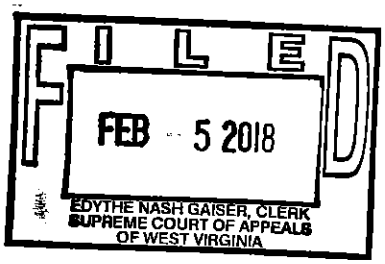
IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

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

VS. **// CIVIL ACTION NO. 16-C-82**
Judge Jeffrey D. Cramer

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

JUDICIAL MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Honorable Jeffrey D. Cramer respectfully requests the above-styled case be referred to the Business Court Division.

In regard to additional related actions:

The following related actions could be the subject of consolidation, and is now pending:

Markwest Liberty Midstream v. Bilfinger Westcon Inc. - Civil Action No. 16-C-66 – Circuit Court of West Virginia, West Virginia.

This action involves: (Please check all that apply)

X Breach of Contract;

Sale or Purchase of Commercial Entity;

Sale or Purchase of Commercial Real Estate;

Sale or Purchase of Commercial Products Covered by the Uniform Commercial Code;

Terms of a Commercial Lease;

Commercial Non-consumer debts;

Internal Affairs of a Commercial Entity;

Trade Secrets and Trademark Infringement;

Non-compete Agreements;

Intellectual Property, Securities, Technology Disputes;

Commercial Torts;

Insurance Coverage Disputes in Commercial Insurance Policies;

Professional Liability Claims in Connection with the Rendering of Professional Services to a Commercial Entity;

Anti-trust Actions between Commercial Entities;

Injunctive and Declaratory Relief Between Commercial Entities;

Liability of Shareholders, Directors, Officers, Partners, etc.;

Mergers, Consolidations, Sale of Assets, Issuance of Debt, Equity and Like Interest;

Shareholders Derivative Claims;

Commercial Bank Transactions;

Franchisees/Franchisors;

Internet, Electronic Commerce and Biotechnology

Disputes involving Commercial Entities; or

Other (Describe) _____

_____

In support of this motion, this matter contains issues significant to businesses, and presents novel and/or complex commercial or technological issues for which specialized treatment will be helpful, as more fully described here: Please see included memorandum in support.

In further support of this Motion, please find attached hereto an accurate copy of the operative complaint(s), the operative answer(s), the docket sheet, and the following other documents: Please see included Spreadsheet of Attachments to Judicial Motion to Refer to Business Court Division

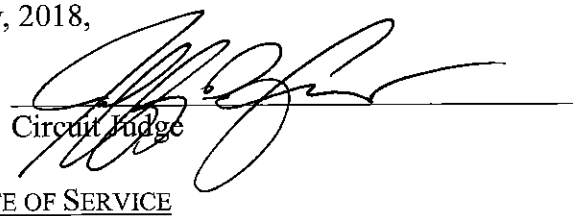
In regard to expedited review, this Court:

X DOES NOT request an expedited review under W.Va. Trial Court Rule 29.06(a)(4), and gives notice that all affected parties may file a memorandum stating their position, in accordance with W.Va. Trial Court Rule 29.

hereby REQUESTS that the Chief Justice grant this Motion to Refer without responses, pursuant to W.Va. Trial Court Rule 29.06(a)(4), and contends that the following constitutes good cause to do so:

WHEREFORE, the undersigned Judge hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

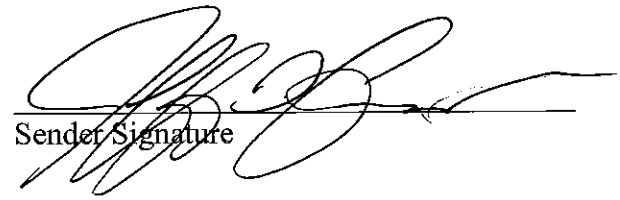
Respectfully submitted, this 2nd day of February, 2018,



Circuit Judge

CERTIFICATE OF SERVICE

I, Jeffrey D. Cramer, do hereby certify that on this 2nd day of February, 2018, I have served the foregoing "Judicial Motion to Refer Case to Business Court Division," with attachments by either hand delivery or first class mail to Jason L. Richey, Esq., Thomas C. Ryan, Esq., Travis L. Bannon, Esq., K&L Gates LLP, K&L Gates Center, 210 Sixth Avenue, Pittsburgh, PA 15222; William Crichton VI, Esq., Crichton & Crichton, 325 9th Street, Parkersburg, WV 26101; Stephen F. Gandee, Esq., Robinson & McElwee, PO Box 128, 140 West Main Street, Suite 300, Clarksburg, WV 26302-0128; Douglas C. LaSota, Esq., Grant H. Hockley, Esq., Marshall Dennehey Warner Coleman & Goggin, 600 Grant Street, Suite 2900, Pittsburgh, PA 15219; David L. Wyant, Esq., Bailey & Wyant PLLC, 1219 Chapline Street, Wheeling, WV 26003; Vic L. McConnell, Esq., Jamie F. Little, Esq., Smith & Cashion & Orr, PLLC, 231 Third Ave. North, Nashville, TN 37201; Donald J. Tennant, Jr., Esq., Tennant Law Offices, 38 Fifteenth Street, Suite 100, Wheeling, WV 26003; Bruce E. Stanley, Esq., Alicia Schmitt, Esq., Stanley & Schmitt, PC, 2424 Craftmont Ave., Pittsburgh, PA 15205; Michael A. Jacks, Esq., Jacks Legal Group, PLLC, United Federal Credit Union Building, 3467 University Ave., Suite 200, Morgantown, WV 26505; W. Gus Saines, Esq., McDermott & Bonenberger, PLLC, 53 Washington Ave., Wheeling, WV 26003; Ross A. Giorgianni, Esq., Blumling & Gusky, LLP, 436 Seventh Ave., 1220 Koppers Building, Pittsburgh, PA 15219; Lori Wetzel McCoy, Circuit Clerk, Wetzel County, West Virginia; and the Business Court Division Central Office, Berkeley County Judicial Center, 380 West South Street, Suite 2100, Martinsburg, WV 25401.



Sender Signature

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA

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

VS.

// CIVIL ACTION NO. 16-C-66
Judge Jeffrey D. Cramer

BILFINGER WESTCON, INC.,
DEFENDANT.

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

VS.

// CIVIL ACTION NO. 16-C-82
Judge Jeffrey D. Cramer

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.

MEMORANDUM IN SUPPORT OF REFERRAL TO BUSINESS COURT

The Plaintiff Markwest Liberty Midstream & Resources, L.L.C. has initiated two civil actions in the Circuit Court of Wetzel County relating to the construction of a

natural gas processing facility (hereinafter referred to as Mobley V). They are Civil Action 16-C-66 and Civil Action 16-C-82. In case 16-C-66, Markwest asserts claims of breach of contract (Count 1), negligence and gross negligence (Count 2), fraud (Count 3), negligent misrepresentation (Count 4), and specific performance for the return of construction planning materials (Count 5) against Defendant Bilfinger Westcon, Inc. Defendant Westcon asserted counterclaims for breach of contract, quantum merit and unjust enrichment, enforcement of mechanic's lien, and a request for declaratory action against Markwest. A Scheduling Conference Order was entered on March 30, 2017. Discovery has proceeded in this matter, but recently Westcon sought leave of Court to amend its counterclaims to include cardinal charge, fraud, tortious interference with contractual relations, conspiracy, constructive fraud, contribution, and indemnification against Markwest, as well as nine additional defendants. Westcon's *Motion to Amend Counterclaims of Bilfinger Westcon, Inc.* seeks leave to expand its claims against the Plaintiff Markwest, as well as assert claims against Markwest Liberty Bluestone, LLC, a subsidiary of Markwest Parent; MPLX LP, a limited partnership that acquired Markwest Parent in 2015; and Hartford Steam Boiler Inspection & Insurance Company, Team Industrial Services, Inc., Furmanite America, Inc., O'Donnell Consulting Engineers, Inc., CEMI, LLC, and Quality Integrated Services, Inc., all of which were contractors and subcontractors on the Mobley V construction. At heart of Westcon's motion is the corporate acquisition of Markwest parent and subsidiaries in 2015 by MPLX LP during the construction of Mobley V. Defendant alleges Markwest failed to inform MPLX LP shareholders and investors of the substantial additional capital expenditures Markwest had accumulated on its pending construction projects as a result of its alleged "T&M

Cap" scheme. The Court has deferred ruling on Westcon's *Motion to Amend Counterclaims of Bilfinger Westcon, Inc.* until a decision is made on its referral. This complex construction case may become even more complicated by the new claims asserted by Westcon.

The Court recently granted Westcon's *Motion to Modify Scheduling Conference Order* and vacated the May 21, 2018, trial in light of the Defendant's companion filing for leave to amend the complaint and this referral.

In case 16-C-82, Markwest alleges breach of contract (Count 1) and negligence and gross negligence (Count 2) against Defendant J.F. Allen Company; negligence against Defendant Amec Foster Wheeler Environment & Infrastructure, Inc. (Count 3), Defendant Redstone International, Inc. (Count 4), Defendant Coastal Drilling East, LLC (Count 5), and Defendant Civil & Environmental Consultants, Inc. (Count 6) All claims originate from the construction of a retaining wall at Mobley V. Counts three through six of the complaint are asserted against subcontractors hired by Defendant J.F. Allen throughout the construction of the retaining wall.

J.F. Allen filed a third-party complaint against The Lane Construction Corporation, asserted counterclaims against Markwest and cross-claims against Defendants AMEC, Redstone, and CEC. Defendant Redstone asserted claims against Defendant J.F. Allen in the District Court for the Northern District of West Virginia (5:15-cv-00113-JPB-JES). Redstone's case remains pending in the district court but has been stayed since April 2017. In addition, Redstone asserted a cross-claim against J.F. Allen in its *Answer and Affirmative Defenses to Cross-Claim and Cross-Claim Against J.F. Allen Company*. Redstone also asserted a cross-claim against Defendant CEC.

Defendant CEC asserted cross-claims against J.F. Allen, AMEC, Redstone, and Coastal. Defendant AMEC asserted a counterclaim against J.F. Allen.

A Scheduling Conference Order was entered on May 15, 2017, setting the trial for July 11, 2018. On January 30, 2018, the Court entered an Order granting *Amec's Motion to Modify Scheduling Conference Order and Motion to Continue Trial Date*. Under the Order, discovery was extended to July 6, 2018, and the July 11, 2018, Trial and June 22, 2018, Pretrial Conference were vacated.

These cases are so closely related that it would be counterintuitive not to refer both matters for consideration. Both cases involve the construction of the Mobley V natural gas processing facility. While discovery is still being developed in these matters, discovery will undoubtedly overlap as a result of the nature of the allegations made in each complaint. Due to the complex nature of these matters, the undersigned refers these matters for your honorable consideration.