

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA

TUCKER-STEPHEN G. BELL, ET AL.,)	
)	
PLAINTIFFS,)	CIVIL CASE NO.: 17-C-193
)	
v.)	Judge Russell M. Clawges, Jr.
)	
BEST FLOW LINE EQUIPMENT, L.P.,)	
ET AL.,)	
)	
DEFENDANTS.)	
)	

ORDER GRANTING MOTIONS FOR ENTRY OF FINAL JUDGMENT

On the 12th day of October 2018, came Plaintiffs, Tucker-Stephen G. Bell, Heather M. Bell, individually and as Guardians and Next Friends of Colton T. Bell and Tucker M. Bell, Minor Children, and Tucker-Stephen G. Bell and Randi L. Peters, as Guardians and Next Friends of Chase G. Bell, a Minor Child ("Plaintiffs"), by counsel, with a Motion asking the Court to amend its August 31, 2018 Order Denying, in Part, and Granting, In Part, Defendant Nicholson Construction Company's Motion to Dismiss pursuant to Rule 59(e) of the West Virginia Rules of Civil Procedure, or in the alternative, to certify said Order as a final and appealable order pursuant to Rule 54(b).

On the 20th day of November 2018, came Defendant Southern Environmental, Inc. ("SEI"), by counsel, with an unopposed Motion asking the Court to certify its November 1, 2018 Order Denying Defendant Southern Environmental, Inc.'s Motion to Dismiss as final and appealable order pursuant to Rule 54(b).

Having considered the pleadings and otherwise being sufficiently advised in the premises, the Court does hereby **DENY** Plaintiffs' Motion to Amend the Court's August 31, 2018 Order pursuant to Rule 59(e) of the West Virginia Rules of Civil Procedure.

The Court further finds that it is proper to certify its aforesaid Orders of August 31, 2018 and November 1, 2018, as final and appealable orders pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure. The Court finds that the August 31, 2018 Order completely disposes of substantive claims

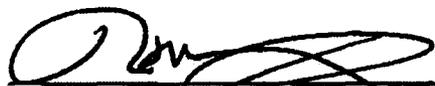
of the Plaintiffs and also possesses the requisite degree of finality. The Court finds that the issues decided in the November 1, 2018 Order are sufficiently related the issues decided in the August 31, 2018 Order such that, in the interest of judicial economy, said Order should likewise be certified as final and appealable at this time. Furthermore, the Court finds that certifying said Orders as final will not prejudice any of the parties involved and further finds that there is no just reason to delay the categorization or certification of the Orders as final and appealable orders.

As such, this Court hereby **GRANTS** the Motions for Entry of Final Judgment of Plaintiffs and SEI and hereby **ORDERS** that this Court's August 31, 2018 Order and November 1, 2018 Order be certified as final and appealable orders, in all respects, pursuant to Rule 54(b) of the West Virginia Rules of Civil Procedure. Accordingly, the parties shall file their notices of appeal within thirty (30) days of entry of this Order in accordance with the West Virginia Rules of Appellate procedure.

IT IS SO ORDERED.

The Clerk is directed to send certified copies of this Order to all counsel of record.

Entered this 29th day of November, 2018.

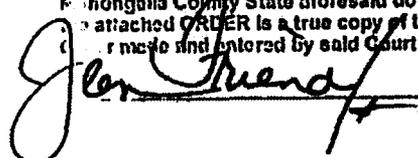


Honorable Judge Russell M. Clawges, Jr.

ENTERED: NOV 29, 2018
DOCKET LINE 319 Clerk

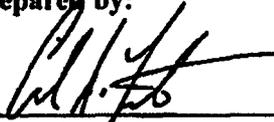
STATE OF WEST VIRGINIA, SS:

I, Glen Friend, Clerk of the Circuit/Family Court of Boone County State aforesaid do hereby certify that the attached ORDER is a true copy of the original made and entered by said Court.



Circuit Clerk

Prepared by:



Carl A. Frankovitch, Esq. (WV Bar No. 12150)
Frankovitch, Anetakis, Simon, Decapio & Pearl, LLP
337 Penco Road
Weirton, WV 26062
Tel: (304) 723-4400
Fax: (304) 723-5892
Counsel for Plaintiffs

Matthew R. Zwick, Esquire (WV Bar No. 12169)
ZWICK & ZWICK LLP
P.O. Box 1127
Du Bois, PA 15801
Tel: (814) 371-6400
Fax: (814) 503-8453
Counsel for Plaintiffs

Approved by:

/s/ Nathaniel D. Griffith with permission via e-mail
Nathaniel D. Griffith, Esq. (WV Bar No. 11362)
Pullin, Fowler, Flanagan, Brown, & Poe, PLLC
2414 Cranberry Square
Morgantown, WV 26508
Phone: (304) 225-2200
Fax: (304) 225-2214
ngriffith@pffvw.com
Counsel for Defendant Casagrande USA, Inc.

/s/ J. David Bolen with permission via e-mail
J. David Bolen, Esq.
Ellen M. Jones, Esq.
Dinsmore and Shohl, LLP
611 Third Avenue
Huntington, WV 25701
Counsel for Defendant Best Flow Line Equipment. L.P.

/s/ Bradley K. Shafer with permission via e-mail

Bradley K. Shafer, Esq.

Jason G. Wehrle, Esq.

Mintzer Sarowitz Zeris Ledva & Meyers, LLP

48 Fourteenth Street, Suite 200

Wheeling, WV 26003

Counsel for Defendant Southern Environmental, Inc.

/s/ Brandy D. Bell with permission via e-mail

Brandy D. Bell, Esq.

Erin J. Webb, Esq.

Kay Casto & Chaney PLLC

1085 Van Voorhis Road, Suite 100

Morgantown, WV 26505

Counsel for Defendant Longview Power, LLC

/s/ Tonya P. Shuler with permission via e-mail

Rita Massie Biser, Esq.

Tonya P. Shuler, Esq.

Moore & Biser, PLLC

317 Fifth Avenue

South Charleston, WV 25303

Counsel for Defendant Nicholson Construction Company

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
DIVISION II

TUCKER-STEPHEN G. BELL,
HEATHER M. BELL, individually
and as Guardians and Next Friends of
COLTON T. BELL and TUCKER M.
BELL, minor children; and
TUCKER-STEPHEN G. BELL and
RANDI L. PETERS as Guardians and
Next Friends of CHASE G. BELL, a
minor child,

Plaintiffs,

v.

CASE NO.: 17-C-193
Judge Russell M. Clawges, Jr.

BEST FLOW LINE EQUIPMENT, L.P.,
SOUTHERN ENVIRONMENTAL, INC.,
LONGVIEW POWER, LLC,
CASAGRANDE S.P.A.,
CASAGRANDE USA, INC.,
INTERNATIONAL DRILLING
EQUIPMENT, INC., and
NICHOLSON CONSTRUCTION COMPANY,

Defendants.

**ORDER DENYING DEFENDANT SOUTHERN ENVIRONMENTAL, INC.'S
MOTION TO DISMISS**

This matter came before the Court on the 10th day of October 2017, on Defendant Southern Environmental, Inc.'s ("SEI") Motion to Dismiss pursuant to Rules 12(b)(1) and 12(b)(6) of the Rules of Civil Procedure. Plaintiff appeared by counsel, Carl A. Frankovitch and Matthew R. Zwick. Defendant Best Flow Line Equipment, L.P. appeared by counsel, J. David Bolen and Ellen M. Jones. Defendant SEI appeared by counsel, Jordan E. Berty. Defendant Longview Power, LLC appeared by counsel, Brandy D. Bell. Defendant Casagrande appeared

by counsel, Nathaniel D. Griffith. Defendant International Drilling Equipment, Inc. appeared by counsel, Peter T. DeMasters. Defendant Nicholson Construction Company appeared by counsel, Tonya P. Shuler and Rita Massie Biser.

The Court heard arguments of counsel and took the motion under advisement. The Court has studied the motion, response, and the memoranda of law submitted by the parties; considered the arguments of counsel; and reviewed pertinent legal authorities. As a result of these deliberations, the Court is ready to rule.

FACTS and PROCEDURAL HISTORY

On May 19, 2015, Plaintiff Tucker-Stephen Bell was working in the course of his employment for Defendant Nicholson, at Defendant Longview Power Plant in Madsville, Monongalia County, West Virginia, when he suffered an injury while operating a drill rig. Plaintiff, who is a Pennsylvania resident, had worked in West Virginia for a period exceeding thirty (30) calendar days in the 365-day period prior to the accident.

According to the Complaint, a 3-inch water swivel unthreaded and/or detached from the pipe nipple that connected it to the drill rig, causing the hose and swivel to whip in the air and strike the back of Plaintiff's head. As a result, the hard hat Plaintiff was wearing was cracked, causing damage to his skull. Upon being struck by the swivel, Plaintiff fell approximately 5 ½ feet from the drill rig platform to the ground. Defendant Best Flow Line Equipment, L.P. ("Best Flow") is a manufacturer and distributor of drilling parts such as swivel joints, hoses, fittings, and valves.

Defendant Longview Power, LLC owns and operates a coal-fired power plant.

Defendant SEI is a contractor that engages in producing, supplying, repairing, rebuilding, and upgrading air pollution control equipment in the United States and internationally. SEI is registered to conduct business in the State of West Virginia, but maintains its principal place of business in Pensacola, Florida. Longview Power hired SEI as its general contractor to produce, supply, repair, rebuild, expand, and/or upgrade air pollution control equipment and the baghouse at Longview Power Plant.

Defendant Nicholson Construction Company is a geotechnical contractor, specializing in the design and installation of deep foundation elements, earth retention systems and ground treatment. Nicholson was a subcontractor hired by SEI to design and install the foundation pilings for the Fabric Filter Building at Longview Power Plant. Nicholson is incorporated under the laws of the Commonwealth of Pennsylvania and maintains its principal place of business in Cuddy, Pennsylvania.

Defendants Casagrande S.p.A. and Casagrande USA are manufacturers and distributors of foundation equipment, including commercial drilling rigs. Casagrande S.p.A. is the parent company of Casagrande USA, Inc. Defendant International Drilling Equipment, Inc. is a dealer, suppliers, seller, and/or distributor of geotechnical and foundation equipment and tooling, and is the exclusive distributor of foundation equipment manufactured by the Casagrande Defendants.

On May 4, 2017, Plaintiffs filed this action and on August 17, 2017, filed their Amended Complaint, which alleges claims against SEI for negligence, loss of spousal consortium, and loss of parental consortium. Plaintiffs assert that SEI owed a duty to properly control, monitor, and supervise the work of various subcontractors, including Nicholson. Plaintiffs also assert that SEI owed a duty to provide a safe work environment; develop and enforce safety policies and

procedures; ensure that subcontractors abide by all safety policies and procedures; ensure that subcontractors abide by all controlling state and federal rules and regulations; ensure that subcontractors did not operate the Drill Rig unless it and all components parts were properly installed, secured, utilized, and/or maintained; and take all other reasonable and appropriate actions to eliminate harm or injury to the Plaintiffs. Plaintiffs allege that SEI negligently and/or recklessly breached those duties.

On September 21, 2017, Defendant SEI filed its Motion to Dismiss the Amended Complaint. SEI argues that this Court does not have subject matter jurisdiction over Plaintiffs' claims against it. SEI further argues that the claims are not viable under Pennsylvania law. Therefore, SEI contends that all claims against it should be dismissed.

Plaintiffs insist that this Court has subject matter jurisdiction over their claims, that they have sufficiently pled their claims for negligence and loss of spousal and parental consortium, and that West Virginia law controls this case:

DISCUSSION

"Whenever it is determined that a court has no jurisdiction to entertain the subject matter of a civil action, the forum court must take no further action in the case other than to dismiss it from the docket." Syl. Pt. 1, Hinkle v. Bauer Lumber & Home Bldg. Ctr., Inc., 158 W.Va. 492 (1975).

The standard applied to Rule 12(b)(6) motions is well established. In analyzing the complaint, the Court must accept the allegations as true, and construe the same in the light most favorable to the Plaintiff. "The trial court, in appraising the sufficiency of a complaint on a Rule

12(b)(6) motion, should not dismiss the complaint unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Syllabus, Flowers v. City of Morgantown, 166 W.Va. 92 (1980).

SEI contends that this Court does not have subject matter jurisdiction over Plaintiffs' negligence claims because Plaintiff is a Pennsylvania employee bringing an action against his Pennsylvania employer and receiving Pennsylvania workers' compensation benefits. SEI argues that it is the "statutory employer" of Tucker-Stephen Bell. SEI subcontracted Nicholson to perform certain work and Nicholson assigned some of those tasks to its employee, Plaintiff Tucker-Stephen Bell.

In its Order entered August 31, 2018, the Court found that Plaintiff is entitled to the benefits and privileges of the West Virginia Workers' Compensation Act. SEI argues that since Plaintiff is eligible for workers' compensation benefits from both West Virginia and Pennsylvania that this case is governed by the election of remedies doctrine and *res judicata*.

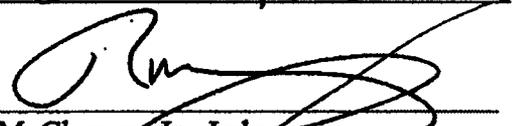
SEI insists that Pennsylvania's workers' compensation statute is the exclusive remedy by which Plaintiff can recover for his workplace injuries. Therefore, SEI argues it should be immune from liability and dismissed from this action. At this stage of the proceedings, the Court is not persuaded. Accordingly, the Court DENIES Defendant SEI's Motion to Dismiss.

ORDER

WHEREFORE, it is ORDERED that the Court DENIES Defendant Southern Environmental, Inc.'s Motion to Dismiss.

The Court directs the Clerk of the Circuit Court of Monongalia County to distribute certified copies of this order to the parties and/or counsel of record.

Enter November 1, 2018



Russell M. Clawges, Jr., Judge
17th Judicial Circuit, Division II.

ENTERED: Nov. 1, 2018
DOCKET LINE 288, Jean Friend, Clerk