

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

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

Plaintiff,

v.

BILFINGER WESTCON, INC.

Defendant.

Case No. 16-C-66

Judge Cramer

FILED
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LORIE MCCOY
CLERK
WETZEL COUNTY, W. VA.

**PLAINTIFF MARKWEST LIBERTY MIDSTREAM & RESOURCES,
L.L.C.'S REPLY TO THE *SUA SPONTE* JUDICIAL
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

Plaintiff MarkWest Liberty Midstream & Resources, LLC ("MarkWest"), pursuant to West Virginia Trial Court Rule 29.06(a)(4), submits this Reply to the Circuit Court of Wetzel County's *Sua Sponte* Judicial Motion to Refer Case to the Business Court Division (the "Motion"). MarkWest takes no position on the Motion. However, MarkWest (1) does request that no matter who this Court refers the case (back to Wetzel County or to the Business Court Division) that it orders an expedited schedule so that MarkWest can quickly take this matter to trial; and (2) objects to any notion that this matter could be consolidated, or even has anything to do with, the *J.F. Allen* matter.

I. MarkWest Has Been Prejudiced by the Motion Because It Lost Its Upcoming Trial Date and, Therefore, Requests an Expedited Case Schedule.

More than a year and a half ago, MarkWest commenced this action to recover the millions of dollars of damages it sustained as a result of Bilfinger Westcon, Inc.'s ("Westcon") significantly late and defective construction of the Mobley V facility ("Mobley V") at MarkWest's Mobley natural gas processing plant in Wetzel County, West Virginia (the "Mobley Site"). Not only did Westcon cause significant delays and render deficient and incomplete work,

but it also committed particularly egregious fraud that placed the Mobley Site in danger of imminent and catastrophic failure and placed the lives of many at risk.

None of the parties wanted this case sent to the Business Court Division. Instead, on March 30, 2017, the Circuit Court entered a Scheduling Conference Order negotiated by the parties that, among other things, ordered discovery to be completed by **February 16, 2018** and set the case as first chair for trial on **May 21, 2018**. The parties engaged in substantial discovery efforts, including exchanging numerous sets of written discovery, producing hundreds of thousands of documents, and serving fact and expert witness disclosures. On February 2, 2018, **only fourteen (14) days before the close of discovery**, the Circuit Court *sua sponte* filed the Motion.

This Motion severely prejudices MarkWest, a company with significant business operations in West Virginia, because it deprives MarkWest of its upcoming trial which would have allowed it the immediate opportunity to be compensated for the millions of dollars in damages it has endured. Accordingly, whether or not this Court sends the case back to Wetzel County or refers the matter to the Business Court Division, MarkWest requests an expedited referral and an expedited discovery and trial schedule so MarkWest can have its day in court as soon as possible.

II. This Case Could Never Be Consolidated with the *J.F. Allen* Matter.

MarkWest disagrees with the Circuit Court's statement in the Motion 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 West Virginia, Wetzel County) ("*J.F. Allen*") because this case and *J.F. Allen* have absolutely nothing to do with each other.

Consolidation may only be granted when two or more cases involve a common question of law or fact and/or arise out of the same transaction or occurrence. W. Va. R. Civ. P. 42. A cursory review of the Complaint in this case and the *J.F. Allen* case demonstrates that they do not involve

common questions of law or fact or arise out of the same transaction or occurrence, do not involve the same parties (other than MarkWest) and, therefore, cannot be consolidated.

Specifically, in this case, MarkWest seeks nearly \$7 million in compensatory damages plus punitive damages against one defendant (Westcon) as a result of the defective construction of Mobley V and fraud committed by Westcon regarding the welding of certain vessels. In *J.F. Allen*, MarkWest seeks nearly \$30 million in damages against five defendants (J.F. Allen Company, Amec Foster Wheeler Environmental & Infrastructure, Inc., Redstone International, Inc., Coastal Drilling East, LLC, and Civil & Environmental Consultants, Inc.) as a result of the defective design and construction of a 100-foot tall, 1250-foot long retaining wall (the “Retaining Wall”) at the Mobley Site.

Again, simply stated, this case and *J.F. Allen* have absolutely nothing to do with each other. If this case and *J.F. Allen* are both sent to the Business Court Division or both sent to Wetzel County, the cases should not be consolidated and could be assigned to different judges.

Dated: February 9, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2018, a true and correct copy of the foregoing Plaintiff MarkWest Liberty Midstream & Resources, L.L.C.'s Reply to the *Sua Sponte* Judicial Motion to Refer Case to the Business Court Division was served via electronic and U.S. Mail on the following counsel of record:

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