

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM DORCHESTER COUNTY  
Court of Common Pleas

DEC 31 2015  
SC Court of Appeals

Maité D. Murphy, Circuit Court Judge

Case No. 2015-002024

Innovative Waste Management Inc., Crest Energy Partners LP, Edward H. Girardeau, Plaintiffs, Of Whom

Innovative Waste Management, Inc. is the Appellant,

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, Henry Wuertz, and Edward H. Girardeau are the Respondents.

**APPELLANT'S RETURN TO RESPONDENTS' MOTION TO DISMISS**

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TABLE OF CONTENTS

Table of Authorities..... ii

Factual Background ..... 1

Arguments ..... 4

    I.    The July 22<sup>nd</sup> Judgment, not the April 20<sup>th</sup> Judgment, is the subject of Appellant’s Appeal. .... 5

    II.   Appellant’s Rule 59(e) Motion to Reconsider was not successive as it was Appellant’s first post-trial motion that was appropriately filed in a timely manner, and as such it properly tolled the jurisdictional time period for filing the Notice of Appeal and Appellant’s Notice of Appeal was filed in a timely manner. .... 6

Conclusion ..... 13

Certificate of Service ..... 14

TABLE OF AUTHORITIES

CASES

Coward Hund Construction Co., Inc. v. Ball Corp.,  
336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999). ..... 7, 8, 9, 11, 12

Elam v. S.C. Dept. of Transportation,  
361 S.C. 9, 602 S.E.2d 772 (2004). ..... 7, 8, 9, 10, 11, 12, 13

Quality Trailer Products v. CSL Equipment Co.,  
349 S.C. 216, 562 S.E.2d 615 (2002). ..... 7, 8, 9, 10, 11

RULES

Rule 203, SCACR ..... 4

Rule 41, SCRCF ..... 3

Rule 59(e), SCRCF ..... 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

Rule 60(b), SCRCF ..... 2, 3, 5, 6, 7, 12

Rule 60(b)(4), SCRCF ..... 6, 12

COMES NOW APPELLANT, Innovative Waste Mangement, Inc., who hereby files this Return in opposition to Respondents' Motion to Dismiss. As grounds for this Return, Appellant states as follows.

**FACTUAL BACKGROUND**

This matter was filed on May 11, 2012 with the Dorchester County Court of Common Pleas wherein Appellant pled various causes of action, including but not limited to breach of contract, constructive fraud, conversion, and tortious interference with contractual relationships. The case was assigned to The Honorable Maité D. Murphy.

On April 8, 2015, the parties conducted court-ordered mediation and were able to reach a settlement agreement. The settlement agreement stipulated that the Respondents would make a payment of \$450,000.00 within thirty (30) days of the execution of the settlement agreement, and that dismissal of the action was conditioned upon Respondents' payment under the agreement. (See "Exhibit A"). Only two communications were made to the Trial Court regarding the settlement agreement following the execution of the agreement. The first was an e-mail from Mr. David Marvel, counsel for Respondents, advising the Trial Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See "Exhibit B"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton, which indicated that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See "Exhibit C").

On April 20, 2015, a Form 4 Judgment was entered, referred to hereinafter as the "April 20<sup>th</sup> Judgment." The April 20<sup>th</sup> Judgment was signed by the Dorchester County

Clerk of Court, Ms. Cheryl Graham, and did not include the signature of Judge Murphy. The entry of the April 20<sup>th</sup> Judgment was unsolicited, and none of parties to this action executed or filed a stipulation of dismissal. The Judgment directs the reader to “[X] See attached order; (formal order to follow)” and states “[t]his order [X] ends . . . the case.” These were the only two boxes that were checked and completed within the entirety of the Judgment, and other boxes, most notably the box which sets forth “[ ] ACTION DISMISSED: CHECK REASON,” were left incomplete. (See “Exhibit D”). The formal order alluded to within the body of the Judgment was never attached and no such formal order has ever been executed by the Trial Court. The only attachment to the Judgment was Mr. Lawton’s Proof of ADR or Exemption. (See “Exhibit C”). No further reasoning was provided within the April 20<sup>th</sup> Judgment. (See “Exhibit D”)

On May 8, 2015, thirty (30) days elapsed from the execution of the settlement agreement with no payment received. Due to Respondents’ breach of the settlement agreement, Appellant sought to have the action restored to the active trial docket. On May 20, 2015, Appellant contacted the Trial Court and requested the first available date certain trial date. It was on that date that Appellant was notified for the first time of the Judgment.

Upon discovering that the Clerk of Court had dismissed the case, Appellant contacted Judge Murphy’s law clerk and requested a conference to bring to the Trial Court’s attention what appeared to be a clear clerical mistake. Plaintiff was advised by the Trial Court to file a motion and that no conference with Judge Murphy would occur. On May 27, 2015, Appellant filed its Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial pursuant to Rule 60(b), SCRCF. (See “Exhibit E”). The

Respondents filed no opposition to Appellant's Rule 60(b) motion. On June 24, 2015, the Trial Court heard arguments from counsel where Appellant sought for the Trial Court to vacate both the settlement agreement and the April 20<sup>th</sup> Judgment, thereby restoring this matter to the active trial docket. (See "Exhibit F"). On July 22, 2015, the Trial Court entered an Order denying Appellant's Rule 60(b) motion, hereinafter referred to as the "July 22<sup>nd</sup> Judgment." The July 22<sup>nd</sup> Judgment was a form order and contained no reasoning supporting the Trial Court's ruling. (See "Exhibit G"). Furthermore, the transcript of the June 24, 2015 hearing reveals the Trial Court never provided any rationale to support the denial of Plaintiff's Rule 60(b) Motion. (See "Exhibit F"). Of note, the July 22, 2015 Order is the first occasion in which any circuit court judge made any ruling regarding the issues of which Appellant complains of herein – the improper dismissal of this case.

On July 31, 2015, Appellant filed its Motion to Reconsider pursuant to Rule 59(e), SCRCF, and asked the Trial Court to reevaluate its ruling on Appellant's Rule 60(b) motion, the entry of the July 22<sup>nd</sup> Judgment, and the overall validity of the April 20<sup>th</sup> Judgment. In its Rule 59(e) motion, Appellant set forth arguments that the April 20<sup>th</sup> Judgment was void as it was not entered properly and in accordance with Rule 41, SCRCF, that the entry of the April 20<sup>th</sup> Judgment was contrary to the intent of all parties to this action, and that the Appellant had legal right to rescind the settlement agreement due to the Respondents' non-performance. (See "Exhibit H"). Many of these arguments were either newly presented to the Trial Court or further fleshed out in order to provide the Trial Court with a better understanding of Appellant's position. Appellant's Rule 59(e) Motion also contained two new pieces of evidence for the Trial Court to consider,

namely the affidavits of the Angus Lawton, the mediator for this case, and C. Russ Lloyd, the owner and president of Appellant. (See "Exhibit I", "Exhibit J").

On August 18, 2015, the Trial Court denied Appellant's Rule 59(e) motion without hearing oral arguments and entered another Form 4 Judgment that contained no reasoning to the Trial Court's ruling, hereinafter referred to as the "August 18<sup>th</sup> Judgment." Notably, the August 18<sup>th</sup> Judgment did not specifically address any of Appellant's new legal arguments, nor did it address the issues raised in the new affidavits. (See "Exhibit K").

On September 17, 2015, Appellant filed its Notice of Appeal regarding the Trial Court's aforementioned rulings with the Dorchester County Clerk of Court and the South Carolina Court of Appeals. On October 21, 2015, Appellant received delivery of the transcript of the June 24, 2015 arguments. (See "Exhibit F"). On November 20, 2015 Appellant filed its Initial Brief in a timely manner within thirty (30) days of the receipt of the relevant transcript. On December 21, 2015, Respondents filed their Motion to Dismiss to which Appellant now responds.

### **ARGUMENT**

In their Motion to Dismiss, Respondents allege that Appellant failed to comply with the required timing provisions set forth in Rule 203 of the South Carolina Appellate Court Rules, and as such this Honorable Court lacks jurisdiction to hear Appellant's arguments. In support of this allegation, Respondents set forth two arguments: (1) that the April 20<sup>th</sup> Judgment was the subject of Appellant's Notice of Appeal, and as such Appellant failed to file in a timely fashion, and (2) should this Honorable Court determine that the July 22<sup>nd</sup> Judgment was the subject of Appellant's Notice of Appeal,

Appellant's Appellant's Rule 59(e) motion was successive and cannot toll the jurisdiction time period for filing, thereby rendering the filing of Appellant's Notice of Appeal untimely. Appellant contends, however, that (1) the July 22<sup>nd</sup> Judgment, not the April 20<sup>th</sup> Judgment, is the subject of Appellant's appeal, and (2) that Appellant's Rule 59(e) Motion to Reconsider was not successive as it was Appellant's first post-trial motion that was appropriately filed in a timely manner, and as such it properly tolled the jurisdictional time period for filing the Notice of Appeal and Appellant's Notice of Appeal was filed in a timely manner. Appellant shall address these arguments in turn.

**I. The July 22<sup>nd</sup> Judgment, not the April 20<sup>th</sup> Judgment, is the subject of Appellant's Appeal.**

In the opening line of Section II of Respondents' Motion to Dismiss entitled "Law and Argument," Respondents state that "IWM has attempted to appeal the relief granted by a Form 4 Order filed on April 20, 2015 by virtue of a Notice of Appeal filed on September 16, 2015." (See "Respondents' Motion to Dismiss" at p. 4). Respondents go on to argue that, as the Appellant filed its Notice of Appeal on September 17, 2015, the Appellant filed outside of the jurisdictional time period of thirty (30) days and, as such, the Court lacks jurisdiction over this matter. This statement and Respondents' logic are incorrect, however, and grossly mischaracterize the relief sought by Appellant that is the subject of this appeal.

Appellant filed its Notice of Appeal seeking relief from the July 22<sup>nd</sup> Judgment denying Appellant's Rule 60(b) motion, not the April 20<sup>th</sup> Judgment. This fact is clearly set forth in Appellant's Notice of Appeal, in which Appellant stated, "Innovative Waste Management, Inc., appeals the orders of the Honorable Maite D. Murphy dated July 22, 2015 and August 18, 2015 and, by reference, the Form 4 judgment signed by the Clerk of

Court, Cheryl Graham on April 20, 2015, all of which are attached hereto.” (See “Appellant’s Notice of Appeal”). As set forth above, the July 22<sup>nd</sup> Judgment was entered in response to Appellant’s Rule 60(b) motion, and the crux of Appellant’s Rule 60(b) motion was that the April 20<sup>th</sup> Judgment was improperly entered pursuant to the South Carolina Rules of Civil Procedure, thereby rendering it void pursuant to Rule 60(b)(4), SCRPC.

Appellant only made reference to the April 20<sup>th</sup> Judgment and August 18<sup>th</sup> Judgment within its Notice of Appeal insofar as the two orders are inexorably intertwined with the July 22<sup>nd</sup> Judgment. Had the Trial Court ruled in Appellant’s favor in response to Appellant’s Rule 60(b) motion, the April 20<sup>th</sup> Judgment would have been declared void and presumably would have been rescinded. Furthermore, had the Trial Court ruled in Appellant’s favor in response to Appellant’s Rule 59(e) motion, a similar chain of events would likely have occurred. The same is true for this appeal should this Honorable Court rule in favor of Appellant.

As the July 22<sup>nd</sup> Judgment is the true subject of Appellant’s appeal, any allegation that the calculation of the jurisdictional time period for filing a Notice of Appeal should be predicated upon the entrance of the April 20<sup>th</sup> Judgment is incorrect. Based upon the foregoing, Respondents’ Motion to Dismiss should be denied.

**II. Appellant’s Rule 59(e) Motion to Reconsider was not successive as it was Appellant’s first post-trial motion that was appropriately filed in a timely manner, and as such it properly tolled the jurisdictional time period for filing the Notice of Appeal and Appellant’s Notice of Appeal was filed in a timely manner.**

As set forth above, Appellant first became aware of the April 20<sup>th</sup> Judgment on May 20, 2015 when Appellant’s counsel sought to have this case restored to the active

docket following Respondents' breach of the settlement agreement. The Trial Court advised the Appellant that no conference would occur with Judge Murphy and that Appellant's only recourse was to file a motion. As such, Appellant filed its Rule 60(b) motion on May 27, 2015, oral arguments regarding the motion were heard on June 24, 2015, and the motion was ruled upon with the entrance of the July 22<sup>nd</sup> Judgment. Appellant timely filed its first and only Rule 59(e) motion on July 31, 2015, and the Trial Court ruled on this motion by entering the August 18<sup>th</sup> Judgment. Appellant then timely filed its Notice of Appeal regarding the July 22<sup>nd</sup> Judgment on September 17, 2015.

In their Motion to Dismiss, Respondents argue that Appellant's Rule 59(e) Motion was merely a successive post-trial motion, and therefore does not toll the jurisdictional time period to file a Notice of Appeal. In support of this assertion, Respondent cites numerous cases, including Coward Hund Construction Co., Inc. v. Ball Corp., Quality Trailer Products v. CSL Equipment Co., and Elam v. S.C. Dept. of Transportation. 336 S.C. 1, 518 S.E.2d 56 (Ct. App. 1999); 349 S.C. 216, 562 S.E.2d 615 (2002); 361 S.C. 9, 602 S.E.2d 772 (2004). These cases represent the bulk of South Carolina authority on this issue, and set forth that a successive Rule 59(e) motion does not toll the jurisdictional time period for filing a Notice of Appeal in certain circumstances. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 617. The facts of this case, however, are notably different from any of the cited cases, and a close review of the cited cases and their underlying reasoning reveals that Appellant's Rule 59(e) motion was timely, appropriate, and therefore properly stayed the jurisdictional time period for filing a Notice of Appeal.

Coward Hund represents the first time that South Carolina court's addressed the issue of successive post trial motions and their ability to stay the jurisdictional time period for filing a Notice of Appeal. Elam, 361 S.C. at 15, 602 S.E.2d at 775. In Coward Hund, defendants filed a motion for summary judgment with the trial court, which was subsequently granted. 336 S.C. at 2, 518 S.E.2d at 57. The plaintiff timely filed a motion for reconsideration pursuant to Rule 59(e), SCRPC, which, following oral arguments, was denied. Id. The plaintiff then filed a second motion for reconsideration pursuant to Rule 59(e), SCRPC, seeking clarification on a matter upon which the trial court had already ruled. Id. Plaintiff's second motion to reconsider was denied, and the plaintiff filed its notice of appeal within thirty (30) days of receiving the trial courts ruling on its second Rule 59(e) motion. Id. In addressing this novel issue of whether the Notice of Appeal was filed in a timely fashion, the South Carolina Court of Appeals chose to adopt and apply the prevailing rule in the federal courts that a second motion for reconsideration is appropriate "... only if it challenges something that was altered from the original judgment as a result of the initial motion for reconsideration." Id. at 3, 518 S.E.2d at 58. In support of its decision, the South Carolina Court of Appeals notably stated that the plaintiff "... [was] not challenging a new ruling in its second motion," declared that plaintiff's second Rule 59(e) motion was merely successive, and dismissed the appeal. Id. at 4-6, 518 S.E.2d at 58-59.

South Carolina courts further extended the rationale set forth in Coward Hund in Quality Trailer. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 615 (2002). In Quality Trailer, a jury returned a verdict in favor of the plaintiff at trial and the defendant timely filed post trial motions, including motions for judgment notwithstanding the

verdict, new trial absolute, and new trial nisi remittitur. Elam at 16, 602 S.E.2d at 774-75. The trial court ruled against the defendants, and in turn filed a Motion to Reconsider pursuant to Rule 59(e), SCRPC. Id. at 16, 602 S.E.2d at 774-76. The Supreme Court held that a “. . . first, written, virtually identical Rule 59(e) motion . . .” is merely successive and that appeal may be barred if the Rule 59(e) motion does not “. . . result in a substantial alteration of the original judgment . . .” or the moving party merely “. . . recaptions a written JNOV/new trial motion, which has been ruled upon . . .” Id.

In each of the aforementioned cases, substantive arguments were heard before the trial court, either at a hearing or at trial, which were then followed by two separate instances of subsequent post-trial motions. In each case, the final motion made by the appellant was a Rule 59(e) motion that the court deemed to be successive, thereby refusing to extend the jurisdictional time period for filing a Notice of Appeal. In Coward Hund, the plaintiffs lost a motion for summary judgment argued before the trial court, then filed two separate Rule 59(e) motions. The South Carolina Appellate Court ruled that the second Rule 59(e) motion, or the third argument on the issues, was merely a successive post-trial motion and therefore could not stay the jurisdictional time period. *See generally* Coward Hund, 336 S.C. 1, 518 S.E.2d 56. Similarly, in Quality Trailer a full trial on the issues occurred and a jury verdict was awarded, followed by post-trial motions and, inevitably, a written Rule 59(e) motion. The South Carolina Supreme Court ruled that the Rule 59(e) motion was merely successive and could not stay the calculation of the jurisdictional time period for an appeal. *See generally* Quality Trailer, 349 S.C. 216, 562 S.E.2d 615.

In 2004, however, the South Carolina Supreme Court took issue with the unwarranted expansion of the reasoning set forth in Quality Trailer in its holding in Elam v. S.C. Dept. of Transportation, 361 S.C. 9, 602 S.E.2d 772 (2004). In Elam, a jury entered a verdict in favor of the plaintiff and the defendant immediately made oral motions for JNOV, new trial absolute, and new trial nisi remittitur. Id. at 13-14, 602 S.E.2d at 774. The trial judge denied all of the defendant's motions in a ruling from the bench. Id. The defendant then entered a Rule 59(e) motion to reconsider the trial judge's ruling in a timely fashion, and this motion was subsequently denied. Id. The defendant filed a notice of appeal in a timely fashion, however the South Carolina Court of Appeals raised the issue of timeliness *sua sponte* and proceeded to apply the precedent set forth in Quality Trailer. Id. The Court of Appeals declared that the defendant's – now the appellant – Rule 59(e) motion was merely successive and dismissed the appellant's appeal as untimely. Id. The case was then submitted to the South Carolina Supreme Court for further review. Id.

The Supreme Court inevitably reversed the Court of Appeals ruling, holding that the appellant's Rule 59(e) motion was not merely successive and therefore the appellant's notice of appeal was filed in a timely manner. *See generally* Elam, 361 S.C. 9, 602 S.E.2d 772. In so ruling, the Supreme Court provided a detailed analysis of South Carolina jurisprudence on the issue and arrived at the conclusion that “. . . civil procedure and appellate rules should not be written or interpreted to create a trap for the unwary lawyer or party, but a careful consideration of this issue has led us to conclude that is precisely the effect of an unwarranted expansion of Quality Trailer.” Elam, 361 S.C. at 25, 602 S.E.2d at 780. Furthermore, the Supreme Court stated that it “. . . strive[s] to avoid an

interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.” Id. at 25, 602 S.E.2d at 780-81. The Supreme Court held that a Rule 59(e) motion may properly be used “. . . as a vehicle to seek ‘reconsideration’ of issues and arguments.” Id. at 21, 602 S.E.2d at 778. “There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument. It is inherently unfair to disallow such an opportunity.” Id. at 22, 602 S.E.2d at 779. “. . . [A] party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” Id. at 21, 602 S.E.2d 778-79. Additionally, “. . . a party usually is free to file an initial Rule 59(e) motion . . . without unnecessary concern the repetition of an issue or argument made in a previous motion will result in a subsequent appeal being dismissed as untimely.” Id. at 21, 602 S.E.2d at 778.

The instant case is notably different from those presented in Coward Hund or Quality Trailer, and is far more similar to the circumstances presented in Elam. No trial, hearing, or any substantive argument was ever held regarding the dismissal of this matter, nor were any of the substantive issues presented herein heard by the Court prior to the entry of the April 20<sup>th</sup> Judgment. As set forth above and in Appellant’s prior motions, the Dorchester County Clerk of Court, Ms. Cheryl Graham, improperly entered the April 20<sup>th</sup> Judgment absent any affirmative action taken by any party to induce her to do so and without the parties’ consent. Furthermore, as the April 20<sup>th</sup> Judgment was not signed by Judge Murphy, there is no evidence that the Trial Court or Judge Murphy ordered or even knew about the entry of the April 20<sup>th</sup> Judgment. Based upon these facts, it is Appellant’s

contention that the April 20<sup>th</sup> Judgment is void pursuant to Rule 60(b)(4), SCRPC, and this contention was the subject of Appellant's 60(b) motion. Appellant's Rule 60(b) motion was its first opportunity to argue or even address the April 20<sup>th</sup> Judgment before the Trial Court, and, as such, the July 22<sup>nd</sup> Judgment denying Appellant's Rule 60(b) motion was the first ruling on the merits of this issue. As noted above, the July 22<sup>nd</sup> Judgment was the first ruling made by a circuit court judge on the issues Appellant has brought before this Court.

As in Elam, Appellant's filed a single Rule 59(e) motion on July 31, 2015 in a timely manner. Contrary to the situation presented in Coward Hund, this motion was filed to challenge a new ruling, as the July 22<sup>nd</sup> Judgment was the first ruling on the substantive matters regarding the improper dismissal of this case. Furthermore, Appellant's Rule 59(e) motion was not merely the Appellant's attempt to " . . . recaption[] a written JNOV/new trial motion, which has been ruled upon . . . ," but in fact provided new, substantive arguments regarding the invalidity of the April 20<sup>th</sup> Judgment and new evidence in the form of the affidavits of Angus Lawton, the mediator for this case, and C. Russ Lloyd, the owner and president of Appellant. Elam, 361 S.C. at 16, 602 S.E.2d at 774-76) (See "Exhibit I", "Exhibit J").

Appellant responded immediately once the April 20<sup>th</sup> Judgment was discovered, and acted within the bounds of the South Carolina Rules of Civil procedure when it filed its Rule 60(b) motion at the Trial Court's instruction. Furthermore, Appellant's Rule 59(e) motion was an appropriate and timely attempt under the Supreme Court's ruling in Elam to induce the Trial Court to reconsider the issues raised in its earlier Rule 60(b) motion. As such, Appellant properly filed its Notice of Appeal within the thirty (30) day

jurisdictional time period and Respondents' Motion to Dismiss should be denied. Any ruling to the contrary could only be reached using an "... interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place," and such a result would surely be unjust. Elam, 361 S.C. at 25, 602 S.E.2d at 780-81.

### CONCLUSION

Based upon the foregoing, Appellant respectfully requests that this Honorable Court to deny Respondents' Motion to Dismiss.

Respectfully Submitted  
GRUENLOH LAW FIRM  
Counsel for the Appellant

By: 

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1512 Laurel Street  
Columbia, SC 29201  
(803) 888-7130  
(888) 567-1129 (facsimile)

Date: December 31, 2015.  
Charleston, South Carolina

# **EXHIBIT A**

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

INNOVATIVE WASTE MANAGEMENT  
INC.,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

2015 JUL 31 PM 3:41

CASE NO.: 2012-CP-18-1227

CLERK OF COURT  
DORCHESTER COUNTY

**SETTLEMENT AGREEMENT**

1. The undersigned and their attorneys hereby agree to settle all claims in this matter and dismiss this case in exchange for the total sum of \$450,000.00, to be paid to Plaintiff by or on behalf of Defendants within 30 days of the date of this agreement.
2. Plaintiff and Plaintiff's counsel agree that this payment satisfies any obligations of the Defendants relating to this case.
3. All parties will pay their own costs in this matter.
4. Plaintiff will pay 50% of the mediation fee. The Defendants will pay the remaining 50% of the mediation fee.
5. The Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.
6. The parties agree that this agreement settles all claims of all parties, and that all parties will sign mutual releases of all claims against each other relating to the disputes in this matter.

Date: April 8, 2015

*[Handwritten signature]*

Russ Lloyd for Plaintiff

*[Handwritten signature]*

Attorney for Plaintiff

*[Handwritten signature]*

Attorney for Plaintiff

Henry Wuertz, Individually, and on behalf of Crest  
Energy Partners Gp/Llc,  
Crest Energy Partners L.P., Dunhill Products L.P.,  
Henry Wuertz And Edward H. Girardeau

*[Handwritten signature]*

Edward H. Girardeau, Individually

*[Handwritten signature]*

Attorney for Defendant

# **EXHIBIT B**



Wm. Michael Gruenloh &lt;mike@gruenlohlaw.com&gt;

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**IWM v. Crest et al 2012-CP-08-1227**

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David B. Marvel &lt;dave@prennermarvel.com&gt;

To: "Murphy, Maite Law Clerk (William Crantford)" &lt;mmurphy1c@sccourts.org&gt; Tue, Apr 14, 2015 at 11:01 AM

Cc: "bstevens@dorchestercounty.net" &lt;bstevens@dorchestercounty.net&gt;, Fritz Jekel &lt;fritz@j-dlaw.com&gt;, "Mike Gruenloh (mike@gruenlohlaw.com)" &lt;mike@gruenlohlaw.com&gt;

Hi William, I hope all is well. We just received notice that this case is on the May 4, 2015 roster. Amazingly, we were able to reach a settlement during mediation last Wednesday. I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated. Please let me know if you need anything further from me.

Best regards,

David B. Marvel

Prenner Marvel, P.A.

636 King Street

Charleston, South Carolina 29403

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# **EXHIBIT C**

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

2015 JUL 31 PROOF OF ADR OR EXEMPTION

INNOVATIVE WASTE MANAGEMENT, INC.,

Plaintiff.

*Clayton W. ...*  
CLERK OF COURT  
DORCHESTER COUNTY

CASE NO.: 2013-CP-18-1897

*2013 CP-18-1237*

vs.

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

Defendants.

*2013 CP-18-1237*  
*7/31/15 9:23*

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. \_\_\_\_\_ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff

\_\_\_\_\_  
Defendant/Attorney for Defendant

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Phone/Fax

Date: \_\_\_\_\_

B. X 1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- (X) Fully Settled.  
( ) by Consent Judgment, to be file by \_\_\_\_\_  
or (X) Voluntary Dismissal to be filed by Atty. Marvel
- ( ) Partially Settled.  
( ) At an impasse.  
( ) In need of further ADR I [ ] and [ ] am not willing to continue as a neutral. I recommend that ADR resume as of \_\_\_\_\_

5. Plaintiff [X] was present [ ] was not present  
Defendant [X] was present [ ] was not present

6. Other parties were:

X Lawyer for Defendant D. Marvel  
X Lawyer for Plaintiff M. Gruenloh, F. Jekel  
\_\_\_\_ Representative for Insurance Carrier \_\_\_\_\_  
\_\_\_\_ Guardian *ad Litem* \_\_\_\_\_  
\_\_\_\_ Experts \_\_\_\_\_  
\_\_\_\_ Others \_\_\_\_\_

7. Choice of the neutral was by:

X Stipulation  
\_\_\_\_ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

\_\_\_\_\_  
\_\_\_\_\_

Neutral's Signature

Date: April 10, 2015

# **EXHIBIT D**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF DORCHESTER  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP1801227

FILED - RECORDED  
 APR 21 2015  
 CLERK DORCHESTER COUNTY

Innovative Waste Management Inc  
 Crest Energy Partners LP

Edward H Girardeau

Crest Energy Partners Gp, LLC  
 Dunhill Products GP,  
 Henry Wurtz  
 Innovative Waste Management Inc

Crest Energy Partners LP  
 Dunhill Products LP  
 Edward H Girardeau  
 C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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.

Cheryl Graham Cheryl Graham 2099 4/20/2015  
Clerk of Court Judge Code Date

**For Clerk of Court Office Use Only**

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202  
Ste C Charleston, SC 29401-3037  
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-  
2579  
Patrick Aulton Chisum 192 East Bay Street, Suite 202  
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham  
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.

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# **EXHIBIT E**

FILE COPY

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF DORCHESTER ) CASE NO. 2012-CP-18-1227

CERTIFIED COPY  
2015 MAY 27 AM 11:29

INNOVATIVE WASTE MANAGEMENT, )  
INC., )  
CLERK OF COURT )  
DORCHESTER COUNTY )  
Plaintiff, )

v. )

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

**MOTION TO VACATE  
SETTLEMENT AGREEMENT,  
RESTORE TO ACTIVE DOCKET,  
AND SET FOR TRIAL**

The Plaintiff, Innovative Waste Management, Inc., by and through their undersigned counsel hereby moves this Honorable Court to vacate the settlement agreement entered into between Plaintiff and Defendants Crest Energy Partners, GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau (hereinafter "Defendants") pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. In support of this motion, Plaintiff states as follows:

1. On April 8, 2015, Plaintiff and Defendants conducted mandatory mediation regarding this action and were able to reach a settlement agreement.
2. On April 8, 2015, Plaintiff and Defendants entered into a binding Settlement Agreement (attached as "Exhibit A") stipulating Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement.
3. On April 20, 2015 and pursuant to the aforementioned mediation and Settlement Agreement, this action was removed from the docket. The parties did not file a stipulation of dismissal, and dismissal was conditioned upon the Defendants payment under the Settlement Agreement.

4. On May 8, 2015, thirty (days) elapsed from the execution of the binding Settlement Agreement with no payment tendered by Defendants.
5. Plaintiff allowed Defendants a short extension until the end of business on May 19, 2015, but as of the date of this motion no payment has been received.
6. As Defendants have breached the Settlement Agreement, there is good cause to vacate such agreement and proceed immediately to trial.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to grant an order vacating the April 8, 2015 Settlement Agreement, restoring this action to the active docket, and immediately setting this action for trial.

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) 577-0027  
(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: May 21, 2015  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **MOTION TO VACATE SETTLEMENT AGREEMENT, RESTORE TO ACTIVE DOCKET, AND SET FOR TRIAL** in the above matter were served on the below named parties and/or their respective counsel and /or agents by sending accurate copies via U.S. Mail and accurate electronic copies of the same via e-mail.

2015 MAY 21 AM 12:23  
CERTIFIED COPY  
CLERK OF COURT  
SOUTH CAROLINA

David B. Marvel  
Premier Marvel  
636 King Street  
Charleston, South Carolina 29403  
*Attorney for Defendants*

By:



Brian R. Holmes  
192 East Bay Street, Suite 202  
Charleston, South Carolina 29401  
(843) 577-0027  
(843) 577-0721 (facsimile)

Date: May 21, 2015  
Charleston, South Carolina

# **EXHIBIT F**



1 THE CLERK: Judge, this is Innovative Waste versus Crest  
2 Energy Partners, plaintiff's motion to vacate settlement  
3 agreement/restore to active docket.

4 THE COURT: All right, counsel.

5 MR. GRUENLOH: Your Honor, Mike Gruenloh for the  
6 plaintiff. I have a copy of our motion if you don't have one  
7 handy.

8 THE COURT: If you have an extra, that would be perfect.

9 MR. GRUENLOH: Absolutely.

10 THE COURT: All right. You may proceed.

11 MR. GRUENLOH: Your Honor, this is our motion to vacate  
12 the settlement agreement and set the matter immediately for  
13 trial. Our argument will be very short. You may recall we  
14 were before you earlier this year. We were ordered to  
15 mediate the case. We mediated it with Angus Lawton.  
16 Surprise of all surprises, we reached an agreement at the end  
17 of the day. The agreement, in relevant part, was that the  
18 defendants would pay \$450,000 within 30 days. At that time  
19 and only at that time, when the settlement was consummated,  
20 would we file our stipulations of dismissal and our releases.

21 Of course, the payment never came, otherwise we wouldn't  
22 be here today. We extended the deadline a couple of times  
23 when we were told that the money's coming, the money's  
24 coming. The money's not here. It has become increasingly  
25 clear to us, this case has been on file for three years, that

1 the only way these defendants are going to pay is when the  
2 sheriff goes to their door. They are in breach of the  
3 settlement agreement. We've informed them of that. We've  
4 informed them of the fact that we intend to vacate the  
5 settlement agreement and move forward towards trial. That's  
6 what the instructions are that we've received from our  
7 client, so that's what we're asking the Court to do today.

8 The case was apparently dismissed, despite the fact that  
9 we didn't send in a stipulation of dismissal. I think that  
10 that was done because the mediator sent in a statement saying  
11 the case was fully settled, but it did not indicate that the  
12 case had been dismissed. It indicated that Mr. Marvel would  
13 be sending in a stipulation of dismissal, and that's also  
14 what he informed the Court. The only communication that  
15 either of us had with the Court was an email from Mr. Marvel  
16 shortly after the mediation saying, we will send in a  
17 stipulation of dismissal once the settlement has been  
18 consummated.

19 Settlement has never been consummated, so we, again, are  
20 here today asking the Court to put this back on the roster.  
21 To the extent that a dismissal was entered in error or  
22 otherwise, we'd ask that that be vacated, and we're here  
23 asking for a trial date.

24 THE COURT: Let me ask you this: Was the agreement  
25 signed by the parties and the attorneys?

1 MR. GRUENLOH: The agreement was signed by the parties  
2 and the attorneys. It's a part of our motion that's been  
3 attached, and there is, I believe it's No. 5 on the  
4 agreement, and it says that the dismissal will only happen  
5 upon the receipt of the funds.

6 THE COURT: All right, sir.

7 MR. MARVEL: Your Honor, I had hoped to be able to  
8 respond to this motion by showing up here with a certified  
9 check and moving to enforce the settlement. The fact of the  
10 matter is that my client can't pay the settlement at this  
11 time due to some factors outside of their control. During  
12 the mediation I can represent to you, Your Honor, that I was  
13 on a telephone call in which there was -- my client was  
14 restructuring a deal that he had in place and had gotten  
15 concessions from some third parties that was going to allow  
16 him to be able to fund the settlement. That didn't happen.  
17 The deal fell apart. He can't fund it. It would be our  
18 position the settlement agreement is what it is. I do think  
19 it's enforceable under Rule 43(k). I do think that that's  
20 the plaintiff's remedy, and if he wants to turn it into a  
21 judgment and enforce that in Texas, we would not contest  
22 that; but, Your Honor, if I had a check, I would have a  
23 better argument on that. If Your Honor wants to set it for  
24 trial...

25 THE COURT: Anything further? Yes, sir, do you have

1 anything to add?

2 MR. MARVEL: No, Your Honor. Thank you.

3 MR. GRUENLOH: Your Honor, I would just say, again, we  
4 never communicated any intent to dismiss the case, and I'm  
5 not -- I've never had this situation arise before, so I don't  
6 know if it's something the mediator did wrong or that we did  
7 incorrectly; but without any intent from us to dismiss the  
8 case and, I mean, we had real concerns, when we left the  
9 mediation, that the payment was going to be here in 30 days.  
10 That's why we specifically set out in the settlement  
11 agreement that no dismissals would happen, no releases would  
12 be signed, until the money came in.

13 And the only other thing that I want to say is I know  
14 that we've been a bit of a bother contacting you all about  
15 this because it's been a very frustrating experience for  
16 this, and I just wanted to thank your staff and everybody for  
17 dealing with us on it.

18 THE COURT: Well, it's certainly no bother. That's what  
19 we're here for. It's our job to try to facilitate efficient  
20 process of these cases. What I will do is I will take a look  
21 at the communications that were provided to the Court that  
22 led to the dismissal of the case along with the stipulation  
23 for the settlement agreement that was signed. I'll notify  
24 you of my decision.

25 MR. GRUENLOH: Can I hand up one other -- let me give

1 this to Your Honor. This is the only -- this appears as a  
2 note in the court system. This is the only communication  
3 that I'm aware of that either party made to the Court  
4 regarding the settlement (indicating). And you can see  
5 that's Mr. Marvel's words, and he indicates that the  
6 dismissal will be sent when the settlement is consummated,  
7 and of course it never was.

8 MR. MARVEL: Your Honor, I'd be happy to -- I can make a  
9 PDF copy of that email that shows who it was copied to and  
10 everything and provide that to Your Honor this afternoon.

11 THE COURT: Thank you.

12 MR. GRUENLOH: One last thing, Your Honor. I know you  
13 said that you were going to take this under advisement, but  
14 of course we are here seeking a date certain. I don't want  
15 to put the cart before the horse, but if Your Honor is able  
16 to entertain us on that subject, the case has been filed for  
17 three years. It's been a frustrating process.

18 THE COURT: I understand, and my recollection of the  
19 case was that you needed a two-week term of court, which of  
20 course is like having an act of congress to get a two-week  
21 term of court.

22 MR. GRUENLOH: I understand.

23 THE COURT: So, frankly, I don't know what I'm going to  
24 do right now without looking at the communications that were  
25 provided to the Court. However, if we do need a two-week

1 term of court, we're just going to find what's available and  
2 just let you know and you will have to be present. That's  
3 all I can say. We'll try to obviously make sure it's  
4 convenient for the parties, but it will not be continued for  
5 any other reason if it is scheduled to be tried.

6 MR. GRUENLOH: Understood, and I'll talk to Mr. Marvel  
7 and see if we can pare that down. Maybe we can do it in a  
8 week.

9 THE COURT: That actually would be most helpful if you  
10 could.

11 MR. MARVEL: My only request is if I could have 20 or 30  
12 days from whenever your decision is made because I may need  
13 to sever some issues based on the current status of my  
14 client's situation, and I may need to engage other counsel to  
15 represent some of the parties, that sort of thing, before the  
16 trial.

17 THE COURT: Sure. I'm not going to tell you to show up  
18 next week. I understand this is a complex case and you'll  
19 need a little bit of time to prepare. I'll give you  
20 sufficient notice, obviously, to be ready to proceed. But  
21 let's cross that bridge when we get for it.

22 MR. GRUENLOH: And I won't pre-argue Mr. Marvel's motion  
23 to withdraw, but when we've been laboring together for three  
24 years, and on the eve of trial we would obviously object to  
25 any motion to withdraw.

1 MR. MARVEL: Thank you, Your Honor.

2 THE COURT: You all have a good day.

3 MR. MARVEL: For the record, Your Honor, I did not make  
4 that motion.

5 THE COURT: It's not before me. That is for sure.

6 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER  
2 STATE OF SOUTH CAROLINA  
3 COUNTY OF DORCHESTER  
4

5 I, the undersigned Ruth L. Mott, Official Court Reporter  
6 for the State of South Carolina, do hereby certify that the  
7 foregoing is a true, accurate and complete transcript of  
8 record of all the proceedings had and evidence introduced in  
9 the matter of the above-captioned case, relative to appeal,  
10 in the 1st Judicial Circuit Court for Dorchester County,  
11 South Carolina, on the 24th of June, 2015.

12 I further certify that I am neither related to nor  
13 counsel for any party to the cause pending or interested in  
14 the events thereof.

15 October 19, 2015  
16   
17 Ruth L. Mott

18 Certified Court Reporter  
19  
20  
21  
22  
23  
24  
25

# **EXHIBIT G**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF DORCHESTER  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP1801227

Innovative Waste Management Inc Crest Energy Partners LP Edward H. Girardeau	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
--	--

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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: **After reviewing all testimony and other evidence presented at the hearing, along with a review of the records provided to the Court, Plaintiff's 60(b) motion to vacate settlement, restore to active docket and set for trial heard on Wednesday, June 24th, 2015 in Dorchester County is hereby denied.**

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 here 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.

<i>Maité Murphy</i>	2166	7/22/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date

**For Clerk of Court Office Use Only**

This judgment was entered on 7/22/2015, and a copy mailed first class or placed in the appropriate attorney's box on 7/22/2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh/Patric 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

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

*Cheryl Graham*

Court Reporter: Ruth Mott

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.

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# **EXHIBIT H**

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER

2015 JUL 31

IN THE COURT OF COMMON PLEAS

CASE NO. 2012-CP-18-1227

*Cheryl Anderson*  
CLERK OF COURT  
DORCHESTER COUNTY

INNOVATIVE WASTE MANAGEMENT,  
INC.,

Plaintiff,

v.

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

Defendants.

**MOTION TO RECONSIDER**

The Plaintiff, Innovative Waste Management, Inc. (hereinafter "Plaintiff"), by and through their undersigned counsel hereby moves this Honorable Court pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure to reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate Settlement Agreement, Restore to Active Docket, and Set for Trial and respectfully requests that the Court vacate its April 20, 2015 Judgment and immediately set this matter for trial. In support of this motion, Plaintiff states that (1) the case was errantly dismissed by the Clerk of Court based upon the Proof of ADR or Exemption filed by the mediator and no stipulation of dismissal or any other motion or order complying with Rule 41 of the South Carolina Rules of Civil Procedure has ever been filed in this action, (2) the Settlement Agreement and other communications to the Court clearly indicate that the case was not to be dismissed until the settlement was consummated, and (3) Defendants have breached the Settlement Agreement and Plaintiff therefore has a right to rescind that agreement.

## FACTUAL AND PROCEDURAL HISTORY

This case was filed on May 11, 2012. On April 8, 2015, Plaintiff and Defendants conducted court-ordered mediation regarding this action and were able to reach a settlement agreement. The Settlement Agreement entered into by the parties stipulated that Defendants would make a payment of \$450,000.00 within thirty (30) days of the execution of the agreement, and that dismissal of the action was conditioned upon Defendants' payment under the agreement. (See Settlement Agreement at Paragraph 5, attached as "Exhibit A"). The amount agreed upon in order to settle the case was significantly less than the actual value of the claim and Plaintiff only accepted this greatly reduced amount based upon Defendants' and their counsel's representation that payment would be made within the thirty (30) day time period. (See Affidavit of C. Russ Lloyd, attached as "Exhibit B"). The timing of the payments was a material term to the settlement. (See "Exhibit B" at Paragraph 6).

Only two communications were made to the Court regarding the Settlement Agreement prior to Plaintiff bringing its Motion to Vacate. The first was an e-mail from David Marvel, Counsel for Defendants, advising the Court of the settlement and stating "I am working on releases now, and we will file a stipulation of dismissal once the settlement is consummated." (See Marvel E-mail, attached as "Exhibit C"). The second communication was the Proof of ADR or Exemption filed by the mediator, Mr. Angus Lawton. On April 20, 2015, Mr. Lawton filed a Proof of ADR or Exemption with the Court indicating that the case was "(X) Fully Settled . . . (X) Voluntary Dismissal to be filed by Atty. Marvel." (See Proof of ADR or Exemption, attached as "Exhibit D"). On that same date, a Form 4 Judgment was issued dismissing this case (See April 20, 2015 Judgment, attached as "Exhibit E"). The Judgment was signed by Dorchester County Clerk of Court Cheryl Graham and directs the reader to "[s]ee attached order; (formal

order to follow)” and states “[t]his order [X] ends . . . the case.” The ADR statement was not intended to dismiss the case and, in fact, cannot dismiss the case pursuant to Rule 41. (See Affidavit of Angus Lawton, Esq. at Paragraph 7, attached as “Exhibit F”). There is no order dismissing the case attached to the Judgment, and in fact the only supporting documentation accompanying the Judgment is a copy of the Proof of ADR or Exemption. The parties have never executed or filed a voluntary dismissal, as the settlement was never consummated.

On May 8, 2015, thirty (30) days elapsed from the execution of the Settlement Agreement with no payment received. Despite Defendants’ counsel’s initial assurances of payment, Defendants have yet to make any payment pursuant to the Settlement Agreement and have advised Plaintiff that payment is not forthcoming. After Defendants’ failure to consummate the Settlement Agreement, Plaintiff contacted the Court and sought to have the action set for trial. On May 20, 2015 Plaintiff was, for the first time, notified that on April 20, 2015 a Judgment signed by the Clerk of Court and attaching the ADR statement of the mediator and that “[t]he case was closed out . . . .”<sup>1</sup> (See Court E-mail Correspondence, attached as “Exhibit G”). Upon learning this information, Plaintiff wrote to the Court advising the Court of what appeared to be an errant dismissal and requesting a conference to discuss correcting the error and placing the case back on the docket. Plaintiff was unable to secure an informal conference with the court regarding this issue and immediately filed its Motion to Vacate on May 27, 2015.

On June 24, 2015, the Court heard arguments from counsel requesting that the April 20, 2015 Judgment and the Settlement Agreement be vacated. The Defendants filed no opposition to this motion. On July 22, 2015, the Court entered a form order denying Plaintiff’s May 27, 2015 motion. Plaintiff now respectfully requests that this Court reconsider its July 22, 2015 ruling.

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1. Plaintiff’s counsel has no record of having received a copy of the April 20, 2015 Judgment with the attached Proof of ADR or Exemption at any point prior to this date.

## STANDARD OF REVIEW

“ . . . Rule 59(e), SCRCP, provides for a motion to alter or amend judgment and preserve the record for appeal.” Pelican Build Centers v. Dutton, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993). “The purpose of Rule 59(e), SCRCP, to alter or amend the judgment is to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” Arnold v. State, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992). A party may file a motion to reconsider under Rule 59(e) when it “ . . . believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it.” Elam v. SCDOT, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (citing Arnold v. State, 309 S.C. 157, 420 S.E.2d 834 (1992)). A trial court has inherent jurisdiction to enforce settlement agreements entered before it and this jurisdiction extends to motions to vacate settlement agreements. Kumar v. Third Generation, Inc., 320 S.C. 430, 472 S.E.2d 637 (Ct. App. 1996).

## ARGUMENT

The April 20, 2015 Judgment was entered incorrectly and dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure. No Rule 41 dismissal has ever been entered in this case. Likewise, the Clerk of Court’s dismissal of this case is contrary to the written terms of the Settlement Agreement and the intent of all interested parties and is therefore improper. Finally, Defendants’ have breached the Settlement Agreement and South Carolina law is clear that Plaintiff may rescind the agreement due to Defendants’ non-performance. For these reasons, the Court’s earlier July 22, 2015 Order was incorrect and should be overturned.

**I. Dismissal of this case is improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.**

Rule 41 of the South Carolina Rules of Civil Procedure governs the dismissal of actions and provides the methodology by which the courts may dismiss a lawsuit. Rule 41(a)(1) provides for voluntary dismissal by stipulation of the parties and states that after the adverse party in an action has filed an answer or motion for summary judgment, a case may only be dismissed “. . . by filing a stipulation of dismissal signed by all parties who have appeared in the action . . . .” Rule 41(b) provides for involuntary dismissal of a case for various grounds such as a plaintiff’s failure to prosecute or comply with the South Carolina Rules of Civil Procedure or any order of court, or for a plaintiff’s failure to show a right to relief. Notably absent from this rule, however, is any provision setting forth a situation where the trial judge or clerk of court may unilaterally dismiss a case absent a motion or affirmative action made by one of the parties. Furthermore, Rule 41 does not allude to any situation where the actions of a third party mediator may dismiss a case absent a signed stipulation of dismissal executed by the parties.

In the instant case, there has been no stipulation of dismissal filed by either the Plaintiff or the Defendants. In fact, the record is replete with references to the future execution of a stipulation of dismissal once payment was made under the Settlement Agreement. In the Settlement Agreement, the parties set forth that “[t]he Parties hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made.” (See “Exhibit A” at Paragraph 5) (emphasis added). Mr. Lawton’s Proof of ADR or Exemption sets forth that there would be a “Voluntary Dismissal to be filed by Atty. Marvel.” (See “Exhibit D”). Finally, Mr. Marvel’s e-mail correspondence with the Court regarding the settlement states that “. . . we will file a stipulation of dismissal once the settlement is consummated.” (See “Exhibit C”). To date, no dismissal complying with

SCRCF 41 has ever been executed or filed with the Court. The lone document attached to the April 20, 2015 Judgment is Mr. Lawton's Proof of ADR or Exemption, which may not properly be used to dismiss a case under Rule 41 of the South Carolina Rules of Civil Procedure. (See "Exhibit E"). As such, this case was improperly dismissed and it should be returned immediately to the active trial docket.

II. Dismissal of this case is contrary to the intent of all interested parties.

Should the Court disagree with Plaintiff's stance as set forth above, Plaintiff would contend that dismissal of this case is improper as it is contrary to the intent of all interested parties. In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) (citing Pruitt v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 343 S.C. 335, 339, 540 S.E.2d 843, 845 (2001) (enforcement of the terms of a settlement agreement is a matter of contract law)). The primary concern of the court interpreting a contract is to give effect to the intent of the parties. N. Am. Rescue Products, Inc. v. Richardson, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015), reh'g denied (Mar. 19, 2015) (citing Lee v. Univ. of S.C., 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014)). "The parties' intention must, in the first instance, be derived from the language of the contract." Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003). "If the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect". Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973).

The language included in the Settlement Agreement is clear and unambiguous and expressly sets forth the parties' intent to file a stipulation of dismissal only if the settlement was consummated. As set forth above, the Settlement Agreement states that "[t]he Parties hereby

authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice in exchange for the \$450,000 payment, once payment is made." (See "Exhibit A" at Paragraph 5) (emphasis added). It cannot be more clear from this document that the parties did not intend for the case to be dismissed.

As noted above, there are numerous other examples within the record that reaffirm the parties' intent as set out in the Settlement Agreement. Mr. Marvel's e-mail correspondence with the Court and Mr. Lawton's ADR are all clear evidence that the parties intended for the case to be dismissed by an executed stipulation of dismissal if and only if the Defendants paid the Plaintiff \$450,000.00. Mr. Marvel informed the Court that a stipulation of dismissal would be submitted when the settlement was consummated, (See "Exhibit C"). Likewise and as noted in his affidavit, Mr. Lawton did not intend for his Proof of ADR or Exemption to serve as the basis for a dismissal. In fact, it is his understanding that such a document may not be used as the grounds for the entrance of a judgment under SCR 41. (See "Exhibit F" at Paragraph 7). As such, Plaintiff humbly requests that the Court respect the intent of the parties and return this matter to the active docket.

**III. Defendants have breached the Settlement Agreement and Plaintiff may rescind the agreement due to non-performance.**

As set forth above, Settlement Agreements are viewed as contracts under South Carolina law. (Supra Argument Section II). In situations where a breach of a contract is ". . . so substantial and fundamental as to defeat the purpose of the contract," rescission of that contract may be warranted. Brazell v. Windsor, 384 S.C. 512, 516-17, 682 S.E.2d 824, 826 (2009). Rescission ". . . is an equitable remedy that attempts to undo a contract from the beginning as if the contract had never existed." ZAN, LLC v. Ripley Cove, LLC, 406 S.C. 404, 413, 751 S.E.2d 664, 669 (Ct. App. 2013). The failure to make payment as specifically outlined in a contract

constitutes a substantial breach of contract. Silver v. Aabstract Pools & Spas, Inc., 658 S.E.2d 539, 543 (Ct. App. 2008).

In this case, Plaintiff agreed to settle its multi-million dollar claim for \$450,000.00 based solely upon the promises of the Defendants and their counsel, Mr. Marvel, that the settlement proceeds would be paid within the thirty (30) day time period. (See "Exhibit B" at Paragraph 6). Absent this promise, Plaintiff would not have executed the Settlement Agreement and would have proceeded to a jury trial. The time period for payment was a significant and material term of the Settlement Agreement and the Defendants failure to comply with this provision not only constitutes a breach of the Settlement Agreement, but has entirely defeated Plaintiff's purpose for executing the Settlement Agreement. (See "Exhibit B" at Paragraph 6).

The Defendants have yet to pay any money and are clearly in breach of the agreement. Moreover, contrary to his initial assertions to the Court, Mr. Marvel recently indicated that he had no information that any payment would be forthcoming at any time in the near future. As such, it is only equitable and proper for the Court to exercise its authority to vacate the Settlement Agreement and return this case to the active docket, especially in light of the fact that the dismissal of this case was improper pursuant to Rule 41 of the South Carolina Rules of Civil Procedure.

#### CONCLUSION

WHEREFORE, Plaintiff requests that the Court reconsider its July 22, 2015 Order denying Plaintiff's Motion to Vacate, thereby vacating the April 8, 2015 Settlement Agreement and April 20, 2015 Judgment and restoring this action to the active docket.

Respectfully Submitted  
GRUENLOH LAW FIRM  
Counsel for the Plaintiff

By: 

Wm. M. Gruenloh SCBAR # 12418  
Patrick Aulton Chisum SCBAR #100571  
Brian R. Holmes SCBAR # 102052  
192 East Bay Street, Suite 202  
Charleston, South Carolina 29401  
(843) 577-0027  
(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)

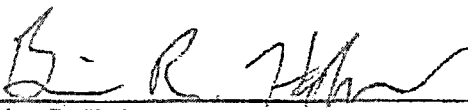
Date: July 31, 2015  
Charleston, South Carolina

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of **MOTION TO RECONSIDER** in the above matter were served on the below named parties and/or their respective counsel and/or agents by sending accurate copies via U.S. Mail and/or accurate electronic copies of the same via e-mail.

David B. Marvel  
Prenner Marvel  
636 King Street  
Charleston, South Carolina 29403  
*Attorney for Defendants*

CLERK OF COURT  
DOMESTIC COUNTY  
JUL 31 PM 3:41

By:   
Brian R. Holmes  
192 East Bay Street, Suite 202  
Charleston, South Carolina 29401  
(843) 577-0027  
(843) 577-0721 (facsimile)

Date: July 31, 2015  
Charleston, South Carolina

# **EXHIBIT I**

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

) AFFIDAVIT OF  
) ANGUS LAWTON, ESQ.  
)  
)

Personally appeared before me, Angus Lawton, Esq. who, being duly sworn deposes and states as follows:

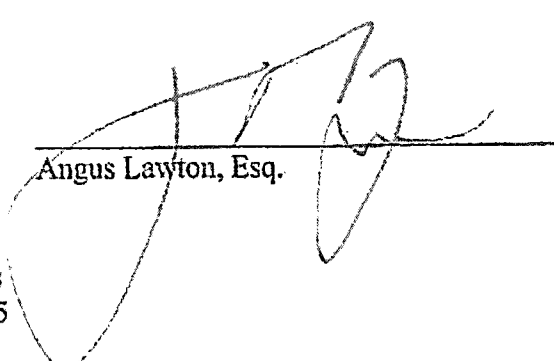
CLERK OF COURT  
DORCHESTER COUNTY

1. My name is Angus Lawton, and I am a member in good standing of the South Carolina Bar. I have been practicing law in South Carolina since November of 1988.
2. I have been a Civil Court mediator certified by the South Carolina Bar since 2005.
3. On April 8, 2015 I conducted the mediation in the matter of: IWM v. Crest Energy Partners, G.P. . Henry Wuertz, et al, 2012-CP-18-1227, a case pending in Dorchester County.
4. After the mediation, I submitted a Proof of ADR or Exemption form (hereinafter "ADR form") to the Dorchester County Clerk of Court. A copy of that form is attached to this affidavit as Exhibit A. I submitted this ADR form to the Clerk of Court within ten (10) days of the mediation as required by the mediation rules in Circuit Court in South Carolina.
5. The ADR form indicated that the case was settled, and that Attorney Marvel (counsel for Defendant) would file a Voluntary Dismissal.
6. I recently received a copy of a Form 4 which was signed by a representative of the Dorchester County Clerk of Court. A copy of that Form 4 is attached as Exhibit B. The Form 4 indicates that the Order ends the case, and it states "See attached order; (formal order to follow.)" Attached to the Form 4 is the ADR form that I had previously submitted to the Clerk of Court. It appears that the basis for the Form 4 dismissal is the ADR form that had been submitted to the Clerk of Court.

7. The ADR form that I submitted to the Clerk of Court is not an order, and it was not my intent for the ADR Form to be used as such. As a mediator, I lack the authority to move for a case to be dismissed, and as indicated in the ADR Form, the attorneys are to file a voluntary dismissal for a dismissal to take place.

8. I do not know if the attorneys in this case have filed a voluntary dismissal with the Clerk of Court.

Further Affiant say not.

  
\_\_\_\_\_  
Angus Lawton, Esq.

SWORN to and subscribed before me this  
30 day of July, 2015

  
\_\_\_\_\_  
Notary Public for the State of South Carolina  
My Commission Expires 9-4-2023

Exhibit A

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
INNOVATIVE WASTE MANAGEMENT,  
INC.,

Plaintiff.

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227  
CASE NO.: ~~2013-CP-18-1897~~

FILED - RECORDED  
2015 APR 20 PM 3:11  
CHERYL GRAHAM  
CLERK OF COURT  
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. \_\_\_\_\_ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff

\_\_\_\_\_  
Defendant/Attorney for Defendant

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Phone/Fax

Date: \_\_\_\_\_

B.  X  1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- Fully Settled.
  - by Consent Judgment, to be file by \_\_\_\_\_
  - or  Voluntary Dismissal to be filed by Atty. Marvel
  
  - Partially Settled.
  - At an impasse.
  - In need of further ADR I [ ] and [ ] am not willing to continue as a neutral. I recommend that ADR resume as of \_\_\_\_\_

5. Plaintiff  was present      [ ] was not present  
Defendant  was present      [ ] was not present

6. Other parties were:

- X Lawyer for Defendant D. Marvel
- X Lawyer for Plaintiff M. Gruenloh, F. Jekel
- \_\_\_\_\_ Representative for Insurance Carrier \_\_\_\_\_
- \_\_\_\_\_ Guardian *ad Litem* \_\_\_\_\_
- \_\_\_\_\_ Experts \_\_\_\_\_
- \_\_\_\_\_ Others \_\_\_\_\_

7. Choice of the neutral was by:

- X Stipulation
- \_\_\_\_\_ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

\_\_\_\_\_

\_\_\_\_\_

Neutral's Signature

Date: April 10, 2015

EXHIBIT B

FORM 4

STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2012CP1801227

FILED - RECORDED

2015 APR 29  
CHERYL  
CLERK  
DORCHESTER COUNTY  
COURT  
Henry Wertz  
Innovative Waste  
Management Inc

Innovative Waste  
Management Inc  
Crest Energy Partners LP

Edward H Girardeau

Crest Energy Partners  
Gp, LLC  
Dunhill Products GP,  
LLC  
Edward H Girardeau  
C. Russ Lloyd

Crest Energy Partners  
LP  
Dunhill Products LP  
Edward H Girardeau  
C. Russ Lloyd

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j) SCRPC;  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.

Cheryl Graham *Cheryl Graham* 2099 4/20/2015  
Clerk of Court Judge Code Date  
For Clerk of Court Office Use Only

This judgment was entered on 4-20-2015, and a copy mailed first class or placed in the appropriate attorney's box on 4-20-2015, to attorneys of record or to parties (when appearing pro se) as follows:

William Michael Gruenloh 192 East Bay Street, Suite 202  
Ste C Charleston, SC 29401-3037  
Frederick John Jekel PO Box 2579 Mt. Pleasant, SC 29465-  
2579  
Patrick Aulton Chisum 192 East Bay Street, Suite 202  
Charleston, SC 29401

David B. Marvel 636 King Street Charleston, SC 29403

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

*Cheryl Graham*  
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.

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STATE OF SOUTH CAROLINA  
COUNTY OF DORCHESTER  
INNOVATIVE WASTE MANAGEMENT,  
INC.,

Plaintiff.

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS

PROOF OF ADR OR EXEMPTION

2012-CP-18-1227  
CASE NO.: ~~2013-CP-18-1897~~

FILED - RECORDED  
2015 APR 20 PM 3:13  
CHERYL GRAY  
CLERK OF COURT  
DORCHESTER COUNTY

(An original and copy of this form is to be completed and filed with the Office of the Clerk of Court and a copy forwarded to the attorneys for the parties within 10 days of the conclusion of ADR, or within 300 days of the filing date of the action, whichever is earlier.)

A. \_\_\_\_\_ I certify that this case is exempt from ADR for the following reason and the parties with to exercises that exemption:

\_\_\_\_\_  
Plaintiff/Attorney for Plaintiff

\_\_\_\_\_  
Defendant/Attorney for Defendant

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Phone/Fax

\_\_\_\_\_  
Phone/Fax

Date: \_\_\_\_\_

B.  X  1. Alternative Dispute Resolution (ADR) was conducted in the form of:

MEDIATION

(Note: If binding arbitration has been chosen by the parties but not yet completed, an appropriate order of dismissal must be attached hereto.)

2. The neutral(s) was/were: (Name of arbitrator/mediator):

ANGUS M. LAWTON

3. The ADR was conducted on April 8, 2015.
4. As a result of the ADR, this case should be considered (please check one):
- Fully Settled.
  - by Consent Judgment, to be file by \_\_\_\_\_
  - or  Voluntary Dismissal to be filed by Atty. Marvel
  
  - Partially Settled.
  - At an impasse.
  - In need of further ADR I  and  am not willing to continue as a neutral. I recommend that ADR resume as of \_\_\_\_\_

5. Plaintiff  was present       was not present  
Defendant  was present       was not present

6. Other parties were:

- X Lawyer for Defendant D. Marvel
- X Lawyer for Plaintiff M. Gruenloh, F. Jekel
- \_\_\_\_ Representative for Insurance Carrier \_\_\_\_\_
- \_\_\_\_ Guardian *ad Litem* \_\_\_\_\_
- \_\_\_\_ Experts \_\_\_\_\_
- \_\_\_\_ Others \_\_\_\_\_

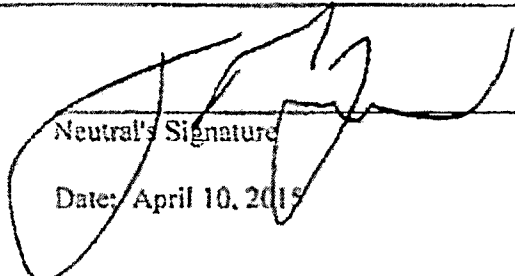
7. Choice of the neutral was by:

- X Stipulation
- \_\_\_\_ Court Order

8. The total number of hours spent in ADR was 10.6 hours.

9. Further comments of the neutral:

\_\_\_\_\_  
\_\_\_\_\_

Neutral's Signature   
Date: April 10, 2015

# **EXHIBIT J**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

AFFIDAVIT OF  
C. RUSS LLOYD

2015 JUL 31 PM 3:41

Personally appeared before me, C. Russ Lloyd, who, being duly sworn deposes and states as follows:

CLERK OF COURT  
DORCHESTER COUNTY

1. I am Russ Lloyd, the Owner/President of Innovative Waste Management, Inc.
2. Innovative Waste Management, Inc. is the named Plaintiff in IWM v. Crest Energy Partners GP, L.L.C., Crest Energy Partners L.P., Dunhill Products L.P., Henry Wuertz, and Edward H. Girardeau, Case Number 2012-CP-18-1227, which is currently pending in Dorchester County.
3. I am intimately familiar with the allegations and claims asserted by the Plaintiff in the aforementioned case.
4. On April 8, 2015, I participated as Plaintiff's representative in the court ordered mediation of the aforementioned case. I had sole settlement authority for Plaintiff at this mediation.
5. A settlement was tentatively reached at the mediation that required the Defendants to make a payment of Four Hundred Fifty Thousand Dollars (\$450,000.00) to be paid by no later than May 8, 2015, or thirty (30) days after the conclusion of the mediation.
6. The payment term of thirty (30) days was critical and material to my acceptance of the settlement amount agreed upon by the parties and I accepted a much reduced settlement amount as compared to my total claim based upon Defendants and their counsel's representation that the payment would be made in thirty (30) days.

7. The settlement agreement made dismissal of this action contingent upon the receipt of payment by no later than May 8, 2015, and it was understood that if payment was not made then the case would not be dismissed and would proceed to a jury trial.
8. To date, Plaintiff has yet to receive any payment from Defendants.
9. Due to the Defendants failure to pay as agreed, I never executed a dismissal in this case, nor did I authorize my counsel to execute a dismissal of this case on my behalf.
10. To my knowledge, no dismissal of this case has ever been executed by Plaintiff.
11. I respectfully request for this Court to rescind the settlement agreement and restore this case to the active trial docket.

Further Affiant say not.



C. Russ Lloyd, Owner/President  
Innovative Waste Management, Inc.

SWORN to and subscribed before me this  
30 day of July, 2015



Notary Public for the State of South Carolina

My Commission Expires My Commission Expires January 23, 2017

# **EXHIBIT K**

FORM 4

STATE OF SOUTH CAROLINA  
 COUNTY OF DORCHESTER  
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE  
 CASE NUMBER 2012CP1801227

CERTIFIED COPY

2013 AUG 20 AM 11:04

*Henry Wuertz*  
 CLERK OF COURT  
 DORCHESTER COUNTY

Innovative Waste Management Inc  
 Crest Energy Partners LP

Edward H Girardeau

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

PLAINTIFF(S)

DEFENDANT(S)

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), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j) SCRPC;  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: Pursuant to this Court's authority under Rule 59 SCRC, the Plaintiff's Motion to Reconsider is dismissed without oral argument and determined upon the briefs filed by the parties. I find that all arguments properly raised to the Court have already been ruled upon and this Court will not consider further arguments on the matter.

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.**

	2166	<del>8/10/2015</del> 8/18/2015
Maité Murphy, Circuit Court Judge	Judge Code	Date

**For Clerk of Court Office Use Only**

This judgment was entered on 8/20/2015, and a copy mailed first class or placed in the appropriate attorney's box on 8/20/2015, to attorneys of record or to parties (when appearing pro se) as follows:

**William Michael Gruenloh** 192 East Bay Street, Suite 202  
Ste C Charleston, SC 29401-3037  
**Frederick John Jekel** PO Box 2579 Mt. Pleasant, SC 29465-  
2579

**David B. Marvel** 636 King Street Charleston, SC 29403

\_\_\_\_\_  
**ATTORNEY(S) FOR THE PLAINTIFF(S)**

\_\_\_\_\_  
**ATTORNEY(S) FOR THE DEFENDANT(S)**



**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.

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CERTIFICATE OF SERVICE

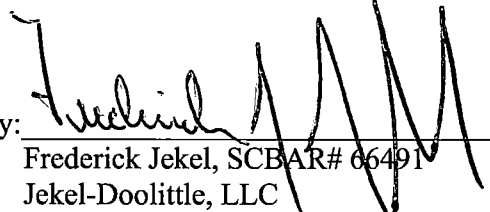
RECEIVED

DEC 31 2015

SC Court of Appeals

The undersigned hereby certifies that a true and correct copy of APPELLANT'S  
**RETURN TO RESPONDENTS' MOTION TO DISMISS** in the above-referenced  
matter was served on the below named parties and/or their respective counsel and/or  
agents by depositing true and accurate copies of the same in the U.S. mail, first class,  
properly addressed, with sufficient postage affixed, on the date below.

David B. Marvel  
Prenner Marvel  
636 King Street  
Charleston, South Carolina 29403

By:   
Frederick Jekel, SCBAR# 06491  
Jekel-Doolittle, LLC  
1512 Laurel Street  
Columbia, SC 29201  
(803) 888-7130  
(888) 567-1129 (facsimile)

Date: December 31, 2015  
Charleston, South Carolina