800129005	**Entity Type:**	Foreign Limited Partnership
Original Date of Filing:	September 25, 2002	**Entity Status:**	Forfeited existence
Formation Date:	N/A		
Tax ID:	11136486757	**FEIN:**	113648675

Name: Crest Energy Partners, L.P.
Address: 7026 Old Katy Rd Ste 201
Houston, TX 77024 USA
Fictitious Name: Crest Group, L.P.
Jurisdiction: DE, USA
Foreign Formation Date: August 2, 2002

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES

Name	Name Status	Name Type	Name Inactive Date	Consent Filing #
Dunhill Products, L,P,	Prior	Legal	September 25, 2002	0
Dunhill Products, L.P.	Prior	Legal	August 13, 2010	0
Crest Group, L.P.	Inactive	Fictitious	January 29, 2016	0
Crest Energy Partners, L.P.	Inactive	Legal	January 29, 2016	0

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BUSINESS ORGANIZATIONS INQUIRY - VIEW ENTITY

Filing Number:	800128893	**Entity Type:**	Foreign Limited Liability Company (LLC)
Original Date of Filing:	October 2, 2002	**Entity Status:**	Forfeited existence
Formation Date:	N/A		
Tax ID:	11136486716	**FEIN:**	113648671

Name: Crest Energy Partners GP, LLC
Address: 7026 OLD KATY ROAD STE 249
Houston, TX 77024 USA
Fictitious Name: Crest Group GP, LLC
Jurisdiction: DE, USA
Foreign Formation Date: July 31, 2002

REGISTERED AGENT | FILING HISTORY | NAMES | MANAGEMENT | ASSUMED NAMES | ASSOCIATED ENTITIES

Name	Name Status	Name Type	Name Inactive Date	Consent Filing #
Dunhill Products GP, LLC	Prior	Legal	August 13, 2010	0
Crest Group GP, LLC	Prior	Fictitious	August 13, 2010	0
Crest Energy Products GP, LLC	Prior	Legal	August 13, 2010	0
Crest Energy Partners GP, LLC	Inactive	Legal	January 29, 2016	0

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24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

713
635

24TH JUDICIAL COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 744-568 **DIVISION "P"**

INNOVATIVE WASTE MANAGEMENT, INC.

VERSUS

CREST ENERGY PARTNERS GP LLC, ET AL.

FILED
Jun 10th 2019
DEPUTY CLERK

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

The Motion to Quash Subpoena *Duces Tecum* to Margavio & Schmidt, CPAS ("Margavio") filed on April 17, 2019 came for hearing on May 28, 2019.

PRESENT: Marcus K. Pierre, attorney for Margavio & Schmidt, CPAS;

After hearing the arguments of counsel and reviewing the pleadings on file in conjunction with the matter brought this Court, and for reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Quash is **GRANTED**.

Signed in Gretna, Louisiana this 10 day of June, 2019.

HON. JUDGE LEE V. FAULKNER

NOTE TO CLERK:
Please notify all counsel of record

June 7, 2019
I, HEREBY CERTIFY THAT ALL COSTS INCURRED IN THIS MATTER HAVE BEEN PAID.
DEPUTY CLERK

SIGNED: HON. LEE V. FAULKNER, JR. - DIVISION: P - 06/10/2019 09:45:16 - CASE:744-568 - ID:30042

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24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

RULE 9.5 CERTIFICATE

I CERTIFY that pursuant to Uniform District Court Rule 9.5, I circulated a copy of this Judgment for comment to opposing counsel on 30th day of May, 2019, by electronic mail. Opposing counsel has no objection to this proposed Judgment.

I have allowed at least five (5) working days before presentation to the Court.

Certified this 6th day of June , 2019.

Respectfully submitted,

Salvador J. Pusateri T.A. (#21036)
Marcus K. Pierre (#38372)
PUSATERI, JOHNSTON, GUILLOT & GREENBAUM
1100 Poydras Street – Suite 2250
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ATTORNEYS FOR MARGAVIO & SCHMIDT, CPAS

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff, versus CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE Defendants.	CASE NO. 2012-CP-18-1227 ORDER

This matter came before the Court on the Amended Motion to Compel Answers to Discovery filed by Plaintiff, Innovative Waste Management, and the Motion for Protective Order filed by Defendants. Having considered these Motions, along with the Affidavits and Exhibits submitted therewith and the Arguments' of counsel, and now being fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court hereby finds good cause to allow the service of Interrogatories beyond that allowed by Rule 33(b)(9), SCRCP. Accordingly, Defendants shall respond to Plaintiff's previously served Interrogatories no later than ~~May 1, 2013~~ July 1, 2013, subject to Paragraph 3 below;

2. Defendants shall provide any responsive documents to any request for production served upon it that it did not previously answer and provide Plaintiff with a Production Log of their March 20, 2013 Production of Documents and any additional documents produced, consistent with the intent of the final sentence of Rule 34(b), SCRCP, no later than ~~May 1, 2013.~~ July 1, 2013.

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3. In lieu of detailed responses to Plaintiff's Interrogatories and Requests for Production which seek information related to the income and wealth of the Defendants, each Defendant shall provide a sworn or certified financial statement indicating its/his net worth.

4. In the event the parties are unable to amicably resolve any continuing discovery dispute in this matter, they shall request a teleconference with the Court prior to filing or renewing any Motion.

IT IS SO ORDERED!

Honorable Edgar W. Dickson

Date: ~~April~~ June 3, 2013

Time: _____

~~St. George~~ Orangeburg, South Carolina

2/2

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	2012-CP-18-1227
Innovative Waste Management, Inc.,	)	
PLAINTIFF,	)	TRANSCRIPT OF RECORD
VS.	)	April 1, 2013
Crest Energy Partners Group, et al,	)	St. George, South Carolina
DEFENDANTS.	)	

B E F O R E:

THE HONORABLE EDGAR DICKSON, Judge

A P P E A R A N C E S:

WILLIAM M. GRUENLOH, Esquire
Attorney for the Plaintiff

DAVID B. MARVEL, Esquire
Attorney for the Defendants

SHARON VIZER
Court Reporter

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
MOTION HEARING	3			
CERTIFICATE OF REPORTER	41			

E X H I B I T S

NO.	DECRIPTION	ID	EV

No exhibits presented at hearing.

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P R O C E E D I N G S

APRIL 1, 2013

(Whereupon, Court convened when the following matters were had:)

THE COURT: Morning.

MR. GRUENLOH: Good morning, Your Honor. Mike Gruenloh for the Plaintiff Innovative Waste Management.

MR. MARVEL: Morning, Your Honor. David Marvel for the defendants.

MR. GRUENLOH: I have my associate, Patrick Chisolm, here with us as well, Your Honor. Let me -- may I approach, Your Honor?

THE COURT: Yes, sir.

MR. GRUENLOH: I have a complete copy of the brief for the Court. And I'm sorry; I wanted to have these exhibits spaced out for you so it would make it a little bit easier, but I'll do my best to refer you to what we're talking about.

THE COURT: Okay.

MR. GRUENLOH: Your Honor, first thank you for hearing us today. This matter was originally set for March 15th and we deferred it pending an agreement of the parties. We spoke with the coordinator and you were gracious enough to hear us today in the event that we weren't able to resolve this. This is a discovery dispute and we certainly

hate to take the Court's time with this, but some background is necessary before we get into the substance of the motion. I'll try to do that quickly just to give you an idea what the case is about, the discovery we're seeking.

THE COURT: Okay.

MR. GRUENLOH: Your Honor, this case was originally filed in 2011 in federal court on the basis of diversity jurisdiction. One of the defendants, former employee of my client's company, Innovative Waste Management, -- I'll be referring to that as I.W.M. -- Rodney Bridge, alleged midsuit in that case that he maintains a South Carolina residence and on that basis the case was dismissed on subject matter grounds. We promptly refiled the case here.

We had a number of discovery disputes in that case and I've referenced those in our brief and I also have copies of those for the Court. Innovative Waste Management, my client, they're a local company here. They're basically a broker of recycled or residual products. What they do is they find companies that have things like slop oil that the companies don't realize that there's value in them, then they go and they find a buyer for them. So ---

THE COURT: That's impressive enough in and of itself.

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MR. GRUENLOH: Their business, Your Honor, they don't have tankers. They don't have rail cars. Their business is basically a brokerage. So their client lists and the folks who they do business with and the products that they have been able to find value in, that's their confidential information, that's their lifeblood, that's their trade secret. Dunhill/Crest was a trade partner of Innovative Waste Management. The CEO of Dunhill/Crest is Henry Wuertz. He's named as an individual defendant. And two of my client's former employees, Girardeau and Bridge are also individual defendants.

In April of 2010 my client and Dunhill agreed to the terms for the sale of approximately 1.1 million dollars in oil. Then I.W.M. employees Girardeau and Bridge were responsible for handling that transaction. My client was out of the country. Before he left the country he left explicit instructions that this was a prepaid deal and that the 1.1 million dollars was to be in his account before what's called the nomination codes -- that's what they give to allow a barge to leave port -- were turned over to Dunhill. The folks who were responsible for this transaction from I.W.M. were Girardeau and Bridge.

My client came back into the country, found that the oil was gone and there was no money in his account. He also found that his employees, Girardeau and Bridge, were

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gone as well.

Since that time my client invoiced Dunhill. Dunhill said, No, we don't owe you any money because you owe us on a deal that happened prior to this deal. My client requested an accounting; no accounting was ever forthcoming. When I asked Mr. Wuertz at deposition in the predecessor case where the accounting was -- excuse me -- when I asked the CFO of Dunhill where the accounting was, she said to me that Mr. Wuertz instructed her to shut the accounting down.

We have since found or my client has since found that there are a number of deals that were pending, right on the cusp of being completed in the April 2010 time frame that were stalled by his former employees, Geraldo and Bridge. We found in the predecessor case that Mr. Girardeau, my client's former employee, was meeting with Henry Wuertz at his home in New Orleans prior to the events that are complained of in the complaint for the purpose of negotiating employment.

We have also found at deposition, Mr. Rodney Bridge, former employee of my client, testified under oath that he took with him in secret after hours a number of notebooks that contained, in his words, everything that he worked on at my client's business including client's lists and the very lifeblood that I was talking to you about earlier. I

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asked him if he had used those to the benefit of his current employer Dunhill/Crest. He said, Yes.

I asked him to go get those notebooks right now. And at that point counsel shut the deposition down, took him out of the room, and those notebooks were produced a couple of weeks later and they were suspiciously light.

In this case we've alleged breach of contract. We've alleged tortuous interference with contract. We've alleged breach of loyalty. And we've alleged misappropriation of trade secrets based upon the summary that I've just given Your Honor, those facts.

In response to our allegations, as I said, the defendants have said to us, No, you owe us money on a prior deal where we were supposed to be partners. We have repeatedly asked for that accounting. And in the discovery that's issued today, we've asked for the receipts. If we owe you money, give us the accounting and give us the receipts. We have also asked in the discovery that we're talking about here today that's in dispute for -- and these were in the interrogatories -- those deals that we allege were shut down and interfered with, we've said to the defendants, Tell us the business that you did with these individual companies before you ever knew about Innovative Waste Management and tell us about the business that you did with them after you met Innovative Waste Management and

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specifically after my client's employees went to go work for Crest Dunhill and brought to bear his trade secrets and confidential information. We haven't gotten responses on those things.

So I would say at the heart of the issue -- there's a whole bunch of discovery that hasn't been answered and we will get into that. But at the heart of the issue, those receipts. Show us that you actually spent money on this prior deal and what business did you do with these individual companies. Those are really important things that we believe -- we're on the trial roster right now for April the 8th and we believe that we've been prejudiced as to the counterclaim and we've certainly been prejudiced as to our ability to prove the loss of business.

Just a little bit of procedural history, Your Honor. We served discovery in this case in October. I sent a couple of letters, made a couple of phone calls, got no response whatsoever. There was -- there were no responses from the defendants. This matter was set on our motion to compel for a hearing on March the 15th. The first that I heard from defense counsel was March the 12th offering to enter into a consent order. Agreeing to, I quote, respond to all outstanding discovery requests of the plaintiff by March the 22nd. We negotiated that, Your Honor. We went back and forth because, again, I always hate to bring

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discovery disputes and do this motion practice before the Court. So we tried to work it out. What we came up with was an agreed order which is attached to that brief and I've go a copy of it here if you can't find it in that mess of paper, Your Honor. But the agreed order said, and again I quote, -- do we have a copy of that agreed order, Patrick? Why don't you find that for the Court so I can walk it up? -- what that agreed order said is, The defendants will respond to all of plaintiff's outstanding discovery requests no later than March the 20th.

We kept this date open just in case that didn't happen. Sure enough March 20th came around, Your Honor, and we got -- may I approach the Court?

THE COURT: Sure.

MR. GRUENLOH: This is the copy of the agreed order that we had it signed by the parties. I don't have one that's signed back by the Court back yet.

(Document handed up to the court.)

THE COURT: Y'all sent this order to me?

MR. GRUENLOH: We did, Your Honor.

THE COURT: Okay. Okay.

MR. GRUENLOH: And again I would direct the Court to the language in that agreed order that says the defendants will respond to all outstanding discovery requests of the plaintiffs no later than March the 20th.

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March the 20th came around. What we got are incomplete responses to the requests for production. And I'm sure Mr. Marvel will point to the volume of the requests and that's why I lugged this box in, Your Honor. This is the paper that we've got from them. The vast majority of this are documents that were produced in the predecessor action. For some of the requests it's very, very difficult for us to figure out which documents may be responsive to which requests because we get thing likes see documents produced 1 through 2,254. That response appears a number of times in the defendants' discovery responses. Or we get, See 1 through 700 when we're asking for the receipts, the backup for the counterclaim.

So to the extent that we've been unable to be a little bit more specific on what we believe are the deficiencies with the document requests, Your Honor, it's because these responses don't enable us to go through and really understand which documents are being produced in response to which questions.

That brings me to the interrogatories. We got no responses to the interrogatories despite the fact that the defendants in an agreed order agreed to produce -- excuse me -- agreed to respond to all outstanding discovery requests. Instead what we got was a motion for protective order saying, Plaintiffs, you asked too many

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interrogatories and so we're not going to answer any of them.

Now, Your Honor, they had this discovery for five, six months. They were sitting on this. I talked to Mr. Marvel a number of times about the consent order that we've entered into and not a single time was any deficiency brought up with this discovery. They also say in addition to you've asked too many, they also say, Well there's some information in here that requests financial information of the individual Defendants and you're not entitled to that information until there's a prima facie showing of punitive damages.

I'd be more than happy to put a proffer on the record right now of what goes to punitive damages in this case. I believe I've already done a little bit of it.

THE COURT: I think you have.

MR. GRUENLOH: Yeah. I'll tell Your Honor there's a Facebook page back and forth between two of my -- the Girardeau and Bridge, who are the two former employees of my client's company. At the one year anniversary of when this oil left the port without the money they're congratulating one another and saying this is the anniversary of when we left Charleston and sunk the ship and pursued our dreams. That alone, Your Honor, I think shows exactly what these defendants were doing.

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But getting back to the motion to compel, we didn't get a response to a single interrogatory. And in those interrogatories we are asking questions, among other things, Tell us what business -- give us an accounting of the business that you did with these companies that -- where the transactions, the contracts, were stalled and interfered with. Tell us whether or not you eventually closed these deals. Because my client has heard through the grapevine that Crest did close these deals. But of course we can't get that information. We have issued subpoenas and we're waiting on that information.

We believe that if there were any deficiencies with the discovery, those issues ought to have been brought up in November of 2012 or December of 2012 or January or when we were negotiating the consent order in which the defendants agreed to respond to all outstanding discovery requests. We believe that them entering into the consent order about two and a half weeks ago now was just a ploy to get a little bit more time.

In Mr. Marvel's defense he has said to me -- and, you know, we have tried to keep the lines of communication open -- he has said to me, Well the reason for the delay is I've been waiting on a conflict.

THE COURT: Waiting on a what? Oh, a conflict waiver?

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MR. GRUENLOH: Conflict waiver.

MR. MARVEL: I can enlighten you on that now, Your Honor, or when it's my turn.

THE COURT: I'll let him explain then I'll come back.

MR. MARVEL: Okay.

MR. GRUENLOH: What we have been told is they've been waiting on a conflict waiver, Your Honor, and that's because Girardeau and Bridge, my clients old -- former employees who went to work for Dunhill, apparently have now left Dunhill. We don't know why they left Dunhill. It may have something to do with the depositions that we took in this case and some of the facts that have come to light. But I would suggest that if it takes you six, seven, eight months to get a conflict waiver, maybe you've got a conflict.

In closing, Your Honor, we've asked the Court to strike the defendants' answer and their counterclaim. And in light of the pattern of discovery abuse that occurred in the federal case -- by the way Judge Gergel didn't get a chance to rule on that stuff before the subject matter issue came up. And I would've liked to have been heard on those issues before Judge Gergel, but here we are today. In light of the discovery abuse, the pattern of discovery abuse, in light of the agreed order that we entered into

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and what appears to be the defendant's willful noncompliance with that order -- we didn't talk anything about a protective order. We didn't talk anything about any objections that the defendants may have with respect to any deficiencies in our discovery. That should have been brought up before. Pursuant to Rule 11 that should have been brought up. Was never brought up. This is just kicking the can down the road.

We believe under the -- what's the case that we cited? -- under the QZO Case, which is cited at page seven and page eight of our brief, Your Honor, we believe the defendants actions in this case are markedly similar to the defendants in that case. The trial court in that case struck the defendant's answer after they had a pattern of noncompliance with discovery. And specifically they turned over a hard drive that had been wiped. We've got some notebooks here that have been wiped. We've got an order here that hasn't been complied with. Same conduct.

If the Court is not of a mind to strike the answer and the counterclaim, we would like full responses to the requests for production. And I noted in our brief at page four there are about 30 requests for production that we just got nonanswers to. Tell us who your experts are and they cite to rule 26. Well we're on the roster for next week, Your Honor. So we've got to know if they've got an

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expert at this point.

In the alternative we would ask for full responses to those requests for production, including a narrowing down of what each of the documents is responsive to. You can't say see production 1 through 2,254. If I did that I imagine that the defendants would be in here complaining of my conduct.

As to the interrogatories, we believe that any defendant -- any objections that the defendants could have made, they waived by not taking any action. It was six months, Your Honor, from the time that this discovery was served. And then we had a two-, three-day back and forth negotiating this consent order. Not a single time was any deficiency raised. We believe that to the extent they have any objections, those ought to be waived.

If the Court would like to hear on individuals as to the RFPs or individual interrogatories, I'd be happy to go through them. But our position is they've waived any objections. We need the discovery now. We need to get ready for this case.

Thank you, Your Honor.

THE COURT: Thank you, sir.

All right. Mr. Marvel?

MR. MARVEL: Your Honor, this case does have a long and tortured history. I will say that, on behalf of

my clients, that I don't believe there's an allegation in either the complaint or the counterclaim or any of the third-party claims that is not disputed by the other parties that -- and there's some -- certainly some contentious issues that are raised in this case and amongst the parties themselves. I think between Mr. Gruenloh and I we have had an open line of communication.

But frankly, we have not had the ability in the federal court case or this case to resolve any of the issues that have arisen as part of discovery. As for what went on in the federal court case, we had legitimate issues that were briefed extensively as to the issues that Mr. Gruenloh's bringing up in discovery. They weren't ruled on. We feel that we would have been -- that we would have prevailed on those issues had they been.

As to this particular issue what's before the Court is the motion to compel and our motion for protective order. Our motion for protective order relates solely to the interrogatories. And it's based solely on the rule that absent a court order to the contrary what the plaintiff gets in the way of serving interrogatories, Your Honor, is 50. And I've got, at least how I've enumerated the subparts and everything he's asked as to Defendant Girardeau there's 63 interrogatories, as to Defendant Bridge there's 63 interrogatories, as to

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Defendant Wuertz there would be 71 interrogatories, and as to the corporate defendants there are basically 75. I don't think it's fair for me, Your Honor, to pick and choose which of those interrogatories he would like me to answer. That's what we did in the federal court case. He served about 35 to 40 and we answered 1 through 25 and then objected to the rest on the basis of the federal court rule.

But in this particular case, the reason why I did not think that was an appropriate response was for example in the corporate interrogatories, interrogatory number six says, State whether you currently conduct any business or have an existing business relationship with the following companies and if so, please describe such business. Indicate the names, address, and telephone numbers of any person at such company with whom you conduct business and state the amount of income that such business has generated for you and any other defendant in this litigation since April of 2010. And then there's companies that are identified as A through R underneath that interrogatory.

Now, you know, I somewhat charitably set that as maybe 23 different interrogatories. Arguably it's 54 different interrogatories.

Now as a practical matter one of the things he's asked in that course says, State the amount of income that such

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business has generated for you. My clients tell me we just can't answer that question. It's not possible. Some of these companies identified here are suppliers; some of them are customers; some of them are third party venders that do things like dewater oil and transport oil and things like that that don't necessarily generate income in the sense that we get a check on a particular transaction, but in the general course of what my clients do it probably has some input on their bottom line.

Now all that being said, any response as to that request for amount of income would have to go through 30 years of my client's business and over multiple, multiple transactions that involve lots of different parts, lots of different types of oil, lots of different shipments of oil. It sometimes gets mixed, blended, refined, and then sold to third parties. There's simply not a calculable number that I can give him.

Now that being said, my response to that interrogatory as to some of those would be, you know, we may generate income but we can't calculate the numbers; some of them would be, we generate income but can't give you an exact figure as to a specific period of time; and some of them would be we don't generate any income from it. But I didn't want to take the step of picking and choosing which of those interrogatories he would like for me to answer

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when some of them I can't answer and frankly there's so many of them we can't -- outside the rules with, you know, unless the Court would direct us given the facts of this case to respond to more than 50 interrogatories I think there's simply too many here for us to get to, Your Honor.

Now, the reasoning behind the delay and -- and Mr. Gruenloh's correct, all this discovery was served in October of last year. And the initial delay would have been solely on my fault because we were building and moving an office. And just -- I believe late November of last year Mr. Gruenloh and I had an email exchange in which he said, Dave, where are your answers to my interrogatories and requests to produce? And I said, I will get you that. I will -- I will -- I'm calendering it. I'm trying to get it to you the first week of December. Hadn't had a chance to do it now and I apologize for the delay.

Now at that point when I got with the my clients and started working on the interrogatories was when the issue as to two of my clients left Crest Energy for reasons wholly unrelated to the dispute between these two parties and in any way related to this case. One of my clients who -- the one who actually maintains a residence in Summerville -- his wife had a baby, got tired of flying to Houston every Monday morning, he decided to come back and start his own company and one of the other defendants

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joined him in that. So from that it took me between the first week of December, given the holidays, and the end of January to get a joint-defense agreement and a conflict waiver, which, Your Honor, I'm happy to provide to you. I don't necessarily want to show it to plaintiff, but I'm happy to give it to you if you'd like to see it. But based on that -- I did not have that document until January 31st. We began working on the discovery responses. Couldn't get to it.

Mr. Gruenloh filed the motion to compel. I thought we had the issue resolved as to that at least as far as the timing of the responses went. I don't think the order -- in fact I think the order specifically preserves further argument and actually contemplates that there may be additional disputes as to the actual production. What I agreed with Mr. Gruenloh is actually to give our responses by that specific date. The trial date was moved in the event he had some issues with the discovery responses themselves. And one of my clients voluntarily paid him $500 for his time, recognizing that the issue relating to conflict waiver and the joint-defense agreement didn't have anything to do with his client. His frustration was well founded, Your Honor, and we -- so we thought we would give him some attorney's fees on it.

So, Your Honor, I think as to the requests for

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production, the way that many of the requests for production are phrased are give me every document that you have that relates to dispute A or dispute B. Now that request is so broad it's difficult for us to narrow it down. And I made an attempt in our responses to requests for production to narrow things down where we could divide where they are.

Now as a practical matter, there are 2200 pages of documents. There's some additional subpoena responses that have come in. There are a lot of documents that have been produced in this case and it is difficult to weed those down. And I believe his motion states that I failed to respond to one, which I'm happy to look at and respond to. I didn't realize that that was an issue. But, Your Honor, I think we've done it as best we can as far as narrowing it down. I'm happy to do a production log for him that designates what the documents are. We think that his client should be able to go through them and recognize what they are. Maybe the lawyers can't because it's a complicated business. But they essentially relate to three different transactions that are at issue in this case and -- as well as some of the personnel files, as well as every piece of paper that was in the notebooks that he requested.

I don't know where he -- where Mr. Gruenloh has information that suggests that those responses are light,

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Your Honor. I mean, we've got the original notebooks. I'm happy to provide them to the Court if you want to compare them to -- I don't have them here with me. But we produced every single document that he's asked for that we have in our possession.

THE COURT: Well I think he was concerned, as I guess I would be, if the notebooks were there at the deposition and they weren't produced at the deposition.

MR. MARVEL: Well, Your Honor, he hasn't produced -- I was not aware that they existed.

THE COURT: No, I understand that. I understand that. I understand that you were probably surprised.

MR. MARVEL: Well, Your Honor, as a practical matter they don't contain anything that is -- and this will all be flushed out at trial.

THE COURT: Right.

MR. MARVEL: Our position is they don't contain anything that's a trade secret. A lot of them are doodles; a lot of them are telephone notes, things like that. I didn't know what was in it, Your Honor. I thought that -- and on the record I thought we had an agreement at that time that at least I'd have the opportunity to look at them before we turned them over to the other side. I had no idea what was in those documents, Your Honor. And we

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produced -- if anybody missed a page it would be Prolegal Copies because what I did as soon as I got back was sent them to them, had them all turned into PDF and then produced them to Mr. Gruenloh. I don't know that that took two weeks, Your Honor. It was a fairly quick process.

THE COURT: Okay.

MR. MARVEL: But he certainly has every document within those notebooks. I still have the original notebooks in my office which I'm happy to have him come review. But we went to the extra expense of actually having them scanned and sent to them.

THE COURT: Okay. All right.

MR. MARVEL: But, Your Honor, I do think -- the interrogatories, in our opinion, clearly violate the rule. We'd be happy to answer the interrogatories if he'd pare them down to 50 including subparts, which is what the rule calls for.

As for his request for sanctions, I think given the circumstances, Your Honor, this is one of those cases where in the interest of justice I don't think sanctions are appropriate in any way. We voluntarily, you know, provided Mr. Gruenloh some attorney's fees as to the delay on it. We think there's legitimate dispute as the number of interrogatories. We've done as best we can to produce the responses to request for production and we'll continue to

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do that as those documents are uncovered in the course of future discovery.

THE COURT: All right. Thank you, sir.

Yes, sir?

MR. GRUENLOH: Just a couple of points and I'll be brief. First, Mr. Marvel and I have attempted to work together and I think that he's just got a difficult client and he's got a difficult case. I don't think Mr. Marvel's difficult. I want to make that clear on the record.

The Court -- it is within the Court's discretion to allow additional interrogatories if the Court sees fit. And I would go back, Your Honor, to our point on the waiver, that if at any point they would have brought this up we could have sat down and had a conversation rather than taking up the court's valuable time with this issue today. So at least as to Rule 11 I think that they've waived any objections that they could have made on the discovery.

Mr. Marvel did not talk about the financial issue and I didn't make a full proffer on the evidence that we have that we believe that goes to the punitive issue. If Your Honor would like to have a proffer on that now, I can do it in about 10 minutes.

THE COURT: No, I don't need that. I think you have told me what the problem is, employees leaving.

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There's some conflicts with whether or not Mr. -- was it Wuertz?

MR. GRUENLOH: Wuertz.

THE COURT: -- who he had worked with at one time before.

MR. GRUENLOH: Well Wuertz is the CFO/owner of Dunhill, later called Crest.

THE COURT: Right.

MR. GRUENLOH: Girardeau and Bridge are the former employees.

THE COURT: All right.

MR. GRUENLOH: And as to Mr. Marvel's suggestion regarding the notebooks that he doesn't know where we get that from, first Mr. Bridge indicated in his deposition and I've attached the testimony to the -- it's the last exhibit to our brief -- he said -- I said, What was in the notebooks? And he said, Everything that I worked on for I.W.M.

I said, Including client lists? He said, Yes.

That's my client's trade secrets, Your Honor. And I understand that the argument that's coming from the other side is, Well you can find those people's names out on the Internet so that's not secret. But what you can't find on the EPA cite is the fact that those client's have particular products that have value and the profit margins

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and trading partners that will buy those products. That's the trade secret that's been taken here. And when we received the notebooks two weeks later after having been shut down in the deposition that information was not in there. I had my client look at them. My client said, This is not all of the information. And if we get to the point, he would be happy to provide an affidavit or come in and raise his right hand on that issue.

THE COURT: All right. Mr. Gruenloh, let me ask you a question.

MR. GRUENLOH: Yes, Your Honor.

THE COURT: I pulled I guess the interrogatories -- the corporate interrogatories. Would that be the ones you're referring to to Mr. Wertz, Mr. Marvel?

MR. MARVEL: No, Your Honor.

MR. GRUENLOH: There are four sets.

MR. MARVEL: Four sets, Your Honor.

THE COURT: They seem to be -- they seem to be fairly redundant. Is that ---

MR. GRUENLOH: That is correct, Your Honor, they are. To some -- there's probably two or three different one in each set.

THE COURT: Okay.

MR. GRUENLOH: And that was done by design, Your Honor.

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MR. MARVEL: Your Honor, the corporate interrogatories are two defendants, Crest Energy Partners ---

THE COURT: I got it. I got it. I believe I was -- the one thing ---

MR. MARVEL: They are -- I'm sorry. Your Honor.

THE COURT: Go ahead.

MR. MARVEL: I'm sorry, Your Honor. I didn't mean to interrupt you. I was going to say, the one thing that -- that -- the requests themselves may be fairly redundant but that doesn't necessarily mean that the answers would be.

THE COURT: No, thank you for that. Appreciate that.

MR. MARVEL: Otherwise he wouldn't need to serve them.

THE COURT: That's right. Everybody might have a different perspective on them. Okay.

MR. MARVEL: And, Your Honor, if I may?

THE COURT: Yes, sir.

MR. MARVEL: As to, for example as to Defendant Wuertz, what he -- what Mr. Gruenloh has numbered as interrogatory number 25 says, Set forth any and all real property, real and personal property owned whether individually, collectively, or otherwise owned and include

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what other third-parties included without limit to and he's got, Bank accounts, domestic and offshore checking, saving, money market or otherwise ---

COURT REPORTER: I'm sorry. Can you slow down just a little bit?

THE COURT: Yeah, would you ---

MR. MARVEL: I apologize for that.

THE COURT: That's okay.

MR. MARVEL: Bank accounts, domestic, offshore, checking, savings, money market, balances, names of accounts, locations of accounts, holders of accounts, et cetera, that's just A. Any and all certificates of deposit, stock certificates, bonds, membership interest in LLCs, partnership interests, on and on, any and all title to vehicles, mobile homes, watercraft defendants [verbatim], deeds, mortgages, notes, contracts of sale.

I fail to see how any of this is relevant to any of the issues that are in the case and to the extent that certain financial information even could be admissible as to -- if he isn't able to prove entitlement to punitive damages, we think this goes vastly beyond what he would need to find that information out. I think that -- but at this point we would argue that -- that -- you know, that he's asking for personal information from one of the defendants and we don't think he's entitled to it. That

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it's correct. I don't think there's a South Carolina case on point, but there's a number of federal -- federal decisions that say you have to at least prove that prima facie case. I don't see how Mr. Gruenloh can put together that proffer at this point given that he's an attorney and not a witness in this matter. If he's -- you know, at some late point there's some record testimony that might be able for them to actually prove as a prima facie case that fraud, right now all he has is two of our employees who were not subject to a confidentiality agreement, who are not subject to an employment agreement, left one company to go work for one of their customers, which not only happens quite frequently, and particularly in this industry, they moved to a -- they moved up, Your Honor.

What my client does is purchase and refine and then resell these products. Now what I.W.M. does is entirely different. They broker these products. They are able to find them in a specific location. They then try to find a customer for it. And I believe -- I may be paraphrasing this a little bit -- but I believe the client's testimony was they never actually purchase product until that product is actually ready for sell and under contract to sale to somebody else. They are purely a broker.

THE COURT: Well that's what he indicated at the very first.

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MR. MARVEL: Correct, Your Honor.

THE COURT: His client was a broker.

MR. MARVEL: What my client does is actually buy the product and take it and mix it with other product and do a lot of things to it which are complicated and I don't understand and subject to -- to a lot of trade secret issues. And that process is entirely different from what they do. So to the extent, you know, that -- the allegation is that simply by going to work for another company, there's a prima facie case of fraud.

Your Honor, all defendants Bridge and Girardeauo did was go work for a bigger company where their opportunities were greater and where they thought they could make more money.

THE COURT: Okay. What about the receipts that he's talking about and the accounting?

MR. MARVEL: What he -- as I understand his request, there's a -- prior to the transactions that ultimately resulted in the filing of this case, ---

THE COURT: Right.

MR. MARVEL: --- there was a deal that has been sort of loosely referred to as the North Fighter because that was the name of the ship that actually carried it.

THE COURT: North?

MR. MARVEL: North Fighter. In some deposition

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testimony it's referred to as Shell Montreal Trade. My clients don't do that because they've got lots of deals with Shell Montreal, but I.W.M. had one and this was it. It was a joint venture between Crest Energy Partners and I.W.M. in which they bought a shipload of some sort of slop oil from the Shell terminal in Montreal and brought it down to the Gulf Coast and then the plan was this was going to be something that we can refine fairly easily. You know, given the volume of product Shell doesn't want it, they don't know what to do with it. We're going to buy it, we're going to refine it, and we're going to make a profit off of it.

His client took a $500,000 advance profit loan beginning on the initial banking transactions from it. Now, thereafter -- his client had also chartered a second ship not realizing that he had contractually under maritime law agreed to charter that vessel. Both parties got sued for it and ended up paying $250,000 to the owner of the vessel for a ship that never showed up and never carried any product simply because they did not enter into a contract for it. That was problem number one.

Problem number two was when we got the product down into the Gulf Coast, it turned out it wasn't quite as refinable as we thought it was going to be and we had a difficult time unloading it. In fact one of the reasons

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why we haven't produced everything that details the allegations in our counterclaim is because we're not done with it yet. We've still got tanks that have what we call slop water that needs to be treated and disposed of under EPA guidelines. We've got tanks and stuff that haven't been done yet so we don't know what the final costs are. The only thing we do know is given what we were able to sell as a usable product, at this point we are $693,000 in the hole, aside from the $500,000 his client already took. So, you know, that would be -- the reasoning behind where the transactions that Mr. Gruenloh first started talking about in which there was one issue where I.W.M. brokered a sale to Crest, the reason why partial payment on that transaction was withheld was because; one, we felt that they already owed us $500,000; two, it was an ongoing issue that was obviously going to turn into much greater loss for my client than it ended up -- that was anticipated from the beginning. And it was a pure joint venture.

THE COURT: Okay. And, Mr. Marvel, let me just -- I can tell this is a complex issues.

MR. MARVEL: It is, Your Honor.

THE COURT: Okay. The only way y'all are going to be able to resolve a complex issue is that if y'all give enough discovery back and forth between each other that y'all can both make -- that you're both able to determine

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what the facts are and then you can report to your clients, your respective clients, what their either liability or chances of recovery are. I mean that's the way I look at it.

MR. MARVEL: And, I agree with that, Your Honor.

THE COURT: Okay.

MR. MARVEL: And I guess I failed to answer your question by way of trying to give you this background on it.

THE COURT: Yes, sir.

MR. MARVEL: The reason why we have not been able to produce all those receipts is twofold; one, we don't have them; two, to the extent he's asked for -- in the way he's asked for them we haven't quite been able to produce them because not every portion of that transaction is subject to a direct, you know, here's a purchase order, here's the check we wrote for it. Some of that product was blended and my people are in the process of trying to do that analysis. We've got a preliminary report which I did produce to Mr. Gruenloh which actually outlined all the parties that we felt originally had -- you know, that we had some expense shared with, which certainly Mr. Gruenloh can -- I'm not saying he necessarily has to do that, but he can send subpoenas to those people should he want to. We would consent to that. But to the extent -- we don't have

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an issue with producing all that stuff. We haven't been able to do it yet due to the complexity of the transaction, the fact that it's simply not done yet, Your Honor.

THE COURT: Okay.

MR. GRUENLOH: And, Your Honor, just on the issue of subpoenas, you know, I could have sent out 15 subpoenas and, you know, gotten orders to domesticate them in 15 different counties and spent a couple, a few thousand dollars doing that. But I thought what I would do instead is use the rules of civil procedure and ask the defendant to narrow that down for me. That's why it's so important that they provide answers to these interrogatories so that we can move forward on this.

Also I heard Mr. Marvel just say we didn't produce receipts on our counterclaim because don't have them. And we're certainly going to attach that little bit of testimony to our forthcoming motion for summary judgment if the Court doesn't see fit to strike the counterclaim today. But this is the same claim that we've -- my client has been saying for four years, If you believe that we owe you money on this, sent us an accounting. That's the same accounting that the CFO said, Well Henry Wuertz told me to shut that down. And I would offer that as evidence of Mr. Wuertz's punitive conduct along with the fact that he admitted to meeting with my client's employees for the purpose of

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offering them terms of employment a month before his company took 1.1 million dollars in oil from my client.

And I will be able to make that proffer if the Court would like.

THE COURT: Listen, okay. Just -- I was looking over one of the -- because I'm just glancing through these things. And for your record, I'm looking at interrogatories to Defendant Bridge question number one -- I mean question number six. Well that's not the one. There was one that had, Did you have any business with any of these -- our listed people prior to 2010? Did you have any business with them and if so contacts and the nature of the business and like that.

MR. GRUENLOH: Yes, sir.

THE COURT: I think that my take on that is that you want to know whether they had business with them before they were contacts for them and the general nature of that business; is that correct? Not all the specific businesses?

MR. GRUENLOH: Yes, Your Honor. And then we've got a request for production that says, Please produce any of the documents that you referred to in answering this interrogatory so we hope that we might see the business that they did with these companies that we allege they interfered with both before and after they left my client's

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employment.

THE COURT: Right. But what I'm saying is before we get to -- before we get to some of the production I think we need to first find out if they had business with them. Is that -- would that be correct?

MR. GRUENLOH: It is. And maybe that was a long-winded way of asking it. But that's what we asked them for, Your Honor. Tell us what business you did before this date. Tell us what business you did after this date.

THE COURT: And, Mr. Marvel?

MR. MARVEL: Your Honor, as a practical matter may I suggest a solution for this? I don't necessarily mind responding to all these interrogatories. I didn't feel it was fair for me to pick and choose, given the vast number of them, to pick and choose which ones I should respond to given that some of them actually have legitimate objection and some of them we can't answer. Some of them just simply are going to be none. And I think Your Honor hit on it. If you would like to order that this case is complex enough that it warrants these types of interrogatories, I'd be happy to respond to them. And, you know, if I could have 20 days to do that, I'll get on a plane and go to Houston next week and get it done and come back.

THE COURT: Well I think this is a complex case.

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I want them answered. Okay? I think it's about time to have them answered. Now, regarding with the -- I believe he's entitled to some basic information as far as what your client's worth is, not in the -- at this stage of the game not in the specifics that you're requesting, but I would like for y'all to -- I think he needs to be able to get some kind of valid certifiable statement of worth from your clients. You know, I don't -- you know, so that he'll have something, you know, have a general idea about what the worth is.

MR. MARVEL: I believe that we can do that, Your Honor.

THE COURT: Okay. All right.

MR. MARVEL: Any particular form? We can produce a certified financial statement from every defendant in this case, Your Honor.

THE COURT: Okay. That -- go ahead.

MR. GRUENLOH: I think that that just answered my question, but we're talking about each defendant in the case?

THE COURT: Oh, right. Right. I understand that. And if they get that, that will give me something or you something to value the case on if it comes to that. And if the case proceeds much further, we'll have another way of going.

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Now let me just tell you, as far as striking anything, I'm not going to do that at this time because the case is -- I know y'all have been fighting it; I know the frustration on your behalf -- it is new to me. Okay? But my goal in this is to get the discovery complete, everybody understand the facts so that they can report to their respective clients where they're going and what the case is -- what they're facing and -- but I'm going to tell you, I'm going to want full and complete discovery and I want people to cooperate. I want both sides to cooperate. I don't have a problem with the attorneys. I understand that. I have been in probably each one of your shoes at different times. I've often said, you know, attorneys can resolve matters, it's clients who can't. But just so y'all will know what I'm looking for is I'm looking for y'all to get to the bottom of this, provide information to each other so that we can go forward in this in a intelligent and informed manner. Okay?

MR. GRUENLOH: Your Honor, in light of the fact that we've had to file this motion twice and had to spend about six, seven hours on this issue now that we think we ought not to have, we would renew our request for attorney's fees on this matter.

THE COURT: Well I'll be happy for you to submit an affidavit on it. I'll consider that. But I'm not going

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to rule on that until I think about that for a little bit more.

MR. GRUENLOH: Very good. And just one closing matter, Your Honor, we are on the docket for ---

THE COURT: It's continued.

MR. GRUENLOH: Okay.

THE COURT: Okay. Do that and give me a scheduling order, okay?

MR. GRUENLOH: Very good.

THE COURT: Y'all can do that for me. Okay?

MR. GRUENLOH: We'll do it. Should we send it to Drew?

THE COURT: Yeah. And if you'd prepare the order.

MR. GRUENLOH: Yes, Your Honor.

THE COURT: Submit it to Mr. Marvel so he can review it. Mr. Marvel, if he says something that you don't like, what I ask people to do is send me a red line -- red lined with your perceived corrections.

MR. MARVEL: Okay. Thank you, Your Honor.

MR. GRUENLOH: Thank you, Your Honor.

THE COURT: Gentlemen, thank you so much.

MR. MARVEL: Your Honor, if I could have a specific time frame to give my clients?

THE COURT: How long do you -- reasonably is it

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going to take you? You said 20 days. But I mean is that realistic?

MR. MARVEL: Thirty would certainly be easier for me.

THE COURT: Thirty is fine. Thank you.

END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE OF REPORTER

I, the undersigned Missy Brown, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned case, as recorded by Sharon Vizer and transcribed by me, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 1st day of April 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

July 9, 2013

Missy Brown

Court Reporter

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	CASE NO. 2012-CP-18-1227 **ORDER ON DEFENDANTS' MOTION TO QUASH**
CREST ENERGY PARTNERS, L.P. and EDWARD H. GIRARDEAU Defendants and Third Party Plaintiffs, vs. INNOVATIVE WASTE MANAGEMENT, INC. and C. RUSS LLOYD Plaintiff and Third Party Defendant,	

2015 APR -6 PM 4:40
CLERK OF COURT
DORCHESTER COUNTY
RECEIVED

This matter comes before the Court on the defendants' Motion to Quash and for Protective Order filed December 5, 2014. Defendants sough to quash subpoenas issued by the Plaintiff. At the time of the hearing only two subpoenas were at issue (Wells Fargo and Margavio & Schmidt) as the parties resolved the issues with regard to the AST&T subpoena.

This Court heard arguments on the motion in chambers on April 6, 2015. At the hearing the issues argued centered around the relevancy and scope of the subpoenas at issue.

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This Court having reviewed the subpoenas, reviewed the memorandum and heard arguments, ORDERS ADJUDGES AND DECREES:

The subpoenas issued to Wells Fargo and Accountants Margavio & Schmidt are relevant;

The scope of the subpoenas shall be limited to the years 2009 to the present; and

Plaintiff shall re-issue the subpoenas in accordance with this Order.

6 April, 2015
St. George, S.C.

Honorable Maite Murphy
Circuit Judge First Judicial Circuit

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FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801227

PLAINTIFF(S)	DEFENDANT(S)	
Innovative Waste Management Inc Crest Energy Partners LP	Crest Energy Partners Gp, LLC Dunhill Products GP, LLC Henry Wuertz Innovative Waste Management Inc	Crest Energy Partners LP Dunhill Products LP Edward H Girardeau C. Russ Lloyd

Edward H Girardeau PM 4:40

CLERK OF COURT
DORCHESTER COUNTY

Submitted by: **Attorney for:** ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

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Maité Murphy — 2166 — 4/6/2015

Circuit Court Judge — **Judge Code** — **Date**

For Clerk of Court Office Use Only

This judgment was entered on **4/6/2015**, and a copy mailed first class or placed in the appropriate attorney's box on **4/6/2015**, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patrick Aulton Chisum 192 East Bay Street, Suite 202 Ste C Charleston, SC 29401-3037
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-2579

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Court Reporter

Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

ELECTRONICALLY FILED - 2019 Jun 25 1:02 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

June 5, 2019

The Honorable Maite Murphy
P.O. Box 802
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Re: Innovative Waste Management v. Crest Energy Partners, *et al.*
Case No.: 2012-CP-18-1227

Dear Judge Murphy,

I hope this letter finds you well. I am writing in advance of the hearing on the Plaintiff's Motion this morning to provide the Court with an update of our efforts, with hope that this will streamline the proceedings.

To clarify several comments in the Plaintiff's Motion, the individual defendants Wuertz and Girardeau have agreed to provide updated personal financial statements in accordance with Judge Dickson's June 3, 2013 order. As the Motion and my letter attached to it indicated, Defendant Wuertz is in the process of having outside accountants prepare a statement of his finances for submission in a Louisiana proceeding. It is my understanding that the certified information in this document will be significantly more expansive than what we previously submitted to Plaintiff's satisfaction in this matter. I was informed yesterday that the accountants are working to complete their work this week and I expect to have a copy to provide by the end of next week.

Defendant Girardeau has significant health problems and is currently in the hospital. He believes that he will be discharged tomorrow or Friday, and he intends to complete a sworn personal financial statement as soon as he is able to return home.

None of the named corporate defendants are currently conducting operations and they have no hard assets. I have taken the liberty of submitting requests (Form 4506-T) to the Internal Revenue Service for the transcripts of any return filed by those entities from 2015 to the present. The IRS will transmit those transcripts directly to Mr. Gruenloh, and I ask that he provide me with copies of those documents once they are received.

As for the Plaintiff's requests relating to the out of state subpoenas, Margavio & Schmitt filed a motion to quash in Louisiana state court arguing points of Louisiana law and

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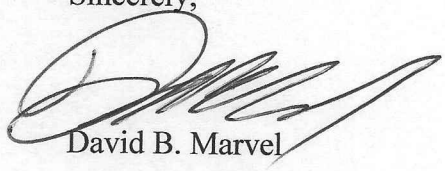
procedure. That firm did, in fact, comply with your April 6, 2015 Order. While that Order denied our Motion to Quash, the order directed the Plaintiff to reissue the subpoenas in accordance with the order, which never happened. The Order did not direct Defendants to do anything, and it would appear that Order is sufficient for submission to the Courts of Harris County, Texas if the Plaintiff intends to pursue any records from Wells Fargo.

Thank you for your attention to this matter. I look forward to appearing before you this morning. With best regards, I remain

Sincerely,



David B. Marvel

/DBM
Cc: Wm. Michael Gruenloh

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS CASE NO: 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC., Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS, L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE, Defendants.	)	

DEFENDANTS' MOTION AND MEMORANDUM TO ALTER OR AMEND ORDER GRANTING PLAINTIFF'S THIRD MOTION TO COMPEL

This matter was before the Court on June 5, 2019, following Plaintiff Innovative Waste Management, Inc.'s Third Motion to Compel Defendants to produce certain financial information. The Court granted Plaintiff's Motion to Compel on June 18, 2109. Defendants now respectfully request that the Court Reconsider and/or Alter or Amend that Order, pursuant to Rule 59, SCRCP, for all of the reasons that follow:

1) The Court issued an Order that directed Defendants to execute certain Authorizations that, while referenced, were not included in the Order;
2) The Court's Order Directed certain named Defendants to perform legal impossibilities, in that they were directed to execute authorizations and provide financial statements by way of Authorized Principals, despite having been provided with evidence and argument that Defendants Dunhill Products GP, LLC and Dunhill Products, L.P., LLC are not separate entities that have Principals, and further that the Entities Crest Energy Partners GP, LLC and Crest Energy Partners L.P. are forfeited

entities. Defendants respectfully request that that the Order be Amended to allow any such documents to be executed by or on behalf of any such entity by an Authorized Principal or Accounting Professional.

3) The Court failed to address the following arguments that were raised to the Court, that Defendants respectfully request the Court rule upon for purposes of appeal:

   a) That the Court's June 18, 2019 Order improperly and collaterally overrules Judge Dickson's Order of June 3, 2013 (Exhibit A);

   b) That the Court's Order improperly collaterally overrules the June 10, 2019 Order of the 24th District Court for the Parish of Jefferson, Louisiana, by directing Defendants to execute authorizations that are in direct contravention of that Order. (Exhibit B);

   c) That, even assuming Plaintiff is entitled to information disclosing the wealth and income of the Defendants, Plaintiff is not entitled to detailed financial information, from 2019 to the Present, that might be disclosed in personal banking records and tax returns, given that Defendants have already produced that information for the years 2009 to 2013.

   d) That there is no prior Order of this Court whatsoever that the Defendant has violated in the course of attempting to work with Plaintiff's counsel on the subjects of its Third Motion to Compel; and

   e) That the award of Attorneys Fees to Plaintiff is unjust given all of the above, and the fact that the only Order that was violated in the course of this Motion was the Plaintiff's violation of this Court's April 6, 2015 Order (Exhibit C), as that Order

did not compel Defendants to do anything, and the Order directed Plaintiff to perform acts that it did not do.

As was fully argued before this Court, Plaintiff's Third Motion to Compel sought an Order 1) directing certain Defendants to produce documents that they had already agreed to produce, 2) directing other Defendants to perform certain acts that they are unable to do, and 3) taking action that, with all due respect, this Court is without authority to Order. While there may be multiple ways for the Plaintiff to obtain the information that it may be entitled to under South Carolina law, or other law that may apply to this case, the Court's June 18, 2019 Order fails to meet that standard and therefore Defendants respectfully request that this Honorable Court reconsider that decision, and alter or amend that Order in such fashion as may comport with that law.

RESPECTFULLY SUBMITTED:

s/ David B. Marvel
David B. Marvel (SCB 68803)
PO Box 22734
Charleston, South Carolina 29413
Ph. (843) 853-4877
Fax (843) 380 3025
dave@marvel.lawyer

June 25, 2019
Charleston, South Carolina

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24TH JUDICIAL COURT FOR THE PARISH OF JEFFERSON

STATE OF LOUISIANA

NO. 744-568 **DIVISION "P"**

INNOVATIVE WASTE MANAGEMENT, INC.

VERSUS

CREST ENERGY PARTNERS GP LLC, ET AL.

FILED
Jun 10th 2019
DEPUTY CLERK

FILED: _____ _____
DEPUTY CLERK

JUDGMENT

The Motion to Quash Subpoena *Duces Tecum* to Margavio & Schmidt, CPAS ("Margavio") filed on April 17, 2019 came for hearing on May 28, 2019.

PRESENT: Marcus K. Pierre, attorney for Margavio & Schmidt, CPAS;

After hearing the arguments of counsel and reviewing the pleadings on file in conjunction with the matter brought this Court, and for reasons orally assigned:

IT IS ORDERED, ADJUDGED AND DECREED that the Motion to Quash is **GRANTED**.

Signed in Gretna, Louisiana this 10 day of June, 2019.

HON. JUDGE LEE V. FAULKNER

NOTE TO CLERK:
Please notify all counsel of record

June 7, 2019
I, HEREBY CERTIFY THAT ALL COSTS INCURRED IN THIS MATTER HAVE BEEN PAID.
DEPUTY CLERK

24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

SIGNED: HON. LEE V. FAULKNER, JR. - DIVISION: P - 06/10/2019 09:45:16 - CASE:744-568 - ID:30042

RULE 9.5 CERTIFICATE

I CERTIFY that pursuant to Uniform District Court Rule 9.5, I circulated a copy of this Judgment for comment to opposing counsel on 30th day of May, 2019, by electronic mail. Opposing counsel has no objection to this proposed Judgment.

I have allowed at least five (5) working days before presentation to the Court.

Certified this 6th day of June , 2019.

Respectfully submitted,

Salvador J. Pusateri T.A. (#21036)
Marcus K. Pierre (#38372)
PUSATERI, JOHNSTON, GUILLOT & GREENBAUM
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New Orleans, Louisiana 70163
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ATTORNEYS FOR MARGAVIO & SCHMIDT, CPAS

24th E-Filed: 06/06/2019 16:22:06 Case: 744568 Div:P Atty:038372 MARCUS K PIERRE

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STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff,	)	CASE NO. 2012-CP-18-1227
vs.	)	**PLAINTIFF'S MOTION FOR SANCTIONS PURSUANT TO S.C.R.C.P. 37**
CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	)	

NOW COMES Plaintiff Innovative Waste Management, Inc., (hereinafter "IWM") by and through its undersigned counsel, and hereby submits this Motion for Sanctions pursuant to Rule 37 of the South Carolina Rules of Civil Procedure, on the grounds that Defendants Crest Energy Partners GP, L.L. C., Crest Energy Partners L.P. (hereinafter collectively "Crest Defendants"), Dunhill Products GP, L.L.C., Dunhill Products L.P. (hereinafter collectively "Dunhill Defendants"), Henry Wuertz and Gerry Girardeau have failed to comply with the relief ordered by this Court.

Because this case is scheduled to be tried on November 18, 2019, Plaintiff requests an expediated hearing pursuant to S.C.R.C.P. 40(a)(2) and (h).

I. STATEMENT OF RELIEF SOUGHT

Plaintiff requests the Court to enter an Order of Sanctions in the form of a default judgment for Defendants' continual willful failure to comply with this Court's orders – all in a deliberate attempt to delay this case. The Defendants' actions show a clear pattern of willful misconduct which has unduly prejudiced Plaintiff's ability to try its case. As set out below, this

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pattern of delay and abuse of process supports an entry of default by this Court. Plaintiff respectfully request that this Court enter an Order of Default rather than an Order of Contempt. As noted below, Defendants' request that they be held in contempt for failure to follow the Court's August 1, 2019 order is not the correct sanction for his misconduct and solely for the purpose of creating an appealable issue to avoid the trial of this case.

II. BACKGROUND

As this Court is well aware, Plaintiff has been forced to file three Motions to Compel in this case as a result of Defendants' failure to abide by the Rules of Civil Procedure. The Court has granted each of Plaintiff's Motions and, on two occasions the Court has sanctioned the Defendants for their willful failure to comply with its prior orders. (**See Orders attached Exhibit 1**) The Court's prior rulings requiring the disclosure of Defendants' financial information are (1) the August 22, 2013 Ruling on Plaintiff's 1st Motion to Compel Production of Defendants' Financial Information, (2) the October 3, 2013 Ruling on Plaintiff's Second Motion to Compel, (3) the April 6, 2015 ruling denying Defendants Motion to Quash certain subpoenas requesting financial information and (4) the Court's June 18, 2019 order and August 1, 2019 clarification of its June order.

A. The Pattern of Willful Non-compliance of This Court's Rulings and Tactics Designed only to Delay or Avoid the Trial of this Matter.

1. The August 22, 2013 Ruling on Plaintiff's 1st Motion to Compel Production of Defendants' Financial Information

On October 2, 2012 Plaintiff served Defendants with Plaintiff's First Requests for Production and Interrogatories, including requests for Defendants' past and current financial information. The Defendants did not respond to any of the discovery requests and, on January 31, 2013, Plaintiff filed its First Motion to Compel. On March 15, 2013, on the eve of the

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hearing of Plaintiff's First Motion to Compel, counsel entered into a Consent Order under which Defendants agreed to provide discovery responses by March 20, 2013 and to pay Plaintiff's attorneys fees related to the motion to compel. The Defendants failed to comply with the Consent Order and Plaintiff filed an Amended Motion to Compel. The Court granted that motion on August 22, 2013 and ordered Defendants to produce sworn, certified financial statements.

2. The October 13, 2013 Ruling on Plaintiff's Second Motion To Compel

The Defendants failed to comply with the August 22, 2013 Order requiring them to produce financial information and Plaintiff was forced to file a second Motion to Compel. On October 13, 2013 the Court again ordered Defendants to provide their financial information and sanctioned the Defendants $2,000.00 for their failure to comply the Court's prior orders.

3. The April 6, 2015 Ruling On Defendants' Motion to Quash

In March 2015 the Plaintiff issued subpoenas to Defendants' bank (Wells Fargo) and accountant (Margavio and Schmidt) requiring the production of Defendants' bank and accountant records from 2009 to the present date. Defendants filed a Motion to Quash. At the hearing on Defendants' Motion to Quash, Defendants argued that the scope of Plaintiff's subpoenas was overbroad and the information sought was not relevant. The Court denied Defendants' Motion to quash and found that bank and accountant records from 2009 through the present were relevant and should be disclosed.

4. The Defendants Breach of the Settlement Agreement

On April 8, 2013 the parties were order to mediate this case. At mediation, the Defendants agreed to pay $450,000.00 to settle the case. The Defendants failed to pay the agreed upon amount. It appears that there was never any intent to pay the settlement and rather, the

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Defendants entered into the sham settlement agreement for the purpose of delaying/avoiding the impending trial date. The dismissal of this case and three-year appeal further delayed this matter.

5. The June 18, 2019 Ruling on Defendants' Third Motion to Compel

When the case was remanded back to this Court, Plaintiffs demanded that Defendants provide updated financial statements and re-issued a subpoena in Louisiana for Margavio & Schmidt (Defendants' CPA) in compliance with the Court's April 6, 2015 Order.

In response, Defense Counsel Marvel advised that he would get back to Plaintiff regarding those issues prior to an April 22, 2019 teleconference scheduled with the Court. Defendants' Counsel did not provide any response on those issues prior to the April 22nd teleconference. During the April 22nd teleconference with the Court, Plaintiff's Counsel requested that Defendants be ordered to provide executed authorizations for the production of the CPA/financial records or simply obtain and produce the records themselves. In response, Defense Counsel advised the Court that he required until May 6, 2019 to provide an answer to Plaintiff's requests. May 6, 2019 came and went with no response from Defense Counsel and on May 15, 2019 Plaintiffs were forced to file their Third Motion to Compel seeking the production of the financial information and sanctions.

In an order dated June 18, 2019 this Court granted Plaintiff's requested relief ordering Defendants to sign authorizations within 7 days of the order and produce sworn certified financial statements within 21 days of the order. On June 25, 2019 Counsel for the Crest Defendants, Dunhill Defendants, and Wuertz filed a motion to amend the Court's order pursuant to S.C.R.C.P. 59. The Court reviewed briefings from the parties and issued an order amending its June 18th Order on August 1, 2019 which granted the relief requested by Plaintiffs and altered its original Order allowing different classes of individuals to sign the requested authorizations.

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On August 9, 2019, after the Court's deadline had passed, counsel for Crest Defendants, Dunhill Defendants, and Wuertz, sent an e-mail representing that he had not seen the order and would pull it. (**See Correspondence regarding August 1st Ruling attached as Exhibit 2**) Plaintiff's Counsel sent a communication sixteen minutes later informing Counsel for Crest, Dunhill, and Wuertz that the deadline had already passed and requesting information on when he would provide the authorizations. On Monday August 12, 2019 at 8:58 am counsel for Crest Defendants, Dunhill Defendants and Wuertz requested copies of the authorizations that were to be signed. Plaintiff's counsel had previously included these in their motion but provided them again to Mr. Marvel at 10:03 am on August 12th and again requested when they would be signed. Mr. Marvel responded nine hours later that he did not believe there would be any issue getting all the signed authorizations to Plaintiff's counsel by August 16th.

On August 19, 2019 Counsel for Crest Defendants, Dunhill Defendants, and Wuertz stated that Mr. Wuertz was "meeting with the accountant later today" and he expected to have "something by tomorrow morning." Plaintiff's Counsel responded via e-mail later that day again asking for Counsel to provide the signed authorizations for Mr. Wuertz's tax returns within two days of the e-mail. No response was received. Plaintiff's counsel sent counsel for all Defendants' Counsel a letter on August 23, 2019, in accordance with S.C.R.C.P. 11, that they had failed to comply with the Court's order and requesting Compliance before Noon on August 28, 2019. Counsel for the Crest Defendants, Dunhill Defendants, and Wuertz e-mailed Plaintiff's Counsel at 11:00am on August 28, 2019 requesting until the end of the day to comply with the order. Plaintiff's did not receive another communication or production of the required authorizations on August 28th.

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On August 29, 2019 Counsel for Defendant Girardeau sent a sworn financial statement which also included language seeking to reserve his right to supplement the information contained in the financial statement at a later time. On August 29, 2019 counsel for Crest Defendants, Dunhill Defendants, and Wuertz produced certain tax documents for 2016 and 2017 tax years of Crest Energy Partners LP, and a financial Statement for Henry Wuertz. The e-mail closes by stating "Stand by, more to come." No additional productions or communications were provided by Counsel for the Crest Defendants, Dunhill Defendants, and Wuertz that day.

On August 30, 2019 counsel for Crest Defendants, Dunhill Defendants, and Wuertz attached a letter from Sean K. Butler, an accountant who represented in the letter to have previously prepared tax returns for Crest Energy Partners, L.P. and is "familiar with that entity's corporate structure and financial condition." This document claims that none of the Crest Defendants nor Dunhill Defendants have any real income reflected on the 2016 nor 2017 tax years and have not filed tax returns for 2018. It is not a financial statement for any entity and moreover represents Defendant's Counsel's communication and work with the Accountant who should be one of the individuals producing documents pursuant to the ordered Authorizations. Instead, Defendant's Counsel worked with Mr. Butler to produce a self-serving document, not responsive to the Court's Order. The e-mail transmitting this document again stated "More to come…"

No further discovery materials were produced. Notably, Defendants have failed to provide the Court-ordered authorizations for the CPA records and have failed to pay the $1,950.00 in sanctions. Instead, Counsel for Crest Defendants, Dunhill Defendants, and Wuertz sent a letter to Hon. Maité Murphy stating he had complied as much as he would with the Order of the Court and believed his actions to be substantially compliant with the Order of the Court.

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(**See Letter from Mr. Marvel attached as Exhibit 3)** In addition, Mr. Marvel requested that this Court hold him in Contempt for his and his client's refusal to comply with the Court's order so that he could appeal the August 1, 2019 order. This was done for the purpose of delaying this matter and avoiding the November 18 trial.

As Defendants are well aware (hence their request for an order of contempt), their production is not what was ordered by the Court. Instead, it is what they offered to provide at the hearing of the Third Motion to Compel. The Plaintiff did not agree with that relief as it allows Defendants to avoid production of its CPA records, which are the records that have been sought since 2012. More importantly, the Court did not agree with that relief and ordered the production of authorizations. Counsel for the Defendants has willfully ignored the Court's order and instead produced only what he (or his client) want to produce.

On September 3, 2019 Plaintiff's counsel received by courier what purported to be a Notice of Appeal. (**See NOA attached as Exhibit 4**) This Notice of Appeal was not filed with this Court or the Court of Appeals. The certificate of Service swearing that the NOA had been served upon Plaintiff's Counsel four days earlier, on August 30, 2019. Mr. Marvel had previously threatened an appeal regarding this issue and Plaintiff's Counsel had previously advised Mr. Marvel that any interlocutory appeal on this issue would be frivolous given that the order is not appealable. As of September 11, 2019, no Appeal has been filed with the Trial Court or Court of Appeals and the time to do so has expired. (This includes the adjustment for Chief Justice Beatty's September 9, 2019 order treating September 3, 2019 – September 6, 2019 as holidays due to Hurricane Dorian.) The false Notice of Appeal served upon Plaintiff and the threat of Appeal appears to be yet another delay tactic.

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Moreover, if Defendants had genuinely intended to appeal this Court's discovery order (which is not appealable), Mr. Marvel should have immediately informed opposing Counsel and Court of their intention not to comply with the order and be held in Contempt as to have an appealable issue. Instead they used every trick in the playbook to buy more time.

Mr. Marvel and his clients have intentionally, willfully, and through material misrepresentation, delayed and avoided court ordered productions of discoverable material – all while feigning that compliance was forth coming. We are now two months from the trial date and this delay along with the empty appeal threat have unduly prejudiced Plaintiff's ability to prepare for this trial.

As noted above, these actions are not isolated but rather form a pattern of years of willful noncompliance with this Court's orders and the use of material misrepresentations and tactics that have no place in South Carolina courts. Defendant's counsel's conduct has been manipulative of the discovery process, lacking in candor, and is wholly deserving of the issuance of a default. The previous imposition of the sanction of attorneys' fees has done nothing to stop or even slow this behavior.

II. ARGUMENT

Rule 26 of the South Carolina Rules of Civil Procedure govern the discovery process in civil suits. The purpose of discovery "is to enable one who is asserting a right or claim to determine the exact nature of such right or claim and the extent thereof." *Earl v. Webb*, 182 S.C. 175, 175, 188 S.E. 798, 802 (1936). Meaningful discovery allows parties to "enhance the truth-seeking process, to enable the attorneys to better prepare for trial, to eliminate surprise, and to promote an expeditious and final determination of controversies in accordance with the

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substantive rights of the parties," 27 C.J.S. Discovery § 2 (citing *D.C. v. S.A.*, 178 Ill. 2d 551, 227 Ill. Dec. 550, 687 N.E.2d 1032 (1997)).

Pursuant to Rule 37, SCRCP, when a party fails to respond to discovery requests or obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just." Rule 37(b)(2), SCRCP. "Rule 37 expressly grants the trial court power to order judgment by default for either violation of a court order, or upon motion, for a party's failure to respond to certain discovery requests." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E. 2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C) & (d)). The decision to award sanctions is entrusted to the discretion of the trial court. *QZO, Inc. v. Moyer*, 358 S.C. 246, 255, 594 S.E.2d 541, 546 (2004). "Discovery sanctions are imposed to penalize those whose conduct may be deemed to warrant such a sanction, and to deter those who might be tempted to such conduct in the absence of such a deterrent." *Creighton v. Coligny Plaza Ltd.Pshp.*, 334 S.C. 96, 122-23, 512 S.E.2d 510 (Ct.App.1998) *citing Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 545, 489 S.E.2d 679, 683 (Ct.App. 1997) (*quoting National Hockey League v. Metropolitan Hockey Club, Inc.*, 427 U.S. 639 (1976). It is in the discretion of this Court to award sanctions for Plaintiff's failure to respond fully to discovery requests and refuses to obey court orders. *Downey v. Dixon,* 294 S.C. 42, 45, 362 S.E.2d 317, 318 (Ct.App. 1987).

The entry of default is a strong sanction but it is warranted in this case. When discovery violations show bad faith, willful disobedience, or gross indifference to another litigants' rights, it is justified to strike that party's pleadings. *QZO, Inc.*, 358 S.C. at 255 (Ct.App. 2004). "Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction." *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc.*, 334 S.C. 193,

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198-199, 511 S.E.2d 716, 718 -719 (S.C.App. 1999)(*citing Baughman v. AT&T Co.*, 306 S.C.101, 410 S.E.2d 537 (1991)).

When determining the proper sanction, the Court should consider the precise nature of the discovery sought, the discovery posture of the case, willfulness, and the degree of the prejudice. *See Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (1997). In *Griffin*, the Court found it proper to strike the pleadings of the Defendant for the willful failure to obey four discovery orders and after lesser sanctions of monetary awards were ineffective. In this case there have been multiple prior orders issued on the topic of financial discovery as well as sanctions issued for previous failures to comply. When considering prejudice, the Court in *Griffin* distinguished the case from *Karppi v. Greenville Terrazzo, Inc.*, 327 S.C. 538, 489 S.E.2d 679 (Ct.App.1997) where the striking of the pleading of one defendant would have had a profound effect on the other parties to the litigation. In the case at bar no prejudice exists as all of the Defendants are offending parties.

Defendant's counsel's letter to the Court dated August 30, 2019 cites to *Davis v. Parkview Apartments*, 409 S.C. 266, 762 S.E.2d 535 (2014) and the precedent cited therein as support for his request for contempt and the ability to appeal your Honor's order. In *Davis* there were repeated discovery abuses, which resulted in not only a finding of contempt, as requested by Mr. Marvel, but also the striking of the Appellants pleadings and an entry of default. That case is analogous to the situation here. The Court stated that when a discovery order is issued the party seeking to challenge the order has two options, comply and waive any right to challenge it or refuse to comply with the order, be held in contempt, and appeal the contempt. *Davis* at 543. Just as the Defendants in this case have, the sanctioned in *Davis* attempted to split the two courses of action. In *Davis* the Court of Appeals found that the sanctioned party,

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> "continued along in the litigation, attempting to divert the implementation of the court's rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility of being held in contempt of court." *Davis* at 543.

Defendants Counsel's numerous representations that he would comply with the Orders set out above, coupled with his subsequent refusal to comply after deadlines and extensions to deadlines have passed is a pattern. As in *Davis*, these defendants have attempted to avoid contempt and dance around the orders of the Court to delay the case. On the eve of trial they again attempt to delay the case, now finally attempting to illicit a ruling of contempt from which they can appeal – solely for the purpose of delay. The Court of Appeals has clearly stated that this is not the proper conduct or course of action for Defendant's challenging discovery orders and upheld the striking of pleadings and entry of default when entered in similar circumstances.

It is possible that Mr. Wuertz has made certain representations to the prosecutors in Texas regarding his financial status (just as he has in this case) that are not consistent with the records of his CPA. It is likely that the specter of successive trials on November 11th for the criminal matter and November 18th are a burden that he has ordered his counsel to attempt to alleviate. These circumstances perhaps explain the willful noncompliance and delay tactics but they certainly do not justify it. Instead, these circumstances present a motive for what has become a pattern of willful noncompliance and delay.

The Defendants' willful misconduct unduly prejudices the ability of the Plaintiff to prepare his case for trial while not affecting the other parties in the case. As noted above and in the numerous motions and briefs addressing these discovery issues, the financial information sought is relevant and essential in support of Plaintiff's allegations that the Defendant has made millions of dollars of illicit profit from the theft of Plaintiff's business. Now, approximately two

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months from trial, Plaintiff is still seeking the discovery that has been sought since 2012 and which has been ordered to be produced by this Court numerous times.

Previous Orders and monetary sanctions of attorney's fees have not proven to be effective. Defendants have simply ignored the Orders and not paid the most recent sanctions. The totality of the Defendants' behavior in this case has shown that another monetary sanction coupled with an order of production will not stop their tactics of delay and willful disobedience of this Court's orders. Plaintiff respectfully request this Court to strike Defendants pleadings as that is the only appropriate sanction given their years of willful misconduct.

GRUENLOH LAW FIRM
Counsel for Innovative Waste Management, Inc.

By: S/Thomas F. Drazan.
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803-765-2383
Fritz@j-dlaw.com

Date: September 13, 2019
Charleston, South Carolina

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

EXHIBIT 2

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Re: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

1 message

David B. Marvel <dave@marvel.lawyer> Fri, Aug 9, 2019 at 12:32 PM
To: Thomas Drazan <thomas@gruenlohlaw.com>
Cc: "Murphy, Maite Law Clerk (Chandler D. Rowh)" <mmurphylc@sccourts.org>, Fritz Jekel <fritz@j-dlaw.com>, "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

I haven't seen that, so thanks for the heads up. I will pull it electronically.

Sent from my iPhone

On Aug 9, 2019, at 12:30 PM, Thomas Drazan <thomas@gruenlohlaw.com> wrote:

> Chandler,
>
> Please disregard my previous e-mail, we have already received the order. I apologize, have a great weekend.
>
> -Tom

Thomas Drazan
Gruenloh Law Firm
Associate Attorney
T 843.577-0027
F 843.577.0721
E THOMAS@GRUENLOHLAW.COM
A 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403
W www.gruenlohlaw.com

****

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Re: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

1 message

Wm. Michael Gruenloh <mike@gruenlohlaw.com> Fri, Aug 9, 2019 at 12:47 PM
To: "David B. Marvel" <dave@marvel.lawyer>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

David-

The deadline has already passed for these. When will you have the signed authorizations and financial statements? Do you still represent Girardeau? If not please forward this to his new counsel.

Let me know by Monday please.

GRUENLOH LAW

gruenlohlaw.com
Wm. Michael Gruenloh, Esq.
Partner
T 843.577-0027
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E mike@gruenlohlaw.com
A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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RE: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

1 message

David B. Marvel <dave@marvel.lawyer> Mon, Aug 12, 2019 at 8:58 AM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

Mike, can you please send me pdf or word versions of what it is you want signed? Judge Murphy still did not attach anything to the order. As soon as you send those, I'll forward them along and let you know what I will have and when. Thank you. Sorry for the confusion on the form 4 distribution, glad it didn't only affect me . . .

I don't see where you submitted the consent order on the Wells Fargo subpoena to the Texas court. Did you do that?

From: Wm. Michael Gruenloh <mike@gruenlohlaw.com>
Sent: Friday, August 9, 2019 12:48 PM
To: David B. Marvel <dave@marvel.lawyer>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>; Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>
Subject: Re: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

David-

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Let me know by Monday please.

gruenlohlaw.com

Wm. Michael Gruenloh, Esq.

Partner

T 843.577-0027

F 843.577.0721

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Best,

Chandler

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Thank you,

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Re: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

1 message

David B. Marvel <dave@marvel.lawyer> Mon, Aug 12, 2019 at 6:45 PM
To: Thomas Drazan <thomas@gruenlohlaw.com>
Cc: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

I do not have any reason to think that there would be an issue getting all this back to you this week. In theory I am on vacation, but will be on this.

Sent from my iPhone

> On Aug 12, 2019, at 10:04 AM, Thomas Drazan <thomas@gruenlohlaw.com> wrote:
>
> David,
>
> Please see the attached authorizations. These were previously provided as a part of our proposed order. I have included the authorizations individually and as a single pdf.
>
> Additionally, will you have the required financial statements to us this week? Also please let us know if you still represent Mr. Girardeau? If not we will need you to immediately forward these to his new counsel and please provide us his contact information.
>
> Thank you,
>
> Thomas Drazan
> Gruenloh Law Firm
> Associate Attorney
> T 843.577-0027
> F 843.577.0721
> E Thomas@gruenlohlaw.com<mailto:Thomas@gruenlohlaw.com>
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> <MTC Authorizations.pdf>
> <MTC Authorizations MS Crest Energy LP.pdf>
> <MTC Authorizations MS Crest GP.pdf>

> <MTC Authorizations MS Dunhill LP.pdf>
> <MTC Authorizations MS Dunhill Products Group.pdf>
> <MTC Authorizations MS Wuertz.pdf>
> <MTC Authorizations WF Crest Energy Partners Group.pdf>
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Re: IWM v. Crest Energy Partners et. Al Case: 2012-CP-18-1227

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David B. Marvel <dave@marvel.lawyer> Mon, Aug 19, 2019 at 2:07 PM
To: "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

Mike- Henry is meeting with the accountant later today, and I expect to have something tomorrow morning. I just returned from vacation, and I am out of pocket for nearly all of tomorrow, so it may be Wednesday before I can get back to you.

Sent from my iPhone

On Aug 9, 2019, at 12:47 PM, Wm. Michael Gruenloh <mike@gruenlohlaw.com> wrote:

David-

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Wm. Michael Gruenloh <mike@gruenlohlaw.com> Mon, Aug 19, 2019 at 2:14 PM
To: "David B. Marvel" <dave@marvel.lawyer>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>, Ryan Jones <ryan@gruenlohlaw.com>

David-

Can you please send over the signed authorization for Henry Wuertz's tax returns by Wednesday too. Also, if he can sign for any other entity please have him do so. If he can't, please let me know why not and who can.

Also, what is his status for attending the November trial? Can you confirm that he will appear?

Thank you.

GRUENLOH LAW

gruenlohlaw.com
Wm. Michael Gruenloh, Esq.
Partner
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Re: Case No.: 2012-CP-18--1227

1 message

David B. Marvel <dave@marvel.lawyer> Wed, Aug 28, 2019 at 11:00 AM
To: Ryan Jones <ryan@gruenlohlaw.com>, "Jbarker@glvlawfirm.com" <Jbarker@glvlawfirm.com>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>

Thomas / Mike,

I was just speaking with Jake and, while we both have production for you today, it is unlikely to be by noon as requested in your letter. I expected to have this done last week but have been tied up on another matter that has kept me out of the office for the bulk of the last week. Therefore, we respectfully request that you give us until the end of today prior to taking any further action. Thanks.

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

From: Ryan Jones <ryan@gruenlohlaw.com>
Sent: Friday, August 23, 2019 12:46 PM
To: David B. Marvel; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Case No.: 2012-CP-18--1227

Dear Counsel:

Please see the attached correspondence from Mr. Drazan.

Respectfully,

Ryan Jones
Paralegal
T 843.577-0027

F 843.577.0121
E RYAN@gruenlohlaw.com
A 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403
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To: Ryan Jones <ryan@gruenlohlaw.com>, "Jbarker@glvlawfirm.com" <Jbarker@glvlawfirm.com>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>

Greetings all. I have attached 2016 and 2017 tax returns for Crest Energy Partners, L.P., along with a reviewed financial statement regarding Henry Wuertz, which also includes related Crest financial information. Stand by, more to come.

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

From: David B. Marvel
Sent: Wednesday, August 28, 2019 11:00 AM
To: Ryan Jones; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Re: Case No.: 2012-CP-18--1227

Thomas / Mike,

I was just speaking with Jake and, while we both have production for you today, it is unlikely to be by noon as requested in your letter. I expected to have this done last week but have been tied up on another matter that has kept me out of the office for the bulk of the last week. Therefore, we respectfully request that you give us until the end of today prior to taking any further action. Thanks.

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

From: Ryan Jones <ryan@gruenlohlaw.com>
Sent: Friday, August 23, 2019 12:46 PM
To: David B. Marvel; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Case No.: 2012-CP-18--1227

Dear Counsel:

Please see the attached correspondence from Mr. Drazan.

Respectfully,

Ryan Jones
Paralegal
T 843.577-0027
F 843.577.0721
E RYAN@gruenlohlaw.com
A 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403
W www.gruenlohlaw.com

****

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

3 attachments

CRESTENERGY_US_2016_ArchiveTaxReturn.pdf
115K

CRESTENERGY_US_2017_ArchiveTaxReturn.pdf
118K

Executed Personal Financial Statements.pdf
479K

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

RE: Case No.: 2012-CP-18--1227

1 message

David B. Marvel <dave@marvel.lawyer> Fri, Aug 30, 2019 at 4:04 PM
To: Ryan Jones <ryan@gruenlohlaw.com>, "Jbarker@glvlawfirm.com" <Jbarker@glvlawfirm.com>
Cc: Thomas Drazan <thomas@gruenlohlaw.com>, "Wm. Michael Gruenloh" <mike@gruenlohlaw.com>, Fritz Jekel <fritz@j-dlaw.com>

Happy Friday, all. Please see the attached letter re: Crest Energy Partners. More to come . . .

From: David B. Marvel
Sent: Thursday, August 29, 2019 9:07 AM
To: Ryan Jones <ryan@gruenlohlaw.com>; Jbarker@glvlawfirm.com
Cc: Thomas Drazan <thomas@gruenlohlaw.com>; Wm. Michael Gruenloh <mike@gruenlohlaw.com>; Fritz Jekel <fritz@j-dlaw.com>
Subject: Re: Case No.: 2012-CP-18--1227

Greetings all. I have attached 2016 and 2017 tax returns for Crest Energy Partners, L.P., along with a reviewed financial statement regarding Henry Wuertz, which also includes related Crest financial information. Stand by, more to come.

Best regards,

David B. Marvel

PO Box 22734

Charleston, South Carolina 29413

Ph. 843.853.4877

Fax 843.380.3025

Email: dave@marvel.lawyer

From: David B. Marvel
Sent: Wednesday, August 28, 2019 11:00 AM
To: Ryan Jones; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Re: Case No.: 2012-CP-18--1227

I was just speaking with Jake and, while we both have production for you today, it is unlikely to be by noon as requested in your letter. I expected to have this done last week but have been tied up on another matter that has kept me out of the office for the bulk of the last week. Therefore, we respectfully request that you give us until the end of today prior to taking any further action. Thanks.

Best regards,

David B. Marvel

PO Box 22734

Charleston, South Carolina 29413

Ph. 843.853.4877

Fax 843.380.3025

Email: dave@marvel.lawyer

From: Ryan Jones <ryan@gruenlohlaw.com>
Sent: Friday, August 23, 2019 12:46 PM
To: David B. Marvel; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Case No.: 2012-CP-18--1227

Dear Counsel:

Please see the attached correspondence from Mr. Drazan.

Respectfully,

GRUENLOH LAW

Ryan Jones

Paralegal

T 843.577-0027

F 843.577.0721

E RYAN@gruenlohlaw.com

A 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403

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****

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

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CPA letter re Crest Dunhill.pdf
612K

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SEAN K BUTLER, CPA, LLC

August 28, 2019

To Whom It May Concern:

I am a Certified Public Accountant licensed by the State of Texas. In the usual course of business, I have prepared tax returns for Crest Energy Partners, L.P. and am therefore familiar with that entity's corporate structure and financial condition. At the request of attorney David B. Marvel, I offer the following, to the best of my current knowledge and based on information gathered and reported in accordance with generally accepted accounting principles.

1. In August 2010 the entity previously referred to as "Dunhill Products, L.P." formally changed its name to "Crest Energy Partners, L.P.". Crest Energy Partners, L.P. continued use of its FEIN 113648675 and otherwise continued the same partnership identity. Therefore, there is no existing separate company "Dunhill Products, L.P.".

2. In August 2010 the entity previously referred to as "Dunhill Products GP, LLC" formally changed its name to "Crest Energy Partners GP, LLC". Crest Energy Partners GP, LLC continued use of its FEIN 11-3648671 and otherwise continued the same entity status. Therefore, there is no existing separate company "Dunhill Products GP, LLC".

3. In 2016, the charters of both Crest Energy Partners, L.P. and Crest Energy Partners GP, LLC were cancelled by the State of Delaware and were placed in forfeiture by the Texas Secretary of State.

4. Crest Energy Partners, L.P. and, by extension, Crest Energy Partners GP, LLC, have not conducted their usual income producing business since 2015, at the latest. Any income reflected on the Crest Energy Partners, L.P. tax returns for 2016 and 2017 is a result of accounting practices which, among other things, require a taxpayer to declare cancelled debt as income. Crest Energy Partners, L.P. has not filed returns for 2018.

5. Otherwise, Crest Energy Partners, L.P. and Crest Energy Partners GP, LLC have no income or assets and are not conducting any transactional business.

Sean K Butler, CPA

11111 Katy Freeway
Suite 910
Houston, TX 77079-1719

Tel: (713) 973-5715
Fax: (713) 422-2495
www.houstontaxservices.net

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EXHIBIT 3

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

August 30, 2019

Via Email and U.S. Mail
The Hon. Maite Murphy
Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

RE: Innovative Waste Management, Inc. v. Crest Energy Partners,
Case No: 2012-CP-18-1227

Dear Judge Murphy,

I hope this letter finds you well and looking forward to the Labor Day weekend. As you will recall, your Order on my clients' Motion to Alter or Amend was issued on August 1, 2019.

Defendant Girardeau has provided Plaintiff 's counsel everything that appears to have been required by your prior Orders. Jake Barker, reading in copy, is taking over Mr. Girardeau's representation and we expect to submit a substitution of counsel soon.

Defendant Wuertz has provided Plaintiff's counsel with a Reviewed Financial Statement which I understand to be a term of art under the Generally Accepted Accounting Principles of the United States. The Wuertz statement includes the certification that the Crest Entities are dormant (i.e. have no income) and have no assets, and I have attached a copy of a more detailed statement relating to the status of the entity defendants. I have also produced 2016 and 2017 tax returns for the Crest entities, which should give the Plaintiff a complete copy of all Dunhill/Crest returns that have been filed from the time relevant to the claim to the present.

With all due respect to Your Honor's ruling, my remaining clients will be serving Notice of Appeal of your August 1, 2019 Order, inclusive of the Court's Orders of June 18, 2019 and April 6, 2015. I am writing to request that you issue an Order of Contempt to the extent you feel the production recited above violates your Order, in accordance with Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014) and the precedent cited therein.

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In my experience, and as noted in Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), a party requesting a contempt order for purposes of appeal typically avoids sanctions under Rule 37, SCRCP, and I therefore respectfully request that the Court issue a Form 4 so stating. If you would like for me to prepare a formal proposed order, I would be happy to do so.

I will be serving Notice of Appeal today. Rule 203, SCACR, allows the Appellant ten days to file the Notice of Appeal, and I respectfully request that you issue an order consistent with this request within that ten-day period so that I may amend the Notice to include your contempt order and the parties can avoid issues relating to appellate jurisdiction, which appear to be debatable in this instance.

Thank you for your consideration of this matter. If I can be of any further assistance, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,

David B. Marvel

/DBM
cc ( ) : Wm. Michael Gruenloh
Frederick Jekel
Jake S. Barker

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EXHIBIT 4

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

DAVID B. MARVEL
Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia
www.marvel.lawyer

August 30, 2019

Via Federal Express
Wm. Michael Gruenloh
Gruenloh Law Firm
67 Moultrie Street, Second Floor
Charleston, SC 29403

RE: Innovative Waste Management, Inc. v. Crest Energy Partners
Case No: 2012-CP-18-1227

Dear Mike,

I hope this letter finds you well. I enclosed our Notice of Appeal in this matter.

If you have any questions or comments, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,

David B. Marvel

/DBM

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Maite D. Murphy, Circuit Court Judge

Civil Action No.: 2012-CP-18-1227

Innovative Waste Management Inc., Crest Energy Partners, LP, Edward Girardeau, Plaintiffs, Of Whom,

Innovative Waste Management, Inc. is the Respondent\,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Respondents.

NOTICE OF APPEAL

COMES NOW DEFENDANTS / APPELLANTS Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, who hereby give Notice that they Appeal the Order of the Hon. Maite Murphy, dated August 1, 2019

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(Exhibit A), inclusive of the Orders dated of June 18, 2019 (Exhibit B) and April 6, 2015 (Exhibit C).

RESPECTFULLY SUBMITTED:

s/ David B. Marvel
David B. Marvel
P.O. Box 22734
Charleston, SC 29413
(P) 843-853-4877
(F) 843-380-3025
dave@marvel.lawyer
ATTORNEY FOR THE APPELLANTS

Charleston, South Carolina
August 30, 2019

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227
2019 Aug 01 1:27 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA
COUNTY OF Dorchester
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2012CP1801227

Innovative Waste Management Inc et al
PLAINTIFF(S)

Crest Energy Partners Gp, LLC et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

On June 18, 2019, this Court entered an Order Granting Third Motion to Compel which, among other things, directed Defendants to execute authorizations and provide financial statements by way of Authorized Principals. On July 5, 2019, Defendants moved the Court to reconsider, alter and/or amend this June 18 Order. The June 18 Order is now amended only to allow these documents and statements to be executed by or on behalf of such entities by either an Authorized Principal or Accounting Professional, and the remainder of the relief requested in Defendants' motion is hereby denied.

ORDER INFORMATION

This order ☐ ends ☑ does not end the case. ☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/01/2019 .

Crest Energy Partners LP
Edward H Girardeau
Innovative Waste Management Inc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227
ELECTRONICALLY FILED - 2019 Aug 01 1:27 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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ELECTRONICALLY FILED - 2019 Aug 01 1:27 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Dorchester Common Pleas

Case Caption: Innovative Waste Management Inc , plaintiff, et al VS Crest Energy Partners Gp, LLC , defendant, et al

Case Number: 2012CP1801227

Type: Order/Electronic Form 4

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2019-08-01 13:02:52 page 3 of 3

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227
ELECTRONICALLY FILED - 2019 Jun 18 11:24 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	)	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff,	)	CASE NO. 2012-CP-18-1227
vs.	)	**ORDER GRANTING PLAINTIFF'S THIRD MOTION TO COMPEL**
CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	)	

This matter came before the Court June 5, 2019 on Plaintiff Innovative Waste Management, Inc.'s Motion to Compel Defendants Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, to produce certain financial information. The Court having considered all filings, argument, and proffers of Counsel rules as follows:

1. An Authorized Principal for each of the Defendants Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products, L.P., and the individual Defendant Henry Wuertz, shall sign their authorizations, appended as Exhibits A – E to this order, requiring the production of the files of their accountants from 2009 to the Present.

2. An Authorized Principal for each of the Defendants Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C., Dunhill Products, L.P., and the individual Defendants Henry Wuertz, shall sign their authorizations, appended as Exhibits F – J to this order, requiring the production of materials

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227
ELECTRONICALLY FILED - 2019 Jun 18 11:24 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

responsive to the Subpoena request to Wells Fargo from 2009 to the Present.

3. The authorizations shall be signed and executed within seven (7) days of this order.

4. All Defendants shall provide current, sworn, certified financial statements sufficient to set out their wealth and income to Plaintiff within twenty-one (21) days of this order.

5. The Court upon a finding of the failure of Defendants to comply with a previous order of the Court and a failure to produce relevant discoverable material to Plaintiff shall bear costs and fees for Plaintiff's bringing this motion in the amount of **$ 1, 950.00** as supported by the affidavit and testimony of Plaintiff's Counsel.

IT IS SO ORDERED

_____
The Honorable Maité Murphy

Date: June _____ 2019

_____, South Carolina

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227
ELECTRONICALLY FILED - 2019 Jun 18 11:24 AM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

Dorchester Common Pleas

Case Caption: Innovative Waste Management Inc , plaintiff, et al VS Crest Energy Partners Gp, LLC , defendant, et al

Case Number: 2012CP1801227

Type: Order/Compel

So Ordered

s/ Maite Murphy 2166

Electronically signed on 2019-06-18 10:50:21 page 3 of 3

ELECTRONICALLY FILED - 2019 Sep 13 4:19 PM - DORCHESTER - COMMON PLEAS - CASE#2012CP1801227

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF COMMON PLEAS
INNOVATIVE WASTE MANAGEMENT, INC. Plaintiff, vs. CREST ENERGY PARTNERS GP, LLC, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, LLC, DUNHILL PRODUCTS L.P., HENRY WUERTZ, and EDWARD H. GIRARDEAU Defendants.	CASE NO. 2012-CP-18-1227 **ORDER ON DEFENDANTS' MOTION TO QUASH**
CREST ENERGY PARTNERS, L.P. and EDWARD H. GIRARDEAU Defendants and Third Party Plaintiffs, vs. INNOVATIVE WASTE MANAGEMENT, INC. and C. RUSS LLOYD Plaintiff and Third Party Defendant,	

2015 APR -6 PM 4:40
CLERK OF COURT
DORCHESTER COUNTY

This matter comes before the Court on the defendants' Motion to Quash and for Protective Order filed December 5, 2014. Defendants sough to quash subpoenas issued by the Plaintiff. At the time of the hearing only two subpoenas were at issue (Wells Fargo and Margavio & Schmidt) as the parties resolved the issues with regard to the AST&T subpoena.

This Court heard arguments on the motion in chambers on April 6, 2015. At the hearing the issues argued centered around the relevancy and scope of the subpoenas at issue.

Gruenloh
Law Firm

9 Broad Street · Suite C
Charleston, South Carolina 29401 *Wm. Michael Gruenloh*

DELIVERED VIA EMAIL ONLY

David B. Marvel
Prenner Marvel
636 King Street
Charleston, South Carolina 29401

May 3, 2013

Re: IWM v. Crest et. al.

Dear Mr. Marvel:

I am in receipt of your clients' discovery responses which were served via email on May 1, 2013. I write to bring to your attention certain deficiencies in your clients' discovery responses and to request that these deficiencies be supplemented within the next seven (7) days. Please consider this a good faith attempt to resolve a discovery dispute without court action. As a general matter, none of the responses are signed. Please forward the original signed responses.

Requests for Production

We have yet to receive responses to Requests to Produce 11 and 13 for Defendant Bridge. Likewise we have not received responses to Requests to Produce 11, 13 and 14 for Girardeau. Finally we have not received responses to Requests to Produce 8, 9,10,11,12, 13, 14, 15, 16, 17, 19, 20, 21 and 22 for Wuertz. These requests for production were all referred to in Plaintiffs' Amended Motion to Compel and are the requests for production referred to in the second paragraph of the consent order to which we previously agreed. Please supplement your responses accordingly.

Also, Request to Produce 3 propounded upon each defendant seeks the production of all documents referred to in answering the interrogatories. I request that you supplement your responses to this request to produce in light of your client's review of documents in answering the interrogatories. Specifically, I request that you produce any documents referred to for the purpose of answering Interrogatories 6 and 7 to Griardeau and Bridge, 9 and 10 to Wuertz and 6 to Crest.

Interrogatories

Interrogatory 6 to Bridge and Girardeau request whether they had any business dealings with certain companies while they were employed by Plaintiff and, if so, request a

description of such business and the names, addresses and telephone numbers of any persons who you dealt with at such businesses. Defendants fail to answer the interrogatory with any particularity as to business dealing with each listed entity and fail to provide the names addresses and telephone numbers of any persons who they dealt with at the listed companies. Please supplement your response accordingly.

Interrogatory 7 to Bridge and Girardeau requests whether they had any business dealings with certain companies since they have been employed by Defendant Crest and/or Dunhill and, if so, request a description of such business, the income any defendant derived as a result of such business and the names, addresses and telephone numbers of any persons who they dealt with at such companies. Defendants simply refer Plaintiffs to their response to Interrogatory 6. This is inappropriate considering the requests seek different information from different timeframes. Moreover, the responses fail to provide the names addresses and telephone numbers of any persons who defendants dealt with at the listed companies and the income derived from such business by any defendant. Please supplement your response accordingly.

Interrogatory 6 to Crest requests whether it currently conducts any business or has an existing business relationship with certain companies and, if so, please describe such business or business relationship; indicate the month and year that such relationship began; state the names, addresses and telephone numbers of the persons at such company with whom you conduct business and state the amount of income that such business has generated for you or any other Defendant in this litigation since April 2010. Defendants fail to answer the interrogatory with any particularity as to business dealing with each listed entity, fails to provide the names addresses and telephone numbers of the persons who it dealt with at the listed companies and fails to provide the income derived from such business since April 2010. Please supplement your response accordingly.

Interrogatory 9 to Wuertz requests whether he had any business dealings with certain companies prior to April 2010 and, if so, requests a description of such business and the names, addresses and telephone numbers of any persons who you dealt with at such businesses. Wuertz fails to answer the interrogatory with any particularity as to business dealing with each listed entity, fails to provide the names addresses and telephone numbers of the persons who he dealt with at the listed companies. Please supplement your response accordingly.

Interrogatory 10 to Wuertz requests whether he had any business dealings with certain companies since April 2010 and, if so, request a description of such business, the income any defendant derived as a result of such business and the names, addresses and telephone numbers of any persons who they dealt with at such companies. Wuertz simply refers Plaintiffs to his response to Interrogatory 9. This is inappropriate considering the requests seek different information from different timeframes. Moreover, the responses fail to provide the names addresses and telephone numbers of any persons who Wuertz dealt with at the listed companies and the income derived from such business. Please supplement your response accordingly.

Interrogatory 13 to Bridge and Girardeau requests the compensation that was offered for each job listed by Defendants. Defendants fail to provide any information regarding compensation. To the extent that Defendants seek to reference their financial statements or tax returns as answer to this question, such reference is inadequate as this request seeks all compensation – including benefits and privileges offered as compensation. Please supplement your response accordingly.

Interrogatory 14 to Bridge and Girardeau requests the compensation defendants are currently being paid for their present employment. Defendants fail to provide any information regarding compensation. To the extent that Defendants seek to reference their financial statements or tax returns as answer to this question, such reference is inadequate as this request seeks all compensation – including benefits and privileges offered as compensation. Please supplement your response accordingly.

Given the past history of your clients' abuse of the discovery process we will be seeking all available remedies and sanctions in the event yet another motion to compel is necessary.

Respectfully,

s/Mike Gruenloh

Wm. M. Gruenloh

David B. Marvel

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans) <edicksonlc@sccourts.org>
Sent: Tuesday, May 21, 2013 12:14 PM
To: David B. Marvel; william gruenloh
Cc: Dickson, Edgar W. Secretary (Peggy Smith); Sarah Pendleton
Subject: RE: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Mr. Marvel,

Thank you for updating the Court. I do not think the status conference is necessary any longer from our perspective.

I do not think he will have any objection to signing the amended pleadings, etc. if they have consent signatures but I will follow up if we need anything additional from you.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)
803-535-2188 (fax)

From: David B. Marvel [mailto:dave@prennermarvel.com]
Sent: Tuesday, May 21, 2013 10:44 AM
To: Dickson, Edgar W. Law Clerk (Andrew C. Evans); william gruenloh
Cc: Dickson, Edgar W. Secretary (Peggy Smith); Pendleton, Sarah
Subject: RE: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Dear Drew,

With the exception of one minor discovery issue that appears to be on its way to resolution, Mike and I have reached agreement on the matters requiring a status conference. Therefore, if it suits Judge Dickson, you may remove it from his calendar. Mike is working on consent orders to amend his complaint, to serve certain out-of state discovery, and setting a t/n/b date which we hope to submit to you shortly and would ask that the Judge sign without need for motions. Please let us know if that presents a problem or if you have any other questions, comments, or concerns. Thank you as always for your assistance with this case.

Best regards,

David B. Marvel
Prenner Marvel, P.A.
636 King Street
Charleston, South Carolina 29403
Ph. (843) 722 7250
Fax (843) 722 7260

dave@prennermarvel.com

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans) [mailto:edicksonlc@sccourts.org]
Sent: Wednesday, May 15, 2013 12:12 PM
To: David B. Marvel; william gruenloh
Cc: Dickson, Edgar W. Secretary (Peggy Smith)
Subject: FW: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Mr. Gruenloh,

Please see the email below I just sent out regarding having to reschedule today's Status Conference.

I apologize for the late notice and inconvenience.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)
803-535-2188 (fax)

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Sent: Wednesday, May 15, 2013 11:51 AM
To: 'Pendleton, Sarah'; mike@gruenlohlaw.com
Cc: Patrick Aulton Chisum; David B. Marvel; Dickson, Edgar W. Secretary (Peggy Smith)
Subject: RE: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Counsel,

We are in the midst of a fairly intensive jury trial this week that we anticipated finishing up sooner than it appears to be headed.

Unfortunately, Judge Dickson will not be available for the Status Conference today—we will have to reschedule it next week.

Can you be available Thursday, May 23, 2013 at 9:30AM?

We will be back in Orangeburg so we ask that you call into our office at that time.

Please advise of your availability.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson

First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)
803-535-2188 (fax)

From: Pendleton, Sarah [mailto:sarah@prennermarvel.com]
Sent: Wednesday, May 15, 2013 9:38 AM
To: mike@gruenlohlaw.com
Cc: Patrick Aulton Chisum; Dickson, Edgar W. Law Clerk (Andrew C. Evans); David B. Marvel
Subject: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Dear Mr. Gruenloh:

Please find attached correspondence from Mr. Marvel for your review with regard to the above captioned case.

Please do not hesitate to contact our office with any questions or concerns.

Sincerely,
Sarah Pendleton

Sarah Pendleton
Legal Assistant
Prenner Marvel PA
636 King Street
Charleston, SC 29403
sarah@prennermarvel.com
(843) 722-7250
(843) 722-7260 Fax

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636 KING STREET
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DANIEL L. PRENNER
DAVID B. MARVEL (SC, GA)
KENNETH G. GOODE, JR.

PHONE: (843) 722-7250
FACSIMILE: (843) 722-7260
www.prennermarvel.com

May 15, 2013

BY EMAIL
William M. Gruenloh, Esq.
Gruenloh Law Firm, LLC
9 Broad Street, Suite C
Charleston, South Carolina 29401

RE: Innovative Waste Management, Inc. v. Crest Energy Partners Group
Case No: 2012-CP-18-1227

Dear Mike,

Thank you for your letter of May 3, 2013, relating to our May 1, 2013 discovery responses. As we previously advised, we contacted the reporter from our April 1, 2013 hearing in response to your letter, in an attempt to obtain a transcript of that proceeding. She replied by telephone call to our office on Friday May 10, 2013, indicating that she wasn't able to complete the transcript at this time, and that she had subcontracted the work to another reporter. That reporter could not be reached on Friday as it was Confederate Memorial Day. She called yesterday and advised that a rush transcript would take more than seven days to complete. Accordingly, this letter reflects my best recollection of the court's directive with regard to your motion to compel and my motion for protective order.

We spent an exhaustive amount of time to log the location, subject matter, and relevance of all 2254 pages of our first document production. In my opinion, the log is self explanatory and any item sought by your Requests for Production can be identified with ease therein. Nonetheless, I will endeavor to respond to your letter as follows:

1) Bridge Response 11– Our prior responses to these Requests were correct as stated. There is no document in Defendant Bridge's possession that states the "terms of employment, start dates, and compensation of his employment with Crest." We did produce certain documents from which that information could be implied, such as tax returns, w-2's, and documents related to his employee benefits. We supplemented those in the May 1, 2013 production with additional wage information.

2) Bridge Response 13 – the Request seeks to compel Defendant Bridge to produce a document that is not in his possession and to his knowledge does not exist. Moreover, it is in the nature of an interrogatory. The most correct answer to this request

would be "None in the possession of this Defendant." However, in a good faith attempt to respond to this request, we referred you to the documents previously produced, which would appear to contain the information you are seeking by the Request.

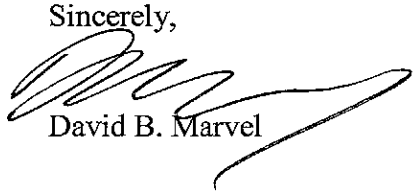
3) Wuertz Responses 8-22 – These Responses are complete and correct responses to your Requests. Defendant Wuertz never employed Defendants Bridge or Girardeau. Defendant Wuertz did not enter into a Joint Venture with the Plaintiff. Defendant Wuertz did not file a counter-claim. Crest Energy Partners, LP may have done all of these things, and I believe you have received every document that would be responsive to those Requests if they had been directed to the correct defendant.

4) With the exception of Paragraph 5 below, the remaining items relate to what I believe is a difference of opinion on what the Court ordered us to do. My argument with regard to the Motion for Protective Order specifically addressed the volume and nature of the interrogatories relating to relationships with the various companies identified therein. My specific recollection is that Judge Dickson stated that we were to generally identify the Defendants' relationships with these companies to the extent they were or had done business with them, what type of business the Defendants were doing with them, and when. I believe we have done that. Further, where possible, that information was clarified by stating in response to the first interrogatory if there was an active business relationship in the time periods addressed in the second interrogatory. Please review the responses again and I believe you will be able to discern the information you seek.

5) Bridge and Girardeau's responses to Interrogatories 13 and 14 are correct as stated. These interrogatories cannot under any reasonable interpretation be construed to request "benefits and privileges offered as compensation." As you are aware, the compensation (i.e. money) made by each of these Defendants in all of the positions depended on the success of their deals and the company in general. Further, with regard to their current employment, they are members of the LLC, have no specific terms of employment, and receive no benefits.

I believe this addresses all of the items stated in your letter of May 3, 2013. I look forward to speaking with you and the Court later today. Until then, I remain, with best regards

Sincerely,



David B. Marvel

DBM/sp
cc: Andrew C. Evans, Law Clerk to The Hon. Edgar W. Dickson

David B. Marvel

From: David B. Marvel <dave@prennermarvel.com>
Sent: Tuesday, May 21, 2013 10:44 AM
To: Dickson, Edgar W. Law Clerk (Andrew C. Evans); william gruenloh
Cc: Dickson, Edgar W. Secretary (Peggy Smith); Sarah Pendleton
Subject: RE: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Dear Drew,

With the exception of one minor discovery issue that appears to be on its way to resolution, Mike and I have reached agreement on the matters requiring a status conference. Therefore, if it suits Judge Dickson, you may remove it from his calendar. Mike is working on consent orders to amend his complaint, to serve certain out-of state discovery, and setting a t/n/b date which we hope to submit to you shortly and would ask that the Judge sign without need for motions. Please let us know if that presents a problem or if you have any other questions, comments, or concerns. Thank you as always for your assistance with this case.

Best regards,

David B. Marvel
Prenner Marvel, P.A.
636 King Street
Charleston, South Carolina 29403
Ph. (843) 722 7250
Fax (843) 722 7260

dave@prennermarvel.com

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans) [mailto:edicksonlc@sccourts.org]
Sent: Wednesday, May 15, 2013 12:12 PM
To: David B. Marvel; william gruenloh
Cc: Dickson, Edgar W. Secretary (Peggy Smith)
Subject: FW: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Mr. Gruenloh,

Please see the email below I just sent out regarding having to reschedule today's Status Conference.

I apologize for the late notice and inconvenience.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)

803-535-2188 (fax)

From: Dickson, Edgar W. Law Clerk (Andrew C. Evans)
Sent: Wednesday, May 15, 2013 11:51 AM
To: 'Pendleton, Sarah'; mike@gruenlohlaw.com
Cc: Patrick Aulton Chisum; David B. Marvel; Dickson, Edgar W. Secretary (Peggy Smith)
Subject: RE: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Counsel,

We are in the midst of a fairly intensive jury trial this week that we anticipated finishing up sooner than it appears to be headed.

Unfortunately, Judge Dickson will not be available for the Status Conference today—we will have to reschedule it next week.

Can you be available Thursday, May 23, 2013 at 9:30AM?

We will be back in Orangeburg so we ask that you call into our office at that time.

Please advise of your availability.

Thank you. Kind regards,

Drew Evans

Andrew C. Evans
Law Clerk, Hon. Edgar Warren Dickson
First Judicial Circuit
P. O. Box 1949
Orangeburg, S. C. 29116
803-535-2187 (phone)
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From: Pendleton, Sarah [mailto:sarah@prennermarvel.com]
Sent: Wednesday, May 15, 2013 9:38 AM
To: mike@gruenlohlaw.com
Cc: Patrick Aulton Chisum; Dickson, Edgar W. Law Clerk (Andrew C. Evans); David B. Marvel
Subject: Innovative Waste Management , Inc. v. Crest Energy Partners Group 2012-CP-18-1227

Dear Mr. Gruenloh:

Please find attached correspondence from Mr. Marvel for your review with regard to the above captioned case.

Please do not hesitate to contact our office with any questions or concerns.

Sincerely,
Sarah Pendleton

Sarah Pendleton
Legal Assistant
Prenner Marvel PA
636 King Street
Charleston, SC 29403

sarah@prennermarvel.com
(843) 722-7250
(843) 722-7260 Fax

From:	Goodstein, Diane S. Law Clerk (Anna R. Welch)
To:	Patrick Aulton Chisum
Cc:	David B. Marvel; william gruenloh; bstevens@dorchestercounty.net; Goodstein, Diane S. Secretary (Karen Parker)
Subject:	RE: 2012CP1801227- Innovative Waste Management Inc VS Crest Energy Partners Gp
Date:	Thursday, May 23, 2013 3:01:05 PM

Counsel,

Judge Goodstein has advised that you do not need to be present for the hearing and we will look to receive your original consent orders. Thank you.

Anna Richter Welch
Law Clerk to The Honorable Diane S. Goodstein
Post Office Box 234
St. George, South Carolina 29477
Fax: (843) 832-0389
Phone: (843) 832-0332

From: gruenlohlaw2@gmail.com [mailto:gruenlohlaw2@gmail.com] On Behalf Of Patrick Aulton Chisum
Sent: Wednesday, May 22, 2013 1:21 PM
To: Goodstein, Diane S. Law Clerk (Anna R. Welch)
Cc: David B. Marvel; william gruenloh
Subject: 2012CP1801227- Innovative Waste Management Inc VS Crest Energy Partners Gp

Anna,

Attached you will find two consent orders in the above referenced matter. I am mailing the same with the original signatures to your attention today. Please let me know when Judge Goodstein is able to sign them.

I am notifying Becky Stevens, in a separate email, that we no longer need the May 24th hearing.

Thanks

Patrick

GRUENLOH LAW

Patrick Aulton Chisom, Esq.
Associate Attorney
T 843.474.1890
F 843.577.0721
E Patrick@gruenlohlaw.com
A 9 Broad Street Charleston, SC 29401

****

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sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

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PRENNER • MARVEL, P.A.
ATTORNEYS AT LAW
PROCTORS IN ADMIRALTY
636 KING STREET
CHARLESTON, SOUTH CAROLINA 29403

DANIEL L. PRENNER
DAVID B. MARVEL (SC, GA)
KENNETH G. GOODE, JR.

PHONE: (843) 722-7250
FACSIMILE: (843) 722-7260
www.prennermarvel.com

August 20, 2013

Via facsimile to (803)535-2188
The Honorable Edgar W. Dickson
Chief Administrative Judge, First Judicial Circuit
P.O. Box 1949
Orangeburg, SC 29116-1949

Re: Innovative Waste Management v. Crest Energy Partners GP, et al.
Case No: 2012-CP-18-1227

Dear Judge Dickson,

I hope this letter finds you well. This case was before you on April 1, 2013, for a hearing on Plaintiff's Motion to Compel and Defendants' Motion for Protective Order. I have attached your June 3, 2013 Order on those motions for your convenience.

We have filed a Motion to Dismiss the Amended Complaint which is scheduled before Judge Goodstein on September 4, 2013. We have also filed another Motion seeking a Protective Order from additional requests for production that we believe are overly burdensome and in violation of your Order. I understand that the Plaintiff intends to file a Motion to Compel relating to those requests. Plaintiff contends that Defendants have not complied with the terms of your Order as it relates to our May 1, 2013 discovery responses, while Defendants assert they satisfied the requirements placed on the record during that hearing.

I apologize for burdening the Court, but the discovery issues are subject to your Order, and Plaintiff's counsel would prefer a hearing on the record over a teleconference. Defendants therefore request that the Motion for Protective Order be placed on your calendar at your convenience. Should you choose to exercise continuing jurisdiction over the discovery issues, we would appreciate it if you would hear the Motion to Dismiss on the same date. Otherwise, I would be happy to ask Ms. Stevens to place that Motion on the September 4 roster.

Thank you for your time and attention to this matter. If you have any questions, comments, or concerns, please do not hesitate to call. With best regards, I remain

Sincerely,

David B. Marvel

/DBM
cc: William M. Gruenloh, Esq.
Frederick John Jekel, Esq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DORCHESTER	)	
	)	CASE NO. 2012-CP-18-1227
INNOVATIVE WASTE MANAGEMENT, INC.	)	
Plaintiff,	)	
versus	)	
	)	ORDER
CREST ENERGY PARTNERS GP, L.L.C, CREST ENERGY PARTNERS L.P., DUNHILL PRODUCTS GP, L.L.C, DUNHILL PRODUCTS L.P., HENRY WUERTZ, EDWARD H. GIRARDEAU, and RODNEY BRIDGE	)	
Defendants.	)	

This matter came before the Court on the Amended Motion to Compel Answers to Discovery filed by Plaintiff, Innovative Waste Management, and the Motion for Protective Order filed by Defendants. Having considered these Motions, along with the Affidavits and Exhibits submitted therewith and the Arguments' of counsel, and now being fully advised,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

1. The Court hereby finds good cause to allow the service of Interrogatories beyond that allowed by Rule 33(b)(9), SCRCP. Accordingly, Defendants shall respond to Plaintiff's previously served Interrogatories no later than ~~May 1, 2013~~ July 1, 2013, subject to Paragraph 3 below;

2. Defendants shall provide any responsive documents to any request for production served upon it that it did not previously answer and provide Plaintiff with a Production Log of their March 20, 2013 Production of Documents and any additional documents produced, consistent with the intent of the final sentence of Rule 34(b), SCRCP, no later than ~~May 1, 2013.~~ July 1, 2013.

1/2

3. In lieu of detailed responses to Plaintiff's Interrogatories and Requests for Production which seek information related to the income and wealth of the Defendants, each Defendant shall provide a sworn or certified financial statement indicating its/his net worth.

4. In the event the parties are unable to amicably resolve any continuing discovery dispute in this matter, they shall request a teleconference with the Court prior to filing or renewing any Motion.

IT IS SO ORDERED!

~~Honorable~~ Edgar W. Dickson

Date: ~~April~~ June 3, 2013

Time: _____

~~St. George~~ Bamberg, South Carolina

2/2

David B. Marvel

From: Patrick Chisum <patrick@gruenlohlaw.com>
Sent: Thursday, September 12, 2013 4:25 PM
To: Goodstein, Diane S. Law Clerk (Anna R. Welch)
Cc: Wm. Michael Gruenloh; David B. Marvel; Fritz Jekel
Subject: IWM v. Crest
Attachments: 9.9.13 MTC Order (Proposed) CA NO 2012CP181227 final edit.docx

Ms. Daniels,

Attached you will find our proposed order regarding Defendants' Motion for Protective Order and Plaintiff's Second Motion to Compel which was heard by the Court on September 9th. We have attempted to confer with Mr. Marvel and, while we have integrated the majority of his comments we have been unable to reach agreement on all issues. Specifically, we understand that Mr. Marvel's position is that the Court granted the defendants motion for protective order in part and also that the Defendants object to paragraph 3.

Please let us know if you need anything further.

Patrick

--
GRUENLOH LAW
Patrick Aulton Chisum, Esq.
Dvvrfldwh#Dwwruqh|
T ;7617:714;<3###
F ;7618::13:54#
E SdwulfnC juxhqorkoz1frp#
A <#Eurdg#Vwhhw#Fkduohvwrq/#VF#5<734#

****

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

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David B. Marvel

From: Sarah Pendleton <sarah@prennermarvel.com>
Sent: Tuesday, September 17, 2013 2:23 PM
To: Goodstein, Diane S. Law Clerk (Anna R. Welch)
Cc: David B. Marvel; Wm. Michael Gruenloh; Fritz Jekel
Subject: Innovative Waste Management v. Crest Energy Partners GP, et al 2012-CP-18-1227
Attachments: 130917 judge goodstein.pdf; 130917 IWM v Crest Proposed Order DBM Edit.docx

Hi Angel:

Please find attached correspondence from Mr. Marvel for Judge Goodstein with attachment with regard to the above referenced case.

Please do not hesitate to contact our office with any questions or instructions.

Sincerely,

Sarah Pendleton

Sarah Pendleton
Legal Assistant
Prenner Marvel PA
636 King Street
Charleston, SC 29403
sarah@prennermarvel.com
(843) 722-7250
(843) 722-7260 Fax

From:	Murphy, Maite Law Clerk (Chandler D. Rowh)
To:	David B. Marvel
Cc:	Mike Gruenloh
Subject:	RE: IWM v. Crest et al. 2012CP1801227
Date:	Monday, April 15, 2019 2:56:07 PM

Sounds good. I will make sure this is notated on her schedule. If anyone is willing to allow us to use their office's conference call number, it would be greatly appreciated. If not, I can just merge the calls on my cellphone.

Best,

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 2:49 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: Mike Gruenloh <mike@gruenlohlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Thank you Chandler, that is perfect. There are likely two or three other issues, so please schedule that. I'll do my best to see if we can't reach some agreement on those in the meantime.

- Dave Marvel

On Apr 15, 2019, at 2:12 PM, Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

> Judge Murphy has indicated that we could hold the conference call next Tuesday, April 23rd at 11 a.m. Also, since my last email, I was able to review the motion and noticed that a date certain trial was being sought. If that is the sole purpose of the conference call, I could help without the need for a conference call, but if other issues needs to be discussed, we can go forward with the conference call next Tuesday at 11 a.m.
>
> Chandler
>
> ---
>
> **From:** David B. Marvel <dave@marvel.lawyer>
> **Sent:** Monday, April 15, 2019 12:33 PM
> **To:** Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
> **Cc:** 'Mike Gruenloh' <mike@gruenlohlaw.com>
> **Subject:** RE: IWM v. Crest et al. 2012CP1801227

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

It appears that Mike and I are both open on Tuesday the 23rd if that suits Judge Murphy. Thank you !

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

<image001.png>

Marvel Et Al., LLC
P.O. Box 22734 Charleston, SC 29413
Ph. 843 853 4877 Fax 843 380 3025 Email dave@marvel.lawyer

From: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Sent: Monday, April 15, 2019 12:18 PM
To: David B. Marvel <dave@marvel.lawyer>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Good Afternoon,

Unfortunately, due to server issues, I am currently unable to access the online public index to view the motion for status conference. Regardless, Judge Murphy's schedule is relatively lax over the weeks beginning on April 22nd and April 29th. If everyone is agreeable, we could hold a conference call during a mutually convenient time on one day during those weeks. If those weeks are inconvenient, please let me know, and I will provide more.

Best,

Chandler

From: Goodstein, Diane S. Law Clerk (Walter Hundley)
Sent: Monday, April 15, 2019 12:06 PM
To: David B. Marvel <dave@marvel.lawyer>; Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Counsel:

Thank you for reaching out to me. Since it was been assigned to Judge Murphy, I will defer to her law clerk, Chandler Rowh, for setting up a status conference. He should contact you soon regarding this matter.

Thank you,

W. Richards Hundley
Law Clerk
Judge Diane S. Goodstein
DGoodsteinLC@sccourts.org
Post Office Box 234
St. George, S.C. 29477
(843) 832 - 0332

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 11:54 AM
To: Goodstein, Diane S. Law Clerk (Walter Hundley) <DGoodsteinLC@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: IWM v. Crest et al. 2012CP1801227

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Dear Mr. Hundley,

I represent the Defendants in this matter, Mike Gruenloh represents the Plaintiff. The case has recently been remitted from the Supreme Court and Plaintiff's counsel requested a status conference, both informally and by motion. To my knowledge, there has been no response from the clerk' office. Prior to the appeal, the case had been designated complex and assigned to Judge Murphy. I agree that the case is in need of a status conference, so I am writing for some direction as to whether that request is properly directed to Judge Goodstein as Chief Administrative Judge or to Judge Murphy, assuming the Court still considers her to be assigned to the case. Any assistance you could provide us would be most helpful. Thank you for your consideration of this matter.

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

Marvel Et Al., LLC

P.O. Box 22734 Charleston, SC 29413

Ph. 843 853 4877 Fax 843 380 3025 Email dave@marvel.lawyer

CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

June 5, 2019

The Honorable Maite Murphy
P.O. Box 802
5200 E. Jim Bilton Blvd.
St. George, SC 29477

Re: Innovative Waste Management v. Crest Energy Partners, *et al.*
Case No.: 2012-CP-18-1227

Dear Judge Murphy,

I hope this letter finds you well. I am writing in advance of the hearing on the Plaintiff's Motion this morning to provide the Court with an update of our efforts, with hope that this will streamline the proceedings.

To clarify several comments in the Plaintiff's Motion, the individual defendants Wuertz and Girardeau have agreed to provide updated personal financial statements in accordance with Judge Dickson's June 3, 2013 order. As the Motion and my letter attached to it indicated, Defendant Wuertz is in the process of having outside accountants prepare a statement of his finances for submission in a Louisiana proceeding. It is my understanding that the certified information in this document will be significantly more expansive than what we previously submitted to Plaintiff's satisfaction in this matter. I was informed yesterday that the accountants are working to complete their work this week and I expect to have a copy to provide by the end of next week.

Defendant Girardeau has significant health problems and is currently in the hospital. He believes that he will be discharged tomorrow or Friday, and he intends to complete a sworn personal financial statement as soon as he is able to return home.

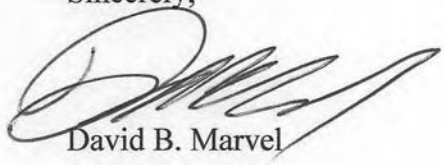
None of the named corporate defendants are currently conducting operations and they have no hard assets. I have taken the liberty of submitting requests (Form 4506-T) to the Internal Revenue Service for the transcripts of any return filed by those entities from 2015 to the present. The IRS will transmit those transcripts directly to Mr. Gruenloh, and I ask that he provide me with copies of those documents once they are received.

As for the Plaintiff's requests relating to the out of state subpoenas, Margavio & Schmitt filed a motion to quash in Louisiana state court arguing points of Louisiana law and

procedure. That firm did, in fact, comply with your April 6, 2015 Order. While that Order denied our Motion to Quash, the order directed the Plaintiff to reissue the subpoenas in accordance with the order, which never happened. The Order did not direct Defendants to do anything, and it would appear that Order is sufficient for submission to the Courts of Harris County, Texas if the Plaintiff intends to pursue any records from Wells Fargo.

Thank you for your attention to this matter. I look forward to appearing before you this morning. With best regards, I remain

Sincerely,



David B. Marvel

/DBM
Cc: Wm. Michael Gruenloh

From: David B. Marvel
To: Wm. Michael Gruenloh; Murphy, Maite Law Clerk (Chandler D. Rowh)
Cc: Fritz Jekel; Ryan Jones; Thomas Drazen
Subject: RE: IWM v. Crest et al. 2012CP1801227
Date: Tuesday, June 11, 2019 12:41:00 PM
Attachments: image001.png
12-1227 Defense mem re MTC3.pdf
Order Granting IWM MTC3 (DBM).docx

Dear Chandler,

I understand that Mr. Gruenloh is out of the office today and unable to provide me with editable versions of the exhibits to his proposed Order. In any event, I believe that the attached Proposed Order, along with the attached memorandum that I will file with the Clerk's office, adequately addresses the issue. Thank you and Judge Murphy for your consideration of this matter.

DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

P.O. Box 22734 - Charleston, South Carolina 29413 - 843.853.4877 - dave@marvel.lawyer

From: David B. Marvel
Sent: Tuesday, June 11, 2019 9:46 AM
To: 'Wm. Michael Gruenloh' <mike@gruenlohlaw.com>; Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>; Thomas Drazen <thomas@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Chandler, I'm working on an edit of the proposed order. Mike, can you please email me the exhibits?

From: Wm. Michael Gruenloh <mike@gruenlohlaw.com>
Sent: Monday, June 10, 2019 2:56 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: David B. Marvel <dave@marvel.lawyer>; Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>; Thomas Drazen <thomas@gruenlohlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

Chandler-

Thank you for bringing the issue on the proposed order for the Motion to Compel to my attention. Paragraph 4 requiring the production of financial statements should apply to all Defendants which is the relief we requested when we were before the court. I have attached a corrected proposed order. Please let us know if Judge Murphy would like an updated number for attorney hours for paragraph 5.

Also attached is a proposed order for Nov 18 date certain. We sent this to defense counsel last week to get input but have not heard back.

Please let us know if you need anything else.

Thank you.

gruenlohlaw.com
Wm. Michael Gruenloh, Esq.
Partner
T 843.577-0027
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E mike@gruenlohlaw.com
A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Mon, Jun 10, 2019 at 1:52 PM Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

> Good Afternoon,
>
> Judge Murphy will grant Plaintiff's proposed order, which was handed up to her last week. Mr.

Gruenloh, when you get a chance, please E-file this Order in Word format and indicate it was heard by Judge Murphy, so the Clerk's office will assign it to her. Also, please correct me if I am wrong, but I believe language regarding Rodney Bridge in paragraph 4 should be removed from since claims against him were previously dismissed with prejudice. Tomorrow morning, I will also mail the signed, original Consent Order, which was also handed up to her, to your office.

Lastly, before I have Judge Murphy sign the Order Setting Date Certain Trial to begin the week of November 18, 2019, I just wanted second confirmation that everyone is in fact agreeable to this.

Best,

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Wednesday, June 5, 2019 8:41 AM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>; Mike Gruenloh <mike@gruenlohlaw.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Good Morning, Please see the attached letter relating to the hearing this morning. Will see you all shortly.

From: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Sent: Tuesday, May 14, 2019 3:48 PM
To: Mike Gruenloh <mike@gruenlohlaw.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>; David B. Marvel <dave@marvel.lawyer>; Ryan Jones <ryan@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Ok, I will go ahead and schedule the hearing at 9:30 on Wednesday, June 5th. Since I don't yet know how the roster will shake out, I will let everyone know as soon as possible if the time of the hearing needs to be changed.

Chandler

From: Mike Gruenloh <mike@gruenlohlaw.com>
Sent: Tuesday, May 14, 2019 3:46 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: Fritz Jekel <fritz@j-dlaw.com>; David B. Marvel <dave@marvel.lawyer>; Ryan Jones <ryan@gruenlohlaw.com>

Subject: Re: IWM v. Crest et al. 2012CP1801227

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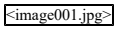
We can be available anytime June 5 or 6th. Thank you

On May 14, 2019, at 12:14 PM, David B. Marvel <dave@marvel.lawyer> wrote:

> The week of June 3 is best for me, I can be available at the Judge's convenience that week. The following week has multiple conflicts.
>
> - Dave Marvel
>
> On May 14, 2019, at 12:10 PM, Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:
>
> > Good Afternoon,
> >
> > Judge Murphy will be presiding over a CP term of court in Dorchester County during the week of June 10th if everyone has availability during that week. Also, if this week is inconvenient for everyone, Judge Murphy will also be in Dorchester County during the week of June 3rd. Even though this will be a General Sessions term of court, I am certain I could squeeze this matter in if necessary.
> >
> > Best,
> >
> > Chandler
> >
> > ---
> >
> > **From:** Wm. Michael Gruenloh <mike@gruenlohlaw.com>
> > **Sent:** Tuesday, May 14, 2019 11:59 AM
> > **To:** Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
> > **Cc:** David B. Marvel <dave@marvel.lawyer>; Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>
> > **Subject:** Re: IWM v. Crest et al. 2012CP1801227
> >
> > ***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******
> >
> > Dear Chandler-

Please see the attached correspondence for Judge Murphy along with a courtesy copy of the Motion to Compel filed by Plaintiff today. We appreciate any assistance you can provide in having this matter scheduled for hearing.

Mike



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Wm. Michael Gruenloh, Esq.
Partner
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E mike@gruenlohlaw.com
A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Tue, Apr 16, 2019 at 10:00 AM Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

> Thank you so much for allowing Judge Murphy to use your office's line.
>
> Best,
>
> Chandler
>
> ---
>
> **From:** Wm. Michael Gruenloh <mike@gruenlohlaw.com>
> **Sent:** Tuesday, April 16, 2019 9:59 AM
> **To:** Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
> **Cc:** David B. Marvel <dave@marvel.lawyer>; Fritz Jekel <fritz@j-

dlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

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Chandler-

This is the number and access code for our conference call at 11am next Tuesday.

Dial - (712) 775-7300
Enter Access Code - 804487#

Mike

<image001.jpg>

gruenlohlaw.com
Wm. Michael Gruenloh, Esq.
Partner
T 843.577-0027
F 843.577.0721
E mike@gruenlohlaw.com
A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Mon, Apr 15, 2019 at 2:56 PM Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

> Sounds good. I will make sure this is notated on her schedule. If anyone is willing to allow us to use their office's conference call number, it would be greatly appreciated. If not, I can just merge the calls on my cellphone.
>
> Best,

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 2:49 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: Mike Gruenloh <mike@gruenlohlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

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Thank you Chandler, that is perfect. There are likely two or three other issues, so please schedule that. I'll do my best to see if we can't reach some agreement on those in the meantime.

- Dave Marvel

On Apr 15, 2019, at 2:12 PM, Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

> Judge Murphy has indicated that we could hold the conference call next Tuesday, April 23rd at 11 a.m. Also, since my last email, I was able to review the motion and noticed that a date certain trial was being sought. If that is the sole purpose of the conference call, I could help without the need for a conference call, but if other issues needs to be discussed, we can go forward with the conference call next Tuesday at 11 a.m.
>
> Chandler
>
> ---
>
> **From:** David B. Marvel <dave@marvel.lawyer>
> **Sent:** Monday, April 15, 2019 12:33 PM
> **To:** Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
> **Cc:** 'Mike Gruenloh' <mike@gruenlohlaw.com>
> **Subject:** RE: IWM v. Crest et al. 2012CP1801227
>
> ***** EXTERNAL EMAIL:** This email originated

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It appears that Mike and I are both open on Tuesday the 23rd if that suits Judge Murphy. Thank you !

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

<image001.png>

Marvel Et Al., LLC
P.O. Box 22734 Charleston, SC 29413
Ph. 843 853 4877 Fax 843 380 3025 Email
dave@marvel.lawyer

From: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Sent: Monday, April 15, 2019 12:18 PM
To: David B. Marvel <dave@marvel.lawyer>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Good Afternoon,

Unfortunately, due to server issues, I am currently unable to access the online public index to view the motion for status conference. Regardless, Judge Murphy's schedule is relatively lax over the weeks beginning on April 22nd and April 29th. If everyone is agreeable, we could hold a conference call during a mutually convenient time on one day during those weeks. If those weeks are inconvenient, please let me know, and I will provide more.

Best,

Chandler

From: Goodstein, Diane S. Law Clerk (Walter Hundley)

Sent: Monday, April 15, 2019 12:06 PM
To: David B. Marvel <dave@marvel.lawyer>; Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Counsel:

Thank you for reaching out to me. Since it was been assigned to Judge Murphy, I will defer to her law clerk, Chandler Rowh, for setting up a status conference. He should contact you soon regarding this matter.

Thank you,

W. Richards Hundley
Law Clerk
Judge Diane S. Goodstein
DGoodsteinLC@sccourts.org
Post Office Box 234
St. George, S.C. 29477
(843) 832 - 0332

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 11:54 AM
To: Goodstein, Diane S. Law Clerk (Walter Hundley) <DGoodsteinLC@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: IWM v. Crest et al. 2012CP1801227

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Dear Mr. Hundley,

I represent the Defendants in this matter, Mike Gruenloh represents the Plaintiff. The case has recently been remitted from the Supreme Court and Plaintiff's counsel requested a status conference,

both informally and by motion. To my knowledge, there has been no response from the clerk' office. Prior to the appeal, the case had been designated complex and assigned to Judge Murphy. I agree that the case is in need of a status conference, so I am writing for some direction as to whether that request is properly directed to Judge Goodstein as Chief Administrative Judge or to Judge Murphy, assuming the Court still considers her to be assigned to the case. Any assistance you could provide us would be most helpful. Thank you for your consideration of this matter.

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

<image001.png>

Marvel Et Al., LLC
P.O. Box 22734 Charleston, SC 29413
Ph. 843 853 4877 Fax 843 380 3025 Email
dave@marvel.lawyer

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From:	David B. Marvel
To:	Ryan Jones; Jbarker@glvlawfirm.com
Cc:	Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject:	Re: Case No.: 2012-CP-18--1227
Date:	Thursday, August 29, 2019 9:07:14 AM
Attachments:	CRESTENERGY_US_2016_ArchiveTaxReturn.pdf CRESTENERGY_US_2017_ArchiveTaxReturn.pdf Executed Personal Financial Statements.pdf

Greetings all. I have attached 2016 and 2017 tax returns for Crest Energy Partners, L.P., along with a reviewed financial statement regarding Henry Wuertz, which also includes related Crest financial information. Stand by, more to come.

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

From: David B. Marvel
Sent: Wednesday, August 28, 2019 11:00 AM
To: Ryan Jones; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Re: Case No.: 2012-CP-18--1227

Thomas / Mike,
I was just speaking with Jake and, while we both have production for you today, it is unlikely to be by noon as requested in your letter. I expected to have this done last week but have been tied up on another matter that has kept me out of the office for the bulk of the last week. Therefore, we respectfully request that you give us until the end of today prior to taking any further action. Thanks.

Best regards,

David B. Marvel
PO Box 22734
Charleston, South Carolina 29413
Ph. 843.853.4877
Fax 843.380.3025
Email: dave@marvel.lawyer

From: Ryan Jones <ryan@gruenlohlaw.com>
Sent: Friday, August 23, 2019 12:46 PM
To: David B. Marvel; Jbarker@glvlawfirm.com
Cc: Thomas Drazan; Wm. Michael Gruenloh; Fritz Jekel
Subject: Case No.: 2012-CP-18--1227

Dear Counsel:

Please see the attached correspondence from Mr. Drazan.

Respectfully,

Ryan Jones
Paralegal
T 843.577-0027
F 843.577.0721
E RYAN@gruenlohlaw.com
A 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403
W www.gruenlohlaw.com

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DAVID B. MARVEL

Attorney at Law • Proctor in Admiralty
Certified Civil and Federal Court Mediator
Admitted to Practice in South Carolina and Georgia

August 30, 2019

Via Email and U.S. Mail
The Hon. Maite Murphy
Dorchester County Courthouse
5200 E. Jim Bilton Blvd.
St. George, SC 29477

RE: Innovative Waste Management, Inc. v. Crest Energy Partners, *et al.*
Case No: 2012-CP-18-1227

Dear Judge Murphy,

I hope this letter finds you well and looking forward to the Labor Day weekend. As you will recall, your Order on my clients' Motion to Alter or Amend was issued on August 1, 2019.

Defendant Girardeau has provided Plaintiff 's counsel everything that appears to have been required by your prior Orders. Jake Barker, reading in copy, is taking over Mr. Girardeau's representation and we expect to submit a substitution of counsel soon.

Defendant Wuertz has provided Plaintiff's counsel with a Reviewed Financial Statement which I understand to be a term of art under the Generally Accepted Accounting Principles of the United States. The Wuertz statement includes the certification that the Crest Entities are dormant (i.e. have no income) and have no assets, and I have attached a copy of a more detailed statement relating to the status of the entity defendants. I have also produced 2016 and 2017 tax returns for the Crest entities, which should give the Plaintiff a complete copy of all Dunhill/Crest returns that have been filed from the time relevant to the claim to the present.

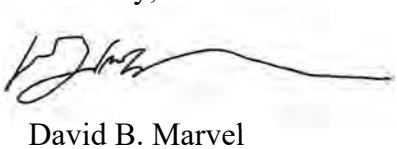
With all due respect to Your Honor's ruling, my remaining clients will be serving Notice of Appeal of your August 1, 2019 Order, inclusive of the Court's Orders of June 18, 2019 and April 6, 2015. I am writing to request that you issue an Order of Contempt to the extent you feel the production recited above violates your Order, in accordance with Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014) and the precedent cited therein.

In my experience, and as noted in Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), a party requesting a contempt order for purposes of appeal typically avoids sanctions under Rule 37, SCRCP, and I therefore respectfully request that the Court issue a Form 4 so stating. If you would like for me to prepare a formal proposed order, I would be happy to do so.

I will be serving Notice of Appeal today. Rule 203, SCACR, allows the Appellant ten days to file the Notice of Appeal, and I respectfully request that you issue an order consistent with this request within that ten-day period so that I may amend the Notice to include your contempt order and the parties can avoid issues relating to appellate jurisdiction, which appear to be debatable in this instance.

Thank you for your consideration of this matter. If I can be of any further assistance, please do not hesitate to contact me at any time. With best regards, I remain

Sincerely,



David B. Marvel

/DBM
cc (*via email*) : Wm. Michael Gruenloh
Frederick Jekel
Jake S. Barker

SEAN K BUTLER, CPA, LLC

August 28, 2019

To Whom It May Concern:

I am a Certified Public Accountant licensed by the State of Texas. In the usual course of business, I have prepared tax returns for Crest Energy Partners, L.P. and am therefore familiar with that entity's corporate structure and financial condition. At the request of attorney David B. Marvel, I offer the following, to the best of my current knowledge and based on information gathered and reported in accordance with generally accepted accounting principles.

1. In August 2010 the entity previously referred to as "Dunhill Products, L.P." formally changed its name to "Crest Energy Partners, L.P.". Crest Energy Partners, L.P. continued use of its FEIN 113648675 and otherwise continued the same partnership identity. Therefore, there is no existing separate company "Dunhill Products, L.P.".

2. In August 2010 the entity previously referred to as "Dunhill Products GP, LLC" formally changed its name to "Crest Energy Partners GP, LLC". Crest Energy Partners GP, LLC continued use of its FEIN 11-3648671 and otherwise continued the same entity status. Therefore, there is no existing separate company "Dunhill Products GP, LLC".

3. In 2016, the charters of both Crest Energy Partners, L.P. and Crest Energy Partners GP, LLC were cancelled by the State of Delaware and were placed in forfeiture by the Texas Secretary of State.

4. Crest Energy Partners, L.P. and, by extension, Crest Energy Partners GP, LLC, have not conducted their usual income producing business since 2015, at the latest. Any income reflected on the Crest Energy Partners, L.P. tax returns for 2016 and 2017 is a result of accounting practices which, among other things, require a taxpayer to declare cancelled debt as income. Crest Energy Partners, L.P. has not filed returns for 2018.

5. Otherwise, Crest Energy Partners, L.P. and Crest Energy Partners GP, LLC have no income or assets and are not conducting any transactional business.

Sean K Butler, CPA

11111 Katy Freeway
Suite 910
Houston, TX 77079-1719

Tel: (713) 973-5715
Fax: (713) 422-2495
www.houstontaxservices.net

From:	David B. Marvel
To:	Wm. Michael Gruenloh
Cc:	Murphy, Maite Law Clerk (Pamela Larson); Ryan Jones; Jake Barker; Fritz Jekel; Thomas Drazan
Subject:	Re: 12-1227 IWM v. Crest Energy Partners, et al.
Date:	Friday, September 20, 2019 2:32:37 PM

Pam, thank you for this. That works for me too. We will see you at 9:30 Monday.

Sent from my iPhone

On Sep 20, 2019, at 2:17 PM, Wm. Michael Gruenloh <mike@gruenlohlaw.com> wrote:

> Pam-
>
> This works for us and we'll be present at 9:30.
>
>
>
> gruenlohlaw.com
> Wm. Michael Gruenloh, Esq.
> Partner
> **T** 843.577-0027
> **F** 843.577.0721
> **E** mike@gruenlohlaw.com
> **A** 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403
>
> **********
>
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>
> On Fri, Sep 20, 2019 at 1:51 PM Murphy, Maite Law Clerk (Pamela Larson) <mmurphylc@sccourts.org> wrote:
>
> > All,
> >
> > Judge Murphy had a chance to review all the materials that have been submitted regarding the request for an expedited hearing. She said that if the parties would like to put their arguments on the record regarding, we will be in a civil trial in Calhoun

County on Monday and she would be willing to hear your arguments while the jury is being sworn in on Monday morning. She will be getting on the bench at 9:30 on Monday morning. Please let me know if this works for you.

Best,

Pam Larson

Law Clerk

The Honorable Maite Murphy

From: Murphy, Maite Law Clerk (Pamela Larson)
Sent: Thursday, September 19, 2019 2:32 PM
To: 'David B. Marvel' <dave@marvel.lawyer>; Wm. Michael Gruenloh <mike@gruenlohlaw.com>
Cc: Ryan Jones <ryan@gruenlohlaw.com>; Jake Barker <Jbarker@glvlawfirm.com>; Fritz Jekel <fritz@j-dlaw.com>; Thomas Drazan <thomas@gruenlohlaw.com>
Subject: RE: 12-1227 IWM v. Crest Energy Partners, et al.

All,

I have spoken with Judge Murphy regarding scheduling an expedited hearing. Unfortunately, she will not be back in Dorchester County for several weeks. In an effort to expedite the motion, she asks that the parties prepare briefs and submit them within the next week. She will rule based on the arguments presented in said briefs. If you have any questions, please feel free to contact me.

Best,

Pam Larson

Law Clerk

The Honorable Maite Murphy

From: David B. Marvel <dave@marvel.lawyer>
Sent: Wednesday, September 18, 2019 1:23 PM
To: Wm. Michael Gruenloh <mike@gruenlohlaw.com>
Cc: Murphy, Maite Law Clerk (Pamela Larson) <mmurphylc@sccourts.org>; Ryan Jones <ryan@gruenlohlaw.com>; Jake Barker <Jbarker@glvlawfirm.com>; Fritz Jekel <fritz@j-dlaw.com>; Thomas Drazan <thomas@gruenlohlaw.com>
Subject: Re: 12-1227 IWM v. Crest Energy Partners, et al.

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Pam, I concur with Mike's comments below, I elected not to file the Notice of Appeal, although it was served, given that judge Murphy indicated she was willing to rule on the issue once briefed. It is my understanding that both service and filing of the NOA are jurisdictional requirements, and therefore there is no reason that the circuit court has been divested of jurisdiction to hear the issue. Thank you.

On Sep 18, 2019, at 1:01 PM, Wm. Michael Gruenloh <mike@gruenlohlaw.com> wrote:

> Thank you Pam. Given that no appeal has been filed, we aren't aware of any reason why Judge Murphy would not have jurisdiction/authority to rule on this matter. If there is any other issue that Judge Murphy would like us to brief please let us know. Given that we are 60 days out for trial we'd like to have the matter heard at the court's earliest convenience.
>
> Mike
>
> <image003.jpg>
>
> gruenlohlaw.com
>
> Wm. Michael Gruenloh, Esq.
>
> Partner
>
> **T** 843.577-0027
>
> **F** 843.577.0721
>
> **E** mike@gruenlohlaw.com

A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Wed, Sep 18, 2019 at 12:51 PM Murphy, Maite Law Clerk (Pamela Larson) <mmurphylc@sccourts.org> wrote:

> Mr. Gruenloh,
>
> I apologize for the delay. Judge Murphy is at the Judicial Conference in Columbia at the moment, so I have not been able to confirm a date for the hearing with her as of yet. I did speak with her about the motion, she has concerns about whether she is able to rule on the matter. I am currently researching the subject for her. I will let you know as soon as we can get it scheduled.
>
> Best,
>
> Pam Larson
>
> Law Clerk
>
> The Honorable Maite Murphy
>
> ---
>
> **From:** Wm. Michael Gruenloh <mike@gruenlohlaw.com>
> **Sent:** Wednesday, September 18, 2019 12:47 PM
> **To:** Murphy, Maite Law Clerk (Pamela Larson) <mmurphylc@sccourts.org>
> **Cc:** David Marvel <dave@marvel.lawyer>; Ryan Jones <ryan@gruenlohlaw.com>; Jake Barker <Jbarker@glvlawfirm.com>;

Fritz Jekel <fritz@j-dlaw.com>; Thomas Drazan <thomas@gruenlohlaw.com>

Subject: Re: 12-1227 IWM v. Crest Energy Partners, et al.

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Hello Ms. Larson.

I wanted to check in with you to see about scheduling an expedited hearing for this matter.

Thank you.

<image003.jpg>

gruenlohlaw.com

Wm. Michael Gruenloh, Esq.

Partner

T 843.577-0027

F 843.577.0721

E mike@gruenlohlaw.com

A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Mon, Sep 16, 2019 at 2:05 PM Ryan Jones <ryan@gruenlohlaw.com> wrote:

> Dear Judge Murphy:
>
> Please see the attached correspondence from Mr. Gruenloh and a courtesy copy of Plaintiff's Motion for Sanctions. If there is anything we can do to assist in the scheduling of the hearing for this motion please let us know.
>
> Thank you.
>
> <image004.jpg>
>
> Ryan Jones
>
> Paralegal
>
> **T** 843.577-0027
>
> **F** 843.577.0721
>
> **E** RYAN@gruenlohlaw.com
>
> **A** 67 MOULTRIE STREET, SECOND FLOOR CHARLESTON, SC 29403
>
> **W** www.gruenlohlaw.com
>
> **********
>
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Dorchester County
First Judicial Circuit
Public Index

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Switch View

Innovative Waste Management Inc , plaintiff, et al VS Crest Energy Partners Gp, LLC , defendant, et al

Case Number:	**2012CP1801227**	**Court Agency:**	**Common Pleas**	**Filed Date:**	**05/11/2012**
Case Type:	**Common Pleas**	**Case Sub Type:**	**Unfair Trade Pra 640**	**File Type:**	**Jury**
Status:	**Appeal**	**Assigned Judge:**	**Murphy, Maite**		
Disposition:		**Disposition Date:**		**Disposition Judge:**	
Original Source Doc:		**Original Case #:**		**Restore Reason:**	**Appeal Granted**
Judgment Number:		**Court Roster:**			

Case Parties Judgments Tax Map Information Associated Cases **Actions** **Financials**

Name	Description	Type	Motion Roster	Begin Date	Completion Date	Documents
Gruenloh, William M	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Marvel, David B.	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Jekel, Frederick John	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Chisum, Patrick Aulton	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Holmes, Brian Ross	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Drazan, Thomas Francis	11/18/2019_JURY_Roster/Notice of Case Roster Publication Sen	Action		10/11/2019-14:02		
Crest Energy Partners Gp, LLC	Appeal/Notice of Appeal to Court of Appeals	Action		10/10/2019-13:20		
Crest Energy Partners Gp, LLC	NEF(10-09-2019 01:20:44 PM) Appeal/Notice of Appeal to C...	Filing		10/09/2019-13:43		
Crest Energy Partners Gp, LLC	NEF(10-09-2019 01:14:30 PM) Letter/Letter	Filing		10/09/2019-13:41		
Crest Energy Partners Gp, LLC	Letter/Letter of August 30, 2019	Filing		10/09/2019-13:14		
Gruenloh, William M	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Chisum, Patrick Aulton	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Drazan, Thomas Francis	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Holmes, Brian Ross	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Jekel, Frederick John	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Marvel, David B.	10/15/2019_MOTION_Roster/Notice of Case Roster Publication S	Action		10/09/2019-10:42		
Innovative Waste Management Inc	NEF(10-02-2019 11:55:13 AM) Motion/Default Judgment	Filing		10/02/2019-14:08		

Innovative Waste Management Inc	**Motion/Default Judgment**	**Motion**		**10/02/2019-11:55**		
Innovative Waste Management Inc	**NEF(10-01-2019 10:31:31 AM) Order/Sanctions**	**Filing**		**10/01/2019-10:31**		
Innovative Waste Management Inc	**Order Granting Motion for Sanctions**	**Order**		**10/01/2019-10:31**	**10/01/2019-10:31**	
Innovative Waste Management Inc	**NEF(09-30-2019 04:32:24 PM) Proposed Order/Sanctions**	**Filing**		**09/30/2019-16:41**		
Innovative Waste Management Inc	**Order/Order Cover Sheet $25.00**	**Filing**		**09/30/2019-16:32**		
Innovative Waste Management Inc	**NEF(09-13-2019 04:19:05 PM) Motion/Sanctions**	**Filing**		**09/13/2019-16:35**		
Innovative Waste Management Inc	**Motion/Sanctions**	**Motion**		**09/13/2019-16:19**	**09/23/2019-16:19**	
Innovative Waste Management Inc	**NEF(08-01-2019 01:27:49 PM) Order/Electronic Form 4**	**Filing**		**08/01/2019-13:28**		
Innovative Waste Management Inc	**Order/Amending 6/18/2019 Order Granting Motion to Compel**	**Order**		**08/01/2019-13:27**	**08/01/2019-13:27**	
Innovative Waste Management Inc	**NEF(07-05-2019 04:10:17 PM) Response**	**Filing**		**07/05/2019-16:16**		
Innovative Waste Management Inc	**Reply to Motion to Alter/Amend**	**Filing**		**07/05/2019-16:10**		
Crest Energy Partners Gp, LLC	**NEF(06-25-2019 01:20:30 PM) Motion/Reconsider**	**Filing**		**06/25/2019-14:11**		
Crest Energy Partners Gp, LLC	**NEF(06-25-2019 01:02:07 PM) Memo/Memo in Opposition**	**Filing**		**06/25/2019-14:09**		
Crest Energy Partners Gp, LLC	**Motion/Alter or Amend Order Granting 3rd Motion to Compel**	**Motion**		**06/25/2019-13:20**	**06/25/2019-13:20**	
Crest Energy Partners Gp, LLC	**Response to Plaintiff's Third Motion to Compel**	**Filing**		**06/25/2019-13:02**		
Innovative Waste Management Inc	**NEF(06-18-2019 11:24:34 AM) Order/Compel**	**Filing**		**06/18/2019-11:24**		
Innovative Waste Management Inc	**Order/Granting Third Motion to Compel**	**Order**		**06/18/2019-11:24**	**06/18/2019-11:24**	
Innovative Waste Management Inc	**NEF(06-14-2019 02:57:06 PM) Notice/Notice of Appearance**	**Filing**		**06/14/2019-14:57**		
Innovative Waste	**Notice/Notice of Appearance**	**Filing**		**06/14/2019-14:57**		

Management Inc						
Innovative Waste Management Inc	**NEF(06-12-2019 04:12:22 PM) Order/Other**	**Filing**		**06/12/2019-16:12**		
Innovative Waste Management Inc	**Order/Set Day Certain**	**Order**		**06/12/2019-16:12**	**06/12/2019-16:12**	
Lloyd, C. Russ	**NEF(05-15-2019 10:31:02 AM) Motion/Compel**	**Filing**		**05/15/2019-10:43**		
Lloyd, C. Russ	**Affidavit/Affidavit of WM. Michael Gruenloh**	**Filing**		**05/15/2019-10:31**		
Innovative Waste Management Inc	**Motion/Compel**	**Motion**		**05/15/2019-10:31**	**06/05/2019-10:31**	
Innovative Waste Management Inc	**NEF(03-14-2019 02:59:14 PM) Motion/Date Certain**	**Filing**		**03/14/2019-15:26**		
Innovative Waste Management Inc	**Motion/Date Certain**	**Motion**		**03/14/2019-14:59**	**06/12/2019-14:59**	
Innovative Waste Management Inc	**NEF(02-27-2019 02:22:16 PM) Remittitur From Supreme Cour...**	**Filing**		**02/27/2019-14:22**		
Innovative Waste Management Inc	**Remittitur From Supreme Court/Reversed and Remanded**	**Filing**		**02/27/2019-14:22**	**02/27/2019-14:22**	
Innovative Waste Management Inc	**Letter to Court of Appeals**	**Filing**		**09/05/2018-08:58**		
Innovative Waste Management Inc	**Appeal/Notice of Appeal (no document)**	**Filing**		**08/31/2018-14:38**	**08/31/2018-14:38**	
Innovative Waste Management Inc	**Order/Recall of Remittitur**	**Order**		**08/31/2018-12:00**	**08/31/2018-14:37**	
Innovative Waste Management Inc	**Remittitur From Court Of Appeals**	**Filing**		**08/22/2018-14:58**	**04/20/2017-14:58**	
Innovative Waste Management Inc	**Notice of Appeal**	**Filing**		**09/17/2015-16:34**	**04/20/2017-16:34**	
Innovative Waste Management Inc	**Form 4/Denying Motion to Reconsider**	**Order**		**08/20/2015-11:03**	**08/20/2015-11:03**	
Innovative Waste Management Inc	**Motion/Reconsider**	**Motion**		**07/31/2015-15:31**	**08/20/2015-15:31**	
Innovative Waste Management Inc	**Order on Pl's Mtn to Vacate Settlement/Restore to Trial Rost**	**Order**		**07/22/2015-14:43**	**07/22/2015-14:43**	
Gruenloh, William M	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/18/2015-11:33**	**04/20/2017-11:33**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/18/2015-11:33**	**04/20/2017-11:33**	

Marvel, David B.	Roster/Notice of Case Roster Publication Sent	Action		06/18/2015-11:33	04/20/2017-11:33	
Chisum, Patrick Aulton	Roster/Notice of Case Roster Publication Sent	Action		06/18/2015-11:33	04/20/2017-11:33	
Chisum, Patrick Aulton	Roster/Notice of Case Roster Publication Sent	Action		05/29/2015-11:42	04/20/2017-11:42	
Marvel, David B.	Roster/Notice of Case Roster Publication Sent	Action		05/29/2015-11:42	04/20/2017-11:42	
Jekel, Frederick John	Roster/Notice of Case Roster Publication Sent	Action		05/29/2015-11:42	04/20/2017-11:42	
Gruenloh, William M	Roster/Notice of Case Roster Publication Sent	Action		05/29/2015-11:42	04/20/2017-11:42	
Innovative Waste Management Inc	Motion/Vacate Settlement Agreement/Restore to Active Docket	Motion		05/27/2015-11:20	06/24/2015-11:20	
Innovative Waste Management Inc	Mediation/Mediation Report/Fully Settled	Filing		04/20/2015-16:01	04/20/2015-16:01	
Gruenloh, William M	Roster/Notice of Case Roster Publication Sent	Action		04/14/2015-10:25	04/20/2015-10:25	
Jekel, Frederick John	Roster/Notice of Case Roster Publication Sent	Action		04/14/2015-10:25	04/20/2015-10:25	
Marvel, David B.	Roster/Notice of Case Roster Publication Sent	Action		04/14/2015-10:25	04/20/2015-10:25	
Chisum, Patrick Aulton	Roster/Notice of Case Roster Publication Sent	Action		04/14/2015-10:25	04/20/2015-10:25	
Innovative Waste Management Inc	Consent Order/domesticate subpoenas	Order		04/06/2015-16:37	04/06/2015-16:37	
Innovative Waste Management Inc	Order on Mtn/Quash Subpoena on Regions Bank	Order		04/06/2015-16:35	04/06/2015-16:35	
Crest Energy Partners Gp, LLC	Order on Motion to Quash/Protective Order	Order		04/06/2015-16:27	04/06/2015-16:27	
Innovative Waste Management Inc	Plaintiffs memorandum in opposition to motion to quash	Filing		04/06/2015-13:11	04/20/2015-13:11	
Innovative Waste Management Inc	Consent Scheduling Order/Mediation d/l 4/8/15	Order		02/19/2015-16:36	02/19/2015-16:36	
Crest Energy Partners Gp, LLC	Rule 11 Certification	Filing		12/12/2014-15:02	04/20/2015-15:02	
Crest Energy Partners Gp, LLC	Motion to Quash and for Protectice order	Motion		12/05/2014-14:10	04/06/2015-14:10	
Crest Energy Partners Gp, LLC	Reply	Filing		06/26/2014-11:46	04/20/2015-14:34	
Innovative Waste Management Inc	Memorandum	Filing		06/17/2014-10:53	04/20/2015-10:53	
Innovative Waste Management Inc	Consent Order Domesticating Out of State Subpoena	Motion		06/09/2014-15:13	06/09/2014-15:13	
Gruenloh, William M	Roster/Notice of Case Roster Publication Sent	Action		06/04/2014-11:40	04/20/2015-11:40	
Gruenloh, William M	Roster/Notice of Case Roster Publication Sent	Action		06/04/2014-11:40	04/20/2015-11:40	
Chisum,	Roster/Notice of Case Roster	Action		06/04/2014-	04/20/2015-	

Patrick Aulton	**Publication Sent**			**11:40**	**11:40**	
Chisum, Patrick Aulton	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/04/2014-11:40**	**04/20/2015-11:40**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/04/2014-11:40**	**04/20/2015-11:40**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/04/2014-11:40**	**04/20/2015-11:40**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/04/2014-11:40**	**04/20/2015-11:40**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**06/04/2014-11:40**	**04/20/2015-11:40**	
Lloyd, C. Russ	**Third Party Def's Motion to Dismiss**	**Motion**		**06/04/2014-11:33**	**06/17/2014-11:33**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:23**	**04/20/2015-16:23**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:23**	**04/20/2015-16:23**	
Chisum, Patrick Aulton	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:23**	**04/20/2015-16:23**	
Gruenloh, William M	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:23**	**04/20/2015-16:23**	
Gruenloh, William M	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:16**	**04/20/2015-16:16**	
Chisum, Patrick Aulton	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:16**	**04/20/2015-16:16**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:16**	**04/20/2015-16:16**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/30/2014-16:16**	**04/20/2015-16:16**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/27/2014-10:48**	**04/20/2015-10:48**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/27/2014-10:48**	**04/20/2015-10:48**	
Chisum, Patrick Aulton	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/27/2014-10:48**	**04/20/2015-10:48**	
Gruenloh, William M	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/27/2014-10:48**	**04/20/2015-10:48**	
Gruenloh, William M	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/23/2014-15:44**	**04/20/2015-15:44**	
Chisum, Patrick Aulton	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/23/2014-15:44**	**04/20/2015-15:44**	
Marvel, David B.	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/23/2014-15:44**	**04/20/2015-15:44**	
Jekel, Frederick John	**Roster/Notice of Case Roster Publication Sent**	**Action**		**05/23/2014-15:44**	**04/20/2015-15:44**	
Crest Energy Partners Gp, LLC	**Motion/Pro Hac Vice for Paxton N. Crew**	**Motion**		**05/23/2014-10:34**	**06/18/2014-10:34**	
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

RECEIVED
May 12 2021
SC Court of Appeals

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

CERTIFICATE OF COUNSEL

I hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material, pursuant to Rule 210(g), SCACR.

David B. Marvel
Counsel for the Appellants

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Apr 02 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz are the Appellants.

APPELLANTS' FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

1) Did the trial court abuse its discretion in compelling the Appellants to execute authorizations for detailed corporate and personal financial records unrelated and irrelevant to the plaintiff's claims?

2) Did the trial court otherwise err as a matter of law in its Order to Compel?

3) Did the trial court abuse its discretion in finding that the Appellants failed to comply with an enforceable discovery order authorizing sanctions under Rule 37, SCRCP?

4) Did the trial court abuse its discretion in striking Appellants' pleadings as a sanction under Rule 37(b)(2)(C)?

STATEMENT OF THE CASE

The dispute underlying this case arose from a serious of three petroleum industry trades involving Respondent Innovative Waste Management ("IWM") and Appellant Crest Energy Partners, L.P., formerly known as Dunhill Products, L.P. ("Crest"). The first transaction involved a shipment of petroleum slops from Montreal, Quebec to St. Charles, Louisiana in December 2009. The second and third transactions involved product that IWM had brokered from certain Shell Oil subsidiaries to Crest, in March and April 2010, from facilities in Mobile, Alabama, and St. Rose, Louisiana.

At the time of these transactions, former Defendant Rodney Bridge and current Defendant Edward Girardeau were employees of IWM. Each voluntarily left their employment with IWM to become employees of Crest in late April 2010.

IWM claims that Crest owes IWM approximately $1,050,000 from the 2010 transactions. IWM also claims that Girardeau, Bridge, Crest, and Crest principal Henry Wuertz engaged in a fraudulent scheme to steal product, clients, and trade secrets.[1] The Crest Defendants deny IWM's claims outright, and further aver that IWM owes Crest over $300,000 from the transactions, after set-off. From these allegations, IWM's Second Amended Complaint asserts ten separate causes of action against the Crest Defendants. IWM asserts three additional claims against Crest, but not against Wuertz Individually (ROA 58-86).

[1] The Complaint named two Crest entities and two Dunhill entities as defendants, along with the individual defendants. Well before the filing of this case, the Dunhill entities executed name changes to become the Crest entities. The undersigned represented all of the defendants below until March 2014 when Defendant Bridge, no longer employed by or with any other defendant, obtained new counsel, entered into a settlement with IWM, and was released. Defendant Girardeau remains a defendant below, is now represented by separate counsel, and is not a party to this appeal. The Crest entities and Wuertz are the Appellants, together referred to as the "Crest Defendants" herein. The defendants named below are collectively referred to as "defendants".

IWM originally filed suit in the United States District Court for the District of South Carolina on April 29, 2011. That case proceeded through discovery before it was dismissed for lack of subject matter jurisdiction on May 10, 2012. On May 11, 2012, IWM filed the instant lawsuit in the Dorchester County Court of Common Pleas, based on the same facts previously alleged in federal court.

As discovery began to proceed in state court, defense counsel (including the undersigned) failed, through conflict and oversight, to respond in a timely fashion to certain Interrogatories and Request for Production that had been served by IWM's counsel on October 2, 2012. IWM filed its first Motion to Compel in State Court on January 31, 2013. (ROA 205-208). The parties discussed and ultimately entered into an initial consent agreement on the Motion to Compel which was submitted as a proposed Consent Order. (ROA 4-6). Thereafter, Defendants filed a Motion for Protective Order (ROA 278-281), and Plaintiff filed an Amended Motion to Compel (ROA 282-290), which was heard by The Hon. Edgar W. Dickson on April 1, 2013 (ROA 110-150). The March 15, 2013 proposed Consent Order was signed by Judge Dickson on April 2 and filed on April 5, 2013 (ROA 4-6). Judge Dickson's Order from the April 1, 2013 hearing was signed on June 3 and filed on August 22, 2013 (ROA 7-10).

Unfortunately, the parties disagreed about the outcome of the April 1, 2013 hearing. Defendants filed a second Motion for Protective Order on August 21, 2013 (ROA 327-329). IWM Filed a Second Motion to Compel in response (ROA 394-412). Although Judge Dickson had previously indicated he was retaining jurisdiction over the discovery issues in this case, those motions were ultimately heard by The Hon. Diane S. Goodstein. Judge Goodstein's Order on the discovery motions was filed on October 3, 2013 (ROA 11-13). Judge Goodstein's Order granting, in part, defendants Motion to Dismiss was filed November 18, 2013 (ROA 14-18).

Judge Goodstein designated the case complex and assigned it to The Hon Maite Murphy on March 10, 2014. (ROA 30-31). IWM filed a Second Amended Complaint that same date, mostly restating the original causes of action. (ROA 58-86). As discovery continued, IWM served certain out-of-state subpoenas on Margavio & Schmidt CPAs in New Orleans, and Wells Fargo Bank, in Houston, seeking detailed financial records of or relating to the Crest Defendants. (ROA 541-548). Defendants sought a third Protective Order by way of a Motion to Quash filed on December 5, 2014 (ROA 539-540). That motion was heard by Judge Murphy on April 6, 2015 and denied by an Order issued that same day (ROA 36-38).

For reasons unrelated to this Appeal, the case was dismissed by the Clerk of Court, Judge Murphy denied IWM's motion to reinstate the case, and then denied IWM's Rule 59 Motion. IWM appealed, which ultimately resulted this Court's opinion in Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC, 423 S.C. 611, 815 S.E.2d 780 (Ct. App. 2018), aff'd as modified, 425 S.C. 568, 571, 824 S.E.2d 214 (2019). The case was remitted to the trial court on February 27, 2019.

Soon thereafter, IWM served a second subpoena on Margavio & Schmidt in New Orleans. On April 17, 2019, Margavio & Schmidt filed a Motion to Quash that subpoena in Jefferson Parish, Louisiana, which was granted on June 10, 2019 (ROA 603-604). On May 15, 2019, IWM filed a Third Motion to Compel in this case, seeking to compel the production of certified financial statements and also seeking to compel the Crest Defendants to execute releases for the Margavio & Schmidt and Wells Fargo documents. (ROA 570-591).

The Third Motion to Compel was heard by Judge Murphy on June 5, 2019 and granted by Order filed June 18, 2019 (ROA 40-42). The Crest Defendants filed a Motion to Alter or Amend

on June 25, 2019 (ROA 667-669) which was partially granted in part but mostly denied by Judge Murphy's Order of August 1, 2019 (ROA 43-45).

On August 30, 2019, undersigned counsel transmitted a letter to Judge Murphy detailing the effort and progress that had been made to comply with her Orders, advising the court that Crest wished to appeal her most recent Orders, and requesting that the court issue a finding of contempt so that the Orders would be immediately appealable (ROA 754-756). In response, IWM filed a Motion for Sanctions. (ROA 672-683) which was heard on September 23, 2019 (ROA 176-204).

On October 1, 2019, Judge Murphy issued an Order granting IWM's Motion for Sanctions and striking the Answers and Counterclaims of the Crest Defendants. (ROA 46-57). This Appeal follows.

STANDARD OF REVIEW

The scope of discovery is generally within the trial court's discretion, and a trial court ruling on discovery matters is reviewed for abuse of that discretion. A trial court's selection of a sanction is likewise usually a matter of discretion. Griffin Grading and Clearing, Inc. v. Tire Service Equipment, 334 S.C. 193, 511 S.E.2d 716 (1999). Appellants bear the burden of establishing that the trial court abused that discretion. Clark v. Ross, 284 S.C. 543, 328 S.E.2d 91 (Ct.App.1985). In determining whether there has been an abuse of discretion all of the facts and circumstances must be evaluated. Edwards v. Ferguson, 254 S.C. 278, 283, 175 S.E.2d 224, 226 (1970).

The trial court must make an effort to impose reasonable discovery limits. The trial court abuses its discretion by ordering discovery that exceeds that permitted by the rules of procedure. Oncology & Hematology Assocs. of S.C., LLC v. S.C. Dep't of Health & Envtl. Control, 387 S.C. 380, 388, 692 S.E.2d 920, 924 (2010). The trial court also will be found to have abused its discretion when a discovery ruling is based on an error of law or a factual conclusion that is without evidentiary support. Fields v. Regional Medical Center Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005). If the trial court's conclusion reached was without reasonable factual support and resulted in prejudice to the rights of appellant, it amounts to an error of law and therefore and abuse of discretion. E.g., Dunn v. Dunn, 298 S.C. 499, 502, 381 S.E.2d 734, 735 (1989); Halverson v. Yawn, 328 S.C. 618 493 S.E.2d 883 (1997); Carlyle v. Tuomey Hosp., 305 S.C. 187, 193, 407 S.E.2d 630, 633 (1991); Fontaine v. Peitz, 291 S.C. 536, 538, 354 S.E.2d 565, 566 (1987).

LAW AND ARGUMENT

The lower court's Order striking the pleadings pursuant to Rule 37(b)(2)(C) was an abuse of discretion because the lower court failed to address the required factors when fashioning the sanction and because the Crest Defendants had not, in fact, violated any proper Order of the court. The prior Order that the Crest Defendants purportedly violated was likewise an abuse of discretion because it was based on errors of law and was an improper collateral review of two prior discovery Orders. As addressed further below, these Orders are unsupported by the record or the law, and therefore the decision of the trial court must be Reversed.

I. THE APPLICABLE RULES OF CIVIL PROCEDURE

The Court is called upon to review several discovery orders under the South Carolina Rules of Civil Procedure. When interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. Ex parte Wilson, 367 S.C. 7, 15, 625 S.E.2d 205, 209 (2005). If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary, and the stated meaning should be enforced. Id.

Rule 26, SCRCP controls the scope of discovery. Generally, a party may seek discovery on any non-privileged matter which is relevant to the case, so long as the information sought appears reasonably calculated to lead to the discovery of admissible evidence. Rule 26 (b), SCRCP.

Rule 33, SCRCP provides that "any party may serve upon any other party written interrogatories to be answered by the party served . . . who shall furnish such information as is available to the party." Rule 33 (b) provides a set of standard interrogatories that may be served in any case. While a party in most cases may also serve general interrogatories, "the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown." Rule 33 (b)(9), SCRCP.

Rule 34, SCRCP allows a party to:

> serve on any other party a request (1) to produce . . . any designated documents, or electronically stored information . . . or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of Rule 26 (b) and which are in the possession, custody or control of the party upon whom the request is served

Rule 34 (a), SCRCP. When a party seeks documents or inspection from a non-party, the discovering party may serve a subpoena on the non-party under Rule 45, SCRCP to "produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified". Rule 45 (1)(c).

The trial court is required to limit the use of use of discovery methods where:

> i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.

Rule 26 (a), SCRCP.

To enforce this limitation, a party (or other responding party) may seek a Protective Order from the Court pursuant to Rule 26 (c). If the moving party establishes good cause for a Protective Order, the court may issue "any order which justice requires", and specifically may order:

> 1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by

> order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Rule 26 (c), SCRCP. In addition to these remedies, a non-party served with a subpoena under Rule 45 may move to quash the subpoena under Rule 45 (c)(3).

Discovery is enforced under Rule 37, SCRCP. If a party fails to answer an interrogatory or fails to respond to a Rule 34 request that inspection will be permitted, "the discovering party may move for an order compelling an answer or . . . inspection in accordance with the request." Rule 37(a)(2). Likewise, if the party served with a request under Rule 34 objects, fails to respond to any part of the request, or fails to permit inspection, "the party submitting the request may move for an order under Rule 37(a). Rule 34 (b), SCRCP. The court may issue an order compelling discovery or "may make such protective order as it would have been empowered to make on a motion made pursuant to Rule 26 (c)." Id.

If a party fails to obey an order compelling discovery, the court "may make such orders in regard to the failure as are just", including issuing:

> (A) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;
>
> (B) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence;
>
> (C) An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party;

Rule 37(b)(2), SCRCP. The court is also empowered to make a finding of contempt under Rule 37(b)(2)(D) or order the party or attorney to pay costs and fees caused by the failure. Rule 37(b), SCRCP.

II. IWM'S INITIAL DISCOVERY REQUESTS VIOLATED THE CIVIL RULES

IWM's first discovery requests in the state court action, served on October 2, 2012, consisted of four sets of Interrogatories and Requests to Produce. (ROA 209-243). One set was directed to the entity defendants collectively, the other three to defendants Wuertz, Bridge, and Girardeau individually. The discovery was certainly comprehensive, covering a swath of general matters but also including pointed inquiries to matters that had arisen in the federal court case. Each set of interrogatories included at least seventy and perhaps over one hundred fifty separate inquiries, depending on how one defines a subpart. Rule 33 (b)(9), SCRCP.

IWMs discovery included two specific lines of inquiry pertinent to this Appeal. The first relates to IWM's claim that Bridge and Girardeau usurped certain corporate opportunities when they left their employment with IWM to become employees of Crest. On this issue, IWM's First Interrogatories to Wuertz, Bridge, and Girardeau directed each of them to:

> State whether you had any business dealings with the following companies prior to April 2010 and, if so, please describe such business and indicate the names, addresses and telephone numbers of any persons who you dealt with at such businesses:
>
> a. Gulf Stream Tanker Chartering
> b. Shell Oil
> c. Amspec L.L.C.
> d. Sunoco
> e. Dow
> f. Alberrnarle
> g. Exxon
> h. United Solutions Inc.
> i. Colonial Pipeline
> j. Texas Molecular
> k. Cross Oil
> l. Esso/Imperial Oil

m. Conoco Phillips
n. CVR Energy Coffeeville Resources
o. Century ORO Signal Oil and Chemical Co.
p. Eastman Chemical
q. Lion Oil, and
r. Macquarie Energy Trading.

(ROA 237-38, 247-48, 255-57) The next interrogatory requested those items of information for the same eighteen companies "since April 2010" (ROA 237-38, 247-48, 255-57).

IWM propounded a corresponding interrogatory to Crest to:

> State whether you currently conduct any business or have an existing business relationship with the [same list of eighteen] companies and. if so, please describe such business or business relationship; indicate the month and year that such relationship began; state the names, addresses and telephone numbers of the persons at such company with whom you conduct business and state the amount of income that such business has generated for you or any other Defendant in this litigation since April 2010.

(ROA 265-66).

IWM's discovery also sought comprehensive information on financial matters of Bridge, Girardeau, and Wuertz unrelated to the facts alleged in the Complaint. This inquiry included the directive for Bridge, Girardeau, and Wuertz to:

> Set forth any and all real and personal property owned, whether individually, collectively, or otherwise owned including with other third-parties. including but not limited to the following;
> a. Any and All domestic or offshore bank accounts. including. checking. savings, money market, or otherwise, in the name of Defendants. including without limitation balances, names of accounts, location of accounts, holder of accounts, etc.;
> b. Any and all certificated of deposits, stock certificates in any publicly held or closely held corporation, as well as any bonds owned by Defendants. membership interest in any and all limited liability companies, partnership interest in any and all partnerships. and any and all interest in any other form of business entity. including joint ventures, whiter domestic or offshore. detailing without limitations and with particularity

percentage of ownership, amount of revenue generated for each entity;

c. Any and all titles to vehicles, mobile homes, or water craft owned by Defendants, detailing a description of each item including year, model, serial number, vehicle identification number, present value and the amount of any lien thereon;
d. Any and all deeds, Mortgages, Notes, Contracts of Sale, and Settlement or closing Statements relating to any real estate transactions involving Defendants;
e. Any and all real property, including without limitation (county. state.jurisdiction), whether domestic or offshore;
f. Any and all life insurance policies owned by Defendants, along with any information pertaining to any loans outstanding on any of said policies;
g. Any and all items of jewelry or art owned by Defendants, including a description of each item and its most appraised evaluation;
h. Any and all lease of realty or personally in favor of Defendants;
i. Any and all books. recorded, documents. or writings concerning the financial status of defendants not herein before specified, including any and all interest in any form of trust, and
j. Any and all tax receipts, tax returned tax supplemental forms, and any and all other documents, forms or letters filed with the United States Internal Revenue Service, and any other State Tax authority within the last five years.

(ROA 240-42, 251-52, 260-62).

All of IWM's First Requests for Production included a request to "[p]roduce all documents referred to by Defendant in answering Plaintiff's First Set of Interrogatories." (ROA 209-214, p. 3). Defendants interpreted this request to require production of documents that were identified in their responses to IWM's Interrogatories. IWM's counsel took the position that this request required the production of any document in the defendants' possession, custody, or control that referenced the subject matter of the response (ROA 144-45(p.35, line 20-p. 36, line 1)).

III. THE DISCOVERY MOTIONS BEFORE JUDGE DICKSON

This case was filed after the parties had been through a year of litigation in federal court, exchanged thousands of documents, taken depositions of all parties and several others, and were

presumably ready for trial. The essential issues were joined in the federal case, and defense counsel was under the impression that the confirmation and supplementation of prior discovery would adequately prepare the parties for a state court trial. Unfortunately, counsel for the defendants (including the undersigned) was unable to respond to IWM's October 2, 2012 discovery in a timely fashion.[2] IWM filed a Motion to Compel, which was scheduled for a teleconference with Judge Dickson on March 15, 2013.

The parties were able to work out an agreement allowing defendants additional time to respond to the discovery and continuing that teleconference until April 1, 2013. That agreement was documented in a March 15, 2013 proposed Consent Order that was ultimately executed by Judge Dickson on April 2, 2013 and filed on April 5, 2013 (ROA 4-6).

With that agreement in place, the defendants began in earnest to prepare responses, but quickly determined that they would be unable to respond to the breadth and scope of discovery as served. IWM's discovery patently violated Rule 33 (b)(9), SCRCP, and was far beyond the scope of what would be expected in this case. The interrogatories also included financial discovery that would have been extensive for supplemental proceedings and was far beyond the scope of pre-trial discovery. With the discovery hearing and status conference already scheduled before Judge Dickson on April 1, 2013, defendants filed a Motion for Protective Order to bring these issues

[2] The primary obstacle to responding to the discovery developed when Bridge and Girardeau resigned from their positions with Crest in September 2012. Counsel was effectively unable to consider responding before the clients determined their preferences and then worked out matters relating to the common/joint defense, potential conflicts, and the defense undertaking. (ROA 110-150 p.12, line 20-p.13, line 6, p. 19, line 12-p.20, line 8). The correspondence in the record and the record also reflects that the undersigned's former firm was completing construction of and opening an office at the time the requests were served. (ROA 110-150, p. 19, lines 6-16). In addition to these issues and the usual vagaries of practice, the undersigned was also heavily involved in the Episcopal Church case, Protestant Episcopal Church in the Diocese of S.C. v. Episcopal Church, 421 S.C. 211, 214, 806 S.E.2d 82, 84 (2017), which was filed on January 4, 2013, completing discovery in Stuart v. Springs Indus., Inc., 957 F. Supp. 2d 644 (D.S.C. 2013), aff'd, 572 F. App'x 191 (4th Cir. 2014), and representing the relator in a sealed False Claims Act matter that required substantial travel.

before the court (ROA 278-281). IWM responded to that Motion with its own Amended Motion to Compel (ROA 282-290).

During the April 1, 2013 hearing, counsel debated the issues in the case and Judge Dickson reviewed the discovery in detail. Judge Dickson recognized that IWM's discovery requests were broad in form and scope, and that they were objectionable in number, but ultimately found that additional interrogatories were warranted given the complexities of the case (ROA 141-, line 19-p. 142, line 4). From the bench, Judge Dickson distilled certain requests to their relevant parts, recognizing the burden of the requests, limiting the volume of what he perceived to be relevant, and ultimately ordering production that was far less onerous than originally served (ROA 144-146, (p. 35, line 15-p. 36, line 5, p. 36, line 11-p. 37, line 2)). As to the requests for discovery of financial information specifically, Judge Dickson found them to be beyond the scope of allowable pre-trial discovery and directed the defendants to provide only "some kind of valid credible statement of [their] worth" (ROA 136-138, (p.27, line 21-p. 30, line 15; ROA 146 p. 37, lines 2-13)). These rulings were encapsulated in the Order signed by Judge Dickson on June 3, 2013 and filed on August 22, 2013 (ROA 7-10).

Defendants not only complied with Judge Dickson's order, they did so far in advance of the date by which they were required to. After the April 1, 2013 hearing, Defendants directed significant resources to IWM's written discovery, in fact providing complete written responses to all by May 1, 2013, sixty days ahead of what Judge Dickson ultimately ordered. On May 3, 2013, IWM's counsel raised several questions about the May 1, 2013 responses (ROA 718-20). Defense counsel responded to those concerns in detail on May 15, 2013 (ROA 721-23). The discovery responses and all of the correspondence among counsel relating to them were provided to Judge Dickson for the Court's review in advance of a telephonic status conference that was scheduled

for May 15, 2013 (ROA 645-647, ROA 643, 651). The Court continued that teleconference, which was ultimately canceled along with a separate hearing that had been set for May 24, 2013 before Judge Goodstein. During this process, IWMs counsel presented Judge Goodstein with several unrelated consent orders, and otherwise all counsel represented to the chambers of both judges that the issues on IWM's discovery were resolved.

It was only on June 3, 2013, after that series of events and resolution, that Judge Dickson signed the Order from the April 1, 2013 hearing. That Order explicitly limited IWM's financial discovery as follows:

> 3. In lieu of detailed responses to Plaintiff's Interrogatories and Requests for Production which seek information related to the income and wealth of the Defendants, each Defendant shall provide a sworn or certified financial statement indicating its/his net worth.

The Order also allowed Defendants a full ninety days from the hearing date to serve the responses that were directed by the Court (ROA 7-10).

IV. THE MOTIONS BEFORE JUDGE GOODSTEIN

IWM filed its First Amended Complaint on July 1, 2013, pursuant to one of the Consent Orders submitted to Judge Goodstein. On July 3, 2013, IWM served Supplemental Requests for Production for all defendants (ROA 330-393). At this point, Judge Dickson's Order on the First Motion for Protective Order and Motion to Compel had been signed, but not yet been entered into the record.

Defendants responded to IWM's First Amended Complaint with a Motion to Dismiss. Defendants also believed that the Supplemental Requests were improper because they were within the scope of Judge Dickson's ruling, and in violation of Rule 43(l), SCRCP. IWM's counsel also began to raise issues with the discovery responses that had been made pursuant to Judge Dickson's Order, which had been addressed and resolved through the May 3 and May 15, 2013

correspondence, subsequent discussion, and accord when the May hearings were canceled and all motions closed without further input from the court.

The Supplemental Requests directed the defendants to:

> 1. Produce an accounting of the income derived by you or any defendant in his lawsuit from the use of the notebooks referred to by Defendant Bridge at page 45, line 12 through page 46, line 16 of his February 2, 2012 deposition attached hereto.

(ROA 333, 349, 360, 379). This request was objectionable because it called for the defendants to produce a document that was not already in existence, which is beyond the scope of Rule 34, SCRCP.

The Supplemental Requests also directed the defendants to:

> 2. Produce all records, including but not limited to any invoice receipts or correspondence regarding any communications you have had with the [eighteen previously identified companies] in the time period between January 2009 and the present [sic]

(ROA 333, 349, 360, 379). This Request is initially objectionable simply because its grammatical structure and/or lack of punctuation prevents the responding party to be able to discern what it is supposed to produce. To the extent the defendants thought they understood what IWM was requesting, they believed it was an overly broad request, and that Judge Dickson had already reviewed and limited that scope of inquiry (ROA 144-145 (p. 35, line 15-p. 36, line 9)).

The Supplemental Requests further directed the defendants to "[P]roduce completed, properly executed originals of" certain official forms to allow IWM to obtain defendants' tax return records from the Internal Revenue Service and/or South Carolina Department of Revenue (ROA 330-393). This request was objectionable because it called for the defendants to produce a document that was not already in existence, and it requested that the Defendants execute official government forms which are protected under applicable laws and regulations. Moreover, the entire

scope of IWM's inquiry into the defendants' financial matters had been explicitly limited by Judge Dickson's ruling and Order.

Given the unreasonable manner in which this appeared to be progressing, Defendants had no choice but to bring the issue back before the lower court for a definitive ruling. On August 20, 2013, Defendants' counsel filed a second Motion for Protective Order, and sent a letter informing Judge Dickson that an issue had arisen relating to his prior ruling that appeared suited for his review (ROA 327-329; 731-733). IWM filed its Second Motion to Compel one week later (ROA 394-412). These motions were ultimately heard by Judge Goodstein during two lengthy and contentious hearings on September 6 and 9, 2013.[3]

As a result of hearing extensive argument on the Motion to Dismiss, Judge Goodstein was well informed on the complexities of the case and the undercurrents of the dispute. Amongst the various defendants, Judge Goodstein dismissed a significant portion of IWM's claims and clarified others. (ROA 14-18). On the discovery motions, Judge Goodstein ordered the defendants to respond in full to the original and supplemental requests relating to the eighteen companies identified as relating to the corporate usurpation claims, and to pay $2,000 in attorney's fees (ROA 11-13; 734, 735). However, Judge Goodstein ruled that defendants were not required to produce documents that were not previously in existence, and again limited IWM's financial discovery requests by refusing to require the defendants to execute releases, and only requiring defendants to "produce the working papers such as W-2's, 1099s, K -1's, etc., used in preparation of Defendants' state and federal tax returns for the period of 2008-2012" (ROA 12).

[3] During the time that this case was previously on appeal, the court reporter for these hearings retired. The current dispute arose more than five years after the hearings, and SC Court Administration stated that it was unable to produce transcripts pursuant to Rule 607(i), SCACR.

Defendants believed, and still believe, that Judge Goodstein inappropriately reviewed an issue that had already been decided by Judge Dickson and that there was no factual basis for monetary sanctions. However, given that there was no practical means of obtaining relief from that ruling, defendants proceeded to devote every resource available to attempt to comply with her Order. At exorbitant expense and substantial personal difficulty for the undersigned, defendants undertook a review of a warehouse full of petroleum trade files from over a decade, culling and producing over 35,000 pages of Crest's otherwise confidential financial and technical documents, served all formal responses required by Judge Goodstein, and promptly paid the monetary sanction. The defendants did not agree with her ruling, but they abided by it.

Although Judge Goodstein signed the Order on the Motion to Dismiss on November 8, 2013, IWM did not file a Second Amended Complaint until March 6, 2014 (ROA 58-86). On March 7, 2014, Judge Goodstein executed an Order designating the case as complex and assigning the matter to Judge Murphy to retain jurisdiction through trial, and discovery continued.

On November 18, 2014, IWM served out of state subpoenas on Wells Fargo Bank and Margavio & Schmidt CPAs. Those subpoenas directed those entities to produce expansive and detailed financial records relating to the Crest Defendants' transactions and tax records (ROA 541-555).

The third-party, out-of-state subpoenas failed to comply with Rule 45, SCRCP on their face, and sought additional financial discovery from third parties that had at this point been addressed and limited by both Judge Dickson and Judge Goodstein.

Defendants filed their third Motion for Protective Order by way of Motion to Quash on December 5, 2014 (ROA 539-540). This Motion was heard and denied by Judge Murphy on April 6, 2015.[4] The Order from that hearing stated as follows:

> The subpoenas issued to Wells Fargo and Accountants Margavio & Schmidt are relevant; The scope of the subpoenas shall be limited to the years 2009 to the present; and Plaintiff shall re-issue the subpoenas in accordance with this Order.

(ROA 36-38).

On April 20, 2015, the case was administratively dismissed. Judge Murphy denied IWM's motion to restore the case, and then denied IWM's Rule 59 motion. IWM appealed those rulings, and this case proceeded through this Court and the South Carolina Supreme Court.

V. IWM'S THIRD MOTION TO COMPEL AND MOTION FOR SANCTIONS

The Supreme Court remitted this case to Dorchester County on February 27, 2019. On March 26, 2019, IWM issued a second subpoena to Margavio & Schmidt, CPAs. That subpoena directed that firm to produce:

> Any and all documents, including but not limited to tax returns. working papers, and P&L statements that pertain to Henry Wuertz. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products GP, L.L.C.. and Dunhill Products L.P. from June 3, 2015 to the present date.

(ROA 583-85). IWM's counsel also informally requested that the defendants provide updated financial statements and execute "authorizations" for IWM's counsel to transmit to Margavio & Schmidt and Wells Fargo, to accompany an extraordinarily broad subpoena *duces tecum* (ROA 586-88). During a telephonic status conference on April 23, 2019, the parties advised the court

[4] This hearing took place in chambers in Orangeburg County. For reasons not readily apparent today, there is no record of the parties' argument.

that these issues were outstanding, but those issues were not argued or fully addressed.[5] On April 17, 2019, Margavio & Schmidt filed a Motion to Quash that subpoena in Jefferson Parish, Louisiana, which was granted on June 10, 2019 (ROA 604-05).

On May 7, 2019, undersigned counsel transmitted a letter to IWM's counsel following up on the discussion during the April 23, 2019 teleconference. That letter clearly stated that Wuertz was willing to provide the requested financial statement, that the Crest entities were no longer in business and therefore had nothing to produce, and that none of the Crest Defendants were willing to execute the requested releases/authorizations (ROA 591-92). In response, IWM filed its Third Motion to Compel on May 14, 2019 (ROA 570-591).

IWM's Motion was heard on June 5, 2019 (ROA 151-175). In advance of the hearing, counsel transmitted correspondence to the court to advise of the progress that had been made following the April teleconference (ROA 740-41). During that hearing, IWM's counsel misrepresented the record to the court in several aspects, misstating the content of Judge Dickson's ruling and the basis for IWM's Second Motion to Compel, stating that the Crest Defendants had been sanctioned twice previously for discovery violations, stating that Wuertz had been unwilling to produce current financial statements, and stating that the undersigned's letter to the court the morning of the hearing contradicted the prior correspondence (ROA 154-155 (p. 4, lines 11-13; p. 5, lines 10-20)).

[5] The lower court's orders, which were drafted by IWM's counsel and therefore track the language of IWM's motions, state that the Crest Defendants agreed to produce the requested documents by May 6, 2019. The record is clear that there was no such agreement. (ROA 151-175 (p. 10, lines 8-14 ("after our teleconference -- my letter was May 7th. We talked about me getting back to him by May 6th, and I was unable to do that, but I was able to get to him in a pretty thorough letter, which he has attached to his motion, the following day.")). IWM's counsel's transmittal correspondence of May 14, 2019 further establishes that he made the request during the teleconference, but the parties remained at impasse as of May 14, 2019.

IWM's counsel also made the remarkable admission that IWM was simply unwilling to follow the proper procedure to obtain the documents it was seeking, stating:

> Your Honor has ordered that the information is relevant, discoverable, but we go into another jurisdiction, and then we have to fight there. And so I don't want to say that they're thumbing their nose at the authority of this Court, but that's what's happened. So the gist of our argument on the bank records and on the CPA records that we've previously requested by subpoena is that we don't want to have to play any more games. We don't want to have to go fight in Louisiana or Texas. What we want is for them to sign authorizations that allow us to get their records.

(ROA 157(p. 7, lines 13-24)).

The court was made aware through oral argument on June 5, 2019, through counsel's letter of June 5, 2019, and through counsel's letter to IWM's counsel of May 7, 2019, that Wuertz was willing to provide a certified financial statement, that Crest had no financial statement to provide, and that the defendants did not intend to object to the subpoenas to Wells Fargo and Margavio & Schmidt if they were issued and served in the jurisdictions where they should have been issued and served.[6] Counsel even signed a Consent Order for IWM to serve the Wells Fargo Subpoena in Texas according to proper procedure, and provided it to IWM's counsel, who then provided it to the court, all in open court (ROA 172-174 (p. 22, line 3-p. 23, line 9; p.24, lines 7-12)).

The court granted IWM's Third Motion to Compel on June 18, 2019 (ROA 40-42). The Court's Order purported to require the Crest Defendants to execute "authorizations, appended as Exhibits", within seven days of the order, but there were no exhibits attached to the Order. The

[6] Counsel's letter to the Court references IRS Forms 4605-T that were transmitted to the IRS. At the time, counsel was aware that the Crest Entities were no longer conducting business, but unaware that they had not filed tax returns for several years. The record does not reflect that the IRS ever responded to the request. On information and belief, if there was any defect in the request, it would have been returned to the taxpayer's address on the taxpayer's most recent return as of the date of the request, which is vacant. In any event, IWM declined the offer for that information.

Order also directed the Crest Defendants to provide current certified financial statements, and to pay $1,950 in costs and fees.

The Crest Defendants filed a timely Motion to Alter or Amend on June 25, 2019 (ROA 667-669). Among other things, that Motion pointed out that the court's Order was defective in that it referred to exhibits that were not attached. On August 1, 2019, the court issued a Form 4 Order allowing the entities to produce financial statements executed by "an accounting professional", but otherwise denying the Crest Defendants' Motion (ROA 43-45).

The Crest Defendants continued to work to provide IWM with available documents that should have satisfied its requests for information, and which were supplementary to previous discovery responses, to no avail. Defendant Wuertz produced a Reviewed Financial Statement, and Crest produced a CPA letter attesting to the entities' status, income, and assets. On August 19, 2019, the Crest Entities filed its 2016 and 2017 tax returns, and those were provided to IWM's counsel on August 29, 2019. (ROA 752-53).

All of these efforts were detailed in correspondence to Judge Murphy on August 30, 2019 (ROA 754-756). That letter also stated:

> With all due respect to Your Honor's ruling, my remaining clients will be serving Notice of Appeal of your August 1, 2019 Order, inclusive of the Court's Orders of June 18, 2019 and April 6, 2015. I am writing to request that you issue an Order of Contempt to the extent you feel the production recited above violates your Order, in accordance with Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014) and the precedent cited therein.
>
> In my experience, and as noted in Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), a party requesting a contempt order for purposes of appeal typically avoids sanctions under Rule 37, SCRCP, and I therefore respectfully request that the Court issue a Form 4 so stating. If you would like for me to prepare a formal proposed order, I would be happy to do so.

(ROA 754).

IWM responded to the Crest Entities' efforts by filing a Motion for Sanctions on September 13, 2019 (ROA 672-683). The Motion was heard on September 23, 2019 (ROA 176-204). As noted above, the Crest Defendants had all produced CPA/GAAP financial statements, and the Crest entities had also produced its recently filed tax returns. During the hearing, IWM's counsel described the only outstanding issue as "they have not produced is the one thing this Court has ordered them to produce; that is, the signed authorizations"[7] (ROA 187 (p. 12, line 12-14)). More accurately described, IWM argued that the Crest Defendants had not executed the non-existent authorizations that the lower court failed to attach to its Order, despite explicitly referencing them as attachments, and despite that being one of many salient points of the Motion to Alter or Amend.

During that hearing, the following exchange occurred on the record:

> MR. MARVEL: I want to make sure I understand [the court] correctly. The financial statements that you ordered us to produce that he was just referring to -- those have been produced. I just want to be clear on that, to make Mr. Gruenloh clear on that. We have produced a statement from the accountant as to Mr. Wuertz. We produced a statement from the same accountant as to entities that says that they are not in business. I believe that we have, not substantially, but I believe we have absolutely complied.
>
> THE COURT: Counsel, any response to that?
>
> MR. GRUENLOH: They have provided financial statements, Your Honor. We think it's more of the same. They have provided what they want us to see. That is the reason why we asked for the authorizations. That is why Judge Goodstein back in 2013 ordered them to comply with that request.

[7] Admittedly, the Crest Defendants also did not pay the monetary sanction, viewing it as an outcome derived issue that should ultimately be overturned. No objection was raised to the amount, but the financial disclosures directly before the court should have provided sufficient evidence to the court on the Crest Defendants' ability to pay that sanction See Estate of Watson v. Babb, No. 2007-UP-329 at *3 (Ct. App. June 25, 2007)

(ROA 202-203 (p. 27, line 20-p. 28, line 11)).

Of course, Judge Goodstein actually denied IWM's motion to compel the defendants to produce executed releases, instead Ordering the defendants themselves to produce the working papers behind their tax returns, only through the year 2012, which they did (ROA 11-13). That was but one of the many continued misrepresentations of the record, asserted by IWM, accepted by the court without factual support, and incorporated into the court's ruling.

On October 1, 2019, the court granted IWM's Motion for Sanctions (ROA 46-57). The Court's Order, once again tracking the misleading references of the Plaintiff's Motion, made findings of fact unsupported by the record, found that the Crest Defendants generally engaged in a pattern of discovery abuse in bad faith and had willfully failed to comply with the court's June 18 and August 1, 2019 Orders.[8] The court therefore sanctioned the Crest Defendants by striking their Answer and Counterclaims, thereby leaving them in default on IWM's claims and leaving Crest without a remedy for the now seven-figure loss that it suffered from the 2009 transaction with IWM.

VI. THE CIRCUIT COURT ABUSED ITS DISCRETION IN GRANTING SANCTIONS

a. The Circuit Court Granted IWM's Third Motion to Compel In Error

When IWM filed its Third Motion to Compel, there was no Order or pending discovery requiring a response from the Crest Defendants. IWM served its expansive financial discovery in October 2012. (ROA 209-214). In April 2013, Judge Dickson limited the scope of that discovery to requiring defendants to "provide a sworn or certified financial statement indicating its/his net worth" (ROA 7-10). After IWM served additional discovery and sought to compel defendants to

[8] C.f. Davis v. Parkview Apartments, 409 S.C. 266, 296, 762 S.E.2d 535, 551 (2014) (Pleicones, J., Concurring) ("the trial judge's specifications of deficiencies in their compliance with the Discovery Order are simply too vague, and rely too heavily on mere references to memoranda prepared by respondents' counsel, to support the finding of contempt.").

execute releases so that IWM could directly obtain their tax records, Judge Goodstein expanded the scope of financial discovery only to require the defendants to produce the working papers behind their returns, and only for the years 2008-2012.

Judge Murphy's April 6, 2015 Order declared (erroneously) that most of the financial discovery IWM sought from third parties was relevant, but that order did not require the Crest Defendants to do anything in response to that finding, and the Order only applied to those documents from 2009 to "the present", not through trial, and therefore through the date of the Order[9] (ROA 32-35). IWM never served any additional or supplementary requests on the Crest Defendants after 2013. IWM certainly could have sought review of either prior discovery order during its prior appeal. Accordingly, Judge Murphy's 2019 review of the 2013 Orders from Judge Dickson and Judge Goodstein was an improper collateral attack on a prior interlocutory order, in violation of the long-standing rule that one judge of the same court cannot overrule another. See, e.g., Charleston Cnty. Dep't of Soc. Servs. v. Father, 317 S.C. 283, 288, 454 S.E.2d 307, 310 (1995).

In 2019, IWM requested that the Crest Defendants supplement the responses that Judge Dickson Ordered, which the Crest Defendants agreed to do when the information was available, and which they did. When IWM demanded that they execute authorizations for additional discovery from Margavio & Schmidt and Wells Fargo, the Crest Defendants refused for several reasons.

Regardless, there was no discovery request or court Order to the Crest Defendants that asked, let alone required, the execution of the authorizations. Judge Goodstein had already ruled

[9] Under the UIDDA, issues of relevance are decided by the court where the action is pending. See Union Carbide Corp. v. Martin, 349 S.W.3d 137, 141 (Tex. App. 2011). Accordingly, that statement in Judge Murphy's Order was sufficient to address any objection to the subpoena by the Crest Defendants in any other jurisdiction. .

that the Crest Defendants were not required to execute authorizations, and she had limited the period for which the Crest Defendants were required to produce their own working papers (ROA 7-10). That ruling was correct because there is no rule of discovery that allows a party to demand that another party execute authorizations for the disclosure of documents in the hands of third parties.

While there is no South Carolina opinion directly on point, federal courts interpreting Fed. R. Civ. P. 34 concur that a party cannot invoke Rule 34 (a) to require another party to create or prepare a new or previously non-existent document. See, e.g., Mir v. L-3 Commc'ns Integrated Sys., L.P., 319 F.R.D. 220, 227 (N.D. Tex. 2016); Alexander v. Federal Bureau of Investigation, 194 F.R.D. 305, 310 (D.D.C.2000). See also Waters v. Stewart, Case No. 4:15-CV-4143-RBH-TER (D.S.C. Feb. 28, 2017). Likewise, Rule 34 does not provide a means by which to request that a party sign a release or to compel production of a signed release. See, e.g., Equal Emp't Opportunity Comm'n v. Thorman & Wright Corp, 243 F.R.D. 426, 429 (D. Kan. 2007) (court would not grant a motion to compel the plaintiff to sign a release because the Rule 34 cannot command a signature and the defendant had not attempted to issue a subpoena); Klugel v. Clough, 252 F.R.D. 53, 55 (D. D.C. 2008); Clark v. Vega Wholesale Inc., 181 F.R.D. 470, 471 (D. Nev. 1998); Neal v. Boulder, 142 F.R.D. 325 (D.Colo.1992).

Notably, in Barnette v. Adams Bros. Logging, Inc., 586 S.E.2d 572 (S.C. 2003), the Supreme Court found that a circuit court did not abuse its discretion by dismissing claims by a plaintiff who repeatedly refused to sign a medical release authorization to allow a plaintiff access to her social security records. The Barnette Court did not directly face or address the question of whether the lower court actually had the authority under Rule 34, SCRCP to order a party to execute a release. More importantly, it is one thing to require a party to execute a release of

information to support a claim that the party has put at issue; it is an altogether different issue for a court to order a defendant to execute a blanket release in favor of a plaintiff on an issue that a defendant contests. See McKnight v. Blanchard, 667 F.2d 477, 481-82 (5th Cir. 1982). It is yet another altogether unique step to say that that a defendant who has not put a question at issue can be compelled under Rule 34 to execute a previously non-existent release for a plaintiff to obtain financial discovery from a third party outside of the court's jurisdiction.

There are many reasons why it makes bad policy for the courts to require litigants to execute document releases. For example, requiring the Crest Defendants to execute "authorizations", particularly of the breadth that IWM would likely seek, would impinge privacy concerns that were outside of the Crest Defendants' authority to release. That issue would seem to be best addressed by the responding party, i.e., Wells Fargo and Margavio & Schmidt, in the jurisdictions where the production is sought. There is a procedure for IWM to follow if they want to serve out-of-state subpoenas. IWM made the choice to sue Texas defendants in South Carolina. There is nothing unreasonable or abusive about requiring IWM to follow the proper interstate procedures if it wants to engage in interstate discovery in its case against citizens of other states.

A state court subpoena may only be served "at any place within the State." Rule 45 (b)(2), SCRCP. Cf. Pennoyer v. Neff, 95 U.S. 714 (1877). Accordingly, for IWM to properly compel the production of documents from an entity in another state, it must do so under that state's laws. To facilitate matters such as this, both South Carolina and Louisiana have enacted the Uniform Interstate Depositions and Discovery Act. La. Rev. Stat. § 13:3825; S.C. Code Ann. § 15-47-100 ("UIDDA"). While Texas has not enacted the UIDDA, it has enacted its own procedural rules reaching the same result. See Tex. Civ. Prac. & Rem. Code § 20.002; Union Carbide Corp. v. Martin, 349 S.W.3d 137, 141 (Tex. App. 2011).

The UIDDA requires the courts of South Carolina to defer to the provisions of the Louisiana Act, and thereby respect the right of the Louisiana courts to assert and control such procedural jurisdiction over Louisiana citizens within state boundaries. S.C. Code Ann. § 15-47-160 ("In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among the states that enact it."). The only procedure by which IWM could obtain discovery directly from Margavio & Schmidt was through compliance with Louisiana's UIDDA. Apparently, IWM refused to do so and, when challenged on the issue in Louisiana by a non-party outside of the lower court's jurisdiction, IWM waived its commensurate right to appear and argue or correct the problem. Once a Louisiana state court ruled that IWM was not entitled to discovery from Margavio & Schmidt, the lower court in this case was without jurisdiction to address the issue by way of requiring the Crest Defendants to execute releases for IWM to obtain the documents outside of the proper intrastate procedure.

With regard to the Wells Fargo subpoena, IWM did not even try to comply with Texas law, despite being ordered by Judge Murphy in 2015 to reissue its subpoena in compliance with her limitations. IWM went so far as to argue in its Third Motion to Compel that "third parties in foreign jurisdictions should not be permitted to use procedural means to prevent document productions ordered by this Court" (ROA 576).

Having failed to follow the proper procedure for out-of-state discovery on all counts, IWM has no remedy against an adverse party in a South Carolina court. See, e.g., Lerner v. Newmark & Co. Real Estate, Inc., 178 A.D.3d 418, 421 (N.Y. App. 2019) (the UIDDA "provides a mechanism for disclosure in New York for use in an action that is pending in another state..., not the other way around"); Catalina Mktg. Corp. v. Hudyman, 212 A.3d 997, 1000 (N.J. App. 2019) ("[A]n application to the court for a protective order or to enforce, quash, or modify a subpoena ...

must comply with the rules or statutes of th[e discovery] state and be submitted to the court ... in which discovery is to be conducted") (*citations omitted*); Yelp, Inc. v. Hadeed Carpet Cleaning, Inc., 770 S.E.2d 440, 444 (2015) (*collecting cases*) ("enforcement of a subpoena seeking out-of-state discovery is generally governed by the courts and the law of the state in which the witness resides or where the documents are located.").

Finally, the June 18 and August 1, 2019 Orders directing the Crest Defendants to execute authorizations was based on an error of law because IWM's requests exceeded the scope of relevancy for pre-trial discovery. In addition to the fact that the court's Order directed the Crest Defendants to execute releases that were not already in existence, and therefore outside the scope of Rule 34, SCRCP, IWM expressly sought the authorizations for financial discovery that address its concerns about collectability, which is beyond the scope of pre-trial financial discovery. IWM repeatedly conceded that fact before the lower court (ROA 151-157, p. 1 ("Defendants now claim that they are not collectible."); ROA 153, (IWM issued the first M&S subpoena because "defendants were claiming they were not collectible"); ROA 154, p 4, lines 3-5 ("We were talking about relevance, but we were also talking back then about the defendants' collectability."); ROA 157 p. 6, lines 3-4 ("We talked about issues of collectability." ROA 157 p. 6, lines 23-25 ("they're relevant, and they also go to matters of collectability")).

Defendants never contested the idea that evidence of net worth is relevant to a party's ability to pay punitive damages. In fact, defense counsel was the one to raise the idea of providing certified or sworn financial statements before Judge Dickson as an alternative to the abusive discovery that had been served by IWM (ROA 37 (p. 37, lines 2-17)). Evidence of net worth is relevant to a defendant's ability to pay, "extrapolations from net worth" are not. Branham v. Ford Motor Co., 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (quoting State Farm Mut. Auto. Ins. Co. v.

Campbell, 538 U.S. 408, 427, (2003)). Issues relating to collectability must be confined to post-judgment proceedings, particularly in cases such as this where the adverse parties conduct business in the same industry. See Ex parte Wilson, 367 S.C. 7, 14, 625 S.E.2d 205, 208 (2005) (post-judgment discovery may not be conducted without the issuance of a writ of execution or the commencement of supplementary proceedings).

At the hearing on its Motion for Sanctions, IWM's counsel referred to the Crest Defendants' most recent financial production as "more of the same" (ROA 204 (p. 28, lines 6-10)). One would think that "more of the same" would be sufficient as IWM did identify one single discrepancy or false statement in the extensive financial data provided prior to the first appeal. IWM also did not identify a single relevant, let alone admissible, item of evidence that it had obtained as a result of Margavio & Schmidt's production of 1674 pages of financial data in response to the April 6, 2015 Order. It strains the concept of relevance to say that the breadth of IWM's financial discovery in 2015 was reasonably calculated to lead to the discovery of admissible evidence. That same depth of discovery for records between 2015 and 2020, relating to claims from 2009 and 2010, bears no relation to pre-trial relevance. South Carolina law requires limited particularity in pleading and a scintilla of evidence to get to trial before a jury. Those entrenched standards should not be abused to provide every litigant capable of filing a Complaint or an Answer the ability to obtain unfettered access to a decade's worth of raw financial data from their adversaries, as IWM demanded and the lower court Ordered.

b. The Circuit Court's Findings of Fact Have No Support in the Record

Judge Murphy's October 1, 2019 Order granting IWM's Motion for Sanctions, supplied by IWM's counsel to the Court, track's the language of IWM's Motion and is therefore replete with findings that are without support in the record. Those findings form the basis of the court's ruling

that the Crest Defendants had engaged in a pattern of willful discovery abuse. It was an abuse of the court's discretion to order sanctions under Rule 37(b)(2)(D) based on these findings, as they are not supported by the record and there were no other grounds for striking the pleadings.

The erroneous findings include the following:

1) The Court's Order found that, in the March 15, 2013 proposed Consent Order, "Defendants' promised to provide discovery requests, including the financial information sought by Plaintiff and to pay Plaintiff's attorney's fees as a sanction for its discovery abuse" (ROA 47, p. 2). This statement not only lacks support in the record, it includes at least three statements that are directly contradicted by the record and the language of the March 15, 2013 Order itself (ROA 4-6).
2) The Court's Order found that "[t]he Defendants failed to comply with the Consent Order and Plaintiff filed an Amended Motion to Compel" (ROA 47, p. 2). This statement is contradicted by the record. In fact, the Defendants filed a Motion Protective Order because IWMs discovery was patently in violation of Rule 33 (b)(9), SCRCP. When defendants filed their motion, and IWM subsequently filed their Amended Motion to Compel, the court had not yet issued an Order that could have been violated.
3) The Court's Order found that "[t]he Court granted that motion on August 22, 2013 and ordered Defendants to produced [sic] discovery including sworn, certified financial statements." Judge Dickson did not grant IWM's Motion, in fact drastically limiting the discovery sought by IWM. The Order also, at defense counsel's suggestion, Ordered "sworn *or* certified" financial statements (ROA 7-10, ROA 146, (p. 37, lines 13-17)). There is no evidence in the record that the Crest Defendants violated that Order.

4) The Court's Order found that "Plaintiff was forced to file a second Motion to Compel on August 27, 2013 when Defendants again failed to comply with the Court's Order." In fact, defendants filed a Second Motion for Protective Order because IWM continued to engage counsel with issues that had been raised and resolved by the prior motions and Judge Dickson's ruling (ROA 327-393). IWM subsequently filed a Motion to Compel, after the hearing had been set, and ten days before it was heard.
5) The Court's Order found that "[i]ssues from the failed settlement were appealed and the case was stayed pending and [sic] order of the Court of Appeals for three years." While this statement is technically correct, the Order implies that the court's denial of IWM's motions to restore the case and IWM's appeal of those rulings, is somehow fault attributable to the Defendants.
6) The record directly contradicts the Order's description of the April 22, 2019 teleconference, and there is no record that defendants ever agreed to provide any responses prior to May 7, 2019 (ROA 49, p. 4).
7) There is no evidence in the record supporting the Court's finding that "[p]laintiff had previously provided defense counsel with copies of these authorizations."
8) The Court's Order contains a paragraph about a previously served, but not filed, Notice of Appeal that the court found was "intended to cause delay." There is no evidence of intent to delay or actual delay relating to this issue. Moreover, the record directly contradicts that finding. Counsel's letter to the Court of August 30, 2019 informed the court of its intent to appeal and requested a finding of contempt to expedite that process. The circuit court Certificate of Service referenced by the Court's Order was exactly correct, the Notice was placed with a courier on August 30, 2019. Moreover, the Notice was actually delivered to

IWM's counsel on September 3, 2019, which would have constituted effective and timely service under Rule 262, SCACR. The record establishes that Counsel actually declined to file the Notice of Appeal after service but before the time designated by Rule 262(d)(1)(B) as the court had indicated it was willing to rule further, and counsel wanted to avoid any contention that the appeal was interlocutory. (ROA 760-761).

9) The description of the September 23, 2019 hearing contained in the Order is contrary to the record in that defense counsel never argued or stated that defendants had "substantially complied with the court's order", that "he could not file the threatened appeal . . . without being held in contempt", or that "he had been ordered by his client to appeal <u>any order</u> issued by the Court." (ROA 52, p. 7 (emphasis in original); ROA 169-170 (p. 19, line 8-p. 20, line 3; p. 20, lines 11-13; p. 28, lines 2-4)). Judge Murphy's Order actually tracks the argument of IWM's counsel, who stated "I expect that Mr. Marvel will get up and say, "I gave him all the tax returns. That is substantial compliance" and "[t]here is no doubt that whatever order issues from this Court, it is going to be appealed by Mr. Marvel" (ROA 160 (p. 10, lines 13-14; p. 11, lines 4-6)). Undersigned counsel's only such statement on the last point was "[w]ith all due respect, Your Honor, I understand your ruling, and I disagree with it. My clients have asked me to appeal it" (ROA 164 (p. 20, lines 11-13)).

The findings of fact cited above are nothing more than a recitation of IWM's argument, which was without support in the record when IWM's counsel said it, and without support in the record when signed by the court. The Order cites these statements, and no others of material consequence, in support of the finding that the Crest Defendants had engaged in willful, bad faith, dilatory conduct in disobeying the Court's discovery orders. This is an abuse of discretion, and there is no basis for the Court's issuance of sanctions otherwise.

c. Seeking a Motion for Protective Order is not discovery abuse.

The recent orders of the lower court fail to recognize or credit the fact that each of these discovery disputes was brought before the court by way of defendants' motions. Defendants were faced with what they perceived to be excessive and overly burdensome discovery propounded by a plaintiff that was wholly unwilling to compromise, reconsider its positions, or give any quarter. Defendants had no choice but to file three separate Motions seeking separate protective orders (ROA 278-281, ROA 327-329, and ROA 539-540).

A Motion for Protective Order is the only available resource available in the trial court to protect a party from overbearing or abusive discovery. Other courts routinely find it appropriate for a party to move for a protective order when faced with interrogatories in greater number than allowed by their civil rules. See Eleazer v. Ted Reed Thermal, Inc., 576 A.2d 1217, 1220 (R.I. 1990); Hanover Ins. Co. v. Lama, 629 N.Y.S.2d 945, 946 (N.Y. App. 1995). Some courts have even found that motions for protective orders must be filed to contest discovery that is perceived to be excessive and burdensome. See Capacchione v. Charlotte-Mecklenburg Sch., 182 F.R.D. 486, 492-93 (W.D.N.C. 1998).

In each instance a substantive discovery dispute arose prior to 2019, that dispute was raised by the defendants through the only means they had available, a Rule 26 (c) Motion for Protective Order. Moreover, those motions were not dilatory or without cause, each of those motions had legitimate grounds that were recognized as such by the court at the time they were argued. Unquestionably, there were too many discovery disputes in the lower court, but that has only resulted from the breadth and frequency of the discovery propounded by IWM. The Crest Defendants, and litigants in general, should not be later penalized for exercising their rights under the civil rules. The imposition and choice of sanctions under Rule 37 should serve to protect the

rights of discovery provided by the Rules of Civil Procedure. Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542–43, 489 S.E.2d 679, 682 (Ct. App. 1997). Presumably, that includes the rights conferred by Rule 26 (a) and (c), SCRCP.

d. Defendants Prevailed on their first Motion for Protective Order

A Motion to Compel under Rule 37(a) has but one positive outcome for the movant: "an order compelling an answer . . . in accordance with the request." Otherwise, the court has "denie[d] the motion in whole or in part" and may issue a Protective Order "pursuant to Rule 26 (c)." Rule 37, SCRCP.

A motion for a Protective Order under Rule 26 (c), in turn, has a broad range of positive outcomes for the movant. As stated, the ruling court can order:

> one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Rule 26 (c), SCRCP.

The initial discovery issue that arose in this case was documented by the filing of IWM's first Motion to Compel on January 31, 2013. (ROA 205-208). That motion was based solely on the defendants' failure to respond to the discovery, which was the only issue addressed and resolved by Judge Dickson's first Order. Thereafter, defendants' first Motion for Protective Order and the argument before the court addressed defendants' substantive concerns, namely the number

of IWM's interrogatories, the breadth of certain requests, and the issues raised by the financial discovery.

On the first question, Judge Dickson agreed the interrogatories violated Rule 33 (b)(9) and were therefore objectionable.[10] While Judge Dickson found that the nature of the case warranted additional interrogatories, that resolution was defense counsel's suggestion, is exactly what Rule 33 (b)(9) requires prior to the service of more than fifty general interrogatories, and is expressly reflected in the Order (ROA 7-10). On the third question, Judge Dickson's ruling explicitly limited the scope of the discovery sought by IWM. While the scope of his ruling on the second issue was a subject of later debate re-visited by Judge Goodstein, defendants' actual responses were not under Judge Dickson's review during the April 1, 2013 hearing. They were, however, provided to Judge Dickson before he issued his Order on the hearing and the motion was closed with all scheduled hearings cancelled.

Judge Dickson's Order from the April 1, 2013 hearing provides the outcomes identified by Rule 26 (c)(2) and/or Rule 26 (c)(4), as the interrogatories were to be answered "only on specified terms and conditions" and "the scope of the discovery [was] limited to certain matters". Accordingly, his ruling can only be characterized as granting the defendants' Motion for Protective Order or denying IWM's Motion to Compel "in whole or in part". Most importantly for the issues before this Court, Judge Dickson's ruling and Order did not imply, or come close to finding, that defendants had violated the March 15, 2013 Proposed Consent Order. That was the only question put squarely before the court by IWM's Amended Motion to Compel.

[10] The rules limit the number of interrogatories for a reason; parties should be encouraged to "make prudent and constructive use" of their interrogatories. The rules also allow and require some form of judicial scrutiny preventing the excessive use of such discovery. Fair Housing Center of Central Indiana, Inc. v. Welton, Case No. 1:18-cv-01098-JMS-DLP, 2019 WL 2422594 (S.D. Ind. June 10, 2019).

e. Defendants also prevailed on their Second Motion for Protective Order

Defendant's Second Motion for Protective Order, again filed before IWM's Second Motion to Compel, asked the court to restrict IWM's Supplemental Requests and enforce the "Protective Order. . . limiting the scope of financial discovery" (ROA 327-329). IWM's Second Motion to Compel sought to require defendants to respond in greater detail to the October 2, 2012 discovery, and also sought an Order for defendants to respond in full to IWM's Supplemental Requests for Production (ROA 394-412).

On the substance of those issues, Judge Goodstein's Order required defendants to respond further to the original interrogatories relating to the eighteen companies identified as relating to the corporate usurpation claims (ROA 11-13). Otherwise, defendants prevailed on the substance of their Motion as the court limited the scope of IWM's Supplemental Requests to documents already in existence, denied IWM's demand that defendants execute releases for their tax records, and limited the scope of financial discovery to "the working papers such as W-2's, 1099s, K -1's, etc., used in preparation of Defendants' state and federal tax returns for the period of 2008-2012" (ROA 11-13).

Judge Goodstein's collateral review of Judge Dickson's ruling was unfortunate, and the assessment of monetary sanctions an error of fact and/or law. Nonetheless, however the Order is stated, it cannot be characterized as granting IWM's Second Motion to Compel, because it did not Order "an answer . . . in accordance with" IWM's requests. Rather, the Order required defendants to respond "only on specified terms and conditions", "only by a method other than selected by" IWM, and to a "scope of discovery . . . limited to certain matters", each of which is a Rule 26 (c) remedy. Therefore, the Order denied the Motion to Compel in part, and granted a Protective Order.

f. IWM was the only Party that violated Judge Murphy's April 6, 2015 Order

Defendants' Motion to Quash and for Protective Order was addressed to IWM's third party subpoenas to Margavio & Schmidt CPA and Wells Fargo Bank. (ROA 520-521). The court's ruling was direct and succinct, finding the discovery relevant, and ordering IWM to re-issue subpoenas limited in scope "to the years 2009 to the present"[11] (ROA 32-35). The lower court's 2019 orders failed to appreciate the fact that *the April 6, 2014 Order did not direct the Crest Defendants to do anything.* Therefore, there is no possibility that the Crest Defendants violated the April 6, 2015 Order, then or now.

The only directive issued by the Court on the Motion to Quash was to IWM, not the defendants. The Order explicitly states, "Plaintiff shall re-issue the subpoenas in accordance with this Order." It was uncontested below that IWM never re-issued either subpoena (ROA 123 (p. 14, line 21-p.15, line 10)). The April 6, 2015 Order did not compel the defendants to do anything. As a result, there was nothing related to that Order for IWM to compel the Crest Defendants to do, and nothing for the Court to find that the Crest Defendants failed to do, willfully or otherwise.

g. The Circuit Court's Ruling and Order is a Failure to Exercise Discretion

When a party fails to obey an order to provide or permit discovery, Rule 37(b)(2)(C), SCRCP gives a trial court the power to "make such orders in regard to the failure as are just," including an order dismissing the action or proceeding, or any part thereof. Temple v. Tec–Fab, Inc., 370 S.C.383, 390, 635 S.E.2d 541, 544 (Ct.App.2006) (citing In re Anonymous Member of the S.C. Bar, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001)). This is a powerful way for trial judges to "use their authority to make sure that abusive deposition tactics and other forms of discovery

[11] Margavio & Schmidt complied with the Order, as its counsel was monitoring the status of the motion following service of the first subpoena. (ROA 165-166 (p. 15, line 24-p.16, line 1)).

abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law." Id.

While the decision to impose sanctions under Rule 37 falls within the sound discretion of the trial court, "the sanction should be aimed at the specific conduct of the party sanctioned and not go beyond the necessities of the situation to foreclose a decision on the merits of a case." Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., Inc., 334 S.C. 193, 198, 511 S.E.2d 716, 719 (Ct.App.1999). When issuing sanctions, the trial court must weigh the nature of the discovery, the discovery posture of the case, any willfulness on behalf of the non-disclosing party, and the degree of prejudice to the party seeking discovery. If the trial court fails to weigh the required factors, it has demonstrated a failure to exercise discretion, which amounts to an abuse of discretion. Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.E.2d 755 (2007).

When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is nevertheless harsh medicine that should not be administered lightly. Karppi v. Greenville Terrazzo Co., 327 S.C. 538, 542–43, 489 S.E.2d 679, 682 (Ct. App. 1997) (citing Orlando v. Boyd, 320 S.C. 509, 466 S.E.2d 353 (1996); Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Before invoking this severe remedy, the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants. Id. The sanction imposed should be reasonable, and the court should not go beyond the necessities of the situation to foreclose a decision on the merits of a case. Id. (citing Balloon Plantation v. Head Balloons, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990). Whatever sanction is imposed should serve to protect the rights of discovery provided by the Rules of Civil Procedure. Id.

As an initial, and perhaps dispositive, matter, the authorizations were never actually attached to the court's Orders of June 18 or August 1, 2019, although explicitly referenced, and therefore the Order itself fails to direct the Crest Defendants to produce the documents that are the subject of IWM's Motion and the court's October 1, 2019 Order (ROA 40-42; ROA 43-45; ROA 46-57). Without the exhibits, there was nothing for the Crest Defendants to sign. If there was nothing for the Crest Defendants to sign, the Crest Defendants could not have violated an Order by failing to do so. If the Crest Defendants did not violate an Order, there is no basis for Rule 37 sanctions.

On its merits, the October 1, 2019 Order referred to the law and factors for analysis cited above without actually considering or addressing any of them, other than the lower court's perception that the Crest Defendants had willfully disobeyed the Court's orders (ROA 46-57). Accordingly, the sanctions order was a result of the trial court's failure to exercise its discretion and is therefore an abuse of discretion. Jamison v. Ford Motor Co., 373 S.C. 248, 644 S.E.2d 755 (2007).

The trial court failed to consider the nature of the discovery, which is simply the Crest Defendants' failure to provide two executed authorizations.[12] Even if the lower court had the authority to order the defendants to execute the authorizations, there is no basis for doing so here where IWM failed or refused to properly serve subpoenas to obtain the documents directly from the persons in possession of them. Even if the authorizations were relevant to the Crest Defendants' net worth, or narrowly tailored to lead to the discovery or admissible evidence, the circuit court should have tailored the sanction to address the Crest Defendants' failure to comply. For one

[12] "[W]hat they have not produced is the one thing this Court has ordered them to produce; that is, the signed authorizations." (ROA 187 (p. 12, lines 12-14)).

example, the court could have issued a sanction under Rule 37(b)(2)(A) or 37(b)(2)(b), and simply instructed the jury that, if it chose to award punitive damages, it could presume that the Crest Defendants had the ability to pay any judgment. Arguably, the court could have removed ability to pay from the jury instructions altogether and issued an Order *in limine* prohibiting any such evidence. Whatever the appropriate remedy, striking the pleadings was excessive.

As for the discovery posture of the case, the case was certainly close to and ripe for trial. Given that the Motion to Compel did not seek information for pre-trial discovery purposes, this factor does not lend itself to a harsh sanction.

Finally. as discussed in detail above, the court's findings that the Crest Defendants willfully disobeyed the court's orders are unfounded. While the Crest Defendants did refuse to supply executed release/authorizations for Wells Fargo and Margavio & Schmidt, they did so only because the ruling was in error and intended to appeal the issue. The Crest Defendants also made a formal request for the court to hold them in contempt, so they could appeal that ruling under the procedures described in Davis v. Parkview Apartments, 409 S.C. 266, 296, 762 S.E.2d 535, 551 (2014) and Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), which the court refused.[13] Defendants provided IWM and the court in great detail the information that it was capable of providing, until such time as they had no recourse but to appeal. (ROA 662-663, ROA 576-579, ROA 589-591). Given that Defendants responded to each discovery dispute by bringing the issues front and center before the court, with candor and detail, these are not circumstances of willful disobedience warranting sanctions under Rule 373(b)(2)(C).

[13] Taken together, the Davis and Metts opinions seem to outline a means to escape error preservation and appealability issues relating to interlocutory discovery orders. The Crest Defendants believe they have preserved the error and the opinions for review and have followed the correct procedure to do so under these circumstances. Regardless, situations such as these call for the South Carolina appellate courts to provide clearer guidance and/or an alternative method for a litigant to obtain review of such pre-trial discovery orders, particularly in designated complex cases.

Finally, it is difficult to see how IWM was prejudiced by the Crest Defendants' actions. If IWM had complied with the April 6, 2015 Order, and served the subpoenas in accordance with proper interstate discovery procedure, it would have the documents it seeks. Moreover, as the documents address collectability and are not relevant for purposes of trial, there is no prejudice to IWM unless and until IWM obtains a judgment.

If the circuit court had considered and addressed these factors in the process of making its ruling and in its October 1, 2019 Order, that Order could not be supported by the facts or the law. Regardless, the court made factual findings that have no support in the record and, in addressing those facts, failed to even consider those factors. As a result, the trial court abused its discretion. The Order granting Sanctions, and the discovery orders leading to it, must be reversed.

CONCLUSION

This appeal asks this Honorable Court of Appeals to do nothing more than review the discovery orders of the circuit court to allow for fairness, efficient pre-trial procedure, and the enforcement of the Rules of Civil Procedure as they are written. The Circuit Court abused its discretion when it granted IWM's Third Motion to Compel, and it compounded that error and further abused its discretion by striking the pleadings of the Appellants as a sanction. These discovery issues are properly presented for review by this Court. For all of the Reasons stated herein, and to be stated hereafter, Appellants respectfully request that this Honorable Court hold that the circuit court's June 18, 2019 Order erroneously compelled financial discovery, that the circuit court's October 1, 2019 is without factual support in the record and improperly sanctioned the Appellants, REVERSE the circuit court's Orders of June 18, August 1, and October 1, 2019, and remand for further proceedings not inconsistent with this Court's Opinion.

RESPECTFULLY SUBMITTED:

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April 1, 2021
Charleston, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Hon. Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

Innovative Waste Management Inc., Respondent,
v.
Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,
Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

(1) Is the only order on appeal the October 1, 2019 Order granting sanctions?

(2) Did the trial court abuse its discretion in granting the October 1, 2019 Order striking Appellants' pleadings?

(3) If Appellants are allowed to challenge prior discovery orders contrary to *Davis v. Parkview Apartments*, would any of Appellants' arguments materially affect the trial court's grant of sanctions in the October 1, 2019 Order?

APPELLANTS' STATEMENT OF ISSUES ON APPEAL

(1) Did the trial court abuse its discretion in compelling the Appellants to execute authorizations for detailed corporate and personal financial records unrelated and irrelevant to the plaintiff's claims?

(2) Did the trial court otherwise err as a matter of law in its Order to Compel?

(3) Did the trial court's abuse its discretion in finding that the Appellants failed to comply with an enforceable discovery order authorizing sanctions under Rule 37, SCRCP?

(4) Did the trial court abuse its discretion in striking Appellants' pleadings as a sanction under Rule 37(b)(2)(c)?

STATEMENT OF THE CASE

Appellants Crest Energy Partners Group, LLC, Crest Energy Partners LP, Dunhill Products, LP and Henry Wuertz's (hereinafter referred to as Appellants) Notice of Appeal purports to appeal the following four orders of the Hon. Maite Murphy (hereafter referred to collectively as "the Appealed Orders"):

(1) October 1, 2019 Order Granting Plaintiff's Motion for Sanction Pursuant to Rule S.C.R.C.P. 37 (R. pp. 46-57);

(2) August 1, 2019 Order Amending June 18, 2019 Order Granting Motion to Compel (R. pp. 43-45)

(3) June 18, 2019 Order Granting Third Motion to Compel (R. pp. 40-42), and

(4) April 6, 2015 Order Denying Defendants' Motion to Quash and for a Protective Order (R. pp. 36-38).

(Appellants' Notice of Appeal)

As an initial matter, only one of the three orders, the October 1, 2019 Order striking Appellants' pleadings, is properly before the Court. As set out below, Appellants failed to appeal any order prior to the October 1, 2019 Order granting sanctions. The prior Orders, and their findings, are the "law of the case" and are not properly preserved for review. Likewise, Appellants' attempts to re-litigate the March 15, 2013, June 3, 2013 and September 27, 2013 orders of the trial court, none of which are listed in their Notice of Appeal, and none of which are subject to this Appeal. This Court need not go outside the bounds of the October 1, 2019 Order and the Record on Appeal to find that the granting of sanctions and striking of Appellants' pleadings was a proper exercise of the trial court's discretion.

The October 1, 2019 Order is not, as Appellants suggest, inconsistent with any rule of law or prior order of the trial court. The order granting sanctions is a proper exercise of the trial court's discretion and well founded in law and fact in response to Appellants' documented discovery abuse, willful noncompliance with court orders, and constant manipulation of the system.

Appellants' brief includes a statement of the case and procedural history that are inaccurate and as such Respondents provide the following factual and procedural history to properly contextualize this Appeal.

Factual and Procedural History

This case stems from Respondent's allegation that Appellants failed to pay the Respondent for over $1 million dollars of oil that Appellants acquired by fraudulent means from Respondent in April of 2010. (R. pp. 66-72, p. 558) In addition, Appellants interfered with the existing and prospective business relationships of the Respondent, all for the purpose of taking Respondent's clients and misappropriating millions of dollars in business from Respondent. (R. pp. 66-72, p. 558-559) Respondent's expert Oliver Wood calculated that Appellants' conduct have caused Respondent no less than $12,000,000.00 in economic losses. (R. p. 570-571)

This case has a long history. Respondent originally filed its complaint in South Carolina District Court on April 29, 2011 styled *Innovative Waste Management v. Crest Energy Partners Group, LLC, Dunhill Products Group, LLC, Henry Wuertz, Edward H. Girardeau and Rodney Bridge* 2:11-cv-01023-RMG. Respondent pled various causes of action, including but not limited to breach of contract, fraud, unjust enrichment, violations of the South Carolina Unfair Trade Practices Act, conversion, and tortious interference with contractual relationships. In the federal court action, the Appellants failed to provide full answers to discovery and the Respondent was forced to file a Motion to Compel. (R. pp. 480-481) The federal action was later dismissed on

jurisdictional grounds for lack of complete diversity. The key piece of evidence in the Federal Court's jurisdictional determination was a South Carolina Driver's License that Appellants failed to produce until after nearly a year of litigating the case. (R. p. 113, lines 7-15)

The underlying case was re-filed in Dorchester County Court of Common Pleas on May 11, 2012. Respondent pled the same causes of action as had been pled in the federal action and later amended its complaint to add certain causes of action including interference with prospective contractual relationships. (R. pp. 58-86) Respondent alleged that Appellants had stolen its trade secrets, clients, and business and that Appellants had thereby enriched themselves at the Respondent's expense. (R. pp. 58-86) Appellants filed a counterclaim alleging economic damage for an entirely different transaction between Appellants and Respondent that was completed prior to the events set out in the Amended Complaint. (R. pp. 91-93 ¶ 38-56) Since both Respondent and Appellants made allegations that they had suffered economic loss and damage due to the conduct of the other party, discovery relating to both parties' financial information was necessary. (R. pp. 559-564)

On October 2, 2012 Respondent served Appellants with Respondent's First Requests for Production and Interrogatories, including requests for Appellants' financial information. (R. p. 283, pp. 221-234, pp. 253-269) Respondents sought Appellants' banking and tax accounting records and also included requests pertaining to the amount of business (by dollar and volume) that Appellants had done with certain third-party, business clients alleged by Respondent to have been taken by Appellants. (R. pp. 283-286, pp. 221-234, pp. 253-269)

The Appellants did not provide any response to the discovery requests and Respondent sent Appellants' counsel a S.C.R.C.P. 11 letter and attempted to confer (R. pp. 283-286, p.481, ¶¶7-10) In response, Appellants' counsel represented that responses to the overdue discovery requests were

forthcoming. (R. pp. 283-286, p. 481, ¶10) Appellants did not provide responses as promised and Respondent filed its first Motion to Compel on January 31, 2013. (R. pp. 205-208)

Shortly after the Respondent's First Motion to Compel was set for a hearing, Appellants agreed to and signed a Consent Order. (R. pp. 4-6) The Consent Order was agreed to and signed by counsel for both parties on March 15, 2015 and provided that "the Defendants shall serve responses, including all responsive documents and to all outstanding discovery requests on or before Wednesday March 20, 2013." [1] (R. pp. 4-6) Also, the Order deferred the hearing on Plaintiff's Motion to Compel that was scheduled for March 15, 2013 and noted that it had been rescheduled to April 1, 2013. (R. pp. 4-6) Finally, the Order noted it was without prejudice to Plaintiff's right to move to compel additional response should it contend that Defendants' responses are inadequate. (R. pp. 4-6) In addition, Appellants' Counsel agreed to pay Respondent's Counsel's attorney fees related to bringing the Motion to Compel. (R. p. 481, ¶ 14)

The Appellants failed to comply with the terms of the March 15th Consent Order. (R. pp. 282-290) Specifically, Appellants provided an un-indexed CD containing 2254 pages of documents which were largely duplicate copies of nonresponsive documents previously produced by Respondent in the Federal Court action. (R. p. 481, ¶ 14) Appellants failed to answer any of the interrogatories and instead filed a Motion for a Protective Order. (R. p. 482, ¶17-20) The Motion for Protective Order raised objections regarding the number of interrogatories posed – an issue that was not raised while the March 15th Consent Order was being negotiated – and was inconsistent with the portion of the Consent Order requiring Appellants to provide a response to all outstanding discovery by March 20, 2013. (R. p. 398) In addition, Appellants made no attempt to confer

[1] The Consent Order was entered into and executed by counsel for the parties on March 15, 2013 but for reasons unknown was not signed by Judge Dickson until April 2, 2013 and was not stamped as filed until April 5, 2013.

pursuant to S.C.R.C.P. 11 prior to the filing of the Motion for Protective Order. (R. p. 482, ¶ 17-20)

Respondent filed an Amended Motion to Compel and incorporated its response in opposition to Appellants' Motion for Protective Order within its Amended Motion to Compel. (R. pp. 282-290) On April 1, 2013 a hearing was held before Judge Dickson on Respondent's Amended Motion to Compel and Appellants' Motion for Protective Order. (R. pp. 110-150) Judge Dickson ordered Appellants to respond to Respondent's previously served Interrogatories, provide responsive documents to all outstanding requests for production, and provide Respondent with a production log. (R. pp. 7-10) In addition, Judge Dickson ordered Appellants to provide a sworn or certified financial statement indicating income and net worth.[2] (R. pp. 7-10) There is nothing in the June 3rd Order precluding the Respondents from seeking additional discovery nor is there any mention by Judge Dickson that he is granting Appellants' Motion for Protective Order. (R. pp. 7-10) The Court set a deadline of July 1, 2013 for Appellants to comply with the June 3rd Order. (R. pp. 7-10)

Appellants failed to comply with Judge Dickson's June 3, 2013 Order and Respondent's counsel made many attempts to confer with Appellants' counsel regarding numerous deficiencies. (R. pp. 286-289, pp.484-485, ¶23-32) On July 3, 2013, Respondent served Appellants with Supplemental Requests for Production seeking additional financial information relating to any transactions between Appellants and Respondent's clients whom Respondent alleged Appellants had interfered with and taken. (R. pp. 400-401, p. 485, ¶26-32) Appellants did not respond to the supplemental discovery requests and Respondent attempted to confer with Appellants' counsel

[2] The Court's Order granting Respondents' Motion to Compel was signed on June 3, 2013 but was not filed until August 22, 2013.

regarding the failure to comply with Judge Dickson's June 3, 2013 Order and refusal to provide any answer to the July 3, 2013 supplemental discovery requests. (R. pp. 400-401, p. 485, ¶26-32) In response, Appellants' Counsel informed Respondent that he would "follow up on the discovery" and would provide responses by Monday, August 19, 2013. (R. p. 485, ¶30) Instead, on Friday, August 16, 2013, Appellants filed a Motion for Protective Order. (R. p. 485, ¶31) Appellants again did not make any attempt to confer with Respondent, pursuant to Rule 11, prior to filing their Motion. (R. p. 485, ¶31) This was the second instance where Appellants filed a motion for protective order after the discovery deadline had passed and after providing assurances to Respondent's counsel that the overdue discovery responses were forthcoming. (R. p. 395)

On August 26, 2013 Respondent filed Plaintiff's Second Motion to Compel and integrated its opposition to Appellants' Second Motion for Protective Order within its motion. (R. pp. 394-412) A hearing was held before Hon. Diane Goodstein on Respondent's Second Motion to Compel and Appellants' Motion for Protective Order on September 9, 2013.[3] Respondent argued that Appellants had failed to provide complete discovery answers to Respondent's October 2, 2012 discovery requests as required by the March 15th and June 3rd Orders and failed to provide any answers to Respondent's July 3rd Supplemental Discovery Requests which included requests for financial information including Appellants' tax records. (R. pp. 398-400, 406-407, 413-477)

The purpose for requesting the tax records was two-fold: (1) to determine how much income Appellants had earned from certain business relationships which Respondent alleged had been illicitly interfered with and taken by Appellants and (2) to verify the economic losses

[3] Judge Dickson's June 3, 2013 order indicated that he would hear any issues relating to ongoing discovery disputes. However, Judge Goodstein heard arguments on the Appellants Motion to Dismiss and indicated that she would also hear arguments relating to the Appellants' Motion for Protective Order and Respondents' Second Motion to Compel. There is no transcript available for this hearing.

Appellants claimed in their counterclaim. (R. pp. 406-408) Respondent further argued that Appellants' failure to comply with the Court's prior orders appeared to be deliberate and willful, set out a history (to that point) of Appellants' discovery abuse and requested that the court grant sanctions pursuant to S.C.R.C.P. 37 including but not limited to striking Appellants' pleadings. (R. pp. 398-400, 406-407).

On September 23, 2013 Judge Goodstein denied Appellants' Motion for Protective Order (in full) and granted Plaintiff's Second Motion to Compel.[4] (R. pp. 11-13) Appellants were ordered to provide responses to the Respondent's initial October 2, 2012 discovery requests by October 9, 2014. (R. pp. 11-13) In addition, the Court ordered the Appellants to respond to the Respondent's supplemental discovery requests, specifically, that "Defendants shall produce the working papers such as W-2's, 1099s, K-1's, etc., used in preparation of Defendants' state and federal tax returns for the period 2008 – 2012.[5] (R. pp. 11-13) The Order noted that "[n]othing set out in this paragraph shall be construed as any limitation upon Respondent's right to seek additional discovery on these issues in the future." (R. pp. 11-13)

Judge Goodstein also found that Appellants had failed to comply with the March 15, 2013 and June 3, 2013 Orders: "Appellants failed to provide discovery responses in accord with this Court's March 15, 2013 and June 3, 2013 Orders and are hereby ordered to pay Respondent's counsel's attorney's fees and costs spent in drafting, preparing and arguing this Motion to Compel

[4] Appellants' Counsel wrote to the Court on September 17, 2013 attaching a red-lined version of the proposed order requesting that the Court characterize its ruling as a granting of Appellants Motion for Protective Order. Counsel also wrote in detail about Appellants objection to the Court granting sanctions for Appellants' conduct. The trial court declined to adopt Appellants suggested revisions to the proposed order. (September 17, 2013 Letter from Appellants' Counsel to the court and Proposed Order)

[5] The scope of time period for the financial information ordered to be produced was based upon one year prior to the events complained of in the Complaint through the present date of the most recent tax return filed by Appellants, which at that time was represented to be 2012.

…" (R. pp. 11-13) Appellants did not comply with the September 23, 2013 Order which later necessitated the subpoenas served upon Margavio and Schmidt and Wells Fargo. (R. p. 560)

On December 3, 2013 the parties entered into a Consent Confidentiality Order which provided protection from disclosure to any third party for any matters Appellants deemed to be confidential. (R. pp. 19-29) On March 10, 2014 the case was designated as complex and assigned to Judge Maite Murphy. (R. pp. 30-31)

On April 28, 2014 Appellants served a subpoena on Regions Bank requesting the banking records of Respondent and of Third Party Defendant Russ Lloyd, the owner of Innovative Waste Management. On May 1, 2014 Respondent filed a Motion to Quash the subpoena arguing that the subpoena was overbroad. (R. pp. 539-540) After conferring with Appellants on the subpoena seeking Respondent's banking records, Respondent entered into a consent order with Appellants by which Respondent agreed to withdraw its objection to the subpoena and allow the production of Respondent's banking records. (R. pp. 32-35)

Appellant Henry Wuertz was deposed in May of 2014. Portions of his testimony conflicted with the financial information previously provided in discovery. (R. pp. 560-564) For example, he testified that his personal net income was between $400,000.00 and $500,000.00 per year which was inconsistent with the financial statement produced. (R. pp. 560-564) Likewise, the financial statement produced by Crest indicated that it had over twenty seven million dollars ($27,000,000.00) in assets in 2012. However, the 2012 Crest tax returns produced by Appellants showed a loss of nine million dollars ($9,000,000.00). (R. pp. 560-564) When asked to explain portions of his tax returns related to these alleged losses, Mr. Wuertz responded, "I'm not an accountant." (R. pp. 560-564) In addition to the inconsistencies between the court-ordered production and the testimony, Mr. Wuertz was unable to give answers to basic questions such as:

(1) how much net income he had made in any of the last few years, (2) what year he had last filed his taxes, and (3) what Crest's net worth was. (R. pp. 560-564) Mr. Wuertz identified Margavio and Schmidt as Appellants' accountant and identified Wells Fargo as their banking institution.

Given these inconsistencies discovered in Mr. Wuertz's deposition and the failure to provide full discovery responses in accord with Judge Goodstein's September 23, 2013 Order, Respondent issued subpoenas to Margavio and Schmidt seeking Appellants' accounting records and to Wells Fargo seeking Appellants' banking records. (R. p. 560) The scope of the requests was 2009 to the present. The information was sought for the purpose of verifying income and alleged economic losses related to the matters in controversy and to verify the testimony of Mr. Wuertz. (R. pp. 560-564)

On December 5, 2014 Appellants filed a Notice of Motion to Quash and Motion for Protective Order relating to the Margavio and Schmidt and Wells Fargo subpoenas. (R. pp. 539-540) Appellants again failed to make any attempt to confer with Respondents pursuant to Rule 11 prior to filing their Motion. (R. p. 540) Appellants argued that (1) the subpoenas to Margavio and Schmidt and Wells Fargo were procedurally defective, (2) the information sought was protected by the Right to Financial Privacy Act, (3) and that the financial records sought by Respondent were not likely to lead to the discovery of admissible evidence. (R. p. 539)

Respondent filed a memorandum in opposition to Appellants' Motion to Quash on April 3, 2015. Respondent informed the Court that the subpoenas were necessary specifically due to the failure of Appellants to comply with the September 23, 2013 Order, failure to provide full and accurate discovery answers and because Appellant Wuertz's deposition answers were inconsistent with the discovery responses. (R. pp. 560-564) Respondent maintained that the subpoenas were properly served in accord with the South Carolina Interstate Deposition and Discovery Act, S.C.

Code Ann. §15-47-100 (1976) and that the Right to Financial Privacy Act did not apply. Respondent further argued that given the Confidentiality Order entered there was no threat of public disclosure. (R. pp. 557-559)

Judge Murphy heard arguments on Appellants Motion to Quash in chambers on April 6, 2015.[6] In denying Appellants' Motion to Quash and Motion for Protective Order in full, the court noted "[a]t the hearing the issues argued centered around relevancy and scope of the subpoenas at issue." (R. pp. 36-38) The court ordered "the subpoenas issued to Wells Fargo and Accountants Margavio and Schmidt are relevant; The scope of the subpoenas shall be limited to the years 2009 to the present; and Respondent shall re-issue the subpoenas in accordance with this order." (R. pp. 36-38)

Respondent promptly issued a subpoena to Margavio and Schmidt in Louisiana seeking Appellants' tax and accounting records. Margavio and Schmidt responded to the subpoena some months later (after the case had been mistakenly dismissed by the Clerk and was on appeal) by providing Appellants' financial records through 2013. (R. p. 157) At the same time, Respondent attempted to domesticate and serve a subpoena upon Wells Fargo in Texas but was unable to do so as that jurisdiction required an additional consent order for the purpose of domestication of the subpoena. (R. p. 168, p. 572, pp. 577-589)

On April 8, 2015 the parties were ordered to mediate this case. At mediation a settlement was reached in which Appellants agreed to pay a settlement amount within 30 days. The Appellants failed to pay the agreed upon settlement amount and breached the settlement agreement. The case was mistakenly dismissed by the Clerk of Court and Respondent appealed the dismissal.

[6] There is no transcript of these proceedings.

Respondent's appeal was granted and the case was remanded back to the lower court to be set for trial.

Given the long delay, the financial information previously sought by Respondents in 2013 needed to be updated. On March 26, 2019 Respondent served an updated subpoena on Margavio and Schmidt. (R. p. 572, pp. 577-589) The subpoena requested updated records through the present. (R. p. 572, pp. 577-589) Appellants' counsel was copied on the correspondence to the Louisiana Clerk of Court and made no objection regarding the subpoena. (R. p. 572, pp. 577-589)

On March 27, 2019 the Respondent wrote to Appellants' Counsel and requested that Appellants provide updated financial statements pursuant to S.C.R.C.P. 26I (R. p. 577) Also, Respondent advised Appellants that Harris County Texas required an additional consent order to domesticate the Wells Fargo subpoena, attached a proposed consent order, and requested that Appellants sign the consent order so that Respondent could effectuate the Wells Fargo subpoena. (R. p. 168, pp. 577-579) Respondent also requested that Appellants produce the records themselves to avoid the unnecessary time and expense. (R. pp. 577-589) The time period specified for the Wells Fargo subpoenas was January 2009 through the present. (R. pp. 577-589) Respondent referred Appellants to the Court's prior orders authorizing this discovery and requested an immediate response if Appellants were unwilling to provide the executed consent order for the Wells Fargo subpoena and provide updated financial statements. (R. pp. 577-589) Respondents requested and was granted an April 22, 2019 telephone conference with the court to discuss these discovery requests in addition to scheduling issues.[7] (R. pp. 572-573, pp. 736-739) When the April

[7] The April 22, 2019 conference with the Court to handle outstanding discovery matters and scheduling for the date certain trial constituted a Rule 26(f) conference. The function of such a conference, according to the Advisory Committee note is to "prevent discovery abuse by encouraging the court to intervene when abuse occurs, or when an attorney has failed to obtain the cooperation of opposing counsel and should have the assistance of the court." S.C.R.C.P. 26(f)

22nd telephone conference was scheduled, Appellants' counsel responded to Respondent's March 27, 2019 letter and advised that he would provide a response on the requested financial statements and the Wells Fargo consent order prior to the April 22nd conference. (R. pp. 572-573, pp. 577-589) Appellants did not provide any response on those issues prior to the April 22nd teleconference. (R. pp. 572-573, pp. 577-589) In the meantime, Margavio and Schmidt filed a motion to quash the subpoena, in Louisiana, despite the Court's April 6, 2015 Order authorizing the subpoena. (R. pp. 572-573, pp. 577-589)

During the April 22nd telephone hearing with Judge Murphy, Respondent's Counsel referenced the prior orders directing the disclosure of Appellants' financial information and summarized Respondent's efforts to acquire the records via subpoena. (R. p. 573) Respondent also advised the court of Appellants' failure to provide the updated financial statements and to sign the consent order necessary for the domestication of the Harris County Wells Fargo subpoena. (R. p. 573) In light of Appellants' refusal to provide the financial statements, cooperate with the Wells Fargo subpoena and third party efforts in Louisiana to quash the court-ordered Margavio and Schmidt subpoena, Respondent moved that Appellants be ordered to provide updated sworn financial statements and executed authorizations authorizing the release of their bank and accounting records held by Wells Fargo and Margavio and Schmidt. (R. p. 573) The court acknowledged Respondent's request at the conference and asked Appellants' counsel for a response. (R. p. 573) Appellant's counsel advised the Court that he required until May 6, 2019 to provide an answer to Respondent's requests. (R. p. 573)

May 6, 2019 passed with no response from Appellants and Respondent's Counsel advised Appellants they had missed the deadline. (R. p. 573) On May 7, 2019 Appellants' counsel replied that Appellants had no duty to supplement the 6 years old financial statements, refused to provide

authorizations for the bank and accountant records, and argued that Appellants did not have the ability to authorize the release of their own banking and accounting records. (R. pp. 590-591) Appellants instead offered to provide a financial statement that was being constructed for use in Appellant Henry Wuertz's criminal trial in which he had been indicted for illegally dumping toxic waste from his fuel refinery into a federally protected bayou in Texas. (R. pp. 590-591) However, Appellants failed to provide that financial statement. (R. p. 573)

On May 15, 2019 Respondent filed its Third Motion to Compel requesting an Order requiring Appellants do the following:

1) Produce updated, sworn, certified financial statements for each Defendant, and

2) Provide executed authorizations for the production of the Wells Fargo and Margavio and Schmidt records from 2009 through the present date or, in the alternative, produce the records themselves, and

3) Pay Plaintiff's attorneys fees and costs related to re-litigating these issues, and

4) For any other relief deemed appropriate.

(R. pp. 570-591) Respondent's counsel attached the prior discovery orders of the court, an affidavit detailing Appellants' pattern of discovery abuse and setting out the time that had been spent on issues created by the discovery abuse. (R. pp. 570-591, 592-594) No written response to Respondent's Third Motion to Compel was filed by Appellants until after the motion was heard and decided by the court.[8]

[8] Appellants Memorandum in Response to Plaintiff's Third Motion to Compel indicates that it was signed by Appellants' counsel on June 11, 2019. However, the date stamp on Appellants' electronic filing indicates June 25, 2019 as the filing date.

On June 5, 2019 a hearing was held on Respondent's Third Motion to Compel. Respondent's counsel presented the prior discovery orders as context, summarized Appellants' conduct and provided argument on why the requested relief was relevant and necessary. (R. pp. 153-156) Even though the Court had previously ruled upon the relevancy of the financial information sought, Respondent offered the following regarding the relevancy of the financial statements and for the authorization of the release of Appellants' financial records:

> "Remember, our client is alleging that we've got a 12 million dollar business loss, in addition to a million dollars for the theft of oil. And as that money is coming out of our client's coffers, the money has got to be going somewhere. So in addition to matters of collectability … we're talking about a business loss, the taking of a client which continues to be profitable for these defendants. So we are entitled to know what money they have received in their accounts from that business account."

(R. p. 156, lines 5-16)

In response, Appellants represented to the court that they would provide the financial statement being constructed in connection with Henry Wuertz's criminal trial and that they would provide an executed 4506T form to allow Respondent to access the tax transcripts Appellants had filed with the IRS. (R. p. 162 lines 15-19) Appellants argued that they should not be required to sign authorizations for the release of the financial records because the information was precluded by Judge Dickson's 2013 Order, was not relevant, and because Respondent's subpoena to Margavio and Schmidt had been quashed in Louisiana. (R. pp. 162-167)

On June 18, 2019 the Court granted Respondent's Third Motion to Compel. (R. pp. 40-42) Judge Murphy ordered Appellants to sign authorizations for the release of their bank and accounting records within 7 days of the Order and to produce sworn certified financial statements within 21 days of the Order. (R. pp. 40-42) The Court also sanctioned Appellants for their noncompliance with the Court's prior order, finding Appellants had failed to comply with a prior

order to produce relevant, discoverable material, and required Appellants to pay attorney fees in the amount of One Thousand Nine Hundred and Fifty Dollars ($1,950.00). (R. pp. 40-42)

On June 25, 2019, the due date specified for the production of signed authorizations, Appellants filed a response in opposition to Respondent's Third Motion to Compel and a Motion to Amend the Court's order pursuant to S.C.R.C.P. 59 (R. pp. 765). The Court reviewed briefings from the parties and on August 1, 2019 issued an order amending its June 18th Order, still granting in full the relief requested by Respondent but altering its original Order allowing different classes of individuals to sign the requested authorizations. (R. pp. 43-45). The authorizations were to be signed within seven days and financial statements were to be produced within 21 days. (R. pp 43-45)

On August 9, 2019, after the Court's deadline had passed for the Appellants' production of authorizations and payment of sanctions without any production from Appellants, Appellants' counsel sent an e-mail to Respondent's counsel representing that he had not seen the August 1, 2019 Order and would obtain a copy of it. (R. p. 685) Respondent's Counsel sent a communication sixteen minutes later stating the deadline had already passed and requesting information on when Appellants would provide the court ordered authorizations. (R. p. 687)

On Monday August 12, 2019 counsel for Appellants requested copies of the authorizations that were to be signed. (R. p. 676, p. 688) Respondent's counsel had previously included these in their motion but provided them again to Appellants' Counsel at 10:03 am on August 12th and again requested when they would be signed. (R. p. 676, p. 692) Appellants' Counsel informed Respondent's Counsel that he did not believe there would be any issue getting all the signed authorizations to Respondent's counsel by August 16, 2019. (R. p. 676, p. 692) The executed authorizations were not provided by Appellants by August 16, 2019. (R. p. 676, pp. 684-703) On

August 19, 2019 Appellants' Counsel wrote that Mr. Wuertz was "meeting with the accountant later today" and he expected to have "something by tomorrow morning." (R. p. 676, pp. 684-703) Respondent's Counsel responded via e-mail later that day asking for Counsel to provide the signed authorizations within two days. No response was received. (R. p. 694)

On August 23, 2019, Respondent's counsel sent Appellants a letter, pursuant to S.C.R.C.P. 11, advising that Appellants had failed to comply with the Court's order on the signed authorizations and requesting compliance before noon on August 28, 2019. (R. p. 676, pp. 696) Appellants' Counsel e-mailed Respondent's Counsel at 11:00am on August 28, 2019 requesting until the end of the day to comply with the Court's August 1, 2019 Order. Appellants provided nothing further on August 28, 2019. (R. p. 676, pp. 684-703)

On August 29, 2019 Appellants produced certain documents purported to be the 2016 and 2017 tax returns of Crest Energy Partners LP, and a financial statement for Henry Wuertz. Appellants' counsel wrote, "[s]tand by, more to come" (R. p. 677, p. 698). On August 30, 2019 Appellants produced a letter from Sean K. Butler, an accountant who represented in the letter to have previously prepared tax returns for Crest Energy Partners, L.P. and is "familiar with that entity's corporate structure and financial condition." This document claimed that none of the Crest Appellants nor Dunhill Appellants have any real income in the 2016 and 2017 tax years and have not filed tax returns for 2018. (R. p. 677, 698) This document was not a financial statement for any entity and was not to be responsive to the Court's Order. (R. p. 677) Appellants' Counsel's e-mail transmitting these documents again stated "[m]ore to come…" (R. p. 700) No further discovery materials were produced. Appellants never produced financial statements for the Crest or Dunhill Appellants and refused to produce executed authorizations for the financial records. Also,

Appellants did not pay the $1,950.00 in monetary sanctions nor make any filing with the court regarding their inability to do so. (R. pp. 672-683, pp. 176-204)

On August 30, 2019 (the Friday before Labor Day) at 4:30 pm, Counsel for Appellants sent a letter to the Court stating he had complied as much as he would with the June 18th and August 1st Orders and requested that the Court hold him in Contempt for his client's refusal to comply with the remaining portions of the August 1, 2019 Order. (R. pp. 677-678, pp. 704-706) Appellant's counsel also wrote that he would be serving a notice of appeal that day. (R. pp. 677-678, pp. 704-706) On September 3, 2019 Respondents received by courier what purported to be a Notice of Appeal signed by counsel for Appellants. (R. pp. 677-678, pp. 707-719)

On September 13, 2019 Respondent filed Plaintiff's Motion for Sanctions Pursuant to S.C.R.C.P. 37 (R. pp. 672-683). No written response to Plaintiff's Motion for Sanctions was ever filed (R. pp. 764-772). A hearing was held on Respondents' Motion for Sanctions on September 23, 2019. Respondent summarized Appellants' noncompliance with the June 18th and August 1st Orders and provided correspondence, affidavits and prior orders in support of its motion and allegation that such noncompliance was willful. Specifically, Respondent argued that Appellants had failed to provide the court-ordered financial statements for the Crest and Dunhill Appellants, failed to provide the court-ordered executed authorizations for the financial records, and failed to pay the $1,950.00 in ordered monetary sanctions. (R. p. 677) Respondent further argued that it had been unduly prejudiced by Appellants' failure to comply with the June 18th and August 1st Orders given that trial was scheduled to begin on November 3, 2019. (R. pp. 672-683, pp. 176-204)

Appellants' counsel argued that he had complied with the Order as much as he could, that his clients were unable to pay the monetary sanctions ordered by the Court and requested the Court to issue an order finding Appellants in Contempt so they could appeal the August 1, 2019 discovery

order. (R. pp. 176-204, pp. 707-719) The following exchange occurred between Judge Murphy and Mr. Marvel at the September 23, 2019 hearing:

> THE COURT: Mr. Marvel, let me ask you this question. You are obviously an officer of the Court. So what you are telling me is that I am going to take what you say as if you are under oath today; do you understand?
> MR. MARVEL: Certainly.
> THE COURT: All right. Your letter to me is basically to find your client in contempt. For contempt that requires a willful violation of this Court's order. You are under oath telling me that your client has willfully violated this Court's order so that you can appeal; is that correct?
> MR. MARVEL: My client has directed me to pursue an appeal.
> THE COURT: Because they have failed to comply with this Court's orders. You have multiple orders awarding sanctions and awarding compliance with the discovery process that have not been complied with. This has been going on for seven years. Judge Dixon's order of 2012, I do recall that motions hearing and motions subsequent to that, because circumstances have changed. As stated in that order, the grammar of what was discoverable in 2015, 2016 has changed. Your client has failed to abide by all of these Court orders – refuses to do so. Now you are asking me to hold them in contempt. So you are telling me that they are in willful violation of these Court's orders. Is that what you are asking me?
> MR. MARVEL: First of all, the record is clear –
> THE COURT: The record is clear, sir. Just answer my question. Yes or no, are you asking me to find your client in contempt for being in willful violation of this Court's orders? Is that what you are asking me to do?
> MR. MARVEL: I am asking for the Court to find us in contempt, not because we believe that we have violated any prior order, but to the extent that Mr. Gruenloh is requesting that my clients sign the authorizations that Mr. Gruenloh has provided us, to my knowledge, is the only thing that we have not done in compliance with that order.
> THE COURT: Well –
> MR. MARVEL: Your Honor –
> THE COURT: Please let me finish. I didn't interrupt you during your presentation. You have filed nothing to the effect that they couldn't afford the sanctions; that you would not be able to comply without any financial documentation. The documentation has been requested, and you have filed piecemeal responses and nothing to back up what was previously ordered by Judge Goodstein before I even heard the case. So you have multiple years of willful disobedience of this Court's order, and now you are asking me to

> find you in contempt, so that basically you can appeal and put this case off three or four more years. That is basically what you are asking me to do; is that correct?
> MR. MARVEL: We do intend to appeal the Court's order. That is correct, Your Honor. I don't believe that the failure to pay the attorney's fees is willful.
> THE COURT: But you didn't file anything that you couldn't pay. There has been nothing filed with Court, that I am aware of, that once that order was issued, you filed any financial statement saying, "We just can't pay it." You just didn't do it.
> MR. MARVEL: That is correct, Your Honor. We didn't file anything.
> THE COURT: So multiple Court orders. You just didn't do it. Multiple Court orders you just didn't do it. So, counsel, anything else you would like the Court to consider at this juncture?
> MR. MARVEL: No, Your Honor. I guess my only point on that issue is that we wanted to produce everything that we could and that we felt was available to produce.
> THE COURT: Sir, wanting to do something and then backing it up is a whole different ballgame from just appearing in court and saying, "I will do it one of these days." You are wanting to do it and not providing responses as to why you can't do it or your inability to do it is a whole different ballgame, sir. So this constant manipulation of the process really is, quite frankly, not reasonably optimistic that you will ever comply with this Court's orders.

(R. pp. 197-200)

The Court granted Respondents Motion for Sanctions on October 1, 2019 and stated:

> "Defendants have engaged in a deliberate pattern of discovery abuse and willfully failed to follow this Court's August 1, 2019 Order. For these reasons, as set out in detail below, the Court grants Respondent's Motion for Sanctions pursuant to Rule 37 of the South Carolina Rules of Civil Procedure and hereby strikes all pleadings of the Wuertz Appellants."

(R. pp. 46-47)

Law and Argument

The Appellants have addressed a variety of arguments seeking to undermine the previous orders of the trial court but the only Order properly before the court is the October 1, 2019 Order

granting sanctions. As such, the only reviewable question before this Court is whether the October 1, 2019 Order was entered in error.

Upon a finding that the October 1, 2019 Order is the only order properly before the Court the review of the order is limited to evaluating whether the trial court abused its discretion in granting sanctions. In awarding sanctions pursuant to S.C.R.C.P. 37 the trial court must have considered four factors in order to justify the grant of sanctions: 1) the nature of the discovery sought, 2) the discovery posture of the case, 3) the degree of prejudice caused by their failures 4) the willfulness of the conduct. *See*, *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (1997). If the sanction is tantamount to entering default, as it is in this case, the moving party must demonstrate bad faith, willful disobedience to the rules of discovery or the court, or gross indifference to the rights of the other party. *See*, *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 718 -719 (S.C. App. 1999)(citing *Baughman v. AT&T Co.*, 306 S.C.101, 410 S.E.2d 537 (1991)).

I. IS THE ONLY ORDER PRESERVED AND PROPERLY ON APPEAL THE OCTOBER 1, 2019 ORDER GRANTING SANCTIONS?

The October 1, 2019 Order of the Court is the only order properly before the Court on Appeal. The trial court granted Respondent's Motion pursuant to S.C.R.C.P. 37, finding that Appellants had willfully abused the discovery process, making the impending date certain trial impossible, prejudiced the Respondent through their conduct and warranted the striking of their pleadings. Appellants brought this appeal challenging the October 1st Order as well as attacking the validity of the trial court's earlier orders.

Appellants inappropriately attempt to bootstrap a review of all the prior discovery orders of the trial court into their appeal of the October 1, 2019 Order granting sanctions. Appellants argue that the prior discovery orders of the trial court including the March 15, 2013 Consent Order, the

June 3, 2013 Order granting Respondent's Amended Motion to Compel, the September 27, 2013 Order granting Respondent's Second Motion to Compel, the April 6, 2015 Order denying the Motion to Quash, the June 18, 2019 Order Granting Respondent's Third Motion to Compel, and the August 1, 2019 Order reaffirming the Grant of Respondent's Third Motion to Compel in response to Appellants S.C.R.C.P. 59I motion were all entered in error and cannot be used to support the Court's October 1, 2019 Order granting sanctions. (Appellants' brief at 14 – 24.) However, Appellants did not request to be held in contempt or appeal any of these prior orders and so they are not subject to this appeal.

Orders which are not appealed are the law of the case and therefore are not proper for review before this Court. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013). (An unappealed ruling is the law of the case and requires affirmance and reliance.) *See Also*, *Johnson v. S.C. Nat'l Bank*, 285 S.C. 80, 82, 328 S.E.2d 75, 76 (1985), *Cooper Tire and Rubber Co. v. Perry*, 201 S.E.2d 245 (1973). Additionally, if a party complies in anyway with an order, they lose the ability to later challenge that order.

> "An order directing a party to participate in discovery is interlocutory and not directly appealable . . . . Instead of appealing immediately, a non-party has two alternatives. He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply." *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881, 882 (1986).

Much of Appellant's brief is spent challenging the validity of the June 12, 2019 Order granting Respondent's Third Motion to Compel. That order sanctioned Appellants and ordered Appellants to sign authorizations for the release of banking and accounting records, provide sworn certified financial statements, made the finding that Appellants failed to "produce relevant discoverable material to Plaintiff" and awarded attorney fees. (R. pp. 40-42)

A review of the procedural history reveals that Order is not subject to this Appeal. Appellants filed their Motion to Alter or Amend a Judgment pursuant to S.C.R.C.P. 59I on June 25, 2019. (R. pp. 667-669) On August 1, 2019 the Court entered a Form 4 order which amended the Motion Granting the Third Motion to Compel allowing Authorized Principals or Accounting Professionals to sign the authorizations and the remainder of the relief requested by Appellants was denied. (R. pp. 43-45) Appellants had two choices at that time, 1) request contempt and challenge the order on appeal or, 2) comply with the order and waive their right to appeal it later. Appellants accepted August 1, 2019 ruling, failing to follow proper procedure for being held in contempt and therefore waived their right to challenge the order on appeal. The following language from *Davis v. Parkview Apartments*, is analogous to the current facts:

> "Appellants did not follow that [being held in contempt] route here. Rather, they continued along in the litigation, attempting to divert the implementation of the court's rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility of being held in contempt of court. However, during this time, Appellants continued to accept the circuit court's formulation of discovery. Right or wrong, these decisions form the law of the case, and Appellants are bound by them now." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 762 S.E.2d 535, 543 (2014)

Appellants did not make any request to be held in contempt regarding the June 12, 2019 or August 1, 2019 Orders as required by *Davis*. Instead, the record reflects they acted just as the appellant did in *Davis*; Appellants made repeated assurances[9] that they would provide the ordered discovery and comply with the August 1, 2019 Order. (R. pp. 684-703, pp. 50-52) In addition, Appellants partially complied with August 1, 2019 Order by providing some of the ordered discovery between August 1, 2019 and August 30, 2019. (R. p. 677, pp. 684-703) After a month

[9] Appellants' Counsel sent e-mails stating he was continuing to attempt to comply with the order on August 12, August 19, August 28, and August 30. (R. pp. 684-703)

of feigning compliance with the order, Appellants served what purported to be a Notice of Appeal of the prior discovery orders delivered by Courier to Respondent's office on September 3, 2019 and signed August 30, 2019. (R. pp. 51-52) The orders Appellants sought to appeal in their August 30th un-filed Notice of Appeal were the very same orders that Appellants' counsel represented he would comply with and for which he provided partial responses. (R. pp. 684-703) Appellants later admitted in open Court that the purported notice of appeal was never filed with any court. (R. p. 194 line 25, p. 195 lines 1-6) After repeated assurances from Appellants that they were complying with the August 1, 2019 order of the Court and would soon provide the ordered materials but failed to, Respondent filed their Motion for Sanctions on September 13, 2019. (R. pp. 672-683)

Appellants filed no response to the Motion for Sanctions and a hearing on the matter was held on September 23, 2019. (R. pp. 764-765, pp. 176-204) On October 1, 2019 the trial court granted Respondent's Motion for Sanctions and struck Appellants' pleadings. (R. pp. 46-57) On October 9, 2019 Appellants filed their Notice of Appeal.

The Supreme Court of South Carolina addressed a similar circumstance to this case in *Davis v. Parkview Apartments*. The Court in addressing appellants' challenges to a privilege order and prior discovery order stated,

> "Only after Respondents filed a motion for sanctions, and Appellants were found to be in contempt of court as part of those sanctions, did they appeal. While this was a final order for purposes of appellate review, as it ordered dismissal of the case, the merits of the underlying discovery orders are not before this Court on appeal. Thus, despite Appellants' vehement objections to the Privilege Order and Discovery Order, the only reviewable question before this Court is whether the sanctions were properly awarded." *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 726 S.E.2d 535, 543 (2012).

As such, the trial court's October 1, 2019 order granting sanctions pursuant to S.C.R.C.P. 37 is the only order which has been properly appealed. Appellants failed to preserve any issues related

to the orders entered prior to the October 1, 2019 Order; therefore they are now the law of the case. *See*, *e.g.*, *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013), *Davis v. Parkview Apartments*, 409 S.C. 266, 726 S.E.2d 535 (2012), *Johnson v. S.C. Nat'l Bank*, 328 S.E.2d 75, 76 (1985), *Cooper Tire and Rubber Co. v. Perry*, 201 S.E.2d 245 (1973).

Davis v. Parkview clearly illustrates that if Appellants fail to appeal the discovery orders, which in a later order for sanctions, make up the grounds for the sanction, the Appellant Court may only review whether the trial court has abused its discretion in granting the Sanction. Any issues pertaining to the underlying discovery orders have been waived. *See*, *Davis v. Parkview Apartments*, 409 S.C. 266, 281, 726 S.E.2d 535, 543 (2012).

II. DID THE TRIAL COURT ABUSE ITS DISCRETION IN GRANTING THE OCTOBER 1, 2019 MOTION STRIKING APPELLANTS PLEADINGS?

Pursuant to Rule 37, S.C.R.C.P., when a party fails to respond to discovery requests or obey an order to provide or permit discovery, the court may "make such orders in regard to the failure as are just." Rule 37(b)(2), S.C.R.C.P.. "Rule 37 expressly grants the trial court power to order judgment by default for either violation of a court order, or upon motion, for a party's failure to respond to certain discovery requests." *Karppi v. Greenville Terrazzo Co.*, 327 S.C. 538, 542, 489 S.E. 2d 679, 682 (Ct. App. 1997) (citing Rule 37(b)(2)(C) & (d)). The decision to award sanctions is entrusted to the discretion of the trial court. *QZO, Inc. v. Moyer*, 358 S.C. 246, 255, 594 S.E.2d 541, 546 (2004).

This Court has addressed the issue of discovery sanctions numerous times, including the appropriateness of a trial court's decision to strike the pleadings of a party. When determining the proper sanction, the Court considers the precise nature of the discovery sought, the discovery posture of the case, the degree of the prejudice and the willfulness of the parties' conduct. *See*

Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (1997). If the court finds the conduct offends these factors a sanction is justified.

In this case, "[w]here the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience, or gross indifference to its rights to justify the sanction." *Griffin Grading and Clearing, Inc. v. Tire Service Equipment Manufacturing Co., Inc.*, 334 S.C. 193, 198-199, 511 S.E.2d 716, 718 -719 (S.C. App. 1999)(citing *Baughman v. AT&T Co.*, 306 S.C.101, 410 S.E.2d 537 (1991)).

The Nature of the Discovery Sought

In evaluating the first factor, the underlying discovery orders which are not subject to this Appeal demonstrate that Respondents sought the financial discovery through numerous discovery requests and subpoenas and that the information sought was relevant, not privileged, and discoverable. The record reflects that the trial court found Appellants' accounting records and banking records to be relevant and necessary to the claims of economic damage and there are ample examples in the record of Respondent's arguments and the trial court's orders to that effect. (R. pp. 36-38, pp. 151-175, pp. 40-42, pp. 11-13, p. 570) The record also reflects that Respondent attempted to procure the sought after discovery through numerous methods (discovery requests, subpoenas, deposition, and finally by authorization) before asking for relief in their Third Motion to compel in the form of the requested authorizations.

Perhaps most telling is that Appellants sought discovery of the same nature, banking records for the Respondent and its principal owner. The difference being that after Respondent filed a Motion to Quash, engaged in meaningful discussions regarding the scope of the subpoena, and withdrew their Motion to Quash and cooperated with Appellants in acquiring the discovery.

(R. pp. 32-35) Considering the claims and counterclaims both alleged economic losses it would seem logical that the discovery was proper as to both parties.

The Discovery Posture of the Case And Prejudice

At the time of the filing of the Motion for Sanctions, this case had been in the South Carolina State Courts for seven years. The Court found that, prior to the Motion for Sanctions, three separate motions to compel filed by Respondent had been granted and Appellants' objections and motions to quash had been denied. (R. pp. 7-13, pp. 36-38, pp. 40-42) At the time of the hearing for the Motions for Sanctions, the date certain trial was 56 days away and pretrial motions due in 26 days. Discovery which was central to Respondent's claims of economic damage should have been produced long before the Court needed to address the Motion for Sanctions.

The discovery rules exist to ensure full and fair disclosure, removing either party from trial by surprise. *Samples* at 113. *Citing*, *State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)* "Essentially, the rights of discovery provided by the rules give the trial lawyer the means to prepare for trial, and when these rights are not accorded, prejudice must be presumed. Unless the party who has failed to submit to discovery can show lack of prejudice, reversal is required." *Samples* at 113-14. (*Internal Citations removed)* Appellants continued to frustrate discovery into a key claim of the case, a claim the trial court's unappealed orders state was relevant and discoverable, up and through the eve of trial. With the date certain trial pending Respondent was left without the time to properly explore the discovery sought and prejudice could be presumed by the trial court.

Willfulness of the Conduct

The trial court found that Appellants' conduct was willful as required in *Samples*, for the grant of a sanction but, further more found that Appellants were willfully disobedient and their

conduct constituted bad faith pursuant to *Griffin.* In the Order granting sanctions the Court makes the finding that prior to the Motion for Sanctions, the Courts had granted three separate motions to compel and denied a motion to quash. (R. pp. 46-57, pp. 7-13, pp. 36-38, pp. 40-42) The Court found that monetary sanctions were awarded in response to these orders yet, the monetary sanctions did not change the behavior of Appellants. (R. p. 54) The Court found that Appellants made representations to the Court and Respondent which they never intended to honor and demonstrated through their repeated assurances that compliance was forthcoming, only to later file motions for protective orders, a notice of appeal purporting to appeal unappealable discovery orders and finally requested a finding of contempt on the eve of trial. (R. p. 54, ¶1, p. 55, ¶1, pp. 282-290, pp. 478-515, pp. 556-565)

The court evaluated and found that Appellants' continual promises to provide discovery, to request more time to comply, to delay, only to then file protective orders or force motions to compel was willful and was a delay tactic. (R. pp. 49-51) The Court inquired at the hearing and made the finding that Appellants' counsel served a notice of appeal, which was never filed, as a tactic of delay. (R. p. 52) The Court found that Appellant did not comply with representations it made during the April 22, 2019 conference (a conference specifically held to resolve the discovery issues) relating to the Respondents' request for accounting and bank records and that the actions made in contradiction of the representations made during the April 22, 2019 conference were taken to delay and disrupt preparation for trial. (R. p. 54) As such, the trial court properly considered whether the actions of Appellants were willfully disobedient and found that they were and undertaken in bad faith.

In *Davis* there were repeated discovery abuses, which resulted in not only a finding of contempt, but also the striking of the Appellants pleadings and an entry of default. That case is

analogous to this case. The Court in *Davis* stated that when a discovery order is issued the party seeking to challenge the order has two options, comply and waive any right to challenge it or refuse to comply with the order, be held in contempt, and appeal the contempt. *Davis* at 543.

In *Davis* the Court of Appeals found that the sanctioned party acted willfully and in bad faith when they,

> "continued along in the litigation, attempting to divert the implementation of the court's rulings by providing incomplete responses and causing delay through other tactics while they decided whether or not to surrender to the possibility of being held in contempt of court."

Davis at 543.

Appellants' Counsel's numerous representations that they would comply with the Orders set out above, coupled with their subsequent refusal to comply after deadlines (and extensions to deadlines) have formed a pattern. As in *Davis*, the Appellants attempted to avoid contempt and dance around the orders of the Court for the purpose of delay and, as in *Davis*, the Court properly exercised its discretion in striking Appellants' pleadings.

The trial court's October 1, 2019 order properly evaluated the factors set forth in *Samples* and *Griffin*, finding willful disobedience to the orders of the court, bad faith in their actions related to the discovery process, and a prejudicial effect on the Respondent. As such the Circuit Court's order of October 1, 2019 striking the pleadings of Appellants should be affirmed.

III. IF APPELLANTS ARE ALLOWED TO CHALLENGE PRIOR DISCOVERY ORDERS CONTRARY TO *DAVIS v. PARKVIEW APARTMENTS*, WOULD ANY OF APPELLANTS' ARGUMENTS MATERIALLY AFFECT THE TRIAL COURT'S GRANT OF SANCTIONS?

Appellants have presented four issues they ask this Court to address in their Appeal and their Initial Brief is divided into several subparts intermixing arguments for the four issues into those subparts. While most of these issues challenge the validity and factual basis of the trial court's

prior discovery orders which are not on appeal, the Respondent will address each of Appellants' arguments in the sequence in which they appear in Appellants' brief.

The June 12, 2019 Order Granting Respondent's Third Motion to Compel is Supported by the Record and Contains no Errors of law.

Appellants challenge the trial court's grant of Respondent's Third Motion to Compel. The Court's order was signed June 1, 2019 and an amended order in response to Appellants' 59I motion filed on August 1, 2019. As noted above, Appellants did not appeal the June 1, 2019 or August 1, 2019 Orders and therefore have not been preserved for appellate review. *Davis* at 281. Regardless, Respondent will address all Appellants' contentions.

First, Appellants argue that any order which came after the June 3, 2013 Order was an improper collateral attack on a prior interlocutory order. (Appellants Brief p.29) Appellants make the same argument regarding the September 27, 2013 Order. (Appellants Brief p.29) Next, Appellants argue that they cannot be forced or ordered to sign authorizations pursuant to Rule 34 of the South Carolina Rules of Civil Procedure and claim that Respondent's only option to obtain the necessary discovery was through a subpoena. (Appellants Brief p.30-32) Finally, Appellants challenge that the discovery compelled by the June 12, 2019 was not relevant. (Appellants Brief p.33) Each of these arguments are addressed in order below.

The Appealed Orders are not Collateral Attacks on the Prior Orders nor are the Prior Orders Subject to this Appeal.

Appellants claim that the September 27, 2013 Order, the April 6, 2015 Order, and the June 12, 2019 orders were all improper collateral attacks on the June 3, 2013 Order. As stated above, those orders are the law of the case and are not subject to this appeal. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) Appellants accepted the prior rulings, failing to follow proper procedure for being held in contempt to challenge the orders on

appeal. Any perceived defect in the prior orders should have been addressed at the time such orders were issued utilizing the framework explained in *Davis*. (*Davis* at 281)

Despite the fact that any potential issues regarding these orders are not properly preserved for appeal the record shows that the subsequent orders for discovery do not overrule Judge Dixon's order but instead allowed additional discovery as the case progressed. In each progressive order the Respondent made a showing to the trial court that the discovery sought was relevant, discoverable, and necessary over objections from Appellants at each juncture.

Respondent's Second Motion to Compel was in response to Appellants' failure to respond to their supplemental discovery requests seeking financial information related to Appellants' claimed losses and Respondent's claims of economic loss. (R. pp. 394-412) The Court found the discovery was proper and granted an order compelling it. Respondent later issued subpoenas for bank and accounting records following Mr. Wuertz's deposition because his testimony conflicted with the financial documents and tax returns Appellants had previously produced in response to Respondent's First Motion to Compel. (R. pp. 560-564) The record shows that the trial court again found the discovery sought to be necessary and relevant.

The Trial Court did not abuse its Discretion in Ordering Appellants to Execute Authorizations to Obtain the Financial Discovery.

Appellants argue that it was error to require them to sign authorizations for the release of their bank and accounting records. In summary, Appellants argue that the trial court could not command them to execute authorizations under S.C.R.C.P. 34 and so Respondent could only obtain the discovery through subpoena. (Appellants Brief pg 30) Appellants' argument confuses the issue as the court did not order the Appellants to sign authorizations pursuant to S.C.R.C.P. 34 but instead as a failure to provide documents within their "legal right" as a sanction pursuant to S.C.R.C.P. 37.

After the remand to the trial court from this Court in the unrelated appeal, Respondent sought updated discovery which had previously been deemed relevant and discoverable and ordered by the trial court. Appellants made numerous representations that they would comply with the previous order of the trial court, first making representations to Respondent's counsel (R. pp. 592-594), then to the trial court, culminating in yet another request for additional time to comply (R. pp. 592-594) and then another failure to provide the promised discovery. Respondent filed their Third Motion to Compel and in the face of Appellants' continual manipulation and refusal to provide the discovery, the trial court ordered the Appellants to provide authorizations for the records.

In South Carolina it is generally accepted that the trial court is given broad discretion to control the scope of discovery. S.C.R.C.P. 26I. The trial court also has broad discretion in ruling on discovery issues and crafting orders in response to a failure to provide discovery pursuant to S.C.R.C.P. 37. *See*, *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989). The trial court ordered Appellants to sign authorizations pursuant to S.C.R.C.P. 37 in response to their failure to provide discoverable material which was in their possession, custody, and control.

While it remains the position of the Respondent that Appellants have failed to preserve this issue for appeal, pursuant to *I'On*, there are numerous grounds that support the October 1, 2019 Order. *See*, *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000). (Acknowledging the Court's power to sustain a trial court's ruling on additional grounds beyond those raised in the original order if the record supports such a finding.)

The information Respondent's sought consisted of bank records and client provided documents for their tax returns. These files are generally owned by the client and contain documents provided by the client, whether those are hard documents such as invoices and receipts

or client created documents like bookkeeping entries. This discovery would consist, in large part, of back up information and forms that were once in the sole custody and control of the entities who provided them to the Accountant. Accountants have a requirement to hold such documents as tax professionals for no less than seven years, before destroying them as opposed to the entities themselves who may dispose of them in accordance with their own procedures. Association of International Certified Public Accountants *Management of an Accounting Practice Handbook* (February 1, 2003). In this case the Appellants have represented that they have economic losses yet at the same time preserved none of the supporting documents from which confirm those losses.

The Fourth Circuit has explained that Rule 34's "possession, custody or control of the party" requirement extends to documents which they have a 'legal right' to. The Court has adopted the "Legal Right plus notification test." The documents, especially the documents and bookkeeping entries provided by Appellants to their tax professionals for the purpose of preparation of their tax returns, are within their Legal Right. In an analogous situation the Court has found that documents in possession, custody or control of a party's attorney or former attorney are within the party's control for purposes of Rule 34." *Poole v. Textron, Inc.*, 192 F.R.D. 494 (2000). Federal Courts have addressed the issue of these documents in respect to accounting documents as well, "This order should also extend to documents and evidence not in the actual possession of defendants. If defendants do not have copies of the tax returns and bank account records, they are still in their control within the meaning of Rule 34, since they can obtain certified copies of them from the government agency or bank concerned." *Paramount Film Distrib. Corp. v. Ram*, 91 F. Supp. 778, 781 (D.S.C. 1950)

As discussed above, the Appellants had failed to provide appropriate, relevant discoverable materials within their possession and control in response to multiple Motions to Compel. The

record and law of the case from the prior unappealed orders, show the discovery sought was discoverable, relevant, and not privileged.

The Respondent was not Restricted to one method of Discovery.

Appellants claim that Respondent had no right to obtain discovery on the Appellants' financial records directly from the Appellants and that Respondents only avenue to obtain the discovery was via a third party subpoena. (Appellant Brief at p.32 ¶2) Appellants' argument that Respondent may only utilize one method by which to obtain the discovery is incongruent with S.C.R.C.P. 26. S.C.R.C.P. 26(a) clearly states "Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions." The rule continues in subsection (d) in relevant part stating, "methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery."

The record shows that Respondent's sought the discovery via requests, deposition testimony, and subpoenas. Only when Appellants failed to abide by their obligations under the rules of discovery did Respondent request the Court to grant the remedy of requiring signed authorizations for the records pursuant to S.C.R.C.P. 37. (R. pp. 570-591, pp. 592-594) The Court's granting of that request in allowing authorizations to be the particular method of acquiring the discovery was a proper exercise of discretion pursuant to S.C.R.C.P. 37.

The Discovery Ordered by the Court was Relevant and Necessary.

Appellants argue that Appellants' banking and accounting records were only relevant for post-trial collectability issues. Appellants' arguments ignore the important fact that both parties

made allegations of economic damage. (R. pp. 58-86, pp. 87-104) The Appellants' accounting and banking records are relevant and necessary to the claims of economic damage and there are ample examples in the record of Respondent's arguments and the trial court's orders to that effect. (R. pp. 36-38, pp. 151-175, pp. 40-42, pp. 11-13, p. 570)

S.C.R.C.P. 26 provides the method by which discovery can be sought. The Rule in relevant part states: "Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action […] It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." S.C.R.C.P. 26(b)(1) "In South Carolina the scope of discovery is very broad and 'an objection on relevance grounds is likely to limit only the most excessive discovery request.'" J. Flanagan, South Carolina Civil Procedure 216 (2d ed. 1996)." *Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215 (Ct. App. 1997) "Rule 26, S.C.R.C.P., allows broad pre-trial discovery. 'The Rules do not differentiate between information that is private or intimate and that to which no privacy interests attach. . . . Thus, the Rules often allow extensive intrusion into the affairs of both litigants and third parties.'". *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853-54 (1994) *Citing*, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 30, 104 S. Ct. 2199, 2206, 81 L. Ed. 2d 17, 25 (1984).

For purposes of admissibility, a higher standard than that of discovery, relevant evidence is defined as evidence that has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. Rule 401, SCRE. "The trial judge must have wide discretion on innumerable questions of relevancy before her, and her decision should be reversed only for abuse of that

discretion." *State v. Sweat*, 362 S.C. 117, 127, 606 S.E.2d 508, 513-14 (Ct. App. 2004) *Citing*, *State v. Anderson*, 253 S.C. 168, 182, 169 S.E.2d 706, 712 (1969).

The Appellants' banking and accounting records were necessary and relevant to the claims of economic damage and Respondents have maintained that position and sought this discovery from the beginning of this case:

> "So I would say at the heart of the issue – there's a whole bunch of discovery that hasn't been answered and we will get into that. But at the heart of the issue, those receipts. Show us that you actually spent money on this prior deal and what business did you do with these individual companies. Those are really important things we believe – we're on the trial roster right now for April the 8th and we believe that we've been prejudiced as to the counterclaim and we've certainly been prejudiced as to our ability to prove the loss of business."

(R. p. 117 lines 5-14)

Likewise, Respondent's counsel stated during its argument for its Third Motion to Compel:

> "Remember, our client is alleging that we've got a 12 million dollar business loss, in addition to a million dollars for the theft of oil. And as that money is coming out of our client's coffers, the money has got to be going somewhere. So in addition to matters of collectability … we're talking about a business loss, the taking of a client which continues to be profitable for these defendants. So we are entitled to know what money they have received in their accounts from that business account."

(R. p. 156 lines 5-16) Moreover, the court has made it clear in each of its successive rulings, particularly so in the April 6, 2015 Order denying Appellants Motion to Quash, that these records are relevant: "At the hearing the issues argued centered around relevancy and scope of the subpoenas at issue." The court ordered,

> "[t]he subpoenas issued to Wells Fargo and Accountants Margavio and Schmidt are relevant; The scope of the subpoenas shall be limited to the years 2009 to the present; and Respondent shall re-issue the subpoenas in accordance with this order."

(R. pp. 36-37) It is important to note, as pointed out above that Appellant did not move for a finding of contempt following the Court's April 6, 2015 Order or take any other steps to contest or preserve that matter for appeal. As such the Court's April 6, 2015 is not subject to this appeal and is the law of the case. *See*, *Shirley's Iron Works* at 573, 785.

The Circuit Court's Findings of Fact Are Well Supported by the Record.

Appellants argue that the Court's October 1, 2019 Order is based upon findings that are not supported by the record and, therefore, the October Order was an abuse of discretion. Appellants Initial Brief contains a list of nine (9) excerpts and issues, which Appellants contend to be erroneous findings. (Appellants' Brief at 34-37) First, many of the "erroneous findings" listed by Appellant are not bases of the Court's October 1, 2019 Order but rather dicta providing context for the Order. Second, it is important to note that Appellants never filed a written response to Plaintiff's Motion for Sanctions nor a proposed order. As noted below, each of the following excerpts and issues raised by Appellants are well supported by the record:

1) "Defendants promised to provide discovery requests, including financial information sought by Plaintiff and to pay Plaintiff's attorney's fees as a sanction for its discovery abuse." This statement, referring to the March 15, 2013 Consent Order, is well supported by the record. The March 15, 2013 Consent Order agreed to and entered into by Appellants plainly stated that "the Defendants shall serve their responses, including all responsive documents, to all outstanding discovery requests on or before Wednesday, March 20, 2013." (R. pp. 301-305) The outstanding discovery requests referenced include requests for the Appellants financial information. (R. pp. 330-393) Likewise, Appellants paid Respondent the sum of Five Hundred Dollars ($500) specifically for the purpose of reimbursing attorney fees for time spent pursing the outstanding discovery. (R. p. 481, ¶ 14)

2) "The Defendants failed to comply with the Consent Order and Plaintiff filed an Amended Motion to Compel." This is exactly what occurred and Respondent's Counsel's January 25, 2013 Affidavit attached to the Amended Motion to Compel, provides this sequence of events in detail. (R. pp. 293-294 ¶ 5-9.) Also, Appellants argue that when they filed their First Motion for Protective Order there was not yet an Order that could have been violated. (Appellant Brief at pg. 35) Appellants are well aware of the fact that they signed and entered into the Consent Order on March 15, 2013, well in advance of the filing of their First Motion for Protective Order. Appellants' current argument is an attempt to make use of the delay in the filing of the March 15, 2013 Consent Order which was signed by counsel for both parties on March 15, 2013 but, for reasons unknown, was not filed by the Clerk until April 5, 2013. Timing issues aside, there is ample support in the record that Appellants did not comply with the March 15, 2013 Consent Order and that Respondents filed an Amended Motion to Compel in response.

3) "The Court granted [Plaintiff's Amended Motion to Compel] on August 22, 2013 and ordered Defendants to produce discovery including sworn, certified financial statements." This finding is well supported by the record, specifically by the June 3, 2013 Order granting Plaintiff's Amended Motion to Compel. (R. pp. 7-10) In addition, in granting Plaintiff's Second Motion to Compel Judge Goodstein found that Judge Dickson had granted Plaintiff's Amended Motion to Compel and more importantly, that Appellants had "failed to provide discovery responses in accord with the March 15, 2013 and June 3, 2013 Orders" and granted sanctions for the noncompliance. (R. pp. 11-13)

4) "Plaintiff was forced to file a second Motion to Compel on August 27, 2013 when Defendants again failed to comply with the Court's Order." This finding is correct and supported by the record. (R. pp. 482-485, ¶21-32, pp. 12-13)

5) "Issues from the failed settlement were appealed and the case was stayed pending an order of the Court of Appeals for three years." This statement, as Appellants admit in their brief, is correct. The October 2019 Order nowhere states (or implies) that the trial court's denial of Respondent's motion to restore the case in 2015 was the fault of or attributable to Appellant.

6) The record does not contradict the October 2019 Order's description of the April 22, 2019 conference with the Judge Murphy and Appellants have provided no specific cite or support for this allegation. In fact, the October 2019 Order sets out precisely what occurred at the April 22, 2019 hearing. (R. pp. 179-180)

7) Appellants claim there is no evidence in the record supporting the Court's finding that "[p]laintiff had previously provided defense counsel with copies of these authorizations." This claim is also incorrect. Appellants had been provided copies of the authorizations as a part of their proposed order to the court which copied counsel for Appellants. (R. p. 481, ¶ 14)

8) Appellants argue that there is no support in the record that the Notice of Appeal signed on August 30, 2019, served on September 3, 2019 and never filed with the Court of Appeals was intended to cause delay as stated in the Court's October 2019 Order. In fact, there is ample evidence in the record that Appellants August Notice of Appeal was intended to cause delay and that it did, in fact cause delay. (R. p. 182, lines 22-25, p. 183, lines 1-20, pp. 678-679)

9) Appellants claim that there is no support in the record that Appellants made arguments to the effect that Appellants had "substantially complied with the court's [June 12, 2019] [O]rder," that they "could not file the threatened appeal … without being held in contempt," or that he had been ordered by his client to appeal any order issued by the court." (Appellants' Brief at pg. 37) The exchange which occurred between Judge Murphy and Mr. Marvel at the September 23, 2019 that is set out in full in the statement of facts show that Appellants argued (1) they had substantially

complied with the court's order by providing everything except the ordered authorizations, (2) that Appellants intended to appeal the court's order no matter the outcome or substance of the order, and (3) that Appellants requested the trial court to find them in contempt specifically so that Appellants could file this appeal. (R. pp. 197-200)

Appellants' Motions for Protective Order were Filed in Bad Faith as a Delay Tactic.

Appellants argue that they were forced to file Motions for Protective order due to overly burdensome, irrelevant or otherwise improper discovery propounded by "a plaintiff that was wholly unwilling to compromise, reconsider its positions, or give any quarter." (Appellants' Brief pg. 38) Appellants further state that they 'won' each motion for protective order and therefore the trial court's order on Sanctions is inconsistent and inappropriate. Appellants' arguments are inapposite to the facts in the record.

While the trial court's October 1, 2019 Order granting sanctions provides a history of the prior discovery orders and responses to such orders, it also provides numerous findings between the date the case was restored in 2019 and the October 1, 2019 Order. The actions of the Appellants during that time frame are cited with some particularity and are amply sufficient to support the Court's October 1, 2019 Order. (R. pp. 54-55)

Second, while Appellants argue that their Motions for Protective Order support an overturning of the October 1, 2019 Order, the record bears out their history of protective orders was in bad faith and actually provides additional reasons to affirm the October 1, 2019 Order. *See*, *I'On, LLC v. Town of Mt. Pleasant*, 338 S.C. 406, 419-20, 526 S.E.2d 716, 723 (2000)

The proper and required method by which to seek relief via protective order from a Court is, if a party believes discovery extends beyond the bounds of discovery, to timely consult with opposing counsel and attempting to remedy the dispute. S.C.R.C.P. 11. Here, Appellants attempted

to use the Rules of Civil Procedure to obfuscate and delay. Appellants negotiated and signed a consent order agreeing to respond to already overdue discovery, again failed to provide it and filed their first motion for protective order without consulting Respondent's counsel. (R. pp. 282-290) Appellants then repeated this behavior in response to Respondent's Supplemental discovery, representing they would contact Respondent's due to their failure to produce it and instead waiting days before filing a protective order without consulting Respondent's Counsel. (R. pp. 478-515, pp. 556-565)

The Record reflects that Appellants filed three motions for protective order and on each occasion the motions were filed 1) after the production deadline for the discovery for which the motions were seeking protection and 2) without making any attempt to confer with Respondent. As such, the record reflects that Appellants utilized motions for protective order for the purpose of delay and in bad faith.

Conclusion

Appellants have appealed the trial court's October 1, 2019 Order granting discovery sanctions and striking their pleading as the sanction. Appellants have attempted to improperly bootstrap the trial court's earlier orders into this appeal. Having failed to follow the Court's procedure to appeal prior discovery orders, those orders and their findings are the law of the case and must be accepted as proper. *See Davis v. Parkview*. Despite the Appellants' efforts to inject uncertainty into the record on appeal by challenging these orders, this Court need only evaluate whether the trial court properly exercised its broad discretion to craft a sanction pursuant to S.C.R.C.P. 37 in its October 1, 2019 Order. The trial court's October 1, 2019 Order found Appellants had engaged in willful disobedience to the orders of the court, bad faith in their actions related to the discovery process, and that these actions had an unduly prejudicial effect on the

Respondent and each of these findings was well supported by the record. As such, the Circuit Court's order of October 1, 2019 striking the pleadings of Appellants should be affirmed.

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March 31, 2021

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Court of Common Pleas

Hon. Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

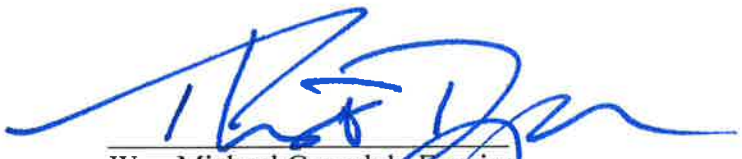
Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners GP, Crest Energy Partners LP, Dunhill Products LP, Henry Wuertz, Appellants.

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.



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Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products GP, LLC, Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products L.P., and Henry Wuertz are the Appellants.

APPELLANTS' FINAL REPLY BRIEF

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APPELLANTS' REPLY

Appellants Crest Energy Partners GP, LLC (f/k/a Dunhill Products GP, LLC), Crest Energy Partners LP (f/k/a Dunhill Products, LP), and Henry Wuertz, (hereafter "Appellants") hereby Reply to the Brief of Respondent Innovative Waste Management ("IWM"), in accordance with Rule 207(b)(3), SCACR, and State v. Wakefield, 323 S.C. 189, 473 S.E.2d 831 (Ct.App.1996).

Respondent contends throughout its brief that this Court should not review any of the lower court Orders, other than Judge Murphy's October 1, 2019 Order Granting Sanctions in favor of Respondent and against Appellants, because all prior orders are the "Law of the Case.". This Argument appears based on a fundamental misunderstanding of the Law of the Case doctrine, and standards of appellate review in general.

Appellants Brief addresses all of the lower court orders involving the discovery dispute, which were filed on April 5, 2013, August 22, 2013, October 3, 2013, April 6, 2015, June 18, 2019, August 1, 2019, and October 1, 2019.[1] The operative Notice of Appeal explicitly sought review of the October 1, 2019 Order, which Appellants referenced as being "inclusive of the prior Orders of August 1, 2019, [which were in turn] inclusive of the Orders dated of June 18, 2019 and April 6, 2015. The August 1, 2019, June 18, 2019, and April 6, 2015 Orders referenced therein addressed pretrial discovery. Each of those orders were interlocutory decisions that were not directly appealable. Ex parte Wilson, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005); Lowndes

[1] Respondent's Brief correctly notes that Appellants served a Notice of Appeal as to the August 1, 2019 Order that was never filed with any court. Appellants did so out of abundance of caution, ultimately believing that it was not necessary as the August 1, 2019 Order was interlocutory and not subject to immediate appeal. Further, Appellants' counsel informed the lower court that Appellants did not intend to proceed with that appeal. Rule 205, SCACR, does indicate that mere service of the Notice of Appeal divests the lower court's jurisdiction pending a Motion to Dismiss the Appeal. Arguably, service of that Notice makes the October 1, 2019 Order a nullity. Appellants respectfully request that the Court consider that initial Notice of Appeal withdrawn, so that the issues presented herein may be decided on the merits. Cf. State v. Dingle, 279 S.C. 278, 306 S.E.2d 223 (1983); Crout v. S.C. Nat. Bank, 278 S.C. 120, 293 S.E.2d 422 (1982).

Products, Inc. v. Brower, 262 S.C. 431, 205 S.E.2d 184 (1974); Patterson v. Specter Broadcasting Corp., 287 S.C. 249, 335 S.E.2d 803 (1985).

This Court has appellate jurisdiction to review Judge Murphy's October 1, 2019 Order pursuant to S.C. Code § 14-3-320(1) and 330(2)(c), and therefore has jurisdiction to review any prior interlocutory orders referenced in the Notice of Appeal. Judge Murphy's October 1, 2019 Order, which granted the sanctions sought by Respondent IWM, struck Appellants' Answer, Counterclaims, and Third-Party Claims. That Order was immediately appealable pursuant to S.C. Code § 14-3-330(2)(c). It was also appealable under S.C. Code § 14-3-330(1) because it struck the Appellants Counterclaims and Third-Party claims, "finally determined a substantial matter involving the claim and/or defense", and therefore "involve[ed] the merits". Wilson, 625 S.E.2d at 208 (2005); Baldwin Const. Co., Inc. v. Graham, 357 S.C. 227, 593 S.E.2d 146 (2004); Mid–State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993).

An issue that is raised in subsequent proceedings in the same litigation following an appellate decision may be subject to the "Law of the Case". As a practical matter, the doctrine is cited routinely by appellate courts in the process of affirming a lower court decision when an issue that might otherwise be dispositive on remand was not appealed or did not survive appellate review.

While the law of the case doctrine is not easy to define succinctly, it generally precludes a party from challenging, "after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court." Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009). One aspect of the doctrine that *does* appear easy to state is that an interlocutory order that was not subject to a prior appeal does not become law of the case. See Gunnells v. Raybestos-Manhattan, Inc., 261 S.C. 106, 111, 198 S.E.2d 535, 536

(1973); Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("[o]rdinarily an interlocutory order which merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered and corrected by the court before entering a final order on the merits."); Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct.App.1989).

Notably, this case was subject to prior appellate review by this Court and by the Supreme Court. See Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC, 423 S.C. 611, 815 S.E.2d 780 (Ct. App. 2018), *aff'd as modified*, 425 S.C. 568, 571, 824 S.E.2d 214 (2019). Respondent filed that appeal after Judge Murphy dismissed the case in 2015; Appellants were certainly not aggrieved by that Order, and therefore had no standing to appeal those orders or any prior, unrelated interlocutory discovery orders. See Cisson v. McWhorter, 255 S.C. 174, 177, 177 S.E.2d 603, 605 (1970); Rule 201(b), SCACR.

Appellants are unsure whether Respondent believes that each of the discovery orders prior to October 1, 2019 are barred by the law of the case, or only the orders pre-dating Respondent's prior appeal. Either way, they are not barred from review because they are interlocutory discovery orders, not matters that "should [or could] have been" raised during the first appeal. Shirley's Iron Works, 743 S.E.2d at 785. If anyone is barred from re-arguing the outcome of those motions because they are the law of the case, it is the Respondent. Respondent never appealed Judge Goodstein's dismissal of a fair portion of their claims, in response to Appellants' Motion to Dismiss. Respondent also failed to raise any of the discovery issues during its prior appeal through this Court.

Respondent's Brief does not acknowledge or meaningfully address the fact that Appellants prevailed on their first and second Motions for Protective Order. Appellants have never challenged

Judge Dickson's Orders. Rather, Appellants complied with them in full, because they substantially reduced the discovery burden that Respondent intended to impose on them. Appellants do believe that Judge Goodstein erred by requiring the production of some 35,000 pages of documents and paying $2,000 in attorneys' fees, and Appellants raised that issue before Judge Goodstein. However, it is undeniable that Judge Goodstein also curtailed the financial production demanded by Respondents. Again, Appellants complied with Judge Goodstein's order.

More importantly, Appellants never directly challenged Judge Murphy's April 6, 2015 Order, because the April 6, 2015 ruling did not Order appellants to do anything**.** As more fully stated in the Appellant's Brief, Respondents were the only party that violated Judge Murphy's April 6, 2015 Order.

To the point where Judge Murphy erroneously dismissed the case in 2015, the following salient facts are both unchallenged and this simple:

1) Appellants challenged the initial financial discovery served by Respondent by filing a Motion for Protective Order;
2) Judge Dickson limited the financial discovery served by Respondent in his August 22, 2013 Order;
3) Appellants complied with the financial discovery requirements contained in the August 22, 2013 Order;
4) Respondent served additional financial discovery after filing its Amended Complaint;
5) Appellants challenged the Amended Complaint by filing a Motion to Dismiss and challenged the additional discovery by filing a Second Motion for Protective Order;
6) Judge Goodstein limited the financial discovery served by Respondent in her October 3, 2013 Order;

7) Appellants complied with the financial discovery requirements stated in the October 3, 2013 Order; and
8) Respondent did not serve **ANY** additional discovery on Appellants after 2013.

Following Remand from the Supreme Court, the record established the additional unchallenged, incontestable facts:

9) Respondent served a subpoena on Margavio & Schmidt, CPAs, a Louisiana Corporation;
10) Appellants did not contest Respondent's subpoena served upon Margavio & Schmidt;
11) Margavio & Schmidt filed a Motion to Quash Respondent's subpoena in Jefferson Parish, Louisiana;
12) Respondent failed to contest the Motion to Quash filed by Margavio & Schmidt;
13) The Jefferson Parish Court granted Margavio & Schmidt's Motion to Quash; and
14) After Respondent's subpoena to Margavio & Schmidt had been quashed, and without serving any additional discovery requests, Respondent demanded that Appellants execute "releases" directing Margavio & Schmidt and Wells Fargo, N.A. to respond to Respondent's Subpoena;

Appellants do not repeat these facts simply to rehash the arguments presented in their Initial Brief, but only to point out the egregiousness of the lower Court's error. Even if Rule 34, SCRCP allowed the Respondent to serve Appellants with a request to execute a release, respondents never served such a request. Even if Respondents had that authority, and had served such a request, and assuming the lower court had the authority to Order the Appellants to execute releases, the lower

court refused to provide Appellants with a copy of the releases they were directed to execute, even after Appellants explicitly requested that the court do so. Yet, without having been served with a Rule 34 request, and without having been directed by the lower court to actually complete any specific act, and without any evidence in the record that Appellants had violated any prior Order of the Court, Appellants were sanctioned under Rule 37, SCRCP.

Appellants' Answers, Counterclaims, and Third-Party claims were stricken. That ruling is an abuse of discretion which should not be allowed to stand.

RESPECTFULLY SUBMITTED:

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April 1, 2021
Charleston, South Carolina

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Innovative Waste Management, Inc., Respondent,

v.

Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products GP, LLC, Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products L.P., Dunhill Products GP, LLC, and Henry Wuertz are the Appellants.

Appellate Case No. 2019-001719

Appeal From Dorchester County
Maité Murphy, Circuit Court Judge

Unpublished Opinion No. 2023-UP-126
Heard December 5, 2022 – Filed March 29, 2023

AFFIRMED

David B. Marvel, of Charleston, for Appellants.

Patrick Aulton Chisum and William M Gruenloh, both of Gruenloh Law Firm, of Charleston; Brian Ross Holmes, of George Sink, PA Injury Lawyers, of Columbia; Frederick John Jekel, of Leventis & Ransom, of

Columbia; and Thomas Francis Drazan, of Charleston, all for Respondent.

PER CURIAM: In this business litigation, the circuit court sanctioned Crest Energy Partners, GP and Crest Energy Partners LP (together Crest Energy), Dunhill Products GP, LLC and Dunhill Products LP (together Dunhill Products), and Henry Wuertz for discovery abuse and struck their pleadings. Crest Energy, Dunhill Products, and Wuertz (collectively, Appellants) now appeal. We affirm.

I.

In 2009 and 2010, Innovative Waste Management (IWM) and Dunhill Products entered into a joint venture, which ultimately led to allegations of breach of contract, fraud, various torts, and other causes of action. Specifically, IWM accused Dunhill Products, Crest Energy Partners (successor-in-interest to Dunhill Products), and Wuertz (the president of Dunhill Products and director of Crest Energy Partners), of stealing trade secrets and improperly interfering with prospective business relationships, as well as the theft of over one million dollars of petroleum products. IWM sought twelve million dollars in economic damages, as well as punitive damages against Appellants. Appellants answered with several affirmative defenses and counterclaims sounding in contract and tort.

IWM served Appellants with requests for discovery and interrogatories on October 2, 2012. Despite assurances from Appellants' counsel that discovery responses were on their way, Appellants did not timely produce discovery. On January 31, 2013, IWM filed its first motion to compel discovery. On March 15, 2013, Appellants and IWM entered into a consent order on IWM's motion to compel, wherein Appellants agreed to pay IWM's counsel $500.00 to cover IWM's attorney's fees in pursuing discovery responses and to provide any outstanding discovery the following week. On March 20, 2013, Appellants provided a compact disc to IWM, which contained 2,254 documents—but did not contain a document log or index of any kind. Appellants did not respond to IWM's interrogatories, and on March 21, 2013, Appellants filed a motion for a protective order, asserting a number of IWM's interrogatories were "patently objectionable."

On March 23, 2013, IWM filed an amended motion to compel discovery, alleging Appellants had willfully failed to comply with the March 15, 2013 consent order. IWM asserted the compact disc provided by Appellants was only partially responsive to its requests for discovery; was not useful because it did not contain a

document index; and did not provide "any documents that evidence the damages alleged in [Appellant's] counterclaim." On April 1, 2013, the parties appeared before the circuit court. After hearing arguments, the circuit court ruled Appellants were required to fully cooperate in discovery, but, in lieu of answering some of the interrogatories regarding Appellant's finances, Appellants could produce certified financial statements as to the net worth of each defendant.

Appellants answered IWM's interrogatories on May 3, 2013, and July 1, 2013, and gave IWM certified financial statements for each Appellant. IWM served Appellants with supplemental discovery requests, asking for an accounting of income derived by Appellants from the use of the confidential information allegedly stolen from IWM, as well as Appellants' tax filings. In response, Appellants filed a second motion for a protective order, asserting the supplemental requests violated the circuit court's April 1, 2013 rulings. On August 27, 2013, IWM filed a motion to compel, arguing Appellants' interrogatory answers were deficient and unresponsive to the posed questions. IWM also asserted Appellants had failed to respond to the supplemental requests for discovery.

The parties again appeared before the circuit court, and, on September 27, 2013, the circuit court signed an order denying Appellants' motion for a protective order and granting IWM's motion to compel in part—ruling Appellants were required to produce the accounting requested, but, in lieu of many of the financial documents and tax records requested by IWM, Appellants would produce "the working papers such as W-2s, 1099s, K-1's, etc., used in preparation of [Appellant's] state and federal tax returns for the period of 2008-2012." The circuit court additionally ruled that, because Appellants failed to provide discovery responses in accord with the court's earlier orders, Appellants were to pay IWM $2,000.00 in attorneys' fees no later than October 9, 2013.

On November 8, 2014, IWM served subpoenas on Appellants' accountant and bank. The subpoenas requested the institutions release Appellants' records from 2008 to the present. On December 4, 2013, Appellants filed a motion to quash the subpoenas, asserting the subpoenas sought information not reasonably calculated to lead to the discovery of admissible evidence. In opposition to the motion to quash, IWM argued the financial records were needed because, when IWM compared Wuertz's deposition testimony and Appellants' tax records with the certified financial statements produced as a result of the circuit court's earlier discovery rulings, differing pictures emerged regarding Appellants' net worth. IWM argued the information from the subpoenas would provide accurate information regarding Appellants' finances, which was relevant "to monies made by the parties as a result of the transactions [at issue in the lawsuit], [Appellants']

ability to satisfy a judgment, and to verify undocumented testimony by the parties under oath." In an April 6, 2015 order, the circuit court denied the motion to quash. As a result of the subpoena, Appellants' accountant released financial records to IWM through 2013.

On April 8, 2015, the parties signed a settlement agreement, which included a payment deadline. As a result of the settlement, the case was dismissed in a Form 4 order signed only by the clerk of court. Appellants did not make the payment by the deadline, and IWM filed a Rule 60(b), SCRCP motion to restore the case, which was denied. In May 2015, IWM appealed the denial of its Rule 60(b), SCRCP motion, and the case made its way through the appellate process for the next four years. In 2018, this court found the Form 4 order dismissing the case void, and the South Carolina supreme court affirmed this holding in February 2019. *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 615, 815 S.E.2d 780, 782 (Ct. App. 2018), *aff'd as modified*, 425 S.C. 568, 824 S.E.2d 214 (2019). Having found the case erroneously dismissed, the supreme court remanded the case to the circuit court. *Innovative Waste Mgmt*, 425 S.C. at 571, 824 S.E.2d at 215.

After remand to the circuit court, IWM's counsel sent Appellants' counsel a letter requesting Appellants update their discovery responses. IWM also re-issued the subpoena to Appellants' accountant, this time requesting records through 2019. In response, the accountant filed a motion to quash the subpoena in Louisiana, which was granted by a Louisiana court. On April 22, 2019, the parties underwent a teleconference with the circuit court during which IWM asserted that, due to Appellants' failure to cooperate in the release of the updated financial documents, Appellants should be ordered to provide executed authorizations for the production of the accounting and banking records, or simply obtain and produce the records themselves.

On May 7, 2019, Appellants' counsel sent IWM a letter following up on the teleconference, stating that all past discovery orders had been complied with at the time they were issued and there was no need for updated financial information. On May 15, 2019, IWM filed another motion to compel discovery. In the motion, IWM asserted Appellants had a duty to supplement the financial statements under Rule 26(e), SCRCP, and Appellants should be ordered to provide executed authorizations for the release of their own banking and accounting records through 2019.

A hearing on the motion to compel was held on June 5, 2019. Appellants asserted the circuit court could not order Appellants to execute authorizations for the

release of their updated banking and accounting records because: 1) it was outside of the circuit court's authority under the rules of civil procedure, 2) the records were not relevant, and 3) an order mandating the release of the records was an improper collateral attack on the court's earlier discovery rulings. On June 18, 2019, the circuit court granted IWM's motion to compel and ordered "An Authorized Principal" for each Appellant to sign authorizations for the release of the accounting and banking records from 2009 to 2019 within seven days. The circuit court also ordered Appellants to pay IWM $1,950.00 for its attorneys' fees and costs of bringing the motion to compel.

On June 25, 2019, Appellants filed a motion to alter or amend the June 18, 2019 order. On August 1, 2019, the circuit court filed an order denying Appellants' motion to amend, except as to one technical issue, stating:

> The June 18 Order is now amended only to allow these documents and statements to be executed by or on behalf of such entities by either an Authorized Principal or Accounting Professional, and the remainder of the relief requested in [Appellants'] motion is hereby denied.

On August 9, 2019, IWM's counsel sent Appellants' counsel an email asking for the authorizations as the deadline to produce the authorizations (seven days) had passed. Appellants' counsel wrote back explaining he had not seen the order, and he would "pull it electronically." Over the next couple of weeks, Appellants produced the 2016 and 2017 tax returns for Crest Energy, as well as a new certified financial statement for Wuertz. Appellants also produced a letter from Crest Energy's CPA stating Crest Energy/Dunhill Products had not been in business since 2015, and any income reported in 2016 and 2017 tax returns was "a result of accounting practices which, among other things, require a taxpayer to declare cancelled debt as income." With these productions, Appellants' counsel stated, "more to come."

However, on August 30, 2019, Appellants sent IWM a notice they would be appealing the August 1, 2019 order. The same day, counsel for Appellants sent the circuit court a letter indicating Appellants had produced all the updated financial information they could. In the letter, Appellants' counsel requested to be held in contempt "to the extent you feel the [updated financial] production . . . violates your [o]rder," so that Appellants could file an appeal of the August 1, 2019 order.

Two weeks later—before the circuit court acted on Appellants' letter—IWM filed a motion for sanctions pursuant to Rule 37, SCRCP. In the motion, IWM asserted

Appellants "continual willful failure to comply" with the many discovery orders in the case was a "deliberate attempt to delay this case," demonstrating "a clear pattern of willful misconduct which has unduly prejudiced [IWM's] ability to try its case." A hearing on the motion for sanctions and Appellants' request to be held in contempt was held on September 23, 2019.

On October 1, 2019, the circuit court issued an order granting IWM's motion for sanctions. In the order, the circuit found Appellants "have engaged in a deliberate pattern of discovery abuse and willfully failed to follow this Court's August 1, 2019 Order[.]" The circuit court detailed the procedural history of the case, noting that, due to missed deadlines and partial responses, IWM "was forced" to file a motion to compel, an amended motion to compel, and a second motion to compel all before the 2015 hearing regarding whether the subpoenas for Appellants' financial documents should be quashed. The circuit court noted that, in denying the motion to quash, it found that "bank and accountant records from 2009 through the present were relevant and should be disclosed." The circuit court then described the communications that occurred amongst IWM, the circuit court, and Appellants after the case's remand from the South Carolina supreme court, noting counsel for Appellants often asked for extensions for the production of the updated financial information and made promises to produce the authorizations that were not fulfilled. The circuit court noted that, on June 18, 2019, and then again, on August 1, 2019, it ordered Appellants to produce authorizations for the release of the banking and accounting records, as well as monetary sanctions in the amount of $1,950.00. The circuit court noted Appellants did not produce the authorizations, pay $1,950.00, or "advise [IWM] or the Court of its inability to pay the award of attorney's fees at any point prior to [the hearing on the motion for sanctions]." The court found that, "from a review of the totality of the record," Appellants' "conduct is in bad faith, is willfully disobedient to the orders of the Court, and demonstrates a gross indifference to [IWM's] rights seeking to delay a case on the eve of trial." The circuit court noted that, instead of timely asserting that Appellants did not believe updated records from the bank and accountant were discoverable, Appellants chose "to make false representations to opposing counsel" and "feign compliance with the order of the Court." Accordingly, the circuit court ruled, instead of being found in contempt without any sanctions, Appellants' pleadings would be struck. This appeal follows.

II.

We hold Appellants have waived appellate review of all discovery orders prior to the October 1, 2019 order granting sanctions, and therefore, the October 1, 2019 order is the only order properly before us on appeal. *See Davis v. Parkview*

Apartments, 409 S.C. 266, 280–81, 762 S.E.2d 535, 543 (2014) (finding plaintiffs who were sanctioned for discovery abuse had waived review of the underlying discovery orders "by providing incomplete responses and causing delay through other tactics" while "continu[ing] to accept the circuit court's formulation of discovery" instead of preserving their objections to the prior discovery orders by immediately refusing to comply with the prior orders, suffering contempt, and appealing from the contempt finding; accordingly, the prior discovery orders were the law of the case and the only order properly on appeal was the order granting sanctions).

Regardless, even if the June 18/August 1, 2019 orders were properly before us on appeal, we find the circuit court did not abuse its discretion or exceed its authority in ordering Appellants to execute authorizations for the release of their own banking and accounting records. *See Hollman v. Woolfson*, 384 S.C. 571, 577, 683 S.E.2d 495, 498 (2009) ("A trial judge's rulings on discovery matters will not be disturbed by an appellate court absent a clear abuse of discretion."). Because IWM asked for punitive damages, Appellants' financial documents through 2019 were relevant under Rule 26, SCRCP. *See* Rule 26(b)(1), SCRCP ("Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action . . . . It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."); *Branham v. Ford Motor Co.*, 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (providing, under South Carolina law, "the wealth of a defendant is a relevant factor in assessing punitive damages" (quoting *Welch v. Epstein*, 342 S.C. 279, 307, 536 S.E.2d 408, 423 (Ct. App. 2000))). Further, although the banking and accounting documents were in the custody of the bank and accountant, they were Appellants' documents, and, therefore, within the legal control of Appellants. *See* Rule 34(a), SCRCP ("Any party may serve on any other party a request (1) to produce . . . any designated documents, or electronically stored information . . . within the scope of Rule 26(b) and which are in the possession, custody or control of the party upon whom the request is served . . . ."); *see also Barnette v. Adams Bros. Logging, Inc.*, 355 S.C. 588, 595, 586 S.E.2d 572, 576 (2003) (affirming an order granting sanctions for a party's failure to comply with a discovery order compelling execution of an authorization for the release of social security records); *Mir v. L-3 Commc'ns Integrated Sys., L.P.*, 319 F.R.D. 220, 229–30 (N.D. Tex. 2016) ("[R]equests for signing and executing written releases or authorizations may be properly made under Rule 34(a) [FED. R. CIV P.]—and then, if necessary, compelled under Rule 37(a) [FED. R. CIV P.]—insofar as they require a responding party to permit the requesting party or its representative to inspect or

copy designated documents or electronically stored information in the responding party's control . . . . Reading Rule 34(a) to permissibly require parties to sign and execute written releases and authorization forms, so understood, does not amount to impermissibly requiring a responding party to create a new or non-existent document."); Wright and Miller, § 2210 Possession, Custody, or Control, 8B Fed. Prac. & Proc. Civ. § 2210 (3d ed. 2022) (gathering cases discussing the issue of compelling authorizations for release of documents within a party's "control"). Finally, due to the evolving discovery posture of the case, we find the June 18/August 1, 2019 orders did not improperly overrule another circuit court's order in the same case. *See Sellers v. Nicholls*, 432 S.C. 101, 114, 851 S.E.2d 54, 60 (Ct. App. 2020) ("'[A]n interlocutory order [that] merely decides some point or matter essential to the progress of the cause, collateral to the issues in the case, is not binding as the law of the case, and may be reconsidered . . . by the court before entering a final order on the merits."(quoting *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013))).

As for the October 1, 2019 order, we hold the circuit court was within its discretion to strike Appellants' pleadings as a sanction for discovery abuse. *See Barnette*, 355 S.C. at 593, 586 S.E.2d at 575 ("Pursuant to Rule 37(b)(2)(C), SCRCP, when a party fails to obey an order to provide or permit discovery, the court may 'make such orders in regard to the failure as are just,' including an order dismissing the action or proceeding, or any part thereof."). Appellants assert they were well within their rights to move for protective orders and a motion to quash and these should not be grounds for sanctions. We agree. IWM's interrogatories and their requests for documents were extensive, and it is reasonable Appellants would ask the court to tailor IWM's discovery requests. However, Appellants' use of motions for protective orders is not the reason Appellants were sanctioned. Rather, in finding Appellants "engaged in a deliberate pattern of discovery abuse," the circuit court described the many times Appellants missed discovery response deadlines; failed to fully comply with motions to compel; represented to the court they would cooperate in discovery, but then failed to follow through; and failed to pay past monetary sanctions. The circuit court found not only was Appellants' non-compliance with the June 18/August 1, 2019 orders willful, it was also likely a tactic "to delay a case on the eve of trial" in gross indifference to IWM's rights. We find the record supports these findings, and, as in *Davis*, the harsh sanction of dismissing Appellants' pleadings was not unreasonable. *See Davis*, 409 S.C. at 283, 762 S.E.2d at 544 (finding dismissal of the pleadings was not an unduly harsh sanction in light of the plaintiff's willful and repeated failure to comply with various orders of the trial court, which resulted in unnecessary delay and prejudice

to the defendants). Accordingly, we affirm the October 1, 2019 order sanctioning Appellants and striking their pleadings.

AFFIRMED.

GEATHERS and MCDONALD, JJ. and HILL, A.J., concur.

RECEIVED

May 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products GP, LLC, Dunhill Products, LP, and Henry Wuertz are the Appellants.

PETITION FOR REHEARING

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INTRODUCTION

Pursuant to Rule 221(a), SCACR, Appellants Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products GP, LLC, Dunhill Products, LP, and Henry Wuertz hereby petition this Honorable Court for a rehearing of Unpublished Opinion No. 2023-UP-126, filled March 29, 2023.

Rehearing is warranted because, initially, the Court erred in holding that the circuit court's October 1, 2019 Order was the only order subject to appeal. This error appears to be based on a misreading of Supreme Court precedent which, if correct, would leave all litigants in South Carolina courts with no means to review discovery orders of the circuit courts, no matter how misguided they may be.

Rehearing is also warranted because the Court's Opinion fails to address Appellants' arguments that 1) there was no actual violation of any order below, 2) lessor sanctions were available to the circuit court and never considered, and 3) that the circuit court's October 1, 2019 order was simply a recitation of Respondent's arguments, written and submitted by Respondent's counsel, which was not without support in the record, and actually contradicted therein. Further, Appellants respectfully submit that the Court's holdings that circuit court was within its discretion in issuing the orders below are incorrect and, anticipating that the Court may not be inclined to directly reconsider its rulings, those arguments are included herein to preserve them for review pursuant to Rule 242(d)(2).

OVERVIEW

The history of this case was extensively briefed by the parties and the Court's opinion displays familiarity with the record. Thus, in the interest of brevity, the as stated in Appellant's Initial Brief are incorporated herein by reference.

In pertinent part, the orders below and subsequent appeal concern a long running discovery dispute in a case that has been in litigation for twelve years, having been dismissed in the federal courts and then having been the subject of a prior appeal up to the South Carolina Supreme Court. Appellants briefs addressed several circuit court orders filed prior to the first appeal, dated April 5, 2013, August 21, 2013, October 3, 2013, and April 6, 2015. Those orders were never intended to be subjects of the instant appeal, but were integral to the history of the issue that culminated in the orders issued by the circuit court after the case was remitted. The post-appeal orders were filed on June 18, 2019, August 1, 2019 (denying Motion to Alter or Amend), and October 1, 2019. Those orders were contested in the lower court and properly appealed pursuant to the procedures outlined by the Supreme Court in Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014), Metts v. Mims, 384 S.C. 491, 682 S.E.2d 813 (2009), and the precedent cited therein. Nonetheless, following oral argument, this Court held that the October 1, 2019 order was the only order subject to the appeal, that the prior orders were within the discretion of the Circuit Court, and that the record supported the findings in the October 1, 2019 order striking Appellant's pleadings, essentially leaving Appellants in default and nullifying Appellant's cross claims below.

Appellants respectfully submit that these rulings are in error and should be reheard and reconsidered for the reasons set forth herein.

GROUNDS FOR REHEARING

1. The Court erred in holding that its review was limited to the October 1, 2019 order.

Without question, discovery orders such as the June 18, 2019 and August 1, 2019 orders in the instant case "are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right." Grosshuesch v. Cramer, 377 S.C. 12, 30–31, 659 S.E.2d 112, 122 (2008) (citing Hamm v. S.C. Pub. Serv. Comm'n, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); Wallace v. Interamerican Trust Co., 246 S.C. 563, 568–69, 144 S.E.2d 813, 816 (1965)). See also Lowndes Products, Inc. v. Brower, 262 S.C. 431, 205 S.E.2d 184 (1974).

However, South Carolina appellate courts have historically reviewed interlocutory orders when such orders are presented on appeal as companion issues to orders that are ordinarily immediately appealable. See, e.g., Brown v. Cnty. of Berkeley, 366 S.C. 354, 362, 622 S.E.2d 533, 538 (2005) (citing Morris v. Anderson County, 349 S.C. 607, 610, 564 S.E.2d 649, 651 (2002); Pitts v. Jackson Nat'l Life Ins. Co., 352 S.C. 319, 338, 574 S.E.2d 502, 512 (Ct.App.2002)).

Shortly after the South Carolina Rules of Civil Procedure replaced the Rules of Practice for the Circuit Courts, the Supreme Court applied this principal to a discovery order directed at a non-party, explicitly adopting existing procedure under the federal rules for the appeal and review of a discovery order, Ex parte Whetstone, 289 S.C. 580, 580, 347 S.E.2d 881, 881 (1986). The Court stated the procedure succinctly: one who is aggrieved by a discovery order "may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply. Id. 347 S.E.2d at 881–82.

An example of how this procedure was historically utilized is found in Ross v. Med. Univ. of S.C., 312 S.C. 532, 435 S.E.2d 877 (Ct. App. 1993) *rev'd* 317 S.C. 377, 379, 453 S.E.2d 880, 882 (1994). In that case, the defendant appealed a discovery order, which was dismissed as interlocutory. Following remittitur, the defendant continued its refusal to answer two requests for admissions, and the plaintiff moved for sanctions. Upon the defendant's continued refusal to comply with the circuit court's order, the defendant was held in contempt, sanctions were imposed, and the court deemed the Requests admitted. Upon a second appeal, the Court of Appeals rightly reviewed both the discovery order and the contempt/sanctions order, vacating both. On certiorari, the Supreme Court also reviewed the merits of the underlying discovery order, reversed the Court of Appeals, and reinstated both the discovery order and the order imposing sanctions for contempt.

The Supreme Court most recently expounded on this procedure in Davis v. Parkview Apartments, 409 S.C. 266, 762 S.E.2d 535 (2014), which was discussed at length at oral argument. In Davis, the plaintiffs appealed an Order dismissing their claims with prejudice as a sanction following a multifaceted discovery dispute that proceeded nearly two years in the circuit court. The Supreme Court certified the case for review pursuant to Rule 204(b), SCACR. affirmed, finding that the plaintiffs had not complied with the procedure outlined in Whetstone. In result, the Supreme Court's rationale in Davis may appear to limit this Court's ability to review an interlocutory discovery order in conjunction with an appealable order granting sanctions. However, Davis actually upheld and restated the Whetstone procedure, which the Appellants here followed explicitly.

The Davis opinion notes three reasons supporting its affirmance of the circuit court, all of which distinguish the facts and proper outcome of this matter. First, the Court noted that the plaintiffs "only appealed the order awarding sanctions, . . . the Dismissal Order." Id., 762 S.E.2d

at 542-43. In contrast, the Notice of Appeal in the instant case explicitly sought review of the April 6, 2015, June 18, 2019 and August 1, 2019 discovery orders, as well as the October 1, 2019 order striking Appellants' pleadings.[1] In this case, Appellants never stopped challenging the June 18, 2019 order. Appellants filed a Motion to Alter or Amend, which was denied by the August 1, 2019 Order. At that point, Appellants advised the Court that they intended to seek Appellate review of the discovery orders, and even asked the court to find them in contempt, going so far as to cite Davis in the process. citing Second, the Davis Court found that the plaintiffs had not followed the Whetstone procedure because they "continued on tin the litigation" and "continued to accept the circuit court's formulation of discovery." Id. at 543. Finally, the Davis Court found that the discovery rulings at issue in that case were "unreviewable on appeal" because the appellants "only raise[d] general issues with those orders", making no "specific objections to each item of discovery deemed discoverable by the circuit judge". Id., at n. 15. In this appeal, Appellants objections to the propriety of the individual orders and the items deemed discoverable in great detail, covering an expansive prior of their briefs and being fully argued before the Court. Clearly, none of the reasons underlying the Davis Court's decision to affirm the sanctions ordered below apply to this case. The procedure restated in the opinion, on the other hand, was followed by the Appellants, allowing this honorable court to review the underlying discovery orders.

The procedure adopted in Whetstone is described in Davis and subsequent cases relatively simply: to obtain review of an interlocutory discovery order, a party must refuse to comply with the lower court's formulation of discovery, and file an appeal from an immediately appealable

[1] Appellants sought review of the lower court's April 6, 2015 Order, which denied a motion to quash a third party subpoena on the basis that the financial records sought by the plaintiff below were relevant and material to the case. While Appellants continue to believe that ruling was in error, they were ultimately not aggrieved by that ruling, as the Order did not require the Appellants to do anything. It is incorporated into the issues relating to the October 1, 2019 ruling only to the extent the respondent was the party that failed to abide by the ruling, and therefore it can not be found as a basis for sanctions against Appellants.

order resulting from the party's failure to comply. See Richardson v. Halcyon Real Est. Servs., LLP, No. 2019-000671, 2023 WL 2995102, at *2 (S.C. Ct. App. Apr. 19, 2023); Whitfield v. Schimpf, No. 2019-001716, 2022 WL 17174886, at *1 (S.C. Ct. App. Nov. 23, 2022). Est. of King ex rel. King v. Richland Cnty., No. 2008-UP-274, 2008 WL 9841679, at *2 (S.C. Ct. App. May 21, 2008) Likewise, it has been reiterated by the Supreme Court as "well settled" precedent. See Montgomery v. Montgomery, No. 2018-001233, 2019 WL 2295405, at *1 (S.C. May 29, 2019) Memorandum Opinion No. 2019-MO-027 Heard May 9, 2019Filed May 29, 2019. Whether the subsequent order finds a party in contempt or issues sanctions is of no consequence, as either result subjects an order to immediate appeal, allowing the appellate court to review companion issues decided in otherwise interlocutory rulings.

Here, the circuit court issued discovery orders adverse to Appellants, which Appellants believed to be procedurally defective, factually incorrect, beyond the scope of discovery, and outside of the discretion of the court. Appellants refused to comply with certain aspects of those orders, advised the court that they intended to seek appellate review, and suffered an excessive sanction as a result. This is precisely what the procedure outlined in Whetstone and Davis requires, and the Court must grant rehearing so that the discovery orders are subject to review.

2. The Court's Opinion fails to recognize or address the deficiencies in the underlying discovery order.

The Court's Opinion in this matter held that Rule 34, SCRCP provides and avenue for a party to request, and for a circuit court to compel, the execution of financial authorizations by an adverse party. Notably, the two cases relied upon by the Court in reaching that conclusion addresses an altogether different situation, where the party compelled to execute such

authorizations placed the subject of those authorizations at issue. E.g., Barnette v. Adams Bros. Logging, Inc., 586 S.E.2d 572 (S.C. 2003). Appellants do not contest the concept that the wealth of a defendant is relevant to the assessment of punitive damages, but it would seem to be incorrect statement of law to say that the documents sought by Respondent must be produced simply "[b]ecause IWM asked for punitive damages". In fact, Respondent repeatedly represented to the lower court that the documents were sought solely for the purpose of assessing credibility. Appellants assert that the Court's ruling is in error, and respectfully request that the Court reconsider its ruling and rehear this matter for the reasons stated in Appellant's Initial Brief.

Moreover, the Court's ruling on this issue, as stated in the Opinion, appears to miss several points argued below and in brief.

First, a review of the record, particularly IWM's Third Motion to Compel (the subject of the orders at issue) establishes that **IWM never actually served a Rule 34 request for the signed authorizations.** Rather, IWM served subpoenas on the third parties at issue, lost a motion to quash in a Louisiana state court, and then filed its Motion to Compel, where the issue of executing authorizations was raised for the first time. Even assuming the Court's ruling as to the breadth of Rule 34 is correct, the concept that a party can use Rule 37, SCRCP to seek an order compelling a party to produce a document that the moving party never actually requested under Rule 34 ignores the plain language of the Rule, and would seem to make the South Carolina courts bastions of common law discovery. For a circuit court to order the production of such documents that were never formally requested, and then strike a party's pleadings when that party has indicated an intent to seek appellate review of that order, would seem to be a prime example of abuse of discretion.

Second, this Court's opinion plainly overlooks the fact that **the circuit court failed to order Appellants to execute any specific authorizations, despite Appellants' request via their**

Motion to Alter or Amend that explicitly requested that the circuit court amend its order to include them. Rather, the June 18, 2019 order referred to authorizations described as being "appended as Exhibits A – E to this order", when there were no such authorizations included. The Record on Appeal is likewise void of reference to these phantom authorizations. The circuit court had ample opportunity to amend its order to include the authorizations, and it chose not to. Appellants should not be faulted, and cannot be sanctioned under the rules of civil procedure, for failing to execute authorizations that do not exist. The plain language or Rule 37(b)(s) only subjects a party to sanctions for "fail[ing] to obey an order to provide or permit discovery". Here, there can be no willful failure to obey an order when compliance with that order is a technical impossibility. The authorizations at issue simply did not exist.

Third, the circuit court ignored, and this Court's Opinion fails to address or recognize, that IWM bears the responsibility for its own failure to obtain the records it allegedly sought via the authorizations. The scope of discovery set forth in the civil rules contemplates that a party seeking discovery will use the allowable tools judiciously. See Rule 26, SCRCP (the "use of discovery methods . . . shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought".). IWM patently ignored the circuit court's 2015 Order that directed it to issue subpoenas to the entities in question. Then, when IWM issued subpoenas in 2019 to the entities in question, it failed to appear and argue under the Uniform Interstate Depositions and Discovery Act that it was entitled to the documents. If IWM had followed through on either of these discovery methods, in all likelihood it would not have needed to request signed authorizations from Appellants to obtain the information it sought.

The discovery orders at issue exceeded the circuit court's authority because Rule 34 should not be utilized to compel the execution of authorizations allowing the release of sensitive documents addressing issues not put at issue by the responding party. Even if that is a correct use of Rule 34, Respondent IWM never actually made a Rule 34 request for the authorizations, and the Court never ordered Appellants to execute any specific authorizations due to its own refusal to provide the authorizations as attachments to its order. Under these circumstances, where Respondent IWM abandoned its otherwise proper use of discovery tools to obtain the same documents, Appellants should not have been subject to sanctions under Rule 37, and certainly not the extremely harsh sanction of striking Appellants' pleadings.

3. **The Court's Opinion incorrectly found that the October 1, 2019 order striking Appellants' pleadings was within the circuit court's discretion.**

Here, the circuit court struck the Appellants' pleadings as a discovery sanction, leaving appellants with no defense, and also without a substantial counterclaim. In doing so, the circuit court abused its discretion because, in fact, the circuit court failed to exercise that discretion at all.

"When the court orders default or dismissal, or the sanction itself results in default or dismissal, the end result is harsh medicine that should not be administered lightly." Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co., 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct.App.1999). A sanction that results in a default or dismissal is a severe punishment that should be imposed only if there is some showing of bad faith, willful disobedience, or gross indifference to the rights of the adverse party. Id. at 198–99, 511 S.E.2d at 719 "[T]he sanction imposed should be reasonable, and the [c]ourt should not go beyond the necessities of the situation to foreclose a decision on the merits of a case." Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 154, 399 S.E.2d 439, 440 (Ct.App.1990).

"An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000). "In deciding what sanction to impose for failure to disclose evidence during the discovery process, the [circuit] court should weigh the nature of the interrogatories, the discovery posture of the case, willfulness, and the degree of prejudice." Jamison v. Ford Motor Co., 373 S.C. 248, 270, 644 S.E.2d 755, 767 (Ct.App.2007). "A failure to weigh the required factors demonstrates a failure to exercise discretion and amounts to an abuse of discretion.". Id.

The findings of fact cited in the circuit court's Order are nothing more than a recitation of IWM's argument, which was without support in the record when IWM's counsel said it, without support in the record when signed by the court, and without support in the Record on Appeal. The Order cites these statements, and no others of material consequence, in support of the finding that the Crest Defendants had engaged in willful, bad faith, dilatory conduct in disobeying the Court's discovery orders. The circuit court failed to undertake any effort to weigh any other factor in ruling that Appellants' pleadings should be stricken, and also failed to assess whether any lessor sanction was available to cure any perceived disobedience by the Appellants. This is clearly an abuse of the circuit court's discretion, and this Court should Grant rehearing, and reverse the October 1, 2019 Order.

The false statements cited in Appellants' Brief are as follows:

The circuit court found that, in the March 15, 2013 proposed Consent Order, "Defendants' promised to provide discovery requests, including the financial information sought by Plaintiff and to pay Plaintiff's attorney's fees as a sanction for its discovery abuse" (ROA 47, p. 2). This

statement not only lacks support in the record, it includes at least three statements that are directly contradicted by the record and the language of the March 15, 2013 Order itself (ROA 4-6).

The circuit court found that "[t]he Defendants failed to comply with the Consent Order and Plaintiff filed an Amended Motion to Compel" (ROA 47, p. 2). This statement is contradicted by the record. In fact, the Defendants filed a Motion Protective Order because IWMs discovery was patently in violation of Rule 33 (b)(9), SCRCP. When defendants filed their motion, and IWM subsequently filed their Amended Motion to Compel, the court had not yet issued an Order that could have been violated.

The circuit court found that "[t]he Court granted that motion on August 22, 2013 and ordered Defendants to produced [sic] discovery including sworn, certified financial statements." Judge Dickson did not grant IWM's Motion, in fact drastically limiting the discovery sought by IWM. The Order also, at defense counsel's suggestion, Ordered "sworn *or* certified" financial statements (ROA 7-10, ROA 146, (p. 37, lines 13-17)). There is no evidence in the record that the Crest Defendants violated that Order.

The circuit court found that "Plaintiff was forced to file a second Motion to Compel on August 27, 2013 when Defendants again failed to comply with the Court's Order." In fact, defendants filed a Second Motion for Protective Order because IWM continued to engage counsel with issues that had been raised and resolved by the prior motions and Judge Dickson's ruling (ROA 327-393). IWM subsequently filed a Motion to Compel, after the hearing had been set, and ten days before it was heard.

The circuit court found that "[i]ssues from the failed settlement were appealed and the case was stayed pending and [sic] order of the Court of Appeals for three years." While this statement

is technically correct, the Order implies that the court's denial of IWM's motions to restore the case and IWM's appeal of those rulings, is somehow fault attributable to the Defendants.

The record directly contradicts the order's description of the April 22, 2019 teleconference, and there is no record that defendants ever agreed to provide any responses prior to May 7, 2019 (ROA 49, p. 4).

There is no evidence in the record supporting the court's finding that "[p]laintiff had previously provided defense counsel with copies of these authorizations."

The circuit court's order contains a paragraph about a previously served, but not filed, Notice of Appeal that the court found was "intended to cause delay." There is no evidence of intent to delay or actual delay relating to this issue. Moreover, the record directly contradicts that finding. Counsel's letter to the Court of August 30, 2019 informed the court of its intent to appeal and requested a finding of contempt to expedite that process. The circuit court Certificate of Service referenced by the Court's Order was exactly correct, the Notice was placed with a courier on August 30, 2019. Moreover, the Notice was actually delivered to IWM's counsel on September 3, 2019, which would have constituted effective and timely service under Rule 262, SCACR. The record establishes that Counsel actually declined to file the Notice of Appeal after service but before the time designated by Rule 262(d)(1)(B) as the court had indicated it was willing to rule further, and counsel wanted to avoid any contention that the appeal was interlocutory. (ROA 760-761).

The description of the September 23, 2019 hearing contained in the Order is contrary to the record in that defense counsel never argued or stated that defendants had "substantially complied with the court's order", that "he could not file the threatened appeal . . . without being held in contempt", or that "he had been ordered by his client to appeal <u>any order</u> issued by the

Court." (ROA 52, p. 7 (emphasis in original); ROA 169-170 (p. 19, line 8-p. 20, line 3; p. 20, lines 11-13; p. 28, lines 2-4)). Judge Murphy's Order actually tracks the argument of IWM's counsel, who stated "I expect that Mr. Marvel will get up and say, "I gave him all the tax returns. That is substantial compliance" and "[t]here is no doubt that whatever order issues from this Court, it is going to be appealed by Mr. Marvel" (ROA 160 (p. 10, lines 13-14; p. 11, lines 4-6)). Undersigned counsel's only such statement on the last point was "[w]ith all due respect, Your Honor, I understand your ruling, and I disagree with it. My clients have asked me to appeal it" (ROA 164 (p. 20, lines 11-13)).

The Court's Opinion failed to address any of these factual issues, and also failed to address Appellant's legal argument that Appellants did, in fact, prevail on each discovery dispute before Judge Dickson and Judge Goodstein. That is the only conclusion that can be reached under the plain language of the South Carolina Rules of Civil Procedure. Moreover, given that reading, it is simply a misstatement of fact for the circuit court to find that Appellants had displayed a history of discovery abuse. Put simply, IWM did not receive anything close to the relief it sought from the hearings on the competing motions for protective orders and motions to compel, because each judge severely limited the scope of IWM's discovery. Quite plainly, that is not discovery abuse.

CONCLUSION

This Honorable Court's opinion incorrectly found that it could only review the circuit court's October 1, 2019 order, failed to address Appellants arguments relating the deficiencies in the underlying discovery orders from 2019, and also failed to address or recognize the factual inaccuracies and legal errors in the October 2019 order, which was drafted by opposing counsel to mirror IWM's argument, rather than the record, and was apparently subject to no scrutiny by the circuit court. For all of these reasons, this Honorable Court must grant this Petition for Rehearing,

and withdraw its prior opinion, and reverse the October 1, 2019 order of the circuit court, striking Appellants' pleadings below.

RESPECTFULLY SUBMITTED:

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May 8, 2023
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RECEIVED
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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

PROOF OF SERVICE

I hereby certify that the Appellants' Petition for Rehearing was served upon Counsel for the Respondent, Wm. Michael Gruenloh, 63 Moultrie Street, Second Floor, Charleston SC 29403, by Federal Express this 8th day of May in accordance with the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules.

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May 8, 2023
Soddy Daisy, Tennessee

The South Carolina Court of Appeals

Innovative Waste Management, Inc., Respondent,

v.

Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products GP, LLC, Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau,

Of Whom Crest Energy Partners GP, LLC, Crest Energy Partners L.P., Dunhill Products L.P., Dunhill Products GP, LLC, and Henry Wuertz are the Appellants.

Appellate Case No. 2019-001719

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

_____ J.

_____ J.

_____ A.J.

Columbia, South Carolina

FILED
Jun 05 2023

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