

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

MARKWEST LIBERTY MIDSTREAM
RESOURCES, L.L.C.,

Plaintiff,

v.

BILFINGER WESTCON, INC.,

Defendant.

**REPLY TO JUDICIAL MOTION TO
REFER CASE TO THE BUSINESS COURT DIVISION**

Pending before the Court in the above-captioned matter is a Judicial Motion to Refer Case to the Business Court Division. In reply to this pending motion, Defendant Bilfinger Westcon, Inc. ("Westcon") states that it has no objection to the requested referral to Business Court. In filing this reply, and in not contesting the requested referral, this Defendant does not waive, and hereby expressly preserves and maintains, any and all jurisdictional and other objections and defenses it possesses.

Further, Westcon is in receipt of Plaintiff's Reply ostensibly taking no position on the Motion, but (1) claiming prejudice in losing a May 21, 2018 trial date, and (2) disagreeing with the Circuit Court's statement that this case "could be the subject of consolidation" with *MarkWest Liberty Midstream, L.L.C. v. J.F. Allen Company, et al.*, Civil Action No. 16-C-82 (Circuit Court of Wetzel County, West Virginia) (the "J.F. Allen case").

First, as reflected in the Motion, the Circuit Court granted Westcon's *Motion to Modify Scheduling Conference Order* in light of Westcon's companion filing for leave to amend the complaint and this referral. The Circuit Court recognized that "[t]his complex construction case

may become even more complicated by the new claims asserted by Westcon.” Therefore, there is no way this matter would have been ready for trial on May 21, 2018.

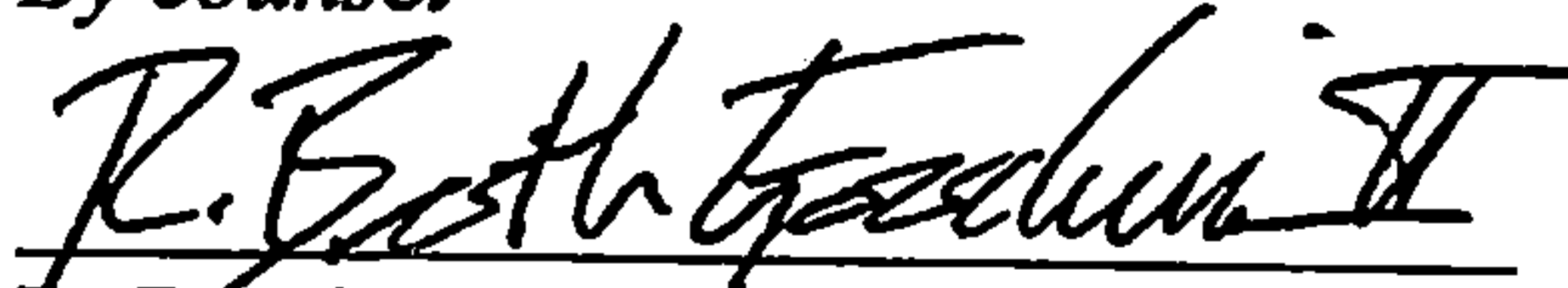
Second, Westcon is not familiar enough with the J.F. Allen case to opine on whether its referral is also appropriate. However, Westcon would note that based on the Circuit Court’s representation in the Motion, the J.F. Allen case also appears to be a rather complex case between businesses and would therefore be appropriate for referral consideration under West Virginia Trial Court Rule 29.06.

Accordingly, Westcon has no objection to the referral of this case to the Business Court Division.

Respectfully submitted,

BILFINGER WESTCON, INC.,

By counsel

A handwritten signature in black ink, appearing to read "R. Booth Goodwin II", is written over a horizontal line.

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IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

**MARKWEST LIBERTY MIDSTREAM &
RESOURCES, L.L.C.,**

Plaintiff,

v.

**Civil Action No.: 16-C-66
Hon. Jeffrey D. Cramer**

BILFINGER WESTCON, INC.,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have served a true and correct copy of the foregoing **“REPLY TO JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION”** on this 12th day of February, 2018, via US Mail to the following:

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