



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: MARCELLUS SHALE LITIGATION

CIVIL ACTION NO. 14-C-3000

THIS DOCUMENT APPLIES TO THE CONNOR-BERGER TRIAL GROUP:

Robert Carnahan and LeaAnn Carnahan

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-110 MSH

Joshua Nelson and Tracie Nelson

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-94 MSH

Brenda Rine

v.

Williams Ohio Valley Midstream, LLC

Civil Action No. 15-C-91 MSH

ORDER FROM PRETRIAL CONFERENCE

Plaintiffs, by counsel Jeremy McGraw and Jeff Parsons, and Defendant Williams Ohio Valley Midstream, LLC (“WOVM”), by counsel Mychal S. Schulz, appeared for the Pretrial Conference for the Conner-Berger Trial Group, which included all individuals who asserted claims of private nuisance arising from the construction and operation of the Conner-Berger Compressor Station by WOVM (“the Conner-Berger Facility”). Lead Presiding Judge Derek C. Swope reviewed all motions for summary judgment, motions *in limine*, responses, replies, and Pretrial Memoranda filed by the parties, and provided an opportunity to counsel to be heard on the issues raised in the pleadings filed.

After consideration of the written pleadings and the arguments of counsel, the Court finds as follows:

1. With respect to **Defendant Williams Ohio Valley Midstream, LLC’s Omnibus Motion to Adopt Pretrial Rulings Made at Pretrial Hearing in the Pinecone Trial Group**

(Transaction ID 65814756) – the Court **GRANTS** this Motion and concludes, as part of that Motion as follows:

a. **Defendant Williams Ohio Valley Midstream, LLC’s Motion for Summary Judgment on Punitive Damages, or in the Alternative, Motion to Bifurcate Trial -**

The Court finds that the Plaintiffs produced no evidence that WOVM violated any local, state, or federal statutes, regulations, or ordinances in the design, construction, and operations of the Conner-Berger Facility. Conversely, WOVM presented evidence that the design and construction of the Conner-Berger Facility was in conformance of the permit issued to WOVM by the West Virginia Department of Environmental Protection (“WVDEP”), Division of Air Quality, for the construction and operation of the Conner-Berger Facility. WOVM has received no notices of violation from the WVDEP or any other government agency concerning the construction and operation of the Conner-Berger Facility. Under these circumstances, and for the reasons detailed in WOVM’s Motion and Reply, the Court **GRANTS** this Motion and concludes that WOVM is entitled to summary judgment on the Plaintiffs’ claim for punitive damages. Evidence and argument concerning punitive damages, therefore, will not be permitted at the trial of this matter.

b. **Defendant Williams Ohio Valley Midstream, LLC’s Motion for Summary Judgment on Personal Injury Claims and Motion in Limine to Preclude any**

Mention of Personal Injuries or Alleged Exposure to Dangerous or Toxic Substances

(Transaction ID 65814804) - For the reasons detailed in WVOM’s Motion and Reply, the Court **GRANTS** this Motion because the Court concludes that WOVM is entitled to summary judgment on all claims of the Plaintiffs for personal injuries. The Court also concludes that the Plaintiffs may not testify generally concerning health worries that they allege may be presented by the Conner-Berger Facility because the Plaintiffs failed to produce any evidence that links any

emission or condition at the Conner-Berger Facility with any specific alleged adverse health effect of any of the Plaintiffs.

c. **Defendant Williams Ohio Valley Midstream, LLC's Motion *in Limine* to Exclude Undisclosed Witnesses** - Because the Court's Case Management Order provided for the date by which fact witnesses must be disclosed, and the date by which individuals who will testify at trial must be disclosed, the Court **GRANTS** this Motion and will not allow any witness who has not been identified and disclosed by the time of the Pretrial Conference to testify at trial. In addition, the Court will permit Plaintiffs to present a maximum of five (5) non-party fact witnesses to testify during trial.

d. **Defendant Williams Ohio Valley Midstream, LLC's Motion *in Limine* to Exclude Photographs and Videos Not Produced by Plaintiffs** - Because the Court's Case Management Order provided for that all photographs and videos had to be produced or otherwise made available as of July 15, 2020, the discovery deadline, the Court **GRANTS** this Motion. The parties have determined that a video purportedly taken by Robert Carnahan, which was on his phone during his deposition on June 8, 2020, was not produced to WOVM; therefore, that video will be excluded as evidence at trial.

e. **Damages recoverable by Plaintiffs** - The Court concluded, after reviewing the Complaints filed by the Plaintiffs and the Plaintiff Fact Sheets submitted by the Plaintiffs, that the Plaintiffs may recover damages related to noise, dust, light, and diminution in value of their property from those conditions. The Court further concluded that the Plaintiffs will not be permitted to recover damages for fear, pain, suffering, or mental suffering. The jury verdict forms will reflect permissible categories of damages available. The Court reserves ruling on whether

the Plaintiffs will be permitted to include a line on the jury verdict forms for future annoyance, inconvenience and discomfort, and a line for loss of quiet enjoyment of property.

f. **Note-Taking by Jurors** - The Court concludes that the jury in the matter will be allowed to take notes per the request of WOVM. As noted in State v. Triplett, 187 W. Va. 760, 421 S.E. 2d 511 (1992), however, the parties must properly question during *voir dire* concerning a juror's ability to take and read notes, and a proper jury instruction concerning note-taking must be submitted by WOVM. In addition, WOVM must provide the pens and notebooks in which the jurors may take notes.

2. With respect to **Defendant Williams Ohio Valley Midstream, LLC's Motion for Jury View** (Transaction ID 65814729) - For the reasons detailed in WOVM's Motion, the Court **GRANTS** this Motion and concludes that the jury and the Court will be provided the opportunity to visit the Plaintiffs' homes for the purpose of observing the totality of the circumstances presented by the operation of the Conner-Berger Facility as it relates to the Plaintiffs' ability to enjoy their respective homes. The Parties will arrange for a jury view during both the daytime and at nighttime, after opening statements, but before the evidence is presented. The Court **DENIES** the Plaintiffs' request that WOVM be required to blowdown any equipment at the Conner-Berger Facility during the jury views.

3. **Testimony of Deborah Shepherd** - The Court **ORDERS** that the parties submit a short brief no later than August 21, 2020, on whether the Plaintiffs should be permitted to call Deborah Shepherd, WOVM's retained appraisal expert, to provide expert witness testimony during the Plaintiffs' case-in-chief. The Court will rule on the Plaintiffs' request to call Ms. Shepherd after reviewing those briefs.

4. **Use of Exhibits During Opening Statements** - The Court will permit counsel to use exhibits during opening statements provided that the opposing counsel does not object. Counsel shall inform opposing counsel no later than 9:00 a.m. on Monday, August 31, 2020, of the identify of exhibits that will be shown to the jury during opening statements. If opposing counsel objects, the exhibit will not be permitted to be shown.

A copy of this Order has this day been served on all counsel of record electronically via File & Serve*Xpress*.

It is so **ORDERED**.

ENTER: August 24, 2020

/s/ Derek C. Swope
Lead Presiding Judge
Marcellus Shale Litigation
Midstream Cases