

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

vs.

Wetzel County Circuit Court
Civil Action No. 16-C-82

J.F. ALLEN COMPANY; AMEC FOSTER
WHEELER ENVIRONMENTAL &
INFRASTRUCTURE, INC.; REDSTONE
INTERNATIONAL, INC.; COASTAL DRILLING
EAST, LLC; CIVIL & ENVIRONMENTAL
CONSULTANTS, INC.,
Defendants,

and

J.F. ALLEN COMPANY,
Defendant/Third-Party Plaintiff,

vs.

THE LANE CONSTRUCTION CORPORATION,
Third-Party Defendant.

TO: THE HONORABLE CHIEF JUSTICE

**REPLY MEMORANDUM OF AMEC FOSTER WHEELER
ENVIRONMENTAL & INFRASTRUCTURE, INC. IN SUPPORT OF THE JUDICIAL
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

COMES NOW the Defendant, Amec Foster Wheeler Environmental & Infrastructure, Inc. (“Amec”), by counsel, pursuant to Rule 29.06(a)(4) of the West Virginia Trial Court Rules, and for its Reply Memorandum in Support of the Judicial Motion to Refer Case to the Business Court Division, states and avers as follows:

FILED
18 FEB 26 AM 10:44
LORI J. MCCOY
CLERK
WETZEL COUNTY, WV

Amec is in agreement with the Wetzel County Circuit Court's referral of this matter to the West Virginia Business Court Division which was filed on February 2, 2018 pursuant to Rule 29.06(a)(1) of the West Virginia Trial Court Rules. Amec is of the opinion and belief that this case fits well within the objectives of the West Virginia Business Court Division. Furthermore, Amec is of the opinion and belief that the West Virginia Business Court Division will be the best suited venue for the efficient management of this complex and multi-faceted litigation which involves numerous claims and defenses woven among several commercial entities. As such, Amec now files its Reply Memorandum in Support of the Judicial Motion to Refer Case to the Business Court Division pursuant to Rule 29.06(a)(4) of the West Virginia Trial Court Rules.

1. This matter is well-suited for the Business Court Division as all the parties herein are sophisticated commercial entities engaging in business within the State of West Virginia.

This matter encompasses issues which are significant to businesses in West Virginia. Specifically, this matter involves a breach of contract action and a negligence/gross negligence action between commercial entities involving the alleged defective design and/or construction of the Eastern Valley Retaining Wall at the Mobley V Gas Plant in Wetzel County, West Virginia ("Retaining Wall"). The Retaining Wall is owned, possessed and controlled by the Plaintiff, MarkWest Liberty Midstream & Resources, L.L.C. ("MarkWest"), a commercial producer and transporter of natural gas for northern West Virginia. MarkWest claims that the Retaining Wall was necessary to expand its oil and gas processing operations, and to create new jobs in Wetzel County. Photographs of the Retaining Wall are attached hereto collectively as **Exhibit A**. These photographs depict the significant size (100-feet tall by 1250-feet long) and the complex nature of the Retaining Wall, which is commonly referred to as the "Great Wall of Mobley."

As evidenced from the photographs, the construction of the Retaining Wall was not a simple task. In fact, the construction required the joint effort of numerous commercial entities along with countless hours of manpower to complete the Retaining Wall. In 2014, at the onset of the project, MarkWest contracted with several entities for the design and construction of the Retaining Wall. Among these entities were the Defendants, J.F. Allen Company (general contractor) (“J.F. Allen”); Civil & Environmental Consultants, Inc. (geotechnical information and quality assurance services) (“CEC”); and The Lane Construction Corporation (excavation, back fill, and compaction services) (“Lane”). J.F. Allen, in its role as the general contractor, subcontracted with Amec for the design of the Retaining Wall and also subcontracted with the Defendant, Redstone International, Inc. (“Redstone”), to construct the Retaining Wall. Additionally, Redstone further subcontracted with a number of other unnamed commercial entities to provide services and supplies necessary for the construction of the Retaining Wall.

Thereafter, these commercial entities all worked together in an effort to complete their respective scope of work to keep the project moving towards completion. In August 2015, J.F. Allen terminated Redstone and removed it from the project. At that time, J.F. Allen contracted with the Defendant, Coastal Drilling East, LLC (“Coastal Drilling”) to finish construction of the Retaining Wall in place of Redstone. The Retaining Wall was substantially completed for MarkWest by these aforementioned entities in the fall of 2015.

Clearly, the construction of the Retaining Wall involved numerous commercial entities who each had vested interests in various aspects of the project. The interrelationships among these entities is complex. Given the intricate nature of these commercial relationships between the parties, this action is well-suited for the West Virginia Business Court Division.

2. This matter is well-suited for the Business Court Division as this dispute involves complex and highly technical issues related to the construction of the Retaining Wall.

This matter presents complex technical issues surrounding the construction of the Retaining Wall. Additionally, a significant amount of damages has been alleged in this dispute by MarkWest. Although Amec denies that MarkWest is entitled to damages as a result of any actions or inactions on the part of Amec, the amount of damages sought by MarkWest is substantial. Currently, MarkWest is claiming over \$29,000,000.00 in total damages stemming from the design and/or construction of the Retaining Wall. MarkWest alleges that approximately \$18,000,000.00 in damages stem from delays in constructing the Retaining Wall, and alleges approximately \$7,000,000.00 in damages stem from costs to remedy purported defects with the Retaining Wall. As expected in a matter of this complexity, in an effort to support these considerable damages, MarkWest has produced hundreds of thousands of pages of discovery documents as well as relying on voluminous expert reports containing very technical opinions.

At this point in time, the parties have collectively produced millions of pages of documents related to the Retaining Wall. In addition to the massive document production herein, MarkWest has produced expert reports to the parties on December 22, 2017 (BRG Report) and December 27, 2017 (Exponent Report).¹ These expert reports produced by MarkWest contain complex scientific theories for the Retaining Wall's alleged defective design and/or construction. Although Amec disagrees with these expert reports produced herein by MarkWest, such reports are nonetheless highly technical and complex, and will require extensive effort to analyze and formulate rebuttal opinions. Along this same vein, Amec intends to inspect and test certain aspects of the Retaining

¹ MarkWest's expert reports – BRG Report and Exponent Report – are attached respectively as Exhibit B and Exhibit C to Amec's Motion to Modify the Scheduling Conference Order and Motion to Continue Trial Date which is attached to and filed along with the Judicial Motion to Refer Case to the Business Court Division.

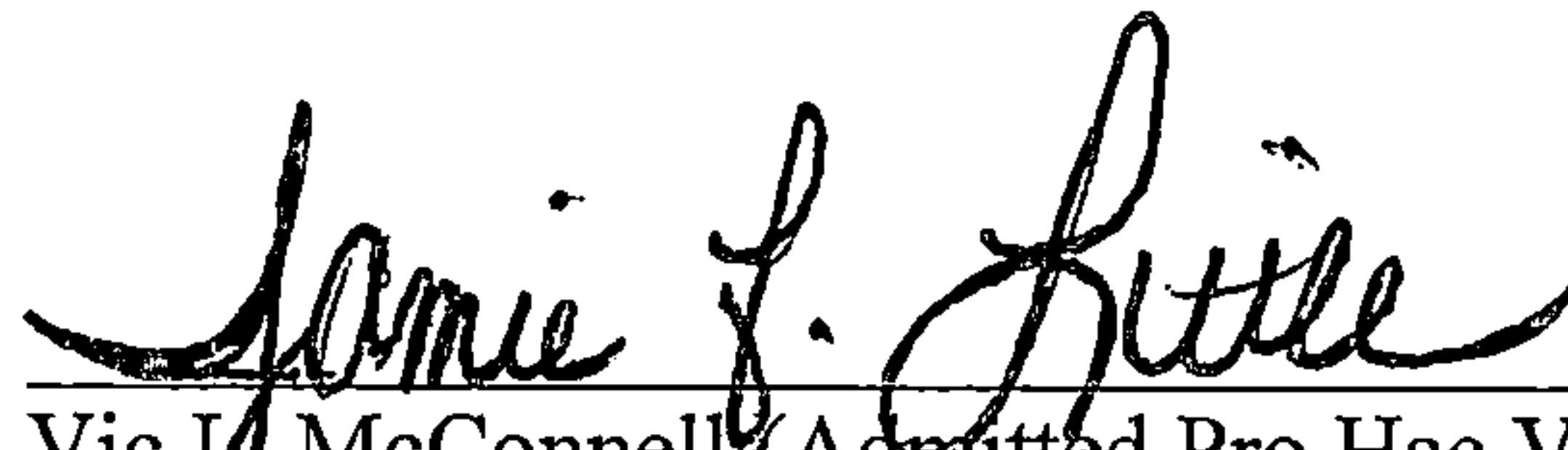
Wall pursuant to Rule 34(a) of the West Virginia Rules of Civil Procedure. Accordingly, any resultant expert reports from Amec's Rule 34(a) inspection are also expected to be highly complex and technical in nature.

Given the scientific and technical nature of the claims surrounding the alleged defective design and/or construction of the Retaining Wall, this action is well-suited for the West Virginia Business Court Division.

CONCLUSION

In conclusion, given the complicated commercial relationships between the parties, and the scientific and technical nature of the claims surrounding the alleged defective design and/or construction of the Retaining Wall, Amec respectfully supports the Judicial Motion to Refer Case to the Business Court Division previously filed herein by the Wetzel County Circuit Court pursuant to Rule 29 of the West Virginia Trial Court Rules.

Respectfully submitted,



Vic L. McConnell (Admitted Pro Hac Vice)

Jamie F. Little (WV State Bar No. 10680)

SMITH CASHION & ORR, PLC

231 Third Avenue North

Nashville, Tennessee 37201

T: (615) 742-8555

F: (615) 742-8556

vmcconnell@smithcashion.com

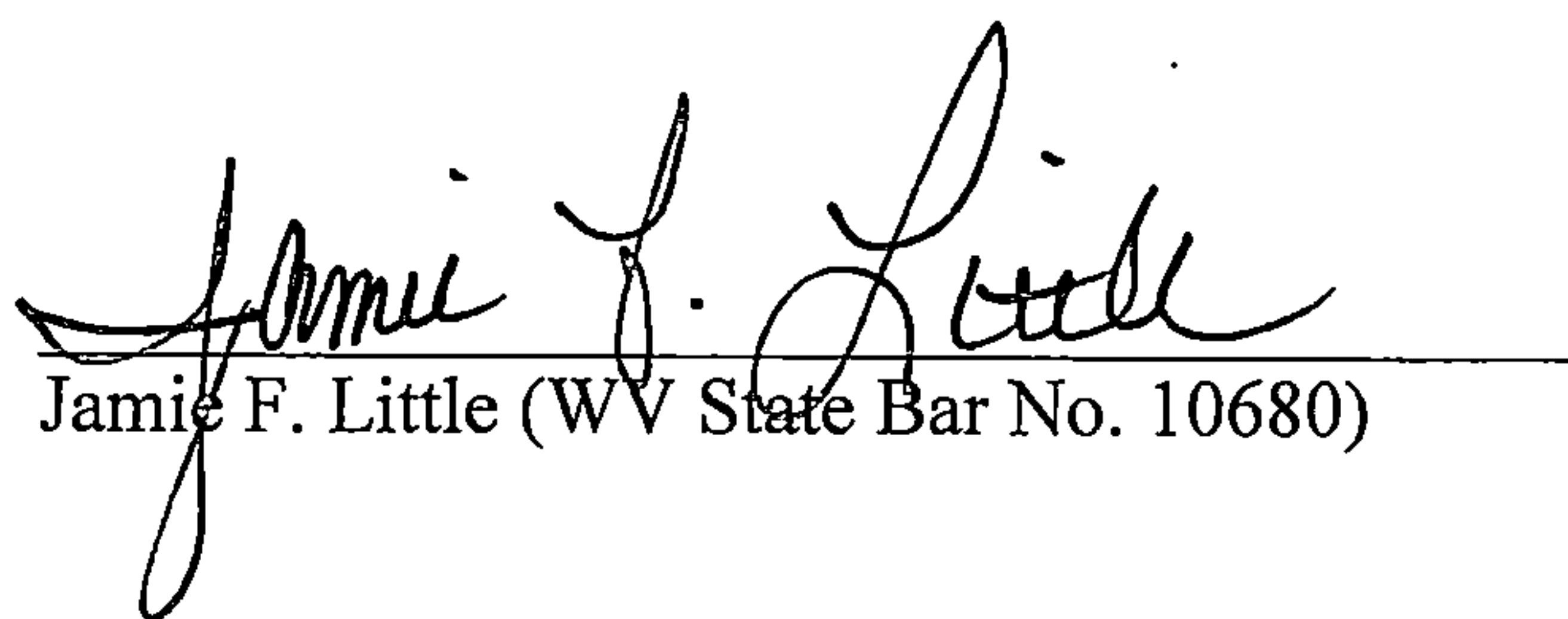
jlittle@smithcashion.com

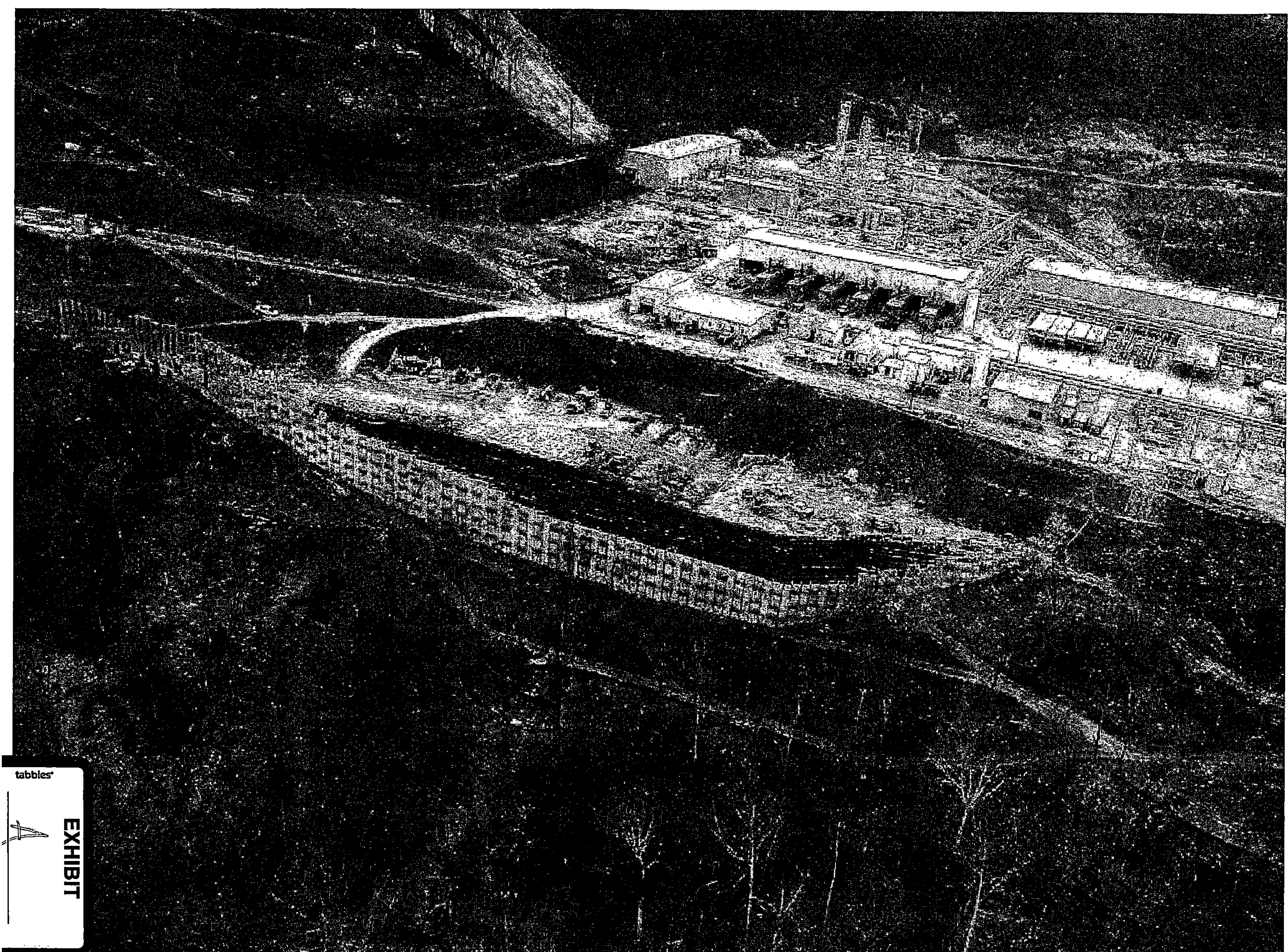
Donald J. Tennant, Jr. (WV State Bar No. 3718)
TENNANT LAW OFFICES
38 Fifteenth Street, Suite 100
Wheeling, West Virginia 26003
T: (304) 230-3200
don@tennantlaw.com

*Counsel for Defendant Amec Foster Wheeler
Environmental & Infrastructure, Inc.*

CERTIFICATE OF SERVICE

I, Jamie F. Little, do hereby certify that on this the 19th day February, 2018 I have served the foregoing "Reply Memorandum of Amec Foster Wheeler Environmental & Infrastructure, Inc. in Support of the Judicial Motion to Refer Case to the Business Court Division" with attachments by U.S. First Class Mail, postage prepaid, to Jason L. Richey, Richard F. Paciaroni, Thomas C. Ryan, Katherine M. Gafner, Travis L. Brannon, William D. Wickard, **K&L Gates LLP**, K&L Gates Center, 210 Sixth Avenue, Pittsburgh, Pennsylvania 15222; William Crichton VI, **Crichton & Crichton**, 325 9th Street, Parkersburg, West Virginia 26101; Bruce E. Stanley, Alicia Schmitt, **Stanley & Schmitt PC**, 2424 Craftmont Avenue, Pittsburgh, Pennsylvania 15205; Michael A. Jacks, **Jacks Legal Group, P.L.L.C.**, United Federal Credit Union Building, 3467 University Ave, Suite 200, Morgantown, West Virginia 26505; Douglas C. LaSota, Grant H. Hackley, **Marshall Dennehey Warner Coleman & Goggin**, 600 Grant Street, 29th Floor, Pittsburgh, Pennsylvania 15219; David L. Wyant, **Bailey & Wyant PLLC**, 1219 Chapline Street, Wheeling, West Virginia 26003; Ross A. Giorgianni, K. Bradley Mellor, Damon R. Thomas, Haig M. Sakoian, **Blumling & Gusky, LLP**, 436 Seventh Avenue, 1200 Koppers Building, Pittsburgh, Pennsylvania 15219; W. Gus Saines, **McDermott & Bonenberger, PLLC**, 53 Washington Avenue, Wheeling, West Virginia 26003, Stephen F. Gandee, **Robinson & McElwee, PLLC**, P.O. Box 128, 140 West Main Street, Suite 300, Clarksburg, West Virginia 26302-0128, Traci L. Wiley, **MacCorkle Lavender PLLC**, P.O Box 3283, 300 Summers Street, Suite 800, Charleston, West Virginia 25332-3283; the Lori J. McCoy, Wetzel County Circuit Clerk's Office, 200 Main Street, New Martinsville, West Virginia 26155; Judge Jeffrey D. Cramer, Marshall County Courthouse, 600 Seventh Street, Moundsville, West Virginia 26041, Carol A. Miller, Business Court Executive Director, Berkeley County Judicial Center, Business Court Division Central Office, Suite 2100, 380 West South Street, Martinsburg, West Virginia 25401 and Edythe Nash Gaiser, Clerk of Court, State Capitol Room E-317, 1900 Kanawha Boulevard East, Charleston, West Virginia 25305 (via Federal Express).


Jamie F. Little (WV State Bar No. 10680)

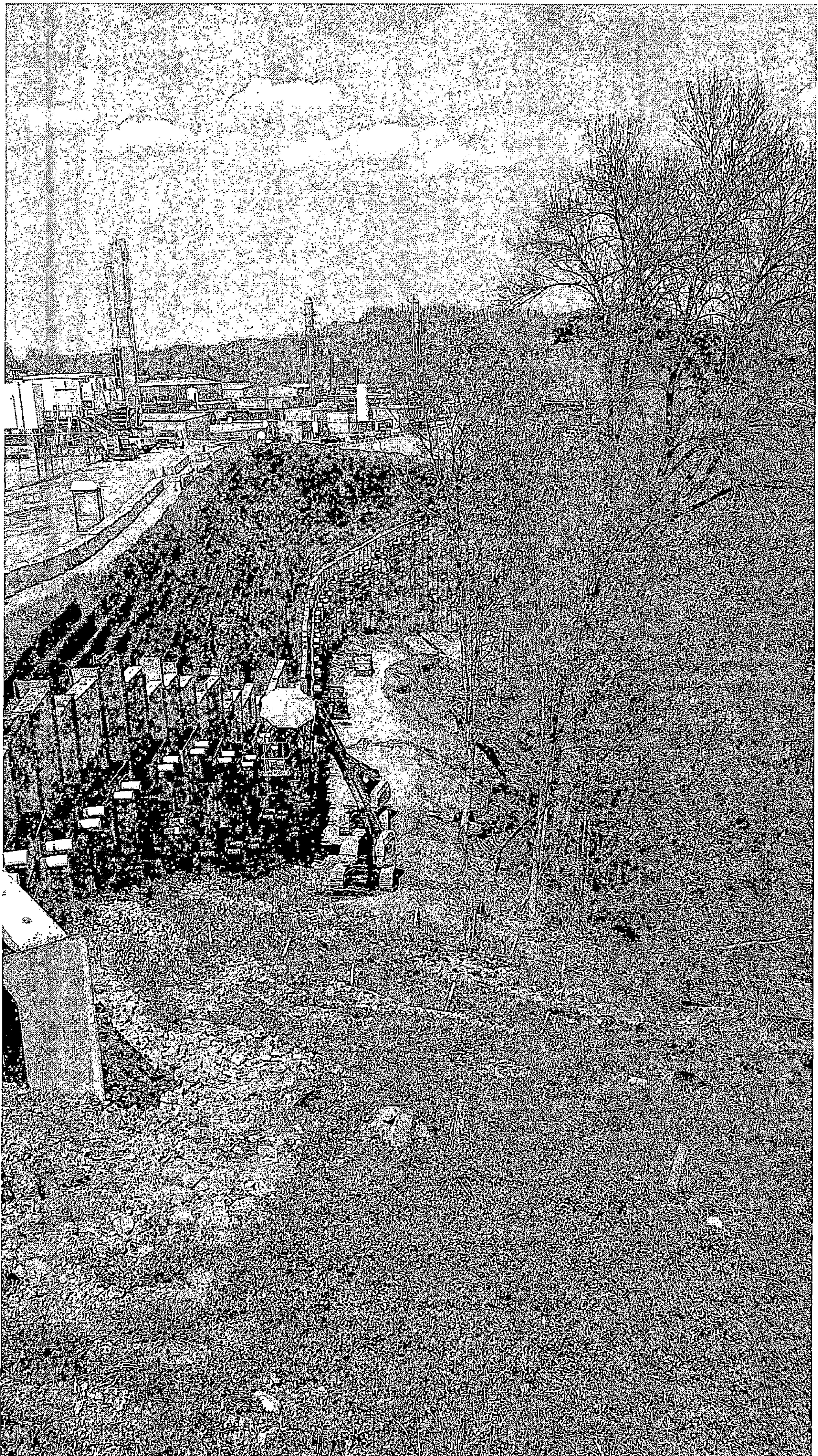


tabbles®

EXHIBIT

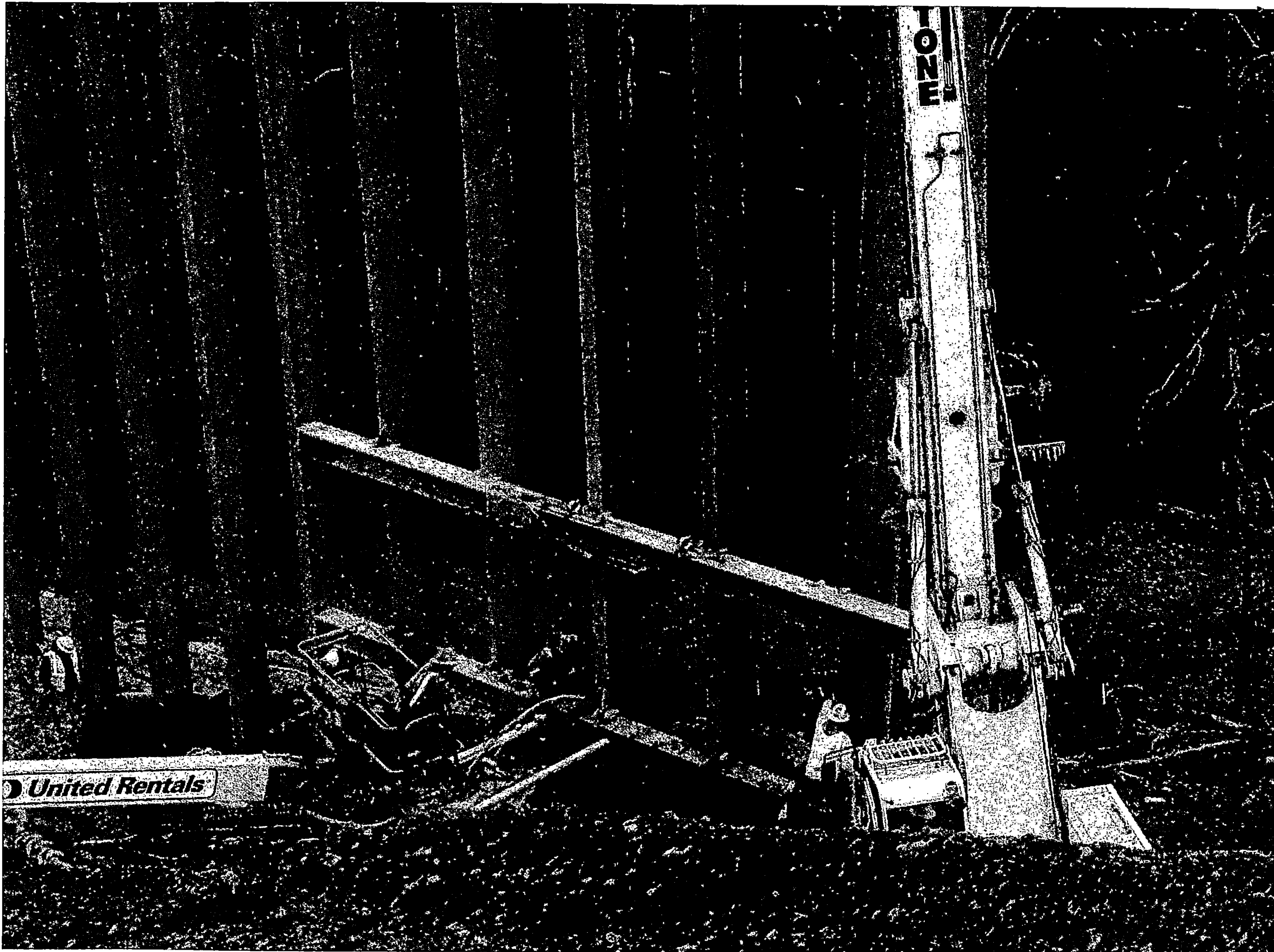
CONFIDENTIAL INFORMATION

MARKWEST_059003



CONFIDENTIAL INFORMATION

MARKWEST_054338



CONFIDENTIAL INFORMATION

MARKWEST_050550