



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: MARCELLUS SHALE LITIGATION

CIVIL ACTION NO. 14-C-3000

THIS DOCUMENT APPLIES TO:

PINECONE TRIAL GROUP

**James Conner and Patricia Conner
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-9 MSH

**Raymond and Carrie Durig
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-10 MSH

**Samuel and Denise Martin
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-12 MSH

**Thomas and Jennifer Martin
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-13 MSH

**William and Kimberly McIlvain
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-14 MSH

**Linda and James Myers
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-15 MSH

**Janet Peck
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-16 MSH

**Linda Sing
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-17 MSH

**Robin Sloan
v.
Williams Ohio Valley Midstream, LLC**

Civil Action No. 16-C-18 MSH

**ORDER MEMORIALIZING RULINGS ISSUED DURING
OCTOBER 4, 2019 PRETRIAL CONFERENCE**

On October 4, 2019, Plaintiffs, by counsel Jeremy McGraw and Scott Blass, and Defendant Williams Ohio Valley Midstream, LLC (“WOVM”), by counsel Mychal S. Schulz and Jennifer J. Hicks, appeared for the Pretrial Conference in the above-styled civil actions, (collectively, the “Pinecone Trial Group”), which included all individuals who asserted claims of private nuisance arising from the construction and operation by WOVM of the Pinecone Compressor Station (“the Pinecone Facility”). The Presiding Judges have read all motions for summary judgment, motions *in limine*, responses, replies, and Pretrial Memoranda filed by the parties, and have provided counsel with an opportunity to be heard on the issues raised in the pleadings filed.

After consideration of the written pleadings and the arguments of counsel, and having conferred with one another to ensure uniformity of their decision, as contemplated by *Rule 26.07(a)* of the *West Virginia Trial Court Rules*, the Presiding Judges unanimously issued the following rulings:

1. *Defendant Williams Ohio Valley Midstream, LLC’s Motion to Exclude Plaintiffs’ Expert Witness (Transaction ID 63105073).*

Defendant WOVM renewed its motion to exclude Plaintiffs’ real estate appraisal expert witness on the ground that Plaintiffs did not comply with the expert witness disclosure deadline set forth in the Court’s Case Management Order. Finding that WOVM suffered no prejudice from Plaintiffs’ delay, the Court **DENIES** the motion.

2. ***Defendant Williams Ohio Valley Midstream, LLC's Motion for Summary Judgment on Punitive Damages, or in the Alternative, Motion to Bifurcate Trial (Transaction ID 64146829).***

Plaintiffs allege WOVM created a nuisance during the construction and operation of the Pinecone Facility in the form of noise, light, odors, and dust from the facility interfering with the peaceful enjoyment of their respective properties. Notwithstanding these allegations, the Court finds that Plaintiffs have not produced any evidence WOVM violated any local, state, or federal statute, regulation, or ordinance in the design, construction, or operation of the Pinecone Facility. Nor have Plaintiffs presented any evidence WOVM violated the terms of any permit issued to WOVM by the West Virginia Department of Environmental Protection (“WVDEP”), Division of Air Quality, for the construction and operation of the Pinecone Facility. The Court further finds that Plaintiffs have not presented any evidence WOVM received a notice of violation from the WVDEP or any other government agency concerning the construction and operation of the Pinecone Facility. Under these circumstances, and for the reasons detailed in WOVM’s Motion and Reply, the Court **GRANTS** the Motion and **ORDERS** that WOVM is entitled to summary judgment on Plaintiffs’ claims for punitive damages. Plaintiffs will not be permitted to present any evidence or argument concerning punitive damages at the trial of this matter.

3. ***Defendant Williams Ohio Valley Midstream, LLC's Motion for Summary Judgment on Property Damage Claims (Transaction ID 64146810).***

Certain Plaintiffs allege they suffered some form of physical damage to their property because of WOVM’s construction and/or operation of the Pinecone Facility. However, Plaintiffs have presented no evidence WOVM’s construction and/or operation of the Pinecone Facility caused any such alleged property damage. For the reasons detailed in WOVM’s Motion and Reply, and because Plaintiffs concede in their Response that they do not intend to present

physical property damages claims at trial, the Court **GRANTS** the Motion and **ORDERS** that WOVM is entitled to summary judgment on all of the Plaintiffs' claims for property damages.

For the same reasons, the Court **GRANTS** *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Evidence Concerning Physical Property Damage – Raymond and Carrie Durig (Transaction ID 64173435)* and *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Evidence Concerning Physical Property Damage – Linda Sing (Transaction ID 64173891)*.

4. *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 64146818)*.

Plaintiffs allege WOVM's actions caused them to have "a reasonable apprehension and risk of exposure to dangerous and toxic substances, compounds and chemical mixtures in the air." See e.g., Sing Complaint at Paragraph 11. However, Plaintiffs have not produced any evidence concerning personal injury caused by the Pinecone Facility or exposure to any "dangerous and toxic substances, compounds and chemical mixtures in the air" from the Pinecone Facility.

For the reasons detailed in WOVM's Motion and Reply, and because Plaintiffs concede in their Response they will not be presenting physical personal injury claims at trial, they have not identified or presented any medical expert witnesses to provide any such opinions, and they are not seeking any specific damage or any type of monitoring related to any specific diseases, the Court **GRANTS** the Motion and **ORDERS** that WOVM is entitled to summary judgment on all claims of the Plaintiffs for personal injuries.

For the same reasons, the Court **GRANTS** *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Evidence Concerning Asthma or Other Alleged Medical*

Conditions – Thomas and Jennifer Martin (Transaction ID 64174168) and Defendant Williams Ohio Valley Midstream, LLC’s Motion in Limine to Exclude Evidence Regarding Alleged Injuries to Non-Parties – Robin Sloan (Transaction ID 64173011), the latter of which is also granted because none of the children of Plaintiff Robin Sloan have been identified as Plaintiffs in this litigation. Finally, the Court concludes that the Plaintiffs may not testify generally concerning health worries that they allege may be presented by the Pinecone Facility because the Plaintiffs failed to produce any evidence that links any emission or condition at the Pinecone Facility with any specific alleged adverse health effect of any of the Plaintiffs.

5. *Defendant Williams Ohio Valley Midstream, LLC’s Motions for Summary Judgment and Motions in Limine on Claims Related to Traffic as a Nuisance (Transaction IDs 64146837, 64146864, 64147253, 64147427, 64147587, 64147676, 64147720, 64147814, and 64148228).*

WOVM filed a Motion for Summary Judgment and a Motion *in Limine* in each of the individual civil actions that comprise the Pinecone Trial Group. For the reasons detailed in each of WOVM’s Motions, and because Plaintiffs concede they will not be asserting at trial a private nuisance claim related solely to increased traffic on Taylor’s Ridge Road and do not plan on introducing such evidence at trial, the Court **GRANTS** each of these Motions **ORDERS** that WOVM is entitled to summary judgment on all claims of the Plaintiffs for private nuisance arising from increased traffic along Taylors Ridge Road.

6. *Defendant Williams Ohio Valley Midstream, LLC’s Motion in Limine to Exclude Undisclosed Witnesses (Transaction ID 64172624).*

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.

7. *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Photographs and Videos of Black Soot and all Related Evidence – James and Linda Myers (Transaction ID 64170558).*

For the reasons detailed in WOVM's Motion, the Court **GRANTS** this Motion and excludes all photographs and videos that have not been produced or otherwise made available to WOVM as of the date of the Pretrial Conference.

8. *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Evidence of Alleged Air Quality, Sound and Vibration Recordings – Linda Sing (Transaction ID 64169929).*

For the reasons detailed in WOVM's Motion and Reply, the Court **GRANTS** this Motion and excludes all documents or recordings that have not been produced or otherwise made available to WOVM as of the date of the Pretrial Conference.

9. *Defendant Williams Ohio Valley Midstream, LLC's Motion in Limine to Exclude Unqualified Expert Testimony of Linda Sing (Transaction ID 64172094).*

For the reasons detailed in WOVM's Motion and Reply, the Court **GRANTS** this Motion and excludes all testimony of Plaintiff Linda Sing that purport to be given or identified as "expert" testimony, including her testimony concerning the cause or source of her asthma and her opinions on the effect of air pollution on the human body.

10. *Defendant Williams Ohio Valley Midstream, LLC's Motion for Jury View (Transaction ID 64272975).*

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 Pinecone Facility as it relates to the Plaintiffs' ability to enjoy their respective homes. Details concerning the jury view, including exactly when the view will take place and the mode of transportation of the jury and appropriate court personnel, including the judges, will be discussed closer to the jury view.

11. 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 these categories of damages available.

12. 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.

It is so **ORDERED**.

ENTERED: November 7, 2019.

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