

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

CONSOLIDATED GARBAGE DISTRICT  
NO. 1

CIVIL ACTION NO. 09-6270

VERSUS

SECTION B

WASTE MANAGEMENT OF  
LOUISIANA, LLC D/B/A WASTE  
MANAGEMENT OF NO, *ET AL.*

MAG. DIV. 4

**MEMORANDUM IN SUPPORT OF MOTION  
TO QUASH SUBPOENA AND RECORDS DEPOSITION**

**NOW INTO COURT**, through undersigned counsel, comes River Birch, Inc. who respectfully submits this memorandum in support of its motion to quash Waste Management of Louisiana, LLC's subpoena duces tecum (hereinafter "the Subpoena"), *see* Exhibit "A," Subpoena, and related records deposition, *see* Exhibit B, Notice of Records Deposition. Waste Management seeks documents that are irrelevant to the claims in this litigation. Compliance with the subpoena and related records deposition request would place an undue burden on River Birch because Waste Management is attempting to discover evidence for purposes of filing an unrelated lawsuit against River Birch, who is not a party to this declaratory judgment action. The brief times given by Waste Management to comply with its requests are also unreasonable considering the broad and undefined scope of the documents requested.

Because Waste Management has placed an undue burden on River Birch, Federal Rule of Civil Procedure 45 requires this Court to quash Waste Management's subpoena and record deposition and to impose sanctions.

### **FACTUAL BACKGROUND**

River Birch, Inc. is the owner and operator of a Sub-Title D, Type I and II Disposal Facility of solid and other waste. Its subsidiary, HWY-90 LLC, is the owner and operator of a Type III Construction and Demolition Disposal Facility for construction and demolition debris and yard and woody waste.

On January 14, 2009, the Jefferson Parish Council adopted Resolution 11149, which authorized the Jefferson Parish Administration to negotiate a contract with River Birch to provide solid waste, RACM, sewerage sludge, C&D debris and yard and woody waste disposal for waste generated within the unincorporated areas of Jefferson Parish and the town of Jean Lafitte. In June of 2009, the Jefferson Parish Council adopted Resolution No. 112454 authorizing and directing the Parish of Jefferson to enter into a Time Contract for Disposal Services with River Birch and Hwy-90.

Before contracting with River Birch, Jefferson Parish contracted with Waste Management of Louisiana, LLC for land fill and waste disposal services. Jefferson Parish has brought the current declaratory judgment action seeking to clarify its rights under its former contract with Waste Management. River Birch is not a party to this suit.

On February 15, 2011, counsel for Waste Management sent a cease and desist letter to River Birch demanding that River Birch stop making false and defamatory statements about Waste Management and threatening legal action. *See* Exhibit "C," February 15, 2011 Cease and Desist Letter. That letter reads:

Your recent advertisements posted in the Times-Picayune on January 20, February 3 and February 14 contain false and defamatory statements which are clearly intended to harm the reputation of Waste Management. Should you fail to cease and desist in publishing false and defamatory statements regarding Waste Management, we will take legal action to stop this illegal conduct on your part and to recover all damages and attorneys fees associated with such legal action.

The next day, Waste Management served River Birch with the Subpoena in connection with the declaratory judgment matter. The Subpoena demands that River Birch turn over the following by February 25, 2011:

1. The report or study, including any financial analysis, prepared by Loren C. Scott & Associates, projecting financial savings to Jefferson Parish for disposal of Parish waste at River Birch Landfill as compared to disposal at the Parish-owned landfill.
2. Any other documents providing support or corroboration for statements recently made by River Birch in advertisements in the Times Picayune regarding cost savings to Jefferson Parish for disposal of Parish waste at River Birch Landfill as compared to the Jefferson Parish landfill.

*See Exhibit "A."*

Two days later, on February 18, Waste Management served River Birch with a Notice of Records Deposition demanding that River Birch appear for a records deposition and produce the subpoenaed documents on February 25. *See Exhibit "B."*

The Subpoena and records deposition notice pertain to Waste Management's threatened defamation lawsuit against River Birch and are unrelated to the declaratory judgment action in which they were issued. The documents requested are irrelevant and compliance with the Subpoena would impose an undue burden on River Birch. The nine days given to produce the documents, and seven days permitted to prepare for the records deposition, are also unreasonable.

## DISCUSSION

Federal Rule of Civil Procedure 45 provides that “on timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it . . . subjects a person to undue burden.” Fed. R. Civ. P. 45(c)(3)(A)(iv). A party moving to quash a subpoena has the burden of demonstrating that “compliance with the subpoena would be unreasonable and oppressive.” *Wiwa v. Royal Dutch Petroleum Co.*, 392 F.3d 812, 818 (5th Cir. 2004). The Fifth Circuit Court of Appeals has set forth the following factors for consideration of whether a subpoena presents an undue burden:

- (1) relevance of the information requested;
- (2) the need of the party for the documents;
- (3) the breadth of the document request;
- (4) the time period covered by the request;
- (5) the particularity with which the party describes the requested documents; and
- (6) the burden imposed.

The documents requested by Waste Management have no bearing on the declaratory judgment action in which the Subpoena was issued. “Liberal discovery is provided for the *sole purpose* of assisting in the preparation and trial, or the settlement, of litigated disputes.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) (emphasis added). As such, “it is axiomatic that a party cannot take [discovery] for purposes unrelated to the lawsuit at hand,” including for purposes of discovering information that would be useful in another lawsuit. *Jennings v. Peters*, 162 F.R.D. 120, 122 (N.D. Ill. 1995) (quashing deposition designed to elicit statements for use in election campaign); *see also Echostar Communications Corp. v. News Corp. Ltd.*, 180 F.R.D. 391, 395-96 (D. Colo. 1998) (quashing subpoena designed to elicit information necessary to file antitrust suit against non-parties).

Waste Management’s Subpoena is a transparent effort to obtain discovery for a potential, unrelated defamation suit against River Birch. The Subpoena was issued the day after Waste Management sent a cease and desist letter to River Birch threatening a defamation suit based on certain advertisements placed in the Times-Picayune. The terms of the Subpoena ask for documents providing “support or corroboration” for statements made in those advertisements. This request is plainly designed to discover the truth or falsity of the advertisements, an issue that would be central in any defamation action brought by Waste Management, *see Trentecosta v. Beck*, 703 So. 2d 552, 559 (La. 1997) (“Four elements are necessary to establish a defamation cause of action: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault (negligence or greater) on the part of the publisher; and (4) resulting injury.”).

The only document requested by Waste Management with any specificity—financial analysis conducted by Loren C. Scott & Associates—was prepared after Jefferson Parish repudiated its obligations to Waste Management and signed a contract with River Birch. The document post-dates Jefferson Parish’s decision to terminate its contract with Waste Management and is irrelevant to whether Jefferson Parish’s contract with Waste Management is validly terminated. Moreover, the Subpoena’s language removes any doubt that Waste Management is seeking the Loren C. Scott & Associates analysis in connection with its potential defamation claim, and not for purposes of the declaratory judgment action. The Subpoena requests the analysis in Paragraph 1. *See* Exhibit “A.” Paragraph 2 of the Subpoena seeks “[a]ny *other* documents” supporting River Birch’s advertisements. *Id.* (emphasis added). As the Loren C. Scott & Associates analysis is the only document specifically mentioned in the

Subpoena, Waste Management clearly maintains that the analysis may support or corroborate the advertisements it believes are false and defamatory.

That Waste Management's Subpoena relates to a potential defamation suit makes the request for production especially inappropriate. Any defamation claim filed by Waste Management would be subject to Louisiana Code of Civil Procedure article 971. Article 971 is Louisiana's anti-SLAPP law, designed to address a "strategic lawsuit against public participation." *Henry v. Lake Charles Am. Press, LLC*, 566 F.3d 164, 169 (5th Cir. 2009). It provides that a plaintiff who files suit "against a person arising from any act of that person in furtherance of the person's right of petition or free speech . . . in connection with a public issue" is subject to a special motion to strike. LA. CODE CIV. PROC. Art. 971. All discovery is stayed when a special motion to strike is filed until the plaintiff establishes a probability of success on the merits of his claim. *Id.* ART. 971(D). Waste Management's Subpoena attempts to make an end run around the discovery restrictions that are imposed in a defamation suit by attempting to obtain discovery here, in an unrelated suit, from a non-party.

Finally, the Subpoena also fails to allow River Birch a "reasonable time to comply." FED. R. CIV. P. 45(3)(A)(i) (Courts must quash or modify a subpoena when it fails to allow a reasonable time to comply). Whether a time amount is reasonable depends on the circumstances, *see Freepport McMoran Sulphur, LLC v. Mike Mullen Energy Equip. Resource, Inc.*, 2004 WL 595236, at \*9 (E.D.La. 2004), but the 14-day period permitted for serving objections to a subpoena by Rule 45(c)(2)(B) is generally considered a reasonable time, *see Biological Processors of Alabama, Inc. v. North Georgia Environmental Services, Inc.*, 2009 WL 2160984, at \*3 (E.D.La. 2009) (collecting cases). Waste Management served River Birch with its subpoena on February 16. The subpoena requires compliance by February 25, thus affording

River Birch only five (5) full business days to respond. River Birch has been given even less time to prepare for its records deposition. It did not receive notice of the February 25 deposition until February 18. Considering the broad and undefined scope of documents requested—the subpoena and records deposition request ask for “*any* other documents” supporting River Birch’s Times-Picayune advertisements—the amount of time provided for response and preparation is patently unreasonable.

Rule 45(c)(1) requires an attorney responsible for serving a subpoena to take reasonable steps to avoid imposing an undue burden on a party. “The issuing court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney’s fees—on a party or attorney who fails to comply.” FED. R. CIV. P. 45(c)(1). Because Waste Management has placed an undue burden on River Birch, this court must impose an appropriate sanction, which should include an award of expenses and attorneys’ fees for filing this motion.

### **CONCLUSION**

The Subpoena and Notice of Records Deposition seek documents irrelevant to the present litigation. Instead, Waste Management seeks to obtain discovery for a threatened defamation action. This is clearly not allowed under federal and Louisiana law and places an undue burden upon River Birch. Waste Management has also failed to allow River Birch a

reasonable amount of time to comply. Because Waste Management has placed an undue burden on River Birch, it must be sanctioned under Rule 45(c)(1). For the foregoing reasons, River Birch respectfully moves this Court for an order quashing Waste Management's Subpoena and records deposition and awarding attorneys' fees.

Respectfully submitted:

*/s/ Ian Atkinson*

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 24, 2011, I electronically filed the foregoing pleading with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to all counsel of record.

*/s/ Ian Atkinson*

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Ian Atkinson