

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION AT LONDON

*Electronically Filed*

McCREARY COUNTY  
HERITAGE FOUNDATION, INC.  
d/b/a BIG SOUTH FORK SCENIC  
RAILWAY,

PLAINTIFF

V.

CASE NO. 6:18-CV-00249-CHB

WASATCH RAILROAD  
CONTRACTORS, et al.,

DEFENDANTS

---

**MOTION TO COMPEL DISCOVERY**

---

Plaintiff, McCreary County Heritage Foundation, Inc. d/b/a Big South Fork Scenic Railway (“MCHF”), by counsel, pursuant to Fed. R. Civ. P. 37(a) and LR 37.1, moves the Court for an order compelling Defendant Wasatch Railroad Contractors (“WRC”) to answer certain interrogatories and respond to certain requests for production of documents served on WRC by MCHF on or about February 17, 2021. In support of its request, MCHF states as follows:

MCHF served post-judgment Interrogatories and Requests for Production (the “Discovery Requests”) on WRC on or about February 17, 2021. On April 15, 2021, WRC served responses to the Discovery Requests and produced approximately 966 pages of documents. On June 16, 2021, counsel for MCHF contacted WRC’s counsel to request that WRC supplement its answer to Interrogatory No. 8, which sought information relating to any “choses in action” owned by WRC. The reason MCHF sought supplementation was because WRC identified three

(3) outstanding claims WRC had against different agencies of the federal government for “work performed but payment in full ... not received,” but did not fully respond.<sup>1</sup>

While WRC identified the claims and their alleged values, it did not identify any documents relevant to those claims as requested in the interrogatory. Consequently, WRC also did not respond fully to Request for Production of Documents No. 1 (“Produce all documents identified in any of your responses to interrogatories served upon you herein.”). Moreover, Request for Production of Documents No. 6 requested “all documents relating to any contract . . . between Wasatch and any third party . . . for the time period from January 1, 2015, to present.” WRC’s response did not identify any documents that related to contracts with the federal government or produce the responsive documents.

On June 28, WRC counsel requested additional time to supplement the responses and document production, with no objection from MCHF. On July 7, MCHF inquired when it could expect to receive the supplementation, and WRC’s counsel stated his client needed more time because its CEO, John Rimmasch, had been hospitalized with COVID. On July 27, MCHF’s counsel informed WRC that it planned to file a Motion to Compel if WRC had not supplemented its responses and production by August 6. WRC did not supplement its responses or produce any additional documents on or before August 6, and this Motion followed.

Fed. R. Civ. P. 37(a)(3) provides that a party seeking discovery may move for an order compelling an answer or production of documents where “a party fails to answer an interrogatory” or “a party fails to produce documents.” Fed. R. Civ. P. 37(a)(4) provides that “incomplete” disclosures, answers or responses “must be treated as a failure to disclose, answer

---

<sup>1</sup> MCHF has not identified the specific federal agencies nor has it attached copies of WRC’s responses to Interrogatories or Requests for Production of Documents to this Motion in an effort to avoid violating the Agreed Protective Order pertaining to confidential information that was entered on May 12, 2021 [R. 26]. In the event confidential information becomes relevant to the present discovery dispute, MCHF will give notice to WRC in accordance with Paragraphs 6 and 7 of the Agreed Protective Order.

or respond.” WRC’s responses to Interrogatory No. 8 and Requests for Production of Documents Nos. 1 and 6 were incomplete for the reasons stated above. An order compelling WRC to provide complete responses and to produce all responsive, non-privileged documents is appropriate.

For the foregoing reasons, MCHF respectfully requests that the Court enter an Order compelling WRC to provide complete responses to Interrogatory No. 8 and Request for Production of Documents Nos. 1 and 6, and to produce all relevant, non-privileged documents.

**LR 37.1 Certification**

In accordance with LR 37.1, I certify that counsel have conferred about the discovery issues discussed in the foregoing Motion and have been unable to resolve their differences. The attempts made by undersigned counsel to resolve the dispute are detailed in the Motion above, and are incorporated herein by reference.

/s/ Stefan J. Bing

Stefan J. Bing, Counsel for Plaintiff

*Respectfully submitted,*

/s/ Stefan J. Bing

Stefan J. Bing

GESS MATTINGLY & ATCHISON P.S.C.

201 West Short Street, Suite 102

Lexington, Kentucky 40507

Telephone: 859 252-9000

Fax: 859 233-4269

Email: sbing@gmaw.com

William G. Crabtree

120 East Fourth Street

London, Kentucky 40741

Telephone: 606 878-8888

Fax: 606 878-8899

Email: wgcrabtreelaw@aol.com

ATTORNEYS FOR PLAINTIFF

**CERTIFICATE OF SERVICE**

I hereby certify that on August 10, 2021, I electronically filed the foregoing Notice with the Clerk of the Court by using the CM/ECF system, and that the system will send a notice of such electronic filing to all other counsel of record.

/s/ Stefan J. Bing

ATTORNEY FOR PLAINTIFF

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF KENTUCKY  
SOUTHERN DIVISION AT LONDON

*Electronically Filed*

McCREARY COUNTY  
HERITAGE FOUNDATION, INC.  
d/b/a BIG SOUTH FORK SCENIC  
RAILWAY,

PLAINTIFF

V.

CASE NO. 6:18-CV-00249-CHB

WASATCH RAILROAD  
CONTRACTORS, et al.,

DEFENDANTS

---

**ORDER**

---

This matter is before the Court upon the Motion to Compel filed herein by Plaintiff, McCreary County Heritage Foundation, Inc. d/b/a Big South Fork Scenic Railway, and the Court having reviewed the record and being duly and sufficiently advised, it is ORDERED as follows:

1. Plaintiff's Motion is GRANTED.
2. Within seven (7) days of entry of this Order, Defendant must serve supplemental responses to Interrogatory No. 8 and Requests for Production of Documents Nos. 1 and 6, and must produce all responsive, non-privileged documents.