IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

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| WILLIAM R. WILLIAMS, ROBERT S. WILLIAMS, and BRYAN P. WILLIAMS, Plaintiffs, | : NO. 18-1063 |
| vs. | : CIVIL ACTION |
| GORDON C. BITLER, LEO M. WILLIAMS, JR., LYCOMING SUPPLY, INC., KAMATOMA EAST, LTD., and LYCOMING CONSTRUCTION SERVICES, LLC, Defendants. | : *Motion to Compel* : *Discovery Responses* |

**ORDER**

AND NOW, following argument held March 11, 2021 on Plaintiffs' Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines, the Court hereby issues the following ORDER.

## *Background*

The foregoing action involves a testamentary trust established by Leo M. Williams, Sr., by his Last Will and Testament, dated May 2, 1990.[1] Under the terms of the Will, Leo Williams, Sr. bequeathed 488 shares of a Pennsylvania corporation that he had established, Lycoming Supply, Inc. ("LSI"), to three of his sons. The shares were divided in the following proportions: Leo M. Williams, Jr. received a 19% stake, or 189 shares; Robert S. Williams received an 18% stake, or 179 shares; and Bryan P. Williams received a 12% stake, or 120 shares.[2] Paragraph 3 of the Will provided that if Leo Williams, Sr. were survived by his wife, Josephine A. Williams, then the residuary of his estate would be divided into two parts, designated as Share No. 1 and Share No. 2.[3] Leo Williams, Sr. passed away on December 20, 1990.[4] Josephine Williams did, in fact, survive her husband. However, Paragraph 6(a) of the Will provided that Share No. 1

[1] Complaint ¶ 14 (Sept. 5, 2018). The Last Will and Testament is attached as Exhibit A to the Complaint.
[2] Complaint ¶ 17.
[3] Complaint ¶ 19.
[4] Complaint ¶ 27.

would only be created if the gross estate reached a level making it subject to estate tax. As this level was not met, only Share No. 2 was established.[5]

LSI only authorized and issued 1,000 shares of stock, three of which are treasury stock.[6] During his lifetime, Leo Williams, Sr. held 996 shares of LSI stock.[7] During her lifetime, Josephine Williams held 1 share, which she bequeathed to her son, Leo Williams, Jr.[8] As previously mentioned, Leo Williams, Sr., bequeathed 488 of his 996 LSI shares through his Will. Trust Share No. 2 was initially comprised of the Leo Williams, Sr.'s remaining 508 shares. The beneficial interest in Trust Share No. 2 was divided in equal 20% portions among Leo Williams, Sr.'s four sons and his one daughter: Leo Williams, Jr.; Robert Williams; Bryan Williams; William R. Williams; and Bonnie P. Noviello.[9] Paragraph 7 of the Will appointed Josephine Williams and Williamsport National Bank as co-trustees.[10] Leo Williams, Sr. passed away on December 20, 1990.[11] Williamsport National Bank submitted a renunciation dated May 15, 1991, and subsequently, by Order dated June 3, 1992, the Court appointed Gordon C. Bitler, doing business as Bitler and Associates, as the successor co-trustee.[12] Under paragraph 6(n)(12) of the Will, the powers of the trustees included the power:

> To make distribution in case or in kind at current values or partly in each allocating specific assets to particular distributes and for such purposes to make reasonable determinations of current values as the corporate trustee shall deem best, subject, nevertheless, to the power in the local court having jurisdiction over the administration of my estate to impose reasonable limitations on the exercise of this discretionary power in order to protect the interest transferred to the several beneficiaries.[13]

On July 3, 2006, Bonnie Noviello sold her full interest in Trust Share No. 2 to Leo Williams, Jr.[14] On January 21, 2009, Robert Williams and Bryan Williams sold the combined 299 shares that had been bequeathed to them through Leo Williams, Sr.'s

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[5] Complaint ¶ 21.
[6] Complaint ¶ 33.
[7] Complaint ¶ 35.
[8] Complaint ¶¶ 36-37.
[9] Complaint ¶ 24.
[10] Complaint ¶ 26.
[11] Complaint ¶ 27.
[12] Complaint ¶ 28.
[13] Complaint ¶ 25.
[14] The Agreement to Assign Interest in Trust is attached as Exhibit C to the Complaint.

Will to LSI, which in turn sold the shares to Leo Williams, Jr.[15] However, Robert Williams, Bryan Williams, and William Williams retained their 20% interest in Trust Share No. 2.

The value of the Trust Share No. 2 was established through various purchase/sales agreements. First, on February 2, 1993, LSI and Trust Share No. 2 entered into a purchase/sale agreement ("1993 Agreement") that stated the value of Trust Share No. 2 was $500,000.00, and stipulated to a reevaluation each fiscal year. The 1993 Agreement provided that if a reevaluation was not performed then the value would be the higher of either the last stipulated value, or the book value[16] as of the date of Josephine Williams' death ("failure to stipulate clause").[17] The 1993 Agreement also provided that LSI had purchased a life insurance policy on Jospehine Williams worth $750,000.00, which would be used to purchase the shares in Trust Share No. 2 upon her death.[18] This 1993 Agreement was executed by Josephine Williams as president of LSI, Josephine Williams and Gordon Bitler as trustees of Share No. 2, and Robert Williams as LSI's corporate secretary.[19]

On June 8, 1995, LSI's Board of Directors promulgated a corporate resolution ("1995 Resolution") rescinding the 1993 Agreement.[20] On November 28, 1995, Leo Williams, Jr. and Trust Share No. 2 entered into a purchase/sale agreement ("1995 Agreement") that bound Share No. 2 to sell its shares to Leo Williams, Jr. upon the death of Josephine Williams.[21] The 1995 Agreement stated that the current value of Share No. 2 was $750,000.00.[22] Although the 1995 Agreement also possessed a failure to stipulate clause, its second criteria for evaluation did not base the evaluation on the book value, but the value of Share No. 2's assets as of the date of death of

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[15] The Option Agreement, Exercise Notice, Promissory Note, and an Action by Unanimous Written Consent, memorializing the sale, are attached as Exhibit B to the Complaint.
[16] The book value equals the difference between a company's total assets, not including intangible assets with no immediate cash value, and total liabilities, including monies owed and operating expenses. *See* Ken Little, *Understanding Book Value When Evaluating Stocks*, THE BALANCE (last updated March 31, 2021), https://www.thebalance.com/understanding-book-value-3140780.
[17] Complaint ¶¶ 45-48. The 1993 Agreement is attached as Ex. D to the Complaint.
[18] Complaint ¶ 49.
[19] Complaint ¶ 51.
[20] Complaint ¶ 54. The 1995 Resolution, signed Patricia Williams as LSI's secretary, Josephine Williams, Gordon Bitler, and Leo Williams, Jr., is attached as Ex. E to the Complaint.
[21] Complaint ¶¶ 58-60. The 1995 Agreement is attached as Ex. F to the Complaint.
[22] Complaint ¶¶ 61-62.

Josephine Williams.[23] The 1995 Agreement required that Leo Williams, Jr. possess a life insurance policy worth $750,000.00, which would be used to purchase the shares of Share No. 2 upon Josephine Williams' death.[24] Leo Williams, Jr., and Josephine Williams and Gordon Bitler as trustees for Share No. 2, executed the 1995 Agreement.[25]

On January 22, 1999, the LSI Board of Directors promulgated a corporate resolution ("1999 Resolution"), which was signed by Leo Williams, Jr., Josephine Williams, and Gordon Bitler.[26] The 1999 Resolution amended the corporate bylaws as follows:

> The price of an outstanding share of Lycoming Supply Inc. stock shall be valued using the book value method of the most recent audited financial statement for the purpose of buying, selling or satisfaction of any legal document. However, the Board of Directors shall have the right to reject any and all purchases and/or sales and shall have the final determination by unanimous vote of share pricing.[27]

On January 22, 2009, Leo Williams, Jr., and Josephine Williams and Gordon Bitler as trustees for Share No. 2, entered into a first amended buy/sell agreement ("2009 Agreement"), which "amend[ed] and restate[ed]" the 1995 Agreement.[28] The 2009 Agreement granted Leo Williams, Jr. the option to purchase up to 304.8 LSI shares (the remaining shares owned by William Williams, Robert Williams, and Bryan Williams), with the purchase price per share being determined by the book value at the end of the most recent fiscal year, but not less than $835.45 per share.[29]

Josephine Williams passed away on September 5, 2015.[30] On July 7, 2016, Leo Williams, Jr., and Gordon Bitler as trustee, executed a second amended buy/sell agreement ("2016 Agreement").[31] The 2016 Agreement acknowledged that following

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[23] Complaint ¶¶ 62-63.
[24] Complaint ¶ 64. According to the agreement, Leo Williams, Jr. obtained this insurance; however, the policy number is identical to the policy number identified in the 1993 Agreement. Complaint ¶¶ 65-66.
[25] Complaint ¶ 67.
[26] *Id.*
[27] See the 1999 Resolution attached as Ex. G to the Complaint.
[28] Complaint ¶¶ 74-76, 80. The 2009 Agreement is attached as Ex. H to the Complaint.
[29] Complaint ¶ 78. The number of shares is based on the 101.6 shares that Leo Williams, Jr. was entitled to receive under the Will and the 101.6 share interest that Leo Williams, Jr. purchased from Bonnie Noviello, subtracted from the 508 shares held by Trust Share No. 2. Complaint ¶ 77.
[30] Complaint ¶ 32.
[31] Complaint ¶¶ 83-84, 86. The 2016 Agreement is attached as Ex. I to the Complaint.

Josephine Williams' death, Leo Williams, Jr. had exercised his option to purchase the LSI stock on December 2, 2015.[32] The 2016 Agreement set the price per LSI share at $1,562.18, totaling $476,152.46 for 304.8 shares.[33] This was consistent with the 2009 Agreement's provision "that the stock price would be determined as of the end of the most recent fiscal year prior to the death of Josephine – *i.e.*, December 31, 2014."[34]

## *Procedural History*

Plaintiffs' Complaint, filed on September 5, 2018, contests the disposition and valuation of the LSI Shares. The Complaint specifically asserts that Gordon Bitler failed to administer the trust in "good faith," having administered Share No. 2 only to the benefit of one beneficiary, Leo Williams, Jr.[35] Plaintiffs challenge the book value valuation of Share No. 2, and contend that Gordon Bitler ignored Plaintiffs' multiple requests to distribute the LSI shares directly to the beneficiaries so that they themselves could negotiate the value of the shares.[36] In addition to Leo Williams, Jr. and Gordon Bitler, the named Defendants to this action are LSI, Kamatoma East, Ltd. ("Kamatoma"), a close corporation of which Leo Williams, Jr. is president and owner, and Lycoming Construction Services, LLC ("Lycoming Construction"), a limited liability company owned by Leo Williams, Jr. Count I of the Complaint asserts a Breach of Fiduciary Duty/Duty of Loyalty against Gordon Bitler as Trustee. Count II asserts a Breach of Fiduciary Duty/Duty of Loyalty against Gordon Bitler and Leo Williams, Jr. as members of LSI's Board of Directors. Count III asserts that all Defendants are liable for Aiding and Abetting a Breach of Fiduciary Duty. Count IV asserts that Leo Williams, Jr. committed an Abuse of Minority Shareholders' Rights. Count V asserts that all Defendants are involved in a Civil Conspiracy. In a Memorandum Opinion issued on April 18, 2019, this Court sustained Preliminary Objections as to Count III of the Complaint, finding that the Pennsylvania Supreme Court had not formally adopted Aiding and Abetting a Breach of Fiduciary Duty as a cause of action.

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[32] Response of Lycoming Supply, Inc., to Plaintiffs' Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines ¶ 30 (Feb. 24, 2021) ("LSI's Response").
[33] Complaint ¶ 85. This total was payable over sixty (60) monthly installments with an interest rate of 3.25% per annum. *Id.*
[34] LSI's Response ¶ 30 (quotation omitted).
[35] Complaint ¶¶ 109-10, 124
[36] Complaint ¶¶ 93-94.

On June 6, 2019, Defendants Leo Williams, Jr., Kamatoma, and Lycoming Construction, proceeding jointly in the foregoing litigation, filed an Answer and New Matter to Complaint. On the same date, Defendants LSI and Gordon Bitler, proceeding individually, filed two separate Answers and New Matter. Plaintiffs filed three separate Answers to New Matter on July 12, 2019.

On June 28, 2019, the Court issued a Scheduling Order setting the close of discovery for March 26, 2020, providing expert report deadlines, and listing the case for the October-November 2020 trial term. On March 2, 2020, the parties filed a Joint Motion to Amend Scheduling Order, asking for an extension of all deadlines for 180 days so the parties could conduct further discovery and potentially participate in mediation. The Court granted this Joint Motion, and on March 10, 2020, issued an Amended Scheduling Order setting the close of discovery for September 30, 2020, and listing the case for the April-May 2021 trial term.

On September 30, 2020, the parties filed a Joint Motion for Revised Scheduling Order, which contained a proposed order by which mediation would be scheduled for late November or early December, and providing new expert report deadlines and dispositive motion filing dates should mediation fail. The Court entered this Revised Scheduling Order on October 7, 2020. The Revised Scheduling Order provided that written discovery was complete, but that parties would be permitted to file motions to compel. The Revised Scheduling Order also provided that following mediation, depositions could be taken until February 2, 2021. The Court subsequently issued an Order on October 29, 2020, scheduling a civil pretrial conference for August 24, 2021, and listing the case for the October-November 2021 trial term.

On January 29, 2021, Plaintiffs filed a Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines (hereinafter “Dual-Motion”). Jointly with this filing, Plaintiffs provided a Certificate of Concurrence/Nonconcurrence that provided that concurrence had been sought from opposing counsel by email sent on January 28, 2021, adding that none of the opposing counsel had concurred in the Dual-Motion. The Court issued an Order scheduling the Dual-Motion for argument on March 11, 2021, and requiring the opposing parties to file a response. Defendants Leo Williams, Jr., Kamatoma, and Lycoming Construction filed an Answer to the Dual-Motion on February

24, 2021. Also on that date, the Court received an Answer filed by Defendant LSI, and a separate Answer filed by Defendant Gordon Bitler.

## *Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines*

As will be evident through a summary of the Dual-Motion, a contentious issue throughout discovery was whether documentation dating after December 31, 2014, the date used for the valuation of the LSI shares, would be relevant to this action.

A. Motion to Compel Discovery Responses from Gordon Bitler

Within the Dual-Motion, Plaintiffs seek to first compel all discovery from Defendant Gordon Bitler that was withheld based on the following objection:

> Bitler objects to the identification, disclosure and/or production of documents in his possession pertaining to Lycoming Supply, Inc. after December 31, 2014 and after the financial statement for Lycoming Supply, Inc. for the year 2014 because any such records are not relevant to the issues involved in this litigation and are not reasonably likely to lead to the discovery of admissible evidence since the value of the shares owned by the Testamentary Trust is determined as of the 2014 financial statement.[37]

B. Motion to Compel Discovery Responses from LSI

Plaintiffs next seek to compel complete responses from Defendant LSI as to Plaintiffs' Interrogatories Nos. 5, 10, 12, 13, and 14.[38] LSI's responses to these Interrogatories uniformly object that, "[t]his Interrogatory is overly broad, seeks information that is neither relevant to the subject matter involved in the action nor reasonably calculated to lead to the discovery of admissible evidence."[39] However, notwithstanding its repeated objection to the breadth and scope of many of Plaintiffs' Interrogatories, LSI responded to several of the Interrogatories by providing information through the year 2014.

Plaintiffs' Interrogatory No. 5 provides as follows:

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[37] Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines ¶ 24 (Jan. 29, 2021) ("Dual-Motion"). Bitler's Responses to Plaintiffs' Interrogatories and Plaintiffs' Request for Production of Documents are respectively attached as Ex. B and Ex. C to the Dual-Motion.
[38] The Interrogatories served upon LSI and LSI's responses thereto at attached as Ex. D to the Dual-Motion.
[39] Dual-Motion ¶ 33.

5. Identify any equipment belonging to Lycoming Supply, Inc., that was ever loaned and/or leased to another person and/or entity, and for each piece of equipment so identified:

a) State the nature of the equipment;

b) State whether the equipment was leased and/or loaned;

c) Identify to whom the equipment was leased and/or loaned;

d) State the consideration for such lease and/or loan;

e) Identify any document pertaining to such lease and/or loan;

f) Identify the insurance policy covering that piece of equipment at any time of the lease and/or loan.[40]

While objecting that the Interrogatory was overbroad and sought irrelevant information, LSI did respond that no equipment was leased or loaned through "the relevant timeframe, i.e., through the end of 2014."[41] Plaintiffs object in their Dual-Motion that there has been no determination that Plaintiffs' damages should be limited to the value of shares through December 13, 2014, and assert that Plaintiff's remedies may be determined by the current value of the shares.[42]

Interrogatory No. 10 provides as follows:

10. Identify any compensation, gifts, and/or exchanges of property, including promises for future exchanges of property, between you and any of the parties to this action since June 3, 1992. For each item so identified, state:

a) What was exchanged and/or promised;

b) When it was exchanged;

c) The value of the exchange.[43]

While again objecting that the Interrogatory was overbroad and sought irrelevant information, and further objecting that the Interrogatory would encompass confidential business records,[44] LSI did provide certain company records in response, including records of the compensation paid to the individual Plaintiffs and to Leo Williams, Jr.[45]

[40] Dual-Motion ¶ 29.
[41] *Id.*
[42] Dual-Motion ¶ 30.
[43] Dual-Motion ¶ 31.
[44] *Id.*
[45] LSI's Response ¶ 31.

Plaintiffs contend that more complete responses are required as the "[e]xchanges of property or promises between the Defendants is squarely at issue in this case."[46]

Interrogatory No. 12 provides as follows:

> 12. Identify any receipt of moneys awarded to you at trial or paid to you from the settlement of legal actions within five (5) years preceding the date of commencement of this action to present.[47]

While again objecting to the scope and relevance of the Interrogatory, LSI provided that it had obtained no money award through December 31, 2014.[48] Plaintiffs again object that there has been no Court determination limiting damages to December 31, 2014.[49]

Interrogatory No. 13 provides as follows:

> 13. Identify all your full-time and part-time employees since 2012.[50]

LSI objected that this Interrogatory was overbroad and did not seek evidence that was relevant or reasonably calculated to lead to the discovery of admissible evidence.[51] Plaintiffs contend that the inquiry is relevant because the Complaint alleges that LSI resources, including the labor of its employees, were used to grow Kamatoma and Lycoming Construction to LSI's detriment.[52] Plaintiffs contend that the same factors require that LSI supplement their response to Interrogatory No. 14, which asked LSI to list the independent contractors it had hired since 2012.[53]

Plaintiffs also seek to have LSI supplement its responses to Plaintiffs' two Requests for Production of Documents.[54] This includes a supplement to Document Production Request No. 1, asking LSI to produce any documents or exhibits identified in LSI's response to Interrogatories, including any supplemental Interrogatories that the Court may permit pursuant to the Dual-Motion.[55] Plaintiffs also seek to have LSI supplement their responses to Document Production Request No. 3 – asking for

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[46] Dual-Motion ¶ 32.
[47] Dual-Motion ¶ 33.
[48] *Id.*
[49] Dual-Motion ¶ 34.
[50] Dual-Motion ¶ 35.
[51] *Id.*
[52] Dual-Motion ¶ 36.
[53] *Id.*
[54] These Requests for Production of Documents are attached as Ex. E and Ex. F to the Dual-Motion.
[55] Dual-Motion ¶ 38.

ledgers, annual financial reports, annual tax returns, and related financial documents – so as to include information after December 31, 2014.[56] This also appertains to Document Production Request No. 4, which requests all documents related the preparation of documents referenced in Request No. 3.[57] Plaintiffs seek supplemental responses for Document Production Request No. 5, which requested bank statements for the periods between September 1, 2006 through March 31, 2007 and April 17, 1998 through December 31, 1998.[58] Plaintiffs assert these particular periods are relevant because Lycoming Construction was formed on or about September 1, 2006, and Kamatoma on April 17, 1998, and the bank statements would show if start-up funds were diverted from LSI to the new businesses during these periods.[59] Plaintiffs finally seek documentation requested in Document Production Requests No. 9 and No. 10, which request W-2s and 1099s for, respectively, employees and independent contractors retained by LSI from 2012 through 2018.[60] Plaintiffs contend this information is needed to determine whether laborers are paid by LSI but utilized by Lycoming Construction or Kamatoma.[61]

C. Motion to Compel Discovery Responses from Leo Williams, Jr.

As with the other Defendants, Leo Williams, Jr. has objected to Plaintiffs' various Interrogatories and Requests for Production of Documents based on the purported over-breadth and lack of relevance of the requests, and also declined to provide documentation after December 31, 2014.[62] Plaintiffs seek supplementation of Leo Williams, Jr.'s responses to Interrogatory No. 1, requesting that Leo Williams, Jr. identify any insurance policy bought by him or an immediate family member through Bitler or Bitler's business.[63] Plaintiffs assert this information could be relevant to the civil

[56] Dual-Motion ¶¶ 40-43.
[57] Dual-Motion ¶¶ 44-45.
[58] Dual-Motion ¶ 46.
[59] Dual-Motion ¶ 47.
[60] Dual-Motion ¶ 49.
[61] Dual-Motion ¶ 51.
[62] The interrogatories served upon Leo Williams, Jr. and his answers thereto are attached as Ex. G to the Dual-Motion. The Request for Production of Documents served upon Leo Williams, Jr. and his answers thereto are attached as Ex. H to the Dual-Motion.
[63] Dual-Motion ¶ 54.

conspiracy count.[64] Plaintiffs seek supplemental responses to Interrogatory Nos. 2, 3, 5, 10, and 11 seeking Leo Williams, Jr. identify the consideration for the buy/sell agreements and the valuation methods used as to shares and equipment.[65] Plaintiffs seek supplemental responses to Interrogatory No. 9, asking for "any compensation, gifts, and/or exchanges of property, including promises of future exchanges of property, between you and any of the parties to this action since June 3, 1992."[66]

Plaintiffs also request that the Court permit supplementation in response to Document Production Request No. 1, which asks Leo Williams, Jr. to provide any documents or exhibits he has identified in his response to Interrogatories.[67] Plaintiffs request that Leo Williams, Jr. supplement his responses to Document Production Request Nos. 2-6, which relate to accounting and share valuation, including providing documentation after December 31, 2014.[68] Plaintiffs finally seek supplementation as to Document Production Request No. 7, which seeks the production of material responsive to any discovery request served upon Lycoming Construction and Kamatoma, but which remains in possession of Leo Williams, Jr.[69]

D. Motion to Compel Discovery Responses from Kamatoma and Lycoming Construction

Plaintiffs request that this Court overrule Kamatoma and Lycoming Construction's objections to Interrogatory Nos. 3 and 4, which ask each entity to identify, respectively, all of their employees and independent contractors retained between 2012 and 2018.[70] Plaintiffs ask that the Court require Kamatoma and Lycoming Construction to supplement their response to Document Production Request No. 1, asking Kamatoma and Lycoming Construction to produce any documents or exhibits identified in their response to Interrogatories.[71] Plaintiffs also seek supplemental documentation as to

[64] Dual-Motion ¶ 55.
[65] Dual-Motion ¶ 58.
[66] Dual-Motion ¶ 59.
[67] Dual-Motion ¶ 62.
[68] *See* Dual-Motion ¶¶ 63-67.
[69] Dual-Motion ¶ 68.
[70] Dual-Motion ¶ 83. Plaintiffs' Interrogatories upon Kamatoma and Lycoming Construction and their answers and objections thereto are attached, respectively, as Ex. I and Ex. J to the Dual-Motion.
[71] Dual-Motion ¶ 85. Plaintiffs' Request for Production of Documents upon Kamatoma and Lycoming Construction and their answers and objections thereto are attached, respectively, as Ex. K and Ex. L to the Dual-Motion.

Document Production Request No. 3, asking for financial statements from 1998 through 2018, and Document Production Request No. 4, asking for bank statements during the formation period of each entity.[72] Plaintiffs seek supplementation as to Document Production Request No. 4, asking for formation and organizational documents for both entities, including any amendments or revisions, which Plaintiffs claim is needed to discern the operations of each entity and clarify their relationship to LSI.[73] Plaintiffs seek supplementation as to Document Production Request Nos. 7 and 8, asking for W-2s and 1099s from both entities for respectively, employees and independent contractors retained from 2012 to 2018.[74] Finally, Plaintiffs seek supplementation as to Document Production Request No. 9, seeking documentation related to the companies' initial capitalization and any capitalization occurring during the first year of formation of each company.[75]

E. Motion to Reschedule Case Deadlines

Plaintiffs request that all case deadlines be held in abeyance pending the Court's determination on the Dual-Motion, and further ask for a continuance of at least ninety days to allow Plaintiffs' experts to review the documents sought from the Defendants.[76]

## *Analysis*

Defendants' Answers to Plaintiffs' Dual-Motion restate their objections to the scope and relevance of Plaintiffs' discovery requests, assert that documents produced after December 31, 2014 are not relevant to the foregoing action, and emphasize the unreasonable burden that compliance with the discovery requests would entail. Lastly, Defendants' object to the untimely filing of the Dual-Motion. The Court will first address the timeliness of the Dual-Motion before considering its merits.

In support of their objection to timeliness, Defendants criticize Plaintiffs for engaging in dilatory discovery practices, noting that Plaintiffs themselves were slow to

[72] *See* Dual-Motion ¶¶ 86-89.
[73] Dual-Motion ¶ 91.
[74] Dual-Motion ¶ 92.
[75] Dual-Motion ¶ 93.
[76] Dual-Motion ¶¶ 96-97.

respond in full to Defendants' discovery requests.[77] Defendants further contend that Plaintiffs' counsel failed to make good faith efforts to reach out to opposing counsel to resolve the discovery issues before resorting to the filing of the Dual-Motion.[78] At argument, Plaintiffs' attorneys, Bret P. Shaffer, Esquire, and John D. Sheridan, Esquire, conceded that there were delays in Plaintiffs' responses to discovery, which they attributed to the COVID-19 pandemic and also to Attorney Shaffer's family health issues. Plaintiffs' counsel further explained that they waited to file the Dual-Motion until they had served complete responses to Defendants' own discovery requests.

The Court observes that when the parties agreed to file the Joint Motion for Revised Scheduling Order, it was with the proviso that written discovery was closed and that the parties would participate in mediation. When the Court issued the Revised Scheduling Order, it was with the purpose of allowing the parties to attempt to resolve the matter amicably through mediation. However, on November 2, 2020, Plaintiffs unilaterally chose to cancel the scheduled mediation.[79] Plaintiffs thereafter filed the Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines on January 29, 2021, some four months after the Court had issued the Revised Scheduling Order, and three months after Plaintiff had cancelled the mediation. Unfortunately, this has been a pattern of Plaintiffs' dawdling discovery practices; although the pleadings had closed by July of 2019, Plaintiffs did not serve any discovery until December of

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[77] *See* LSI's Response ¶ H ("Despite being served with LSI's discovery requests on January 3, 2020, Plaintiffs failed to produce all material documents in their possession until October 23, 2020 – nearly 10 months later."); Answer of Defendants Leo M. Williams, Jr., Kamatoma East, Ltd. and Lycoming Construction Services, LLC to Plaintiffs' Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines ¶ 19 (Feb. 24. 2021) ("Answer of Leo Williams, Jr., Kamatoma, and Lycoming Construction").

[78] While Plaintiffs did comport with the letter of local rule L208.2(e)(A) by including a certification that concurrence was sought from opposing counsel prior to the filing of the motion, the Court does not find Plaintiffs, by providing last minute notice of their discovery concerns, comported with spirit of the discovery rules. There is a general obligation upon the parties to engage in good faith attempts to resolve discovery issues before involving the court. *See e.g.*, *Mountain View Condo. Owners' Ass'n v. Mountain View Assocs.*, 9 Pa. D. & C.4th 81, 86 (Chester Cty. 1991). In *Mountain View*, the trial court held that plaintiff's objections to defendant's interrogatories, filed months after service of the interrogatories and only after the defendant had filed a motion for sanctions, would be dismissed as untimely. The *Mountain View* court emphasized that such a ruling would "encourage parties to make discovery disputes known to each other before the court becomes involved and will further the policy that parties ought to make a good-faith effort to resolve such disagreements before invoking the assistance of the court."

[79] LSI's Response ¶ H. Defendant Gordon Bitler instead provides that mediation had been scheduled for November 23, and 24, and was unilaterally cancelled by Plaintiffs by letter dated October 30, 2020. *See* Answer of Gordon C. Bitler to Plaintiffs' Motion to Compel Discovery Responses and Motion to Reschedule Case Deadlines ¶ 21 (Feb. 24, 2021).

2019.[80] Further, all Defendants had submitted their Answers and Objections to Plaintiffs' discovery requests by February of 2020, almost a year prior to Plaintiffs' filing of the Motion to Compel Discovery Responses.[81] All Defendants had produced documents responsive to Plaintiffs' Requests for Production of Documents by April of 2020.[82]

Further, Plaintiffs' counsel have not been diligent in communicating their discovery concerns with opposing counsel. Prior to Plaintiffs' filing of the Dual-Motion, there had been discussion between Plaintiffs' attorneys, and Candis A. Tunilo, Esquire, counsel for Leo Williams, Jr., Kamatoma, and Lycoming Construction, regarding Plaintiffs' outstanding discovery requests seeking Kamatoma and Lycoming Engine's W-2s and 1099s. However, both Matt Chabal, III, Esquire, counsel for LSI, and C. Edward S. Mitchell, Esquire, counsel for Gordon Bitler, affirmed at argument that prior to circulating the Dual-Motion on January 28, 2021, Plaintiffs' counsel had not communicated any issues regarding LSI or Gordon Bitler's discovery responses.[83]

The Court is of accord that Plaintiffs have been dilatory in their discovery practices, including the untimely filing of the Dual-Motion. The attempt of Plaintiffs' counsel to justify the eleventh hour filing of the Dual-Motion by noting their own prior failure to timely respond to Defendants' discovery requests is illogical and uncompelling. In fact, in waiting to file, Plaintiffs have merely compounded a delay of their own creation. Furthermore, while the Revised Scheduling Order reserved for the parties the right to file Motions to Compel, it is the Court's opinion that this provision should be read in tandem with the stipulation that the parties had agreed that written discovery was closed and that mediation would take place in late November or early December. Similarly, the provision permitting further depositions to take place by February 2, 2021, was predicated on the parties first attempting mediation. If Plaintiffs believed that there was substantial outstanding discovery as of September 30, 2020, then they behaved

[80] LSI's Response ¶ D.
[81] LSI's Response ¶ E.
[82] LSI's Response ¶ F.
[83] *See* LSI's Response ¶ I ("[A]t no time since LSI filed its discovery responses in February, 2020, did Plaintiffs complain about LSI's Answers and Objections to any Interrogatory or Document Request or to the documents LSI produced. Rather, Plaintiffs waited until the eve of the deposition deadline – and well past the paper discovery cut-off – to raise, **for the first time**, an objection to LSI's discovery responses.").

imprudently in stipulating to the close of discovery. The Court will not penalize Defendants by further delaying this matter.

The Courts of this Commonwealth have held that "[a] party seeking discovery is under an obligation to seek discovery in a timely fashion."[84] A court may dismiss a motion to compel discovery as untimely,[85] or deny a motion to extend the discovery period when the moving party fails to meet their "obligation to show that the information sought was material to their case and that they proceeded with due diligence."[86] As the Court finds that Plaintiffs have not engaged in discovery with due diligence, the Court declines to address the materiality, relevance, and scope of Plaintiffs' discovery demands.

## *Conclusion*

Pursuant to the foregoing, Court hereby DENIES Plaintiffs' Motion to Compel Discovery Responses, with one exception. Because counsel have agreed, Plaintiffs will be permitted to serve a supplemental interrogatory upon Defendants Leo Williams, Jr., Kamatoma, and Lycoming Construction, requesting that they identify any "shared" employees or independent contractors between Kamatoma, Lycoming Construction, and LSI.[87]

However, finding the parties will require adequate time to prepare expert reports, the Court hereby GRANTS Plaintiffs' Motion to Reschedule Case Deadlines. Plaintiffs shall have sixty (60) days from today's date, until Friday, June 18, 2021, to provide expert reports. Defendants shall have until Friday, July 23, 2021, to provide responsive

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[84] *Reeves v. Middletown Athletic Ass'n*, 866 A.2d 1115, 1124 (Pa. Super. 2004) (citing *Kerns v. Methodist Hosp.*, 574 A.2d 1068, 1074 (Pa. Super. 1990)).

[85] *See Id.* (affirming lower court's decision that appellant's motion to compel complete answers to interrogatories, filed seven months after Appellee had served answers to the interrogatories and only after Appellee had moved for summary judgment, was untimely and had been rendered moot by the summary judgment motion).

[86] *Id.*; *see also Kerns*, 574 A.2d at 1074 ("[A]ppellate courts of this Commonwealth have found no abuse of discretion in denying a continuance to pursue further discovery pursuant to Pa.R.C.P. 1035(e) when a reasonable period for discovery had expired, and the opposing party failed to demonstrate the materiality of the outstanding discovery or the opposing party failed to demonstrate that it had proceeded in a timely manner with respect to the discovery sought.").

[87] *See* Answer of Leo Williams, Jr., Kamatoma, and Lycoming Construction ¶ 82 (explaining that following a telephone conversation with Attorney Tunilo, "Plaintiffs' counsel had agreed to serve a supplemental interrogatory on Defendant Williams asking whether Lycoming Supply, LCS or KE utilized the same independent contractors or retained any of the same employees[.]").

expert reports. New dispositive motion and pretrial deadlines shall be set by separate Order.

IT IS SO ORDERED this 19th day of April 2021.

BY THE COURT:

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Eric R. Linhardt, Judge

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