

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

**ADVANTAGE ROOFING AND
CONSTRUCTION OF LOUISIANA, INC.**

CIVIL ACTION

VERSUS

NO. 16-677-JWD-RLB

**LANDMARK AMERICAN INSURANCE
COMPANY, ET AL.**

ORDER

Before the Court is Plaintiff's Motion to Compel Compliance with Subpoena Duces Tecum (R. Doc. 40) filed on September 25, 2017. Plaintiff seeks an order compelling the production of documents from the non-party Four Thirteen, Inc. pursuant to a Rule 45 subpoena served on August 16, 2017.

Rule 45 provides that "[a]t any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection." Fed. R. Civ. P. 45(d)(2)(B)(i) (emphasis added).

The subpoena at issue sought compliance in Texarkana, Texas. (R. Doc. 40-5 at 2). Accordingly, to seek the relief sought through the instant motion, Plaintiff should refile the motion in the U.S. District Court for the Eastern District of Texas. If desired, Four Thirteen, Inc. may consent to have the matter transferred to the Middle District of Louisiana as the issuing court, or the court of compliance may do so under Rule 45(f) upon a finding of exceptional circumstances. If not, any resolution must be sought in the district of compliance. Should this motion be refiled in the Eastern District of Texas, counsel shall provide the assigned court with a copy of this order. See Fed. R. Civ. P. 45(f), Advisory Committee Notes, 2013 Amendment.

Furthermore, a court may not order compliance with a subpoena under Rule 45 unless the subpoenaed party and the parties to the action have first been provided notice of the motion to compel. See, e.g., *Shaw Grp., Inc. v. Zurich Am. Ins. Co.*, No. 12-257, 2014 WL 68604, at *1 (M.D. La. Jan. 8, 2014), reconsideration denied, 2014 WL 204244 (M.D. La. Jan. 17, 2014). Here, the record does not indicate that the non-party Four Thirteen, Inc. has been served with a copy of Plaintiff's Motion to Compel. This court will deny any future motion should the motion not indicate that notice was served on the non-party.

Based on the foregoing,

IT IS ORDERED that the Plaintiff's Motion to Compel Compliance with Subpoena Duces Tecum (R. Doc. 40) is **DENIED**.

Signed in Baton Rouge, Louisiana, on September 26, 2017.



RICHARD L. BOURGEOIS, JR.
UNITED STATES MAGISTRATE JUDGE