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Order on Plaintiff's Motion to Compel (Etowah Environmental Group v. Walsh)

Melvin K. Westmoreland
Fulton County Superior Court

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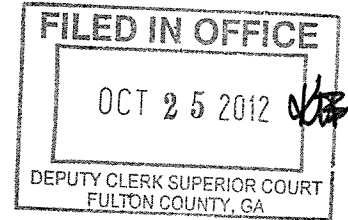
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IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA



ETOWAH ENVIRONMENTAL)
GROUP, LLC,)
)
Plaintiff,)

v.)

CIVIL ACTION NO. 2012CV211149

MICHAEL WALSH, CHRISTOPHER)
BEALL, ADSTAR WASTE)
HOLDINGS CORP. and HIGHSTAR)
CAPITAL II, L.P.,)

Defendants.

ORDER ON PLAINTIFF'S MOTION TO COMPEL

After Plaintiff Etowah Environmental Group, LLC filed a Motion to compel with respect to various discovery issues, Judge Markle, who was previously assigned to this case, directed the parties to confer and attempt to resolve what they could of the disputes.

On October 11, Plaintiff Etowah advised the Court that the parties were at an impasse on Interrogatory Numbers 14 and 15 and Request for Production Number 17. The parties briefed the issues, and the Court heard oral argument telephonically on October 16, 2012.

Based on the briefs and argument, the Court grants Plaintiff's Motion to Compel, as follows:

Compensation Issues

With respect to Interrogatory Numbers 14 and 15, Defendants' Sur-Reply characterizes the dispute with respect to compensation as follows:

Whether Defendants must disclose the 2006 compensation of Defendants Walsh and Beall, identify the person determining Walsh's and Beall's respective compensation, identify the personal benefit accruing to Defendants Walsh and Beall as a result of the ADS acquisition, and produce all documents relating thereto.

The ADS acquisition occurred in 2006. Plaintiffs seek to determine whether the successful completion of this acquisition affected the compensation of Defendants Walsh and Beall. Specifically, Plaintiffs seek to determine whether Defendants Walsh and Beall had a financial motive to commit fraud. Several decisions applying Georgia law conclude that financial information may, in an appropriate case, be relevant to establish a motive to commit fraud and the Court concludes that such information is discoverable here.

Therefore, with respect to Interrogatory Number 14, Defendants shall state the amount of salaries and bonuses, separately, Defendants Walsh and Beall received for their work in 2006 and shall identify the person or persons responsible for establishing or calculating salaries and bonuses for Walsh and Beall for their work in 2006.

In response to Interrogatory Number 15, Defendants shall identify any personal benefit accruing to Defendants Walsh and Beall, directly or indirectly as a

result of the acquisition of ADS, including, but not limited to, benefits related to either Defendants' position or title in ADS.

Plaintiff Etowah's document requests seek documents relating to the interrogatories at issue. For the present time, the Court will limit the documents to be provided to Plaintiff to those documents (including informal and electronic documents) that reflect, evidence or constitute all or any part of a compensation agreement for Defendants Walsh and Beall that applies to the year 2006 or to the ADS acquisition. The Court also compels production of documents discussing or memorializing the amount or fact of compensation due Walsh or Beall for work done in 2006, whether paid in that year or not.

The NEWS Documents

Etowah's Request for Production Number 17 seeks the valuation model used to value North East Waste Services, Inc. The parties agree that the NEWS acquisition occurred within the year prior to Highstar's acquisition of ADS. Etowah contends that the NEWS acquisition involved landfill assets and hauling assets, as did the ADS acquisition. Plaintiff Etowah argues that the process used to value NEWS may lead to evidence of the process Defendants used to value Federal Road or to evidence of what was actually paid for Federal Road. Given the fact that the NEWS acquisition was close in time to the ADS acquisition and involved a similar set of assets, the Court agrees. Defendants shall therefore produce

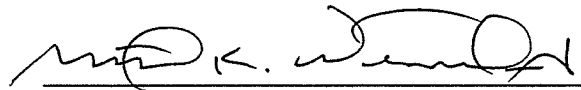
documents, electronic and otherwise, showing the valuation model used to value NEWS, including the criteria, metrics, data and inputs used in the model. To the extent that there are any narratives discussing the model, methods, processes, data and inputs to be used to value NEWS, those documents shall be produced as well. The Court reads this request as seeking not just a single “model,” but the “model or models” used to value NEWS.

The Court does not accept Defendants’ argument that the model be limited to the last version or iteration of it. Rather, Defendants shall produce all of the documents described above and not merely the last version of any model.

Finally, the Court encourages the parties to resolve future discovery disputes in good faith, keeping in mind the discovery standard set forth in O.C.G.A 9-11-26(b)(1). Parsing discovery requests to avoid disclosure is not a good faith effort to comply with the rules of discovery and will not be tolerated.

The Plaintiff’s Motion to Compel is granted as set forth above.

SO ORDERED this 24th day of October, 2012.



Melvin K. Westmoreland, Judge
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:

Attorneys for Plaintiffs	Attorneys for Defendants
<p>H. Wayne Phears, Esq. David J. Forestner, Esq. Jack C. Lundstedt, Jr., Esq. MCGUIRE WOODS, LLP 1230 Peachtree Street, NE Suite 2100 Atlanta, GA 30309 wphears@mcguirewoods.com dforestner@mcguirewoods.com jlundstedt@mcguirewoods.com</p>	<p>Bruce P. Brown, Esq. BRUCE P. BROWN LAW LLC 309 N. Highland Ave. NE, Suite A Atlanta, GA 30307 (404) 584-0400 bbrown@brucepbrownlaw.com</p> <p>George W. Darden, Esq. Jeremy T. Berry, Esq. MCKENNA LONG & ALDRIDGE LLP 303 Peachtree Street Suite 5300 Atlanta, GA 30308 bbrown@mckennalong.com bdarden@mckennalong.com jberry@mckennalong.com</p> <p>Jeffrey R. Burke, Esq. Micol O. Sordina, Esq. Desiree M. Ripo, Esq. WINSTON & STRAWN LLP 200 Park Avenue New York, NY 10166 jburke@winston.com msordina@winston.com dmripo@winston.com</p> <p>Amy R. Foote, Esq. (admitted <i>pro hac vice</i>) Irene Ricci, Esq. FOOTE LAW FIRM 399 Park Avenue New York, NY 10022 afoote@foote-lawfirm.com iricci@foote-lawfirm.com</p>