2016 IL App (5th) 150205-U

NO. 5-15-0205

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WILLIE VAUGHN, STEVEN MOFFETT, and SHIRLEY VAUGHN, Plaintiffs, v. AMERIGAS PROPANE, L.P., a/k/a Amerigas Propane, Inc., a Corporation; MATERIAL RESOURCES, LLC, a/k/a Gateway Co-Packing Company; ROGER DAVIS; and THE WARREN GROUP, INC., Defendants (Amerigas Propane, L.P., Third-Party Plaintiff-Appellee; and Companion Property and Casualty Insurance Company, Third-Party Defendant-Appellant, and The Warren Group, Inc., Roger Davis, Individually, and Material Resources, LLC, Third-Party Defendants).	)	Appeal from the Circuit Court of St. Clair County. No. 14-L-484 Honorable Vincent J. Lopinot, Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Presiding Justice Schwarm and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in treating a workers' compensation insurer's motion for a protective order in response to a subpoena in a refiled negligence action as a motion to reconsider its order granting a motion to compel in response to a subpoena requesting the same information that was filed by a different party in the previously filed cases. On *de novo* review, with the exception of five entries which reflect litigation plans or strategies of insurer's claims adjusters or subrogation agents and thus do not qualify as work product, the circuit court erred in compelling insurer to produce redactions to its claim file notes because all redactions were protected by either attorney/client, insurer/insured, work product, or consultation privilege. Because five entries were improperly withheld, cause remanded to the circuit court to reconsider the propriety of its order finding the insurer to be in contempt and imposing a civil penalty for withholding the redacted information.

¶ 2 The third-party defendant, Companion Property and Casualty Insurance Company (Companion), appeals, pursuant to Illinois Supreme Court Rule 304(b)(5) (eff. Feb. 26, 2010) the April 28, 2015, order of the circuit court of St. Clair County, which found it to be in contempt of court and assessed a civil penalty for failing to produce an unredacted copy of its workers' compensation claim file notes (claim file) pursuant to a subpoena issued by the defendant/third-party plaintiff, Amerigas Propane, L.P. (Amerigas). Companion was found to be in contempt after the circuit court issued an order which, in substance, compelled it to produce the unredacted claim file on January 14, 2015. For the reasons that follow, we vacate the January 14, 2015, order, enter an order, pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), granting Companion's motion for a protective order as to all redactions to its claim file save five entries to be specified

below, and remand for the circuit court to reconsider its April 28, 2015, contempt order in light of this order.

¶ 3 FACTS

¶ 4 The plaintiffs, Willie Vaughn, Steven Moffett, and Shirley Vaughn, filed a complaint in the present action on June 6, 2014, and later, a first and second amended complaint. According to the second amended complaint, Mr. Vaughn and Mr. Moffett, who were employees of defendant, Material Resources, LLC (Material Resources), were seriously injured when propane tanks supplied by Amerigas exploded and caught fire as the men transported them by forklift in the course of their employment. The second amended complaint alleges strict products liability and negligence against Amerigas. In contrast to the original complaint, the second amended complaint also alleges multiple counts of spoliation of evidence based on the loss and/or destruction of the tanks at issue and/or other pieces of evidence. The plaintiffs brought these counts against Material Resources, its workers' compensation insurance carrier, Companion, as well as The Warren Group, Inc., and Roger Davis, the consultant firm and consultant that Companion hired to investigate the accident. Various cross-claims have also been filed by the parties related to the accident and spoliation of evidence.

¶ 5 On September 3, 2014, before the plaintiffs amended their complaint to add the spoliation claims and bring Companion into the suit, Companion filed, as an intervenor, a pleading entitled "Companion Property & Casualty Insurance Company's Motion for Protective Order or in the Alternative For Reconsideration of Orders Entered on March 27, 2014" (motion for a protective order). As explained by this pleading and the exhibits

attached thereto, on May 13, 2014, the plaintiffs had voluntarily dismissed consolidated lawsuits (the prior litigation) that were essentially refiled in the instant case. The following events occurring during the prior litigation, which are relevant to the issues raised by the parties on appeal, are set forth in the motion for a protective order and its exhibits. Worthington Industries, an entity that was named as a defendant in the prior litigation but not a party to the instant case, issued a subpoena to Companion requesting production of, *inter alia*, Companion's workers' compensation claim file for the plaintiffs. Companion produced the claim file with certain entries redacted and attached a privilege log with respect to the redactions asserting various privileges. Pursuant to Worthington Industries' motion, Companion produced an unredacted version of the claim file to the court for *in camera* review.

¶ 6 On March 27, 2014, the circuit court entered an order in the prior litigation, which stated:

> "This matter came before the court on *** Worthington Industries Motion for In Camera Inspection of Companion Group[']s claim file. The Court having reviewed said claim file hereby finds and orders as follows:
>
> 1. Companion has made no showing that establishes the basis for the assertion of attorney-client privilege or that the claim file records of Companion are work product.
> 2. Companion to comply with the subpoena duces tecum of 2/7/12 and produce unredacted copies of the records."

¶ 7 Following the circuit court's order compelling Companion to produce the unredacted claim file in the prior litigation, Companion filed a motion to reconsider. However, prior to a hearing on Companion's motion to reconsider, the plaintiffs voluntarily dismissed the consolidated lawsuits. After the plaintiffs refiled the instant lawsuit, to which Worthington Industries was not a party, Amerigas issued a subpoena on August 20, 2014, requesting that Companion produce the claim file. It is in response to this subpoena that Companion filed its motion for a protective order. However, in the alternative, Companion styled its motion as one for reconsideration of the circuit court's order compelling production of the claim file in the prior litigation.

¶ 8 In support of its motion for a protective order, Companion submitted the affidavit of Companion claims supervisor, Michael Downs (Downs affidavit), along with a privilege log and the redacted claim file.[1] The Downs affidavit explains that Companion

[1]Companion did not submit the Downs affidavit in the prior litigation until it filed its motion to reconsider, which was not heard before the prior litigation was voluntarily dismissed by the plaintiffs. However, counsel for Amerigas represented to this court during oral argument that Companion did not submit the Downs affidavit to the circuit court in connection with its motion for protective order after Amerigas issued the subpoena for the claim file in the instant litigation. Our review of the record on appeal reveals that this representation by counsel during oral argument was incorrect, as the Downs affidavit appears in the record on appeal as Exhibit H to Companion's motion for a protective order in the instant litigation.

provided a defense to Material Resources in connection with workers' compensation claims that the plaintiffs filed as a result of the accident underlying this litigation. The Downs affidavit contains a description of the people whose communications are present in the redacted portions of the claim file and their relationship to Companion, including:

- Attorney Roby Javoronok of Brady, Connelly & Masuda, P.C., the firm Companion hired to represent Material Resources;
- Attorney Lisa Vedral of Brady, Connelly & Masuda, P.C., the firm Companion hired to represent its subrogation interests in connection with the instant litigation;
- Culley Medley, the general manager of Material Resources;
- Marcy Vestal, Cherry Taylor, and Mary Ashley, Companion's claims adjusters with authority to manage claims and make decisions related to the workers' compensation litigation and Companion's subrogation interests;
- Bob Salley, Companion's subrogation manager, with responsibility for supervision, management, and decision-making related to Companion's subrogation interests in connection with the instant litigation;
- John McLaughlin and Robert Gianelli, claims representatives with Aon Recovery, the third-party administrator for Companion's subrogation claims, with authorization to manage, supervise, and make litigation decisions in connection with Companion's subrogation interests in the instant litigation; and

- Roger Davis, Companion's consultant in connection with the workers' compensation claims of the plaintiffs.[2]

¶ 9 The privilege log that Companion submitted along with its motion for a protective order contains the date of each redacted claim entry, the person who made the entry, and a description of the entry, and identifies the privileges that Companion is claiming with respect to each entry. Additional facts regarding the redacted entries will be set forth as necessary to our analysis of the issues on appeal.

¶ 10 On October 14, 2014, Amerigas filed a response to Companion's motion for a protective order. With its response, Amerigas attached additional pleadings associated with the proceedings regarding the redacted claim file in the prior litigation. These pleadings illustrate that two weeks after Companion was ordered to produce the unredacted claim file in the prior litigation, and one day prior to Companion filing its

[2]According to Companion's brief, since the time it filed this appeal, Companion has agreed to waive any and all privileges that may exist with regard to Roger Davis, who is now a party to the instant litigation with regard to the spoliation claims being made by the plaintiffs and Amerigas. Companion's brief states that the one entry at issue in this appeal, which reflects communications with Roger Davis, has been disclosed. However, Companion asserts that consideration of the privilege as to that entry is required in order to assess whether it was proper to hold Companion in contempt for withholding that entry. In any event, we consider the entry, as the record on appeal does not reflect Companion's disclosure of the entry.

motion to reconsider the order, Amerigas filed a motion to compel and for sanctions against Companion for failing to produce the file in the prior litigation. The circuit court did not hear or rule upon either motion before the plaintiffs voluntarily dismissed the prior litigation. Amerigas attached a transcript of the hearing on the plaintiffs' motion to voluntarily dismiss the prior litigation to its response to Companion's motion for a protective order in the instant case. During that hearing, an exchange took place between the circuit court and Amerigas, whereby counsel for Amerigas expressed concern that the plaintiffs' voluntary dismissal of the prior litigation would allow Companion to disregard the circuit court's prior order that it produce the unredacted claim file. In response, the circuit court stated, "If it is refiled, then we start where we [a]re at. We adopt what discovery and what orders and I'm certainly not going to let anybody off the hook just because it [i]s restarting." The circuit court concluded, "I can tell you that if this case is refiled, they [a]re not going to get a pass from me." According to Amerigas's response to Companion's motion for a protective order, these comments indicated that the circuit court should not revisit the issue of whether the redacted entries in the claim file are, in fact, privileged.

¶ 11 Although Companion's motion for a protective order states that Companion would resubmit the unredacted claim file for review by the circuit court, it is unclear from the record whether the circuit court actually conducted another *in camera* review of the claim file in conjunction with the Downs affidavit when it considered the motion filed in the

instant litigation.[3] Following a hearing held on Companion's motion for a protective order on January 13, 2015, the circuit court entered an order on January 14, 2015, simply stating, Motion to Reconsider is denied." On March 31, 2015, Amerigas filed a rule to show cause why Companion should not be held in contempt of court for failure to produce the unredacted claim file in compliance with the January 14, 2015, order in the instant litigation and the March 27, 2014, order in the prior litigation. After further briefing and hearing on the rule to show cause, the circuit court entered an order on April 28, 2015, granting Amerigas's motion for a rule to show cause and finding Companion to be in indirect civil contempt for "failure to comply with the order of January 15 [*sic*], 2015, requiring Companion Group to produce unredacted copies of its claims log."[4] The circuit court imposed a monetary civil contempt penalty of $100. Companion filed a timely notice of appeal.

[3]On August 11, 2015, Companion filed a motion to supplement the record on appeal with the full, unredacted copy of the claim file notes for *in camera* review by this court. According to Companion's motion, this was not made part of the common law record because of the claim of privilege. Amerigas filed no response to the motion, and on September 9, 2015, this court granted the motion to supplement the record.

[4]As previously stated, our review of the record shows that the order was entered on January 14, 2015, and simply stated, "Motion to Reconsider is denied."

¶ 12 ANALYSIS

¶ 13 It is well-settled that the correctness of a discovery order may be tested through contempt proceedings, and an interlocutory appeal pursuant to Supreme Court Rule 304(b)(5) is an available method of review for both the contempt order as well as the underlying discovery order. *Doe v. Township High School District 211*, 2015 IL App (1st) 140857, ¶ 67 (citing *Norskog v. Pfiel*, 197 Ill. 2d 60, 69 (2001)). A threshold issue has been raised in this case regarding the appropriate standard and scope of our review. Companion's motion for a protective order was filed in the instant litigation in response to a subpoena issued by Amerigas. Companion's motion for a protective order was alternatively styled as a motion to reconsider the circuit court's order in the prior litigation which compelled Companion to produce the unredacted claim file. That order was entered after Worthington Industries, which is not a party to the instant litigation, issued a subpoena for the documents, although Amerigas did actively participate in the proceedings in the prior litigation that resulted in the motion to compel.

¶ 14 The prior litigation was voluntarily dismissed by the plaintiffs before the circuit court could hold a hearing on the motion to reconsider filed by Companion for reasons wholly unrelated to the discovery dispute at issue. Companion's motion for a protective order in this litigation is based upon various claims of privilege regarding the redacted portions of the claim file, and unlike the original claims of privilege asserted in the prior litigation, is supported by the Downs affidavit, which describes the persons involved in the communications Companion claims are privileged and their relationship to Companion. Amerigas urges us to adopt the standard and scope of review that would be

appropriate for our review of the circuit court's denial of Companion's motion to reconsider the order entered in the prior litigation, which is how the circuit court approached Companion's motion for a protective order. If we were to adopt Amerigas's argument, our standard of review would be for an abuse of discretion, and we would not consider the Downs affidavit, as Companion did not submit it prior to the circuit court's order requiring the production of the unredacted claim file in the prior litigation. See *Pence v. Northeast Illinois Regional Commuter R.R. Corp.*, 398 Ill. App. 3d 13, 16 (2010) (the purpose of a motion to reconsider is to bring to the court's attention newly discovered evidence which was not available at the time of the hearing, and as a general rule the standard of review is for an abuse of discretion). On the other hand, if it were improper for the circuit court to approach Companion's motion for a protective order as one for reconsideration of the order entered in the prior litigation, our standard of review of Companion's claims of privilege would be *de novo*, and it would be proper to consider the Downs affidavit, in conjunction with an *in camera* review of the unredacted claims file, to determine whether the redacted entries are in fact privileged. See *Garvy v. Seyfarth Shaw LLP*, 2012 IL App (1st) 110115, ¶ 29 (we review the circuit court's determination of whether a privilege applies *de novo*). For the reasons that follow, we find that a *de novo* review is proper.

¶ 15 We begin with the proposition that when a case has been voluntarily dismissed and then refiled, our jurisdiction is limited to a review of the propriety of orders entered by the circuit court in the refiled action. *Smith v. P.A.C.E.*, 323 Ill. App. 3d 1067, 1072 (2001). Thus, because the plaintiffs voluntarily dismissed the prior litigation for reasons

wholly unrelated to the discovery dispute at issue before Companion was able to obtain a ruling on its motion to reconsider, Companion has no means of obtaining review of the propriety of the circuit court's order in the prior litigation compelling it to produce the unredacted claim file. In addition, the order in the prior litigation compelled Companion to produce the unredacted claim file pursuant to a subpoena *duces tecum* that was issued by Worthington Industries. Worthington Industries is not a party to the instant action and no longer has authority to issue or enforce such a subpoena. See 735 ILCS 5/2-1101 (West 2014) (only parties to a lawsuit have the authority to issue a subpoena). As such, Amerigas issued a new subpoena *duces tecum* when the instant lawsuit was filed, and it is from this subpoena that Companion seeks a protective order. For these reasons, despite the circuit court's statements during the hearing on the plaintiffs' motion to voluntarily dismiss the prior litigation, we find that the circuit court erred in treating Companion's motion for a protective order as a motion to reconsider its order in the prior litigation, and we vacate the circuit court's January 14, 2015, order. Pursuant to our authority under Illinois Supreme Court Rule 366(a)(5) (reviewing court has authority to make any order that ought to have been made), we proceed to conduct a *de novo* review regarding Companion's claims of privilege, taking into consideration all materials Companion submitted in conjunction with is motion for a protective order, including the Downs affidavit. We have also conducted an *in camera* review of all entries for which Companion claims privilege, and summarize our findings as follows.

¶ 16 We begin with those entries reflecting communications between Companion's claims adjusters or subrogation agents and attorneys Roby Javoronok and Lisa Vedral,

which Companion asserts are protected by the attorney-client privilege, work product privilege, or both. These entries make up the vast majority of the redactions at issue in this case, totalling 75 entries. "[W]here legal advice of any kind is sought from a professional legal advisor in his capacity as such, the communications relating to that purpose, made in confidence by the client, are protected from disclosure by himself or the legal advisor, except the protection be waived." *Fischel & Kahn, Ltd. v. van Straaten Gallery, Inc.*, 189 Ill. 2d 579, 584 (2000). In addition, the work product privilege protects materials that contain or disclose the theories, mental impressions, or litigation plans of the attorney. *Id.* at 591 (citing Ill. S. Ct. R. 201(b)(2) (eff. Jan. 1, 1996)). The work product privilege protects material prepared for any litigation or trial so long as they were prepared by or for a party to the litigation in which the privilege is asserted. *Id.* (citing *Federal Trade Comm'n v. Grolier Inc.*, 462 U.S. 19, 25-26 (1983)).

¶ 17 In order to determine which employees of a corporation enjoy the attorney-client privilege when communicating with an attorney on behalf of the corporation, Illinois applies the control-group test. *Consolidation Coal Co. v. Bucyrus-Erie Co.*, 89 Ill. 2d 103, 118-19 (1982). Under the control-group test, an employee whose advisory role to top management in a particular area is such that a decision would not normally be made without his advice or opinion, and whose opinion in fact forms the basis of any final decision by those with actual authority, is properly within the control group. *Id.* at 120. However, the individuals who merely supply information to those in an advisory role are not members of the control group. *Id.* Only communications between an attorney and

those in the control group of a corporation as thus defined are protected from disclosure. *Id.*

¶ 18 The Downs affidavit identifies the Companion claims adjusters and subrogation agents whose communications with Companion's attorneys are claimed to be privileged. As outlined above, the Downs affidavit makes it clear that these adjusters had decision-making authority with respect to the workers' compensation and subrogation claims for which Companion hired attorneys Javoronok and Vedral. Furthermore, our *in camera* review of all claim entries which reflect communications between Companion's claims adjusters or subrogation agents and these attorneys make clear that these entries do reflect communications made for the purpose of securing legal advice regarding defense of the workers' compensation and/or subrogation claims and/or contain the mental impressions or strategies of the attorney. For these reasons, we find these entries are protected by the attorney-client privilege and/or work product doctrine, and the circuit court erred in requiring Companion to produce them in response to the Amerigas subpoena in the instant lawsuit.

¶ 19 We now review the seven entries in Companion's claim file which it claims are protected by the insurer/insured privilege as communications between its claims adjusters and Culley Medley, who is the general manager for Companion's insured, Material Resources. A statement given by an insured to its insurer, when that insurer is responsible for selecting an attorney and defending the insured in conjunction with the defense of any civil litigation, is protected by the attorney-client privilege. *Rapps v. Keldermans*, 257 Ill. App. 3d 205, 209 (1993) (citing *People v. Ryan*, 30 Ill. 2d 456, 460-

61 (1964)). Our review of the entries at issue reveals that these were clearly communications that fall within this privilege, as they all memorialize statements made by Mr. Medley on behalf of Material Resources, regarding the circumstances surrounding the accident at issue and the plaintiffs' resulting workers' compensation claims. Accordingly, we find these seven entries are privileged, and the circuit court erred in ordering Companion to produce them in response to the Amerigas subpoena in the instant litigation.

¶ 20 We now turn to the 14 entries that Companion claims are protected by Illinois Supreme Court Rule 201(b)(3) (eff. July 1, 2014). Rule 201(b)(3) provides as follows:

> "A consultant is a person who has been retained or specially employed in anticipation of litigation or preparation for trial but who is not to be called at trial. The identity, opinions, and work product of a consultant are discoverable only upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject matter by other means." *Id.*

¶ 21 One of the entries Companion claimed as privileged pursuant to this rule is a record of a conversation between one of Companion's claims adjusters as identified in the Downs affidavit and Roger Davis, who is identified as Companion's consultant in the Downs affidavit. The entry reflects preliminary information Davis provided regarding his investigation of the accident and its cause, and it is clear to this court that at the time the circuit court ruled on Companion's motion for a protective order, the information in

this entry met the standards set forth for privilege pursuant to Rule 201(b)(3).[5] The remaining entries are communications between Companion's claims adjusters and a surveillance firm that Companion hired to investigate the plaintiffs' claimed injuries. *In camera* review of these entries reveals that they all reflect the identity as well as the observations of the surveillance consultants. As Amerigas notes in its brief, the actual video surveillance tapes produced by the consultants are discoverable in this action. See *Shields v. Burlington Northern & Santa Fe Ry. Co.*, 353 Ill. App. 3d 506, 507 (2004). However, pursuant to Rule 201(b)(3), the information reflected in these redacted claim entries is privileged, as Amerigas did not put forth evidence of exceptional circumstances requiring disclosure in the circuit court. For these reasons, we find that the circuit court erred in ordering Companion to disclose the 14 entries that Companion claimed were privileged, pursuant to Rule 201(b)(3).

¶ 22 There are six redacted entries in Companion's claims file remaining for our review. Three of these entries are dated December 2, 2009, and appear on pages 35 and 36 of the claim file. These three entries reflect communications between Companion's claims adjusters and Companion's subrogration agents regarding litigation strategies.

[5]Again, Companion's brief states that this one entry regarding Roger Davis's opinion has been disclosed since the filing of this appeal. Nevertheless, we consider whether it is privileged as the record on appeal does not reflect its disclosure and, as Companion notes, it is still relevant to the issue of whether it was proper to hold Companion in contempt for failing to disclose the entry.

Companion claimed work product privilege with respect to these three entries. Our review of these entries in conjunction with the Downs affidavit reveals no information from which this court can conclude that these communications reflected mental impressions or strategies that were made by Companion's attorneys. Rather, these entries appear to reflect mental impressions and strategies of the adjusters and/or claims agents themselves. As such, we find that Companion's claim of work product privilege with regard to these three entries must fail, and the circuit court did not err when it ordered Companion to produce them in response to the Amerigas subpoena in the instant litigation. See *Fischel & Kahn, Ltd.*, 189 Ill. 2d at 591 (work product privilege only applies to the theories, mental impressions, or litigation plans of a party's attorney (citing Ill. S. Ct. R. 201(b)(2) (eff. Jan. 1, 1996))).

¶ 23 The remaining three entries are made by Companion's claims adjuster and contain summaries of Companion's litigation plans. Companion also claimed work product privilege as to these entries. These entries are dated December 4, 2009, December 17, 2010, and October 27, 2011. In conducting an *in camera* review of these three entries, in conjunction with the Downs affidavit, this court finds that the entry dated December 4, 2009, sufficiently identifies the information as revealing theories or litigation plans generated by an attorney. However, the remaining two entries do not. Rather, these two entries appear to reflect the general observations on strategy of the claims adjuster making the entries. Accordingly, we find that the circuit court erred in ordering Companion to produce the December 4, 2009, entry in response to the Amerigas

subpoena in the instant litigation, but did not err in ordering Companion to produce the entries dated December 17, 2010, and October 27, 2011.

¶ 24 Before turning to the circuit court's contempt order, we briefly address Amerigas's argument that the circuit court was correct in ordering Companion to produce its entire claim file, irrespective of any privilege, simply because Amerigas has asserted a claim against Companion for negligent spoliation of evidence. We have reviewed the case law that Amerigas cited to support its argument, which applies a crime/fraud exception to privilege in exceptional circumstances, and find the case law to be inapposite. See *Sound Video Unlimited, Inc. v. Video Shack, Inc.*, 661 F. Supp. 1482 (N.D. Ill. 1987); *Cleveland Hair Clinic, Inc. v. Puig*, 968 F. Supp. 1227 (N.D. Ill. 1996). We find no authority in Illinois that negates the long-standing privileges asserted by Companion in this case where negligent spoliation of evidence has been alleged.

¶ 25 Because we find that Companion did improperly withhold five entries from disclosure, we decline to disturb the circuit court's April 28, 2015, contempt order. Instead, we remand this cause to the circuit court to reconsider its contempt order in light of this court's decision regarding Companion's various claims of privilege.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we vacate the January 14, 2015, order of the circuit court of St. Clair County, which ruled on Companion's motion for a protective order as if it were ruling on a motion to reconsider. Pursuant to Illinois Supreme Court Rule 366(a)(5), we order that Companion's motion for a protective order is granted for all redacted entries in the claim file except for the following: three entries dated December 2,

2009, one entry dated December 17, 2010, and one entry dated October 27, 2011. Companion is ordered to produce these entries to Amerigas pursuant to its subpoena. This cause is remanded for further proceedings not inconsistent with this order, including reconsideration of the circuit court's April 28, 2015, contempt order in light of this court's findings.

¶ 28 January 14, 2015, order vacated; motion for protective order granted in part; cause remanded with directions to reconsider order entered April 28, 2015.