



GRUENLOH
L A W

Wm. Michael Gruenloh, Esq.
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Thomas F. Drazan, Esq.
thomas@gruenlohlaw.com

DELIVERED VIA ELECTRONIC MAIL

Jenny Abbott Kitchings, Clerk of Court
Court of Appeals
1220 State Street
Columbia, SC 29201

RECEIVED

Feb 04 2021

SC Court of Appeals

February 4, 2021

**Re: Appellate Case No.: 2019-001719
Innovative Waste Management, Inc., Respondent, v. Crest Energy Partners
GP, LLC et al.**

Dear Mrs. Kitchings:

Respondents are in receipt of Appellants January 27, 2021 REPLY RE: MOTION FOR ENLARGEMENT OF TIME. While Respondent believes its Return in Opposition to Appellants' Motion for Enlargement of Time is proper and fully lays out the Respondent's argument in opposition to Appellants' Motion, Appellants' counsel has, in a footnote of his motion accused Respondent's counsel of a lack of candor. This accusation is baseless and Respondent offers this letter in response and as further support in opposition to Appellants' most recent request for more time.

In its return, Respondent made the statement that the Record on Appeal submitted by Appellant is incomplete. As set out below, this statement is correct. It is important to note that Respondent's Return addressed procedural, not substantive objections to Appellants' proposed Record on Appeal, namely Appellants' continuing failure to abide by deadlines set by this Court. As such, Respondent did set out all of the ways in which the Record on Appeal is incomplete but rather focused on the issue of timeliness that is before the Court.

In response to Respondent's statement that the record on appeal is not complete, Appellants wrote the following at footnote 1 of Appellants' Reply: "[T]he return provides no factual basis for that comment; Appellants submit that this is a patent violation of Messrs Drazen (sic) and Gruenloh's duty of candor to the court for which they should be sanctioned, up to and including dismissal of Respondent's case, or otherwise referred to the Office of Disciplinary Counsel." Appellants' Counsel made no attempt to confer with Respondent's Counsel before including this statement in his return.

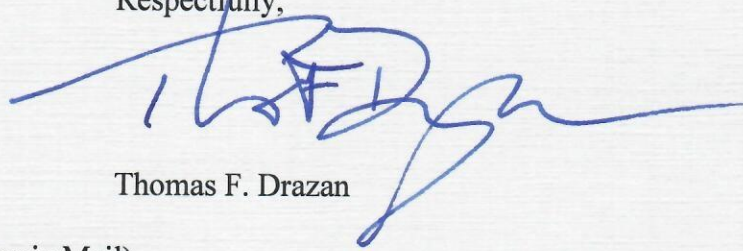
Respondent has identified the following three deficiencies in Appellant's Record on appeal. First, attached to this letter as EXHIBIT A, is Exhibit 5 to The March 25, 2013 Amended Motion to Compel. Appellant's Record on Appeal states that this exhibit "does not appear in the court

record.” Respondent can confirm that Exhibit 5 is in the Court Record, was provided to Respondent’s Counsel by the Dorchester County Clerk of Court’s office and is file stamped.

Counsel for Appellants has also attached an improper version of his June 11, 2019 Memorandum in response to Respondents’ Third Motion to Compel. EXHIBIT B. This memorandum was actually filed 14 days later on June 25, 2019. EXHIBIT C. Respondent addressed the issue of ‘submitted’ vs. filing dates on page 15 of their Initial Brief as part of their argument justifying sanctions. The choice of Appellants to include this unfiled version of the memorandum distorts the Record on Appeal and directly affects Respondent’s arguments in their brief. It would also appear that including the ‘submitted’ instead of filed memorandum fails to comply with Appellate Court Rule 210.

Given the failure of Appellants to file the Record on Appeal within the enlarged time granted by the Court, the continuing failure of Appellants to abide by deadlines even after being given numerous extensions, and the deficiencies in the proposed Record on Appeal, Respondents request the Court to dismiss Appellants’ Appeal.

Respectfully,



Thomas F. Drazan

cc: David Marvel (via Electronic Mail)

EXHIBIT A

FILED-RECORDED

2013 MAR 25 PM 4:41

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT 5



william.gruenloh <gruenlohlaw1@gmail.com>

IWM v. Crest

William Gruenloh <mike@gruenlohlaw.com>
To: "David B. Marvel" <dave@premiermarvel.com>

Thu, Mar 14, 2013 at 11:31 AM

David,

To confirm our earlier conversation, I am negotiable on the amount of attorneys' fees to be paid to my office in connection with the pending motion to compel. You suggested \$400 and I believe that is a bit light given the hours we have been forced to spend on it. However, my bigger issue is the fact that this case is coming up for trial in April and we still have no discovery responses. Given the prior responses to discovery in the federal case, I'm anticipating that we may have disagreements regarding your clients' responses once they are received. One thought is that we might push this matter to the next motion hearing date to give you a chance to provide answers. That would also give me a chance to evaluate the discovery and determine whether we need the court's assistance. This would eliminate the need for us to go to the court twice on discovery issues. Of course this option is dependant upon the court's willingness to push the motion to the next available date. My review of the court roster suggests we might be able to get on the docket April 1 if necessary.

I'd like to hear from you today on these two issues.

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

FILED-RECORDED
2013 MAR 25 PM 4:41
SHERYL K. AMAN
CLERK OF COURT
DORCHESTER COUNTY

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]

[Quoted text hidden]

[Quoted text hidden]

David B. Marvel <dave@prennermarvel.com>
To: William Gruenloh <mike@gruenlohlaw.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>

Thu, Mar 14, 2013 at 5:11 PM

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>
To: Patrick Aulton Chisum <patrick@gruenlohlaw.com>
Cc: William Gruenloh <mike@gruenlohlaw.com>

Fri, Mar 15, 2013 at 6:47 AM

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>
To: "David B. Marvel" <dave@prennermarvel.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>, William Gruenloh <mike@gruenlohlaw.com>

Fri, Mar 15, 2013 at 8:32 AM

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>
To: Mike Gruenloh <gruenlohlaw1@gmail.com>
Cc: Patrick Aulton Chisum <patrick@gruenlohlaw.com>, William Gruenloh <mike@gruenlohlaw.com>

Fri, Mar 15, 2013 at 8:39 AM

The agreement was that we would pay you. I didn't 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]

[Quoted text hidden]

William Gruenloh <mike@gruenlohlaw.com>
To: Trevor Threet <trthreet@charlestonlaw.edu>

Fri, Mar 15, 2013 at 10:22 AM

[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
638 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

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

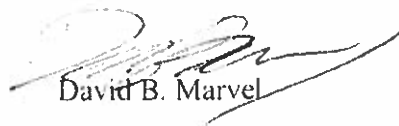
Dear Mike,

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

EXHIBIT B

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 conducted 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

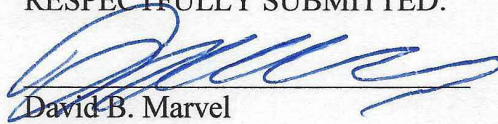
Court of Common Pleas' authority to Order the Defendants to execute an authorization that effectively overrules not only that ruling but also an Order of the 24th District Court for the Parish of Jefferson, Louisiana.

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:

A handwritten signature in blue ink, appearing to read "David B. Marvel", is written over a horizontal line.

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

EXHIBIT C

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:

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