

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Mar 09 2021

SC Court of Appeals

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Maite D. Murphy, Circuit Court Judge

Case No. 2019-001719

Innovative Waste Management Inc., Respondent,

v.

Crest Energy Partners, GP, LLC, Dunhill Products GP, LLC, Henry Wuertz, Innovative Waste Management, Inc., Crest Energy Partners LP, Dunhill Products LP, Edward H. Girardeau, C. Russ Lloyd, Defendants, Of Whom,

Crest Energy Partners GP, LLC, Crest Energy Partners LP, Dunhill Products, LP, and Henry Wuertz, are the Appellants.

MOTION TO AMEND THE RECORD ON APPEAL

APPELLANTS, through undersigned counsel, hereby move this Honorable Court for an Order allowing Appellants leave to file an Amended Record on Appeal.

The Record on Appeal was initially served on January 5, 2021. On January 6, 2021, Appellants filed the Record along with a Motion for leave to serve the Record on Appeal Out of Time. The Court Granted that Motion on February 23, 2021. The parties' Final Briefs are now due to be filed on or before March 15, 2021.

On February 4, 2021, during the course of briefing the January 6, 2021 Motion, Respondent's counsel informed the Court and the undersigned by letter that he believed the Record to be incomplete. The February 4, 2021 letter addressed two issues: a missing Exhibit to a

Memorandum filed by Respondent on March 25, 2013 and a duplicate version of a memorandum filed by Appellants on June 25, 2019. Appellants now request leave to Amend the Record on Appeal to include the items addressed in the February 4, 2021 letter.

Respondent's March 25, 2013 Amended Motion to Compel was served by email on March 23, 2013 in advance of a hearing that had been scheduled for April 1, 2013. As the email attached hereto as Exhibit A shows, that service did not include a copy of the exhibits that were filed with the Court on March 25, 2013. In the final stages of compiling the Record on Appeal, the undersigned realized that he did not have a complete copy of the filing. The Motion also could not be retrieved electronically through the Case Records Search, as filings made before 2014 are not generally available in that manner in Dorchester County. The undersigned therefore contacted the Dorchester County Clerk of Court's office on January 5, 2021, to request a complete copy of this motion and other items. The version of Respondent's motion that had been scanned into the record, and provided to the undersigned, did not include Exhibit 5. After receiving Respondent's letter of February 4, 2021, the undersigned again contacted the Dorchester County Clerk of Court's office to inquire specifically about the missing Exhibit. The Clerk's office was then able to locate the original motion and Exhibit in the court's paper file, and provided it to the undersigned.

The Second issue raised by Respondent related to Appellant's Memorandum in Opposition to Respondent's Third Motion to Compel. The undersigned transmitted a full copy of that memorandum with a proposed Order to the lower court via email on June 11, 2019. See Exhibit B. The Court Granted the Third Motion to Compel on June 18, 2019. The June 11 memorandum was filed in the record on June 25, 2019, in conjunction with the filing of Appellants' Motion to Alter or Amend the June 18 Order, so that the prior arguments could be properly incorporated therein. The June 25 filing did not include a second copy of the proposed Order, but the substance

of the memorandum was otherwise identical in all respects to the version submitted to Judge Murphy on June 11, 2019. When reviewing Respondent's Designation of Matter and compiling the Record, the undersigned did not realize that Respondent specifically sought the inclusion of the June 25, 2019 version filed with the lower Court. Appellants submit that this confusion was understandable given that the two memoranda were substantively identical, and Respondent's Designation of Matter typically referenced incorrect dates of various documents, given that the proper effective date of an Order is the date it is filed, not when it is signed by a judge. See, e.g., Bowman v. Richland Mem'l Hosp., 335 S.C. 88, 92, 515 S.E.2d 259, 261 (Ct. App. 1999); First Union Nat'l Bank of S.C. v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681 (Ct.App.1991), aff'd, 308 S.C. 421, 418 S.E.2d 545 (1992).

Accordingly, Appellants respectfully request that this Honorable Court grant leave to Amend the Record on Appeal to include Exhibit 5 to Respondent's March 25, 2013 Amended Motion to Compel, a complete copy of the June 25, 2019 Memorandum in Opposition to Respondent's Third Motion to Compel, and a copy of the email transmitting the June 11, 2019 version of that memorandum to the court. A copy of the proposed Amended Record on Appeal is being filed contemporaneously herewith. Those documents begin on pages 304, 596, and 730 of the Amended Record, respectively.

Presumably, Respondent will consent to this Motion, given that Respondent made the original request to include the additional documents. If so, Appellants see no reason why the deadline for the submission of Final Briefs should be extended. The undersigned has conferred with Respondent's counsel, who has indicated some willingness to consent to the Motion after they had an opportunity to review the Proposed Amended Record on Appeal. Given the time sensitive nature of this filing and Respondent's counsel's history of contesting any relief requested

by Appellants throughout the last decade of litigation involving these 2010 transactions, it appeared to be prudent to file the motion, with the request that Respondent's counsel inform the Court directly if they intend to consent or contest this Motion.

For all the reasons stated herein, Appellants respectfully request that this Honorable Court grant Appellants leave to Amend the Record on Appeal, and thereby deem the proposed Amended Record on Appeal as filed.

RESPECTFULLY SUBMITTED:

s/ David B. Marvel
David B. Marvel (SCB# 68803)
P.O. Box 22734
Charleston, SC 29413
(P) 843-853-4877
(F) 843-305-3981
dave@marvel.lawyer
ATTORNEY FOR THE APPELLANTS

March 9, 2021
Charleston, South Carolina

From: gruenlohlaw1@gmail.com on behalf of [william gruenloh](#)
To: edicksonlc@sccourts.org
Cc: [David B. Marvel](#); [patrick](#)
Subject: 2012CP1801227- Innovative Waste Management Inc VS Crest Energy Partners Gp
Date: Saturday, March 23, 2013 1:17:08 PM
Attachments: [Amended Motion to Compel.pdf](#)

Dear Drew:

Attached please find a courtesy copy of Plaintiff's Amended Motion to Compel which will be filed with the Clerk of Court on Monday. We will have a hard copy complete with exhibits delivered to Judge Dickson's chambers. This matter is set to be heard at 9:30 am on April 1.

--

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

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From: [David B. Marvel](#)
To: [Wm. Michael Gruenloh](#); [Murphy, Maite Law Clerk \(Chandler D. Rowh\)](#)
Cc: [Fritz Jekel](#); [Ryan Jones](#); [Thomas Drazen](#)
Subject: RE: IWM v. Crest et al. 2012CP1801227
Date: Tuesday, June 11, 2019 12:41:00 PM
Attachments: [image001.png](#)
[12-1227 Defense mem re MTC3.pdf](#)
[Order Granting IWM MTC3 \(DBM\).docx](#)

Dear Chandler,

I understand that Mr. Gruenloh is out of the office today and unable to provide me with editable versions of the exhibits to his proposed Order. In any event, I believe that the attached Proposed Order, along with the attached memorandum that I will file with the Clerk's office, adequately addresses the issue. Thank you and Judge Murphy for your consideration of this matter.



DAVID B. MARVEL

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

P.O. Box 22734 - Charleston, South Carolina 29413 - 843.853.4877 - dave@marvel.lawyer

From: David B. Marvel
Sent: Tuesday, June 11, 2019 9:46 AM
To: 'Wm. Michael Gruenloh' <mike@gruenlohlaw.com>; [Murphy, Maite Law Clerk \(Chandler D. Rowh\)](#) <mmurphy1c@sccourts.org>
Cc: [Fritz Jekel](#) <fritz@j-dlaw.com>; [Ryan Jones](#) <ryan@gruenlohlaw.com>; [Thomas Drazen](#) <thomas@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Chandler, I'm working on an edit of the proposed order. Mike, can you please email me the exhibits?

From: [Wm. Michael Gruenloh](#) <mike@gruenlohlaw.com>
Sent: Monday, June 10, 2019 2:56 PM
To: [Murphy, Maite Law Clerk \(Chandler D. Rowh\)](#) <mmurphy1c@sccourts.org>
Cc: [David B. Marvel](#) <dave@marvel.lawyer>; [Fritz Jekel](#) <fritz@j-dlaw.com>; [Ryan Jones](#) <ryan@gruenlohlaw.com>; [Thomas Drazen](#) <thomas@gruenlohlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

Chandler-

Thank you for bringing the issue on the proposed order for the Motion to Compel to my attention. Paragraph 4 requiring the production of financial statements should apply to all Defendants which is the relief we requested when we were before the court. I have attached a corrected proposed order. Please let us know if Judge Murphy would like an updated number for attorney hours for paragraph 5.

Also attached is a proposed order for Nov 18 date certain. We sent this to defense counsel last week to get input but have not heard back.

Please let us know if you need anything else.

Thank you.

gruenlohlaw.com

Wm. Michael Gruenloh, Esq.

Partner

T 843.577-0027

F 843.577.0721

E mike@gruenlohlaw.com

A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Mon, Jun 10, 2019 at 1:52 PM Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphy1c@sccourts.org> wrote:

Good Afternoon,

Judge Murphy will grant Plaintiff's proposed order, which was handed up to her last week. Mr.

Gruenloh, when you get a chance, please E-file this Order in Word format and indicate it was heard by Judge Murphy, so the Clerk's office will assign it to her. Also, please correct me if I am wrong, but I believe language regarding Rodney Bridge in paragraph 4 should be removed from since claims against him were previously dismissed with prejudice. Tomorrow morning, I will also mail the signed, original Consent Order, which was also handed up to her, to your office.

Lastly, before I have Judge Murphy sign the Order Setting Date Certain Trial to begin the week of November 18, 2019, I just wanted second confirmation that everyone is in fact agreeable to this.

Best,

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Wednesday, June 5, 2019 8:41 AM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphy1c@sccourts.org>; Mike Gruenloh <mike@gruenlohlaw.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good Morning, Please see the attached letter relating to the hearing this morning. Will see you all shortly.

From: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphy1c@sccourts.org>
Sent: Tuesday, May 14, 2019 3:48 PM
To: Mike Gruenloh <mike@gruenlohlaw.com>
Cc: Fritz Jekel <fritz@j-dlaw.com>; David B. Marvel <dave@marvel.lawyer>; Ryan Jones <ryan@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Ok, I will go ahead and schedule the hearing at 9:30 on Wednesday, June 5th. Since I don't yet know how the roster will shake out, I will let everyone know as soon as possible if the time of the hearing needs to be changed.

Chandler

From: Mike Gruenloh <mike@gruenlohlaw.com>
Sent: Tuesday, May 14, 2019 3:46 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphy1c@sccourts.org>
Cc: Fritz Jekel <fritz@j-dlaw.com>; David B. Marvel <dave@marvel.lawyer>; Ryan Jones <ryan@gruenlohlaw.com>

Subject: Re: IWM v. Crest et al. 2012CP1801227

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We can be available anytime June 5 or 6th. Thank you

On May 14, 2019, at 12:14 PM, David B. Marvel <dave@marvel.lawyer> wrote:

The week of June 3 is best for me, I can be available at the Judge's convenience that week. The following week has multiple conflicts.

- Dave Marvel

On May 14, 2019, at 12:10 PM, Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

Good Afternoon,

Judge Murphy will be presiding over a CP term of court in Dorchester County during the week of June 10th if everyone has availability during that week. Also, if this week is inconvenient for everyone, Judge Murphy will also be in Dorchester County during the week of June 3rd. Even though this will be a General Sessions term of court, I am certain I could squeeze this matter in if necessary.

Best,

Chandler

From: Wm. Michael Gruenloh <mike@gruenlohlaw.com>

Sent: Tuesday, May 14, 2019 11:59 AM

To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>

Cc: David B. Marvel <dave@marvel.lawyer>; Fritz Jekel <fritz@j-dlaw.com>; Ryan Jones <ryan@gruenlohlaw.com>

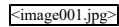
Subject: Re: IWM v. Crest et al. 2012CP1801227

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Dear Chandler-

Please see the attached correspondence for Judge Murphy along with a courtesy copy of the Motion to Compel filed by Plaintiff today. We appreciate any assistance you can provide in having this matter scheduled for hearing.

Mike



gruenlohlaw.com

Wm. Michael Gruenloh, Esq.

Partner

T 843.577-0027

F 843.577.0721

E mike@gruenlohlaw.com

A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Tue, Apr 16, 2019 at 10:00 AM Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

Thank you so much for allowing Judge Murphy to use your office's line.

Best,

Chandler

From: Wm. Michael Gruenloh <mike@gruenlohlaw.com>

Sent: Tuesday, April 16, 2019 9:59 AM

To: Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>

Cc: David B. Marvel <dave@marvel.lawyer>; Fritz Jekel <[19-1719 Motion to Amend ROA](mailto:fritz@j-</p></div><div data-bbox=)

dlaw.com>

Subject: Re: IWM v. Crest et al. 2012CP1801227

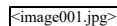
***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. *******

Chandler-

This is the number and access code for our conference call at 11am next Tuesday.

Dial - (712) 775-7300
Enter Access Code - 804487#

Mike



gruenlohlaw.com

Wm. Michael Gruenloh, Esq.

Partner

T 843.577-0027

F 843.577.0721

E mike@gruenlohlaw.com

A 67 MOULTRIE STREET, 2ND FLOOR, CHARLESTON, SC 29403

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On Mon, Apr 15, 2019 at 2:56 PM Murphy, Maite Law Clerk
(Chandler D. Rowh) <mmurphy@cscourts.org> wrote:

Sounds good. I will make sure this is notated on her schedule. If anyone is willing to allow us to use their office's conference call number, it would be greatly appreciated. If not, I can just merge the calls on my cellphone.

Best,

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 2:49 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh)
<mmurphylc@sccourts.org>
Cc: Mike Gruenloh <mike@gruenlohlaw.com>
Subject: Re: IWM v. Crest et al. 2012CP1801227

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Thank you Chandler, that is perfect. There are likely two or three other issues, so please schedule that. I'll do my best to see if we can't reach some agreement on those in the meantime.

- Dave Marvel

On Apr 15, 2019, at 2:12 PM, Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org> wrote:

Judge Murphy has indicated that we could hold the conference call next Tuesday, April 23rd at 11 a.m. Also, since my last email, I was able to review the motion and noticed that a date certain trial was being sought. If that is the sole purpose of the conference call, I could help without the need for a conference call, but if other issues needs to be discussed, we can go forward with the conference call next Tuesday at 11 a.m.

Chandler

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 12:33 PM
To: Murphy, Maite Law Clerk (Chandler D. Rowh)
<mmurphylc@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

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It appears that Mike and I are both open on Tuesday the 23rd if that suits Judge Murphy. Thank you !

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

<image001.png>

Marvel Et Al., LLC

P.O. Box 22734 Charleston, SC 29413
Ph. 843 853 4877 Fax 843 380 3025 Email
dave@marvel.lawyer

From: Murphy, Maite Law Clerk (Chandler D. Rowh)
<mmurphy@sccourts.org>
Sent: Monday, April 15, 2019 12:18 PM
To: David B. Marvel <dave@marvel.lawyer>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Good Afternoon,

Unfortunately, due to server issues, I am currently unable to access the online public index to view the motion for status conference. Regardless, Judge Murphy's schedule is relatively lax over the weeks beginning on April 22nd and April 29th. If everyone is agreeable, we could hold a conference call during a mutually convenient time on one day during those weeks. If those weeks are inconvenient, please let me know, and I will provide more.

Best,

Chandler

From: Goodstein, Diane S. Law Clerk (Walter Hundley)

Sent: Monday, April 15, 2019 12:06 PM
To: David B. Marvel <dave@marvel.lawyer>; Murphy, Maite Law Clerk (Chandler D. Rowh) <mmurphylc@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: RE: IWM v. Crest et al. 2012CP1801227

Counsel:

Thank you for reaching out to me. Since it was been assigned to Judge Murphy, I will defer to her law clerk, Chandler Rowh, for setting up a status conference. He should contact you soon regarding this matter.

Thank you,

W. Richards Hundley
Law Clerk
Judge Diane S. Goodstein
DGoodsteinLC@sccourts.org
Post Office Box 234
St. George, S.C. 29477
(843) 832 - 0332

From: David B. Marvel <dave@marvel.lawyer>
Sent: Monday, April 15, 2019 11:54 AM
To: Goodstein, Diane S. Law Clerk (Walter Hundley) <DGoodsteinLC@sccourts.org>
Cc: 'Mike Gruenloh' <mike@gruenlohlaw.com>
Subject: IWM v. Crest et al. 2012CP1801227

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Dear Mr. Hundley,

I represent the Defendants in this matter, Mike Gruenloh represents the Plaintiff. The case has recently been remitted from the Supreme Court and Plaintiff's counsel requested a status conference,

both informally and by motion. To my knowledge, there has been no response from the clerk' office. Prior to the appeal, the case had been designated complex and assigned to Judge Murphy. I agree that the case is in need of a status conference, so I am writing for some direction as to whether that request is properly directed to Judge Goodstein as Chief Administrative Judge or to Judge Murphy, assuming the Court still considers her to be assigned to the case. Any assistance you could provide us would be most helpful. Thank you for your consideration of this matter.

Best regards,

David B. Marvel
Attorney at Law - Proctor in Admiralty
Certified Civil and Federal Court Mediator

<image001.png>

Marvel Et Al., LLC

P.O. Box 22734 Charleston, SC 29413
Ph. 843 853 4877 Fax 843 380 3025 Email
dave@marvel.lawyer

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