

IN CIRCUIT COURT OF WETZEL COUNTY WEST VIRGINIA

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

Plaintiff,

v.

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

Defendants,

Case No. 16-02-82

Judge Cramer

FILED
2016 OCT 12 AM 9:17
CARON M. DULANEY
CIRCUIT CLERK
WETZEL COUNTY, WV

FILED BY FAX

OCT 11 2016

Balley & Wyant, P.L.L.C.

ANSWER, AFFIRMATIVE DEFENSES, CROSS-CLAIMS AND COUNTERCLAIM TO PLAINTIFF'S COMPLAINT

AND NOW, comes Defendant, J.F. Allen Company ("J.F. Allen") by and through its attorneys, Douglas C. LaSota, Esquire, Grant H. Hackley, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, David L. Wyant, Esquire, Mark A. Kepple, Esquire, and Bailey & Wyant, PLLC, and files the within Answer, Affirmative Defenses, Cross-claim and Counter-claim to Plaintiff's Complaint and avers as follows;

OVERVIEW

1. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

2. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

3. Denied as stated. It is admitted that MarkWest Contracted with MarkWest Liberty Midstream & Resources, LLC. ("MarkWest"), for the design and construction of a retaining wall at its Mobley facility located in Wetzel County, West Virginia ("Project"). It is denied that the Project was specified to have a life expectancy of 75-100 years. It is further denied that the Project was to be back-filled with dirt. To the contrary, MarkWest was to provide J.F. Allen with specified engineered rock fill ("Rock Fill") for placement on the Project. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and the averments contained in this Paragraph are denied to the extent that they are inconsistent therewith.

4. Denied as stated. It is admitted that J.F. Allen's construction of the Project was to be coordinated by MarkWest with its contractor, Lane Construction Corporation ("Lane"), whose scope of work included, but was not limited to the bulk excavation, material sizing, stockpiling and moisture control of the Rock Fill.

5. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith. By way of further response, the averments of this Paragraph of Plaintiff's Complaint are denied as stated. It is admitted that J.F. Allen entered into a lump sum agreement to design and build the Project for MarkWest (MarkWest Contract"). (See Plaintiff's Exhibit "A".)

6. The averments contained within this Paragraph and its subparts constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

7. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

PARTIES

8. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

9. It is admitted that J.F. Allen is a West Virginia Corporation with a principal place of business located at U.S. Route 33, West Red Rock Road, Buckhannon, West Virginia 26201. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

10. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

11. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

12. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

13. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

JURISDICTION AND VENUE

14. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

15. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

16. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

FACTUAL BACKGROUND

A. The Parties' Contractual Relationship

a. J.F. Allen

17. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

18. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

19. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

20. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

b. Amec

21. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

22. Denied as stated. It is denied that the MarkWest Contract or the J.F. Allen-Amec Subcontract specified the Project to have a life expectancy of 75-100 years. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

23. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

24. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

c. Redstone

25. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

26. The averments contained in this Paragraph are admitted.

27. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

28. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

29. The averments contained in this Paragraph are admitted.

d. CEC

30. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

31. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

32. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

33. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

34. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

e. Coastal

35. The averments in this paragraph are admitted.

36. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

37. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied.

B. J.F. Allen's Delay Had a Negative Impact on MarkWest's Other Prime Contractors Involved In the Mobley Site Expansion.

38. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that J.F. Allen's performance on the Project delayed the construction of the Mobley V Processing Plant ("Mobley V Project") in any way.

39. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that Lane was not required to stockpile Rock Fill materials on the Project. By way of further response, Lane repeatedly failed to provide Rock Fill material within the specifications required by the Project. Lane also failed to supply sufficient quantities of Rock Fill material which resulted in delays to the Project. Lane's failures resulted in J.F. Allen having to double handle the Rock Fill and to construct the Project in an inefficient hopscotch fashion.

40. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that J.F. Allen's performance on the Project delayed the construction of the Mobley V Project in any way.

41. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations

contained in this Paragraph are denied. It is specifically denied that J.F. Allen's performance on the Project delayed the construction of the Mobley V Project in any way.

42. The averments contained within this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that J.F. Allen's performance on the Project delayed the construction of the Mobley V Project in any way.

C. MarkWest Had Lost Revenues Due to the Delay in Putting the Mobley V Plant in Operation

43. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

44. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. It is specifically denied that the Project impacted the construction schedule of the Mobley V Project.

45. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial.

46. The averments contained in this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that J.F. Allen's performance on the Project delayed the construction of the Mobley V Project in any way.

D. J.F. Allen Designed and Built a Defective Retaining Wall

47. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

48. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

49. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

50. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

51. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

52. The averments contained in this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. By way of further response, the averments contained in this Paragraph reference a written document which speaks for itself and the averments contained in this Paragraph are denied to the extent that they are inconsistent therewith.

53. The averments contained in this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. By way of further response, J.F. Allen has worked tirelessly to complete the Project and obtain Project acceptance from MarkWest, and which MarkWest has unreasonably refused to do so despite having beneficial use of the Project since June of 2015.

54. The averments contained in this Paragraph are admitted in part and denied in part. It is admitted that MarkWest sent a letter dated October 16, 2016. J.F. Allen specifically denies that the allegations in the letter are accurate and strict proof is demanded at trial.

55. The averments contained in this Paragraph are denied as stated. It is admitted that anchors failed on the Project due in no way to fault on behalf of J.F. Allen. The remaining averments in this paragraph are denied. By way of further response, all failed anchors have been repaired and/or had their load transferred to other structural elements through the installation of walers on the Project H-Piles.

56. The averments contained in this Paragraph are denied as stated. By way of further response, it is admitted that anchors failed over the weekend of February 13, 2016, and have been repaired. The remainder of the averments in this Paragraph are legal conclusions to which no response is required. To the extent a response is required, the averments are denied and strict proof is demanded at trial.

57. The averments contained in this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that the as-built Project does not achieve the amended performance specifications required under the MarkWest Contract.

58. The averments contained in this Paragraph constitute legal conclusions to which no response is required. To the extent that a response may be required, the allegations contained in this Paragraph are denied. It is specifically denied that the as-built Project does not achieve the amended performance specifications required under the MarkWest Contract.

E. J.F. Failed to Supply and Install Contractually Required Wall Monitoring Instrumentation

59. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

60. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are

denied. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the MarkWest Contractual requirements.

61. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the J.F. Allen contractual requirements. Additionally, J.F. Allen retained Thrasher Engineering to begin wall monitoring on August 11, 2015 through November 2015. No movement of the Project was detected by Thrasher Engineering during this time period.

62. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the J.F. Allen contractual requirements.

63. After reasonable investigation, this Defendant is without knowledge, information or belief as to the truth or falsity of the averments contained in this Paragraph and, therefore, specifically deny same and demand strict proof at trial. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the J.F. Allen contractual requirements.

64. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the J.F. Allen contractual requirements. By way of further response, it is denied that the MarkWest Contract required J.F. Allen to provide any Project monitoring services.

F. J.F. Allen's Failure to Discharge Subcontractor/Supplier Liens

65. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

66. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen actively and aggressively pursued discharge of liens against the Project, despite having made payment to Redstone International, Inc. ("Redstone"), for the labor and/or materials the lien claimants purported to have provided.

67. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen actively and aggressively pursued discharge of liens against the Project, despite having made payment to Redstone International, Inc. ("Redstone"), for the labor and/or materials the lien claimants purported to have provided.

68. The averments contained within this Paragraph are denied as stated. By way of further response, J.F. Allen actively and aggressively pursued discharge of liens against the Project, despite having made payment to Redstone, for the labor and/or materials the lien claimants purported to have provided.

69. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen actively and aggressively pursued discharge of liens against the Project, despite having made payment to Redstone, for the labor and/or materials the lien claimants purported to have provided.

70. The averments in this paragraph are admitted.

71. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen actively and aggressively pursued discharge of liens against the Project, despite having made payment to Redstone, for the labor and/or materials the lien claimants purported to have provided.

72. The averments in this paragraph are denied in part and admitted in part. It is admitted that a MarkWest, J.F. Allen and Redstone entered into a Lien and Vendor Agreement. J.F. Allen played a significant role in drafting and facilitating this agreement. It is further admitted that MarkWest and J.F. Allen issued joint checks to numerous Redstone vendors. The remainder of the averments in this paragraph are denied.

G. Meeting of Certain Parties

73. The averments in this Paragraph are admitted. By way of further response, J.F. Allen has worked tirelessly to complete the Project and obtain Project acceptance from MarkWest, which has been unreasonably withheld despite MarkWest having beneficial use of the Project since September 2105.

74. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied.

**COUNT I – BREACH OF CONTRACT
MARKWEST V. J.F. ALLEN**

75. This is a paragraph of incorporation to which no response is required.

76. The averments contained in this Paragraph reference a written document which speaks for itself and are therefore denied to the extent that they are inconsistent therewith.

77. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen incorporates by reference its Counterclaims against MarkWest.

78. The averments contained within this Paragraph and all of its subparts are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied.

79. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied.

WHEREFORE, Defendant J.F. Allen requests that Count I of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

**COUNT II – NEGLIGENCE/GROSS NEGLIGENCE
MARKWEST V. J.F. ALLEN**

80. This is a paragraph of incorporation to which no response is required.

81. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. It is specifically denied that any special relationship existed between MarkWest and J.F. Allen other than that of owner and design/build contractor.

82. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. It is specifically denied that any special relationship existed between MarkWest and J.F. Allen other than that of owner and design/build contractor.

83. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. By way of further response, J.F. Allen stood ready, willing and able to install the Project monitoring as required under the MarkWest Contract. Without amending the MarkWest Contract, MarkWest wrongfully pursued its own Project monitoring program which greatly exceeded the J.F. Allen contractual requirements.

84. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied. It is specifically denied that the as-built Project involved extreme risk or posed any risk to the health, safety or welfare to others.

85. The averments contained within this Paragraph are conclusions of law to which no response is required; however, to the extent a response is deemed necessary, said averments are denied.

WHEREFORE, Defendant J.F. Allen requests that Count II of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

**COUNT III – NEGLIGENCE
MARKWEST V. REDSTONE**

86. This is a paragraph of incorporation to which no response is required.

87. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

88. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

89. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded. By way of further response, it is admitted that Redstone negligently performed duties relating to the Project that required repairs to be made by J.F. Allen.

90. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

WHEREFORE, Defendant J.F. Allen requests that Count III of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

**COUNT IV – NEGLIGENCE
MARKWEST V. AMEC**

91. This is a paragraph of incorporation to which no response is required.

92. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

93. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

94. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded. By way of further response, it is admitted that AMEC negligently performed duties relating to the Project that required repairs to be made by J.F. Allen.

95. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

WHEREFORE, Defendant J.F. Allen requests that Count IV of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

**COUNT V – NEGLIGENCE
MARKWEST V. COASTAL**

96. This is a paragraph of incorporation to which no response is required.

97. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

98. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

99. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

100. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

WHEREFORE, Defendant J.F. Allen requests that Count V of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

**COUNT VI – BREACH OF CONTRACT
MARKWEST V. CEC**

101. This is a paragraph of incorporation to which no response is required.

102. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

103. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

104. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

105. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

106. The averments contained within this Paragraph are directed to a different Defendant and therefore no response is required from J.F. Allen. To the extent a response is required, all averments as to J.F. Allen are denied and strict proof is demanded.

107. This defendant denies each and every other allegation asserted in the Complaint against it and demands strict proof thereof.

WHEREFORE, Defendant J.F. Allen requests that Count VI of the Plaintiff's Complaint be dismissed in its entirety and costs awarded.

AFFIRMATIVE DEFENSES

1. MarkWest's failure to coordinate the multiple prime contractors and the subcontractors to the prime contractors was the direct cause of the Project delay.

2. Accordingly, MarkWest's delay claim is barred in whole or in part due to its own actions.

3. Additionally, any third party delay claims associated with the construction of the Mobley V Project were not attributable to the completion of the Project, but rather, were due to the concurrent delays associated with the Mobley V Project and, are thus not compensable.

4. To the extent MarkWest was delayed by the Project, which is denied, the delay to the Project was caused by unforeseen conditions.

5. To the extent MarkWest was delayed by the Project, which is denied, the delay to the Project was caused by MarkWest's failure to timely respond to J.F. Allen's request for information.

6. To the extent MarkWest was delayed by the Project, which is denied, the delay was caused by MarkWest's changes to the Project design and location which increased the scope of the Project.

7. To the extent MarkWest was delayed by the Project, which is denied, the delay was caused by MarkWest's failure to coordinate its multiple prime contractors on both the Project and Mobley V Project.

8. To the extent MarkWest was delayed by the Project, which is denied, the delay was caused by MarkWest's failure to coordinate the design of the Mobley V Project with the design of the Project.

9. MarkWest has failed to state a claim upon which relief can be granted.

10. All or part of MarkWest's claims are barred as a result of MarkWest's failure to fulfill its obligations to J.F. Allen pursuant to the terms of the MarkWest Contract in connection with the Project.

11. Upon information and belief, all or part of MarkWest's claims are barred by MarkWest's prior breach of the MarkWest Contract.

12. The sole remedy for any claim for consequential damages asserted by MarkWest is an equitable extension in the time for J.F. Allen to perform its work on the project.

13. MarkWest's claims are barred by the applicable statute of limitations.

14. All or part of MarkWest's claims are barred due to the lack of consideration.

15. All or part of MarkWest's claims are barred due to the failure of consideration.

16. All or part of MarkWest's claims are barred by the doctrine of unclean hands.

17. All or part of MarkWest's claims are barred by the doctrine of estoppel.

18. All or part of MarkWest's claims are barred by the doctrine of waiver.

19. All or part of MarkWest's claims are barred by the doctrine of accord.

20. All or part of MarkWest's claims are barred by the doctrine of satisfaction.

21. All or part of MarkWest's claims are barred by the doctrine of release.

22. All or part of MarkWest's claims are barred by the doctrine of mistake.

23. All or part of MarkWest's claims arise out of MarkWest's own acts or omissions and all or part of MarkWest's claims are therefore barred.

24. All or part of MarkWest's claims are barred as a result of MarkWest's failure to give proper notice.

25. All or part of MarkWest's claims are barred by the express language of the MarkWest Contract.

26. All or part of MarkWest's claims are barred by virtue of MarkWest's failure to mitigate damages if any.

WHEREFORE, Defendant J.F. Allen requests that Plaintiff's Complaint be dismissed in its entirety and costs awarded.

COUNTERCLAIM

NOW comes Defendant J.F. Allen Company, by undersigned counsel, and as a counter-claim against MarkWest states as follows:

27. The Answers and Affirmative Defenses above, to Plaintiff's Complaint, are hereby incorporated by reference as though fully set forth herein.

I. Breach of Contract

a. Contract Balances

28. Pursuant to the MarkWest Contract, MarkWest was obligated to compensate J.F. Allen in the amount of \$12,350,000 for its work on the Project.

29. J.F. Allen performed various additional work scope on the Project for which MarkWest agreed to compensate J.F. Allen an adjusted contract amount of \$13,144,505.90.

30. To date, MarkWest has compensated J.F. Allen \$11,421,425.44, leaving an amount due to J.F. Allen of \$1,723,080.46. Despite demand, MarkWest has failed and/or refused to pay J.F. Allen this amount.

31. MarkWest's failure to issue payment for the remaining unpaid adjusted contract amount in the amount of \$1,723,080.46 constitutes a material breach of the MarkWest Contract.

32. J.F. Allen has performed any and all necessary conditions precedent which would entitle it to payment under the Contract with MarkWest, including performing all agreed to work in a good and workmanlike fashion, as well as making proper application for payment of the same.

WHEREFORE, J.F. Allen respectfully requests judgment in its favor and against MarkWest in an amount in excess of \$75,000, together with interest, cost of suit and any and all other relief to which it is entitled.

b. Unforeseen Conditions

33. In the original Project design calculation, Amec made a design assumption that the Rock Fill to be supplied by MarkWest through its contractor, Lane, would have a density of 125 pounds per cubic foot (pcf).

34. This design assumption was approved by MarkWest and its geotechnical engineer, CEC.

35. After the commencement of construction, the Rock Fill as supplied by MarkWest, with quality control by CEC, was determined to have an actual density of 145 pcf.

36. MarkWest violated Article 6.0 of the MarkWest Contract. This section, titled "Right to Perform Other Work" states:

Company reserves the right to perform other work and to let other contracts in connection with the Scope of Work. Contractor shall afford Company, and other contractors, reasonable opportunity for the introduction and storage of their materials and the execution or results upon work of Company, or another contractor. Contractor shall inspect such work and promptly report to Company any defects in such work that render it unsuitable for such proper execution and result. Contractor's failure to so inspect and report such defects prior to Contractor's commencement of the affected portion of the Scope of Work shall constitute an acceptance of Company's and other contractor's work as fit and proper for the execution of the Scope of Work, except as to defects which may develop in Company's or other contractor's work after execution of the Scope of Work. To

ensure proper execution of subsequent Work, Contractor shall examine work already in place and shall at once report to Company any discrepancy between the executed work and the drawings and specifications.

37. J.F. Allen and Amec gave notice of this unforeseen condition to MarkWest and CEC. This unforeseen condition increased the force that the wall would have to resist by 17% and resulted in a reduced calculated Global Factor of Safety.

38. Both Amec and J.F. Allen repeatedly requested direction from MarkWest and CEC as to how to address the unforeseen condition of the increased fill density either through a wall design change or importing less dense fill from offsite.

39. MarkWest and CEC directed J.F. Allen to continue to place the Rock Fill in accordance with the original Amec design with the full knowledge that the denser fill would reduce the Global Factor of Safety of the Project.

40. Both MarkWest and CEC accepted the lower performance specifications rather than incur additional costs associated with either a Project redesign or the importation of less dense fill.

41. Upon substantial completion of the fill placement behind the soldier pile wall, MarkWest and CEC, despite their earlier approval, refused to accept the lowered factor of safety caused by this unforeseen condition.

42. Despite completion of the Project, MarkWest has now directed J.F. Allen to engineer and install any and all measures to address the lower factor of safety caused by the unforeseen condition of the increased Rock Fill density, without compensation.

43. MarkWest's refusal to accept the agreed upon lower Global Factor of Safety constitutes a breach of the MarkWest Contract.

44. As a direct and proximate result of MarkWest's breach of the MarkWest Contract, J.F. Allen will be caused to incur additional costs and expenses associated with modifications to the wall design and construction in order to address this unforeseen condition.

WHEREFORE, J.F. Allen respectfully requests judgment in its favor and against MarkWest in an amount in excess of \$75,000, together with interest, cost of suit and any and all other relief to which it is entitled.

c. Delays

45. Pursuant to the MarkWest Contract the Project was to be completed by March 31, 2015.

46. The MarkWest Contract included a provision declaring "time is of the essence" for which J.F. Allen had an original start date of September 5, 2014.

47. J.F. Allen diligently and professionally performed its work in an attempt to achieve project completion by the March 31, 2015 deadline established by the MarkWest Contract.

48. However, despite J.F. Allen's best efforts to maintain the Project schedule, it was continually hindered by the actions and/or inactions of MarkWest.

49. MarkWest chose to retain a separate contractor, Lane, to provide the engineered Rock Fill for the Project.

50. The Rock Fill was to be sized, stockpiled, protected from moisture and supplied to J.F. Allen as needed to maintain the Project schedule.

51. Despite this critical path activity, entirely within the control of MarkWest, it failed to coordinate Lane's supply of Rock Fill that met the specified requirements for sizing and moisture, resulting in delays and inefficiencies in J.F. Allen's production resulting in further schedule slip.

52. Specifically, J.F. Allen had to frequently spread stockpiled Rock Fill to attempt to dry out the material before placement.

53. J.F. Allen also had to hand pick rocks out of the Rock Fill due to sizing that exceeded specification.

54. J.F. Allen also encountered organics in the Rock Fill after it had been placed and required removal.

55. During periods of Rock Fill placement, J.F. Allen was required to cease Rock Fill placement due to a lack of Rock Fill available from Lane.

56. MarkWest further delayed the Project by failing to coordinate access to the haul road that was frequently monopolized by Lane's equipment which prevented J.F. Allen from accessing the bench upon which the wall was constructed.

57. Additionally, MarkWest failed to coordinate its other contractors employed to construct the Mobley V Project resulting in J.F. Allen's repeated loss of its lay down area, causing double handling of equipment and material.

58. MarkWest also delayed the Project by requesting design changes, including a change in the outfall of large storm water drains which required a work stoppage in an effort to redesign the anchor locations that would have impacted the storm water piping.

59. Additionally, MarkWest did not timely respond to J.F. Allen's request for change orders and request for information. These delays prohibited J.F. Allen from proceeding on the Project in a timely manner.

60. Specifically, MarkWest required wall location changes and expansion of the Project scope, which were not received until September of 2015, that changed the alignment of the south slope of the Project and added additional piles, anchors, lagging and walers.

61. The Project was further delayed due to unforeseen subsurface conditions that required additional excavation and increased Project scope.

62. Finally MarkWest chose to pursue the Project work to occur during winter conditions.

63. Winter conditions that were not within J.F. Allen's control resulted in numerous Project shutdowns.

64. In the face of these delays, outside of J.F. Allen's control, J.F. Allen issued updated schedules in a good faith attempt to complete the Project on time despite delays.

65. Despite the delays caused by MarkWest, J.F. Allen continued to work on the Project and made every attempt to mitigate any schedule impacts and costs associated with delays including accelerating its work through the use of overtime, and increasing its manpower loading by supplementing with its own forces as well as outside subcontractors.

66. As a direct and proximate result of the MarkWest induced delays to the Project, J.F. Allen sustained significant damages including but not limited to:

- a. Extended quality assurance/quality control costs;
- b. Delays in the completion of the Project resulting in J.F. Allen incurring extended home office overhead, extended general conditions, construction and inefficiencies and expenses, adverse weather delays inefficiencies, down time and costs associated with the acceleration to repair and replace Redstone's work;
- c. Additional construction and labor costs; and
- d. Extended rental equipment.

67. MarkWest's failure to compensate J.F. Allen and/or extend the Project completion date constitutes a material breach of the MarkWest Contract.

WHEREFORE, J.F. Allen respectfully requests judgment in its favor and against MarkWest in an amount in excess of \$75,000, together with interest, cost of suit and any and all other relief to which it is entitled.

CROSS-CLAIMS

I. AMEC

NOW comes Defendant J.F. Allen Company, by undersigned counsel, and as a cross-claim against AMEC Wheeler PLC states as follows:

68. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

69. For purposes of these Cross-Claims only, J.F. Allen incorporates by reference the allegations in MarkWest's Complaint. In making such reference, J.F. Allen makes no admission as to the truth of any of the allegations contained in the MarkWest Complaint.

70. Pursuant to the terms of the Amec-Design Subcontract, Amec was responsible for the design of the Project and the engineer of record.

71. The Amec-Design Subcontract required Amec to provide the following deliverables:

- Design Memorandum, summarizing the calculations of the permanent ground Anchor system sealed by a professional engineer registered in the state of West Virginia;
- Plan drawing of the retaining wall system;
- Profile view of the proposed retaining wall system;
- Cross-sections through the wall alignment, at no less than 200 foot intervals; and,
- Up to three (3) drawing sheets illustrating soldier piles, precast concrete panels, Anchors, tie-rods & walers as well as RSS wall construction details; and,
- Construction and material specifications, including:

- Earthwork
- Wall construction items (soldier piles, anchors, tie-rods, structural steel, precast panels, Anchor testing, RSS wall components, etc.)
- Installation and monitoring, including action levels for each parameter measured.

72. Additionally, Amec-Design Subcontract required Amec to provide the following as-built information:

- Drawing depicting rock Anchor locations and elevations;
- Drawing depicting locations and elevations of rock anchor connections to the soldier pile;
- Drawing depicting soldier pile locations;
- Drawing depicting surface drain and outlet locations;
- Drawing depicting topography at toe of wall and 50 foot horizontally downhill after the wall work bench is established;
- Drawing depicting topography at toe of wall and 50 foot horizontally downhill post-construction; and,
- Drawing depicting GEO grid elevations through the RSS wall.

73. The Amec-Monitoring Subcontract required Amec to monitor and test fill placement, monitoring installation and testing of grout and daily reporting of Project construction for conformance with Project plans and specifications.

74. To the extent MarkWest meets its burden of proof in establishing that the Amec-Design of the Project was deficient, as alleged, such deficiency would constitute a breach of the Amec-Design Subcontract.

75. Accordingly, any damages sustained by MarkWest as a result of the alleged Amec-Design deficiencies or Amec-Monitoring deficiencies would be the sole responsibility of Amec as they were allegedly incurred due to design deficiencies or monitoring deficiencies that would constitute a breach of the Amec-Design Subcontract and/or Amec-Monitoring Subcontract.

76. Additionally, J.F. Allen has incurred significant costs associated with repairing and/or replacing AMEC's work on the Project including, but not limited to the following:

- a. Repair/replacement of failed Anchors;
- b. Removal and replacement of walers that deformed upon full loading;
- c. Modification of soldier piles to achieve minimum bearing on lagging;
- d. Removal and replacement of dislodged lagging;
- e. Surveying associated with Project monitoring;
- f. Extended quality assurance/quality control costs;
- g. Delays in the completion of the Project resulting in J.F. Allen incurring extended home office overhead, extended general conditions, construction and inefficiencies and expenses, adverse weather delays inefficiencies, down time and costs associated with the acceleration to repair and replace Redstone's work;
- h. Additional labor and material costs incurred by work self-performed by J.F. Allen and/or its subcontractors;
- i. Extended rental equipment costs; and,
- j. Additional labor and material costs arising from excavation of compacted fill and geotextile materials to uncover failed anchors.

77. Accordingly, any damages sustained by J.F. Allen as a result of the alleged Amec-Design deficiencies or monitoring deficiencies would be the sole responsibility of Amec as they were allegedly incurred due to design deficiencies or that would constitute a breach of the Amec-Design Subcontract and/or the Amec-Monitoring Subcontract.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully

requests that Judgment be entered on its Cross-Claims against Defendant Amec Foster Wheeler Environment & Infrastructure, Inc.

II. REDSTONE

NOW comes Defendant J.F. Allen Company, by undersigned counsel, and as a cross claim against Redstone states as follows:

78. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

79. Redstone was obligated to perform its scope of work pursuant to the terms and conditions of the Redstone Subcontract and failed to do so.

80. The Redstone Subcontract required Redstone to construct the soldier pile wall ("Wall") portion of the Project pursuant to the design prepared by Amec and failed to do so.

DESIGN MODIFICATION

81. During the performance of its work on the Project, Redstone unilaterally contacted Amec to initiate proposed design modifications to the wall including the following:

- a. Relocated the wall
- b. Modified the specification that Wall lagging bear on 2 ¼ inch soldier pile webbing to a minimum of one inch bearing on soldier pile webbing so as to avoid additional construction costs associated with utilizing an overhead crane to vertically place the lagging between soldier piles;
- c. Installation of Anchors horizontally into the wall as opposed to a negative slope installation so as to minimize construction costs associated with the drilling and extension of the tieback Anchors; and,
- d. Pull testing of grouted anchors at the face of the wall as opposed to the face of the slope, as specified, so as to minimize construction costs.

e. Modification of waler design to accommodate revised testing procedure.

82. All of the above design modifications were requested by Redstone directly and approved by Amec.

83. Accordingly, any damages sustained by MarkWest as a result of the alleged design modifications would be the sole responsibility of Redstone as they were allegedly incurred due to design modifications that would constitute negligence on behalf of Redstone.

DIFFERING SITE CONDITIONS

84. Pursuant to the terms of the Redstone Subcontract, Redstone was obligated to perform an independent investigation of the Project so as to fully inform itself as to the existing geology of the site of the Project.

85. Pursuant to the terms of the Redstone Subcontract, Redstone was required to give notice as to any differing site condition it allegedly encountered during the performance of its work on the Project.

86. Article 4.02(A) of the General Conditions incorporated by the Redstone Subcontract ("General Conditions") states:

Subcontractor shall promptly, and before the conditions are disturbed, give a written notice to Design/Builder of (i) subsurface or latent physical conditions at the Site which differ materially from those indicated in the Subcontract Documents, or (ii) unknown physical conditions at the Site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inherent in work of the character called for by the Subcontract Documents.

87. Redstone failed to provide notice to J.F. Allen as to the alleged differing site conditions as required under the Redstone Subcontract.

88. In fact, Redstone never advised J.F. Allen that it encountered ground water in the drilling and grouting of the Anchors for the wall until the Anchors failed during the final inspection and pull test.

89. This failure of notice includes Redstone's reporting that the installed Anchors achieved 75 percent of design strength before backfilling operations were performed by J.F. Allen.

90. Moreover, the Anchors that failed due to the alleged differing site conditions were reported by Redstone as achieving at, a minimum, of 75 percent of design strength at installation, before backfilling, but failed at final inspection at forces well below 75 percent design strength.

91. Article 4.02(C) of the General Conditions states:

No request by Subcontractor for an equitable adjustment under this Paragraph 4.02 shall be allowed unless Subcontractor has given the written notice required; provided that the time prescribed in Paragraph 9.03.A for giving written notice may be extended by Design/Builder.

92. Accordingly, any damages sustained by MarkWest as a result of differing site conditions would be the sole responsibility of Redstone as they were allegedly incurred due to differing site conditions that would constitute negligence on behalf of Redstone.

MECHANICS' LIENS

93. Numerous Mechanics' liens have been filed against the Project by suppliers of labor and materials to Redstone.

94. The Redstone Subcontract authorizes J.F. Allen to reduce or withhold payment when claims and liens have been filed against the project on account of Redstone's work.

95. Articles 13.03(B)(5)&(6) of the General Conditions state:

B. Reduction in or Refusal to Make Payment: Design/Builder may refuse to make the whole or any part of any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such previous payment made, to such extent as may be necessary in

Design/Builder's opinion to protect Design/Builder from loss because:

5. Claims have been made against Design/Builder on account of Subcontractor's performance or furnishing of the Work;
or

6. Liens have been filed in connection with the Work, except where Subcontractor has delivered a specific Bond satisfactory to Design/Builder to secure the satisfaction and discharge of such Liens.

96. These liens against the project constitute claims against J.F. Allen on account of Redstone's performance or furnishing of the work.

97. Redstone has not delivered a specific Bond satisfactory to J.F. Allen to secure the satisfaction and discharge of the liens against the project on account of Redstone's work.

98. As such J.F. Allen has the right to reduce or withhold payment pursuant to the terms of the Redstone Subcontract and also as a matter of law.

99. Accordingly, any damages sustained by MarkWest as a result of Mechanics' Liens would be the sole responsibility of Redstone as they were allegedly incurred due to negligence and/or breaches of contract on behalf of Redstone.

100. Due to J.F. Allen's obligations to MarkWest under the MarkWest Contract, J.F. Allen has paid or caused to be paid from its earned contract balances the amount of \$2,616,035.42, directly to Redstone's suppliers, subcontractors and/or vendors ("Lien Claimants") in order to satisfy liens placed on the Project or potential liens.

101. The payments to the Lien Claimants represents double payment on behalf of Redstone, as Redstone had previously invoiced J.F. Allen and was paid by J.F. Allen for the labor and materials.

CONSTRUCTION DEFECTS

102. Redstone negligently performed work on the Project and the resulting extra square footage on the wall is defective and requires correction or replacement.

103. The Redstone Subcontract authorizes J.F. Allen to reduce or withhold payment for unit work which requires repair or replacement.

104. Article 13.03(B) of the General Conditions states:

B. Reduction in or Refusal to Make Payment: Design/Builder may refuse to make the whole or any part of any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such previous payment made, to such extent as may be necessary in Design/Builder's opinion to protect Design/Builder from loss because:

1. The Work is defective, or completed Work has been damaged requiring correction or replacement;

105. In addition to the above stated construction defects, the wall design, at soldier pile #50, specified a directional change in the installation requiring a specific weld detail, the full length of this intersection.

106. Redstone failed to install the wall as specified in the detail at soldier pile #50, which will necessitate replacement of this installation.

107. Upon information and belief, this field modification at soldier pile #50 was performed without approval from either Amec and/or Mark West.

108. Upon information and belief, Redstone dislodged the lagging while performing the testing of the Anchors at design strength at the wall face, as opposed to the specified slope face, which resulted in structurally compromising the waler installation and creating an unintended force on the soldier piles, possibly resulting in a temporary displacement of the soldier piles and the dislodging of panels. To remedy this, Redstone, without the approval of J.F. Allen or Amec, welded a rebar stiffener to the top of the Soldier Piles to limit the vertical movement of the Soldier

Piles during testing. These stiffeners were subsequently directed by Amec to be removed at J.F. Allen's expense.

109. Additionally, upon information and belief, Redstone's testing of the Anchors at the wall face caused structural deformation of the walers necessitating uncoupling of the Anchors, at the wall interface, reinforcing/stiffening of the walers, reinstallation of the walers, recoupling of the Anchors and, retesting of the pull out strength of the Anchors.

110. All of the above-referenced additional work to correct the defects and omissions by Redstone was performed at the expense of J.F. Allen, with said expenses continuing at present and into the foreseeable future in order to complete the Project.

111. Accordingly, any damages sustained by MarkWest as a result of defective construction would be the sole responsibility of Redstone as they were allegedly incurred due to defective construction that would constitute negligence on behalf of Redstone.

A. BREACH OF REDSTONE SUBCONTRACT

112. On or about September 10, 2014, Redstone and J.F. Allen entered into the Redstone Subcontract in which Redstone agreed to install the wall on the project in accordance with the Amec-Design.

113. The Redstone Subcontract specifically requires that Redstone perform its work in compliance with the Design/Builders Schedule ("J.F. Allen") and that time is of the essence as to all project milestones.

114. Article 2.04 of the General Conditions provides:

A. Subcontractor's Review of Subcontract Documents: Before undertaking each part of the Work, Subcontractor shall carefully study and compare the Subcontract Documents and check and verify pertinent figures therein and all applicable field measurements. Subcontractor shall promptly report in writing to the Design/Builder any conflict, error, ambiguity or discrepancy which Subcontractor may discover or reasonably should have discovered and shall obtain a written interpretation or clarification from

Design/Builder before proceeding with any Work affected thereby; however, Subcontractor shall not be liable to the Design/Builder for failure to report any conflict, error, ambiguity or discrepancy in the Subcontract Documents, unless Subcontractor knew thereof.

B. Preliminary Schedule: Within ten days after the commencement of Subcontract Times (unless otherwise specified in the Subcontract Documents), Subcontractor shall submit to Design/Builder for its timely review:

1. A preliminary progress schedule indicating the times (number of days or dates) for starting and completing the various stages of the Work, including each Milestone specified in the Subcontract Documents and shall be consistent with Design/Builder's progress schedule;
2. A preliminary schedule of Submittals which will list each required Submittal and the times for submitting, reviewing and processing each such Submittal;
3. A preliminary Schedule of Value for all of the Work which included quantities and prices of items which, when added together, equal the Subcontract Price and subdivides the Work into component parts in sufficient detail to service as the basis for progress payments during performance of the Work. Such prices will include a pro rata amount of overhead and profit applicable to each item of Work; and
4. A preliminary cash flow projection estimating that portion of the Subcontract Price to be due during each month of performance.

115. Article 2.06 of the General Conditions provides:

A. Unless otherwise provided in the Subcontract Documents, at least ten days before submission of the first Application for Payment, Design/Builder will arrange a conference to be attended by Subcontractor and others as appropriate to review for acceptability the schedules submitted in accordance with Paragraph 2.04.B. Subcontractor shall have an additional ten days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Subcontractor until acceptable schedules are submitted to Design/Builder.

1. Subcontractor's progress schedule will be acceptable to Design/Builder if it provides an orderly progression of the Work to completion within any specified Milestones and the Subcontract Times and conforms to Design/Builder's progress schedule.

2. Subcontractor's schedule of Shop Drawings and Sample submittals will be acceptable to Design/Builder if it provides a workable arrangement for reviewing and processing the required Submittals.
3. Subcontractor's Schedule of Values will be acceptable to Design/Builder as to form and substance if it provides a reasonable allocation of the Subcontract Price to components of the Work.

116. Redstone failed to submit a preliminary schedule to J.F. Allen; it also failed to perform its work in accordance with the J.F. Allen schedule: It failed to achieve Milestone Goals and was the direct cause in delaying the completion of the Project.

117. The Redstone induced delays to the Project constituted a breach of the Redstone Subcontract.

118. In performance of its work on the Project, Redstone encountered groundwater in the drilling and grouting of the Anchors for the wall until the Anchors failed during the final inspection and pull test. Despite encountering groundwater in the installation of Anchors, Redstone reported achieving 75 percent of design strength before backfilling operations were performed by J.F. Allen.

119. The Anchors that were installed in the presence of groundwater were reported to have achieved a minimum of 75 percent of design strength at installation, before backfilling, but failed at final inspection at forces well below 75 percent of design strength.

120. During the performance of its work on the Project, Redstone unilaterally contacted Amec to initiate proposed design modifications to the wall including the following:

Modified the specification that Wall lagging bear on 2 ¼ inch soldier pile webbing to a minimum of one inch bearing on soldier pile webbing so as to avoid additional construction costs associated with utilizing an overhead crane to vertically place the lagging between soldier piles;

Installation of Anchors horizontally into the wall as opposed to a negative slope installation so as to minimize construction costs associated with the drilling of the Anchors; and,

Pull testing of grouted anchors at the face of the wall as opposed to the face of the slope, as specified, so as to minimize construction costs.

121. All of the above design modifications were requested by Redstone directly with Amec without input or approval by J.F. Allen.

122. As a direct and proximate result of the Redstone initiated design modifications and defective performance of its work, Anchors failed at the face of the wall, Anchors failed with the fill zone, and Anchors pulled out of the bond zone.

123. Additionally, the Redstone installed lagging failed to meet minimal support requirements with the soldier piles.

124. Redstone failed to install the wall as specified in the detail at soldier pile #50, necessitating removal and replacement of this installation.

125. Upon information and belief, this field modification at soldier pile #50 was performed without approval from either Amec and/or J.F. Allen.

126. Upon information and belief, Redstone dislodged the lagging while performing the testing of the Anchors at design strength at the wall face, as opposed to the specified slope face, which resulted in structurally compromising the waler installation and creating an unintended force on the soldier piles, possibility resulting in a temporary displacement of the soldier piles.

127. Additionally, upon information and belief, Redstone's testing of the Anchors at the wall face caused structural deformation of the walers necessitating uncoupling of the Anchors, at the wall interface, reinforcing/stiffening of the walers, reinstallation of the walers, recoupling of the Anchors and, retesting of the pull out strength of the Anchors.

128. All of the above-referenced additional work to correct the design defects and omissions by Redstone was performed at the expense of J.F. Allen, with said expenses continuing at present and into the foreseeable future in order to complete the Project.

129. The failure of Redstone to perform its work in conformance with the Redstone Subcontract requirements, its failure to repair and or replace defective construction, and its failure to pay the Lien Claimants constitute breaches of the Redstone Subcontract.

130. Due to Redstone's failure to perform its work in accordance with the Project schedule, its failure to perform its work in accordance with the Amec-Design, and its failure to pay the Lien Claimants, J.F. Allen terminated the Redstone Subcontract for cause, pursuant to article 14.02(B)(2) of the Redstone Subcontract with provides:

A. The occurrence of any one or more of the following events will justify the rights and remedies of Design/Builder under this Paragraph 14.02:

1. Subcontractor's failure to perform the Work in accordance with the Subcontract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment, failure to adhere to the progress schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04 or failure to make payment to its employees, Subsubcontractors, or Suppliers);
2. Subcontractor's disregard of Laws or Regulations of any public body having jurisdiction; or
3. Subcontractor's violation in any substantial way of any provisions of the Subcontract Documents.

B. If one or more of the events identified in Paragraph 14.02.A occur, Design/Builder may, after giving Subcontractor (and the surety, if any) seven days' written notice:

2. Terminate the services of Subcontractor, exclude Subcontractor from the Site, and take possession of the Work and of all Subcontractor's tools, appliances, construction equipment and machinery at the Site, and use the same to the full extent they could be used by Subcontractor (without liability to Subcontractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the Site or for which Design/Builder has paid Subcontractor but which are stored elsewhere, and finish the Work as Design/Builder may deem expedient. In such case, Subcontractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Subcontract Price exceeds all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys and other professionals and all court or arbitration or other dispute resolution

costs) sustained by Design/Builder arising out of or relating to completing the Work, such excess will be paid to Subcontractor. If such claims, costs, losses and damages exceed such unpaid balance, Subcontractor shall pay the difference to Design/Builder. Such claims, costs, losses and damages incurred by Design/Builder will be incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Design/Builder shall not be required to obtain the lowest price for the Work performed.

131. All of J.F. Allen's damages are the direct and proximate cause of Redstone's material breaches of the Redstone Subcontract.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant Redstone.

B. BREACH OF WARRANTY

132. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

133. Pursuant to Article 6.18 of the General Conditions, Redstone provided a warranty and guarantee as follows:

A. Subcontractor warrants and guarantees to the Design/Builder that all Work will be in accordance with the Subcontract Documents and will not be defective.

134. Redstone has breached its warranty by failing to perform its work in conformance with the Amec design generally and in the following particulars:

- a. Installation of lagging with insufficient bearing on the soldier piles;
- b. Installation and grouting of Anchors in the presence of ground water;
- c. Failing to protect Anchors in the fill and zone;
- d. Failing to perform Anchor pull tests at the face of the slope;
- e. Damaging walers when performing pull tests at the face of the wall;

- f. Failing to properly install the Project at soldier pile #50;
- g. Failing to coat all welds on the Project, and; failing to complete its work on the Project as provided for under the Redstone Subcontract;
- h. Failing to repair lagging that was cracked during installation and handling; and
- i. Failing to complete its work on the project as provided for under the Redstone Subcontract.
- j. Failing to pay its Lien Claimants for labor and/or material supplied to the Project.

135. As a result of Redstone breaches of its warranty as provided for in the Redstone Subcontract, J.F. Allen has incurred damages, which include, but are not limited to, the following:

- a. Repair/replacement of failed Anchors;
- b. Removal and replacement of walers that deformed upon full loading;
- c. Modification of soldier piles to achieve minimum bearing on lagging;
- d. Removal and replacement of dislodged lagging;
- e. Surveying associated with Project monitoring;
- f. Extended quality assurance/quality control costs;
- g. Delays in the completion of the Project resulting in J.F. Allen incurring extended home office overhead, extended general conditions, construction and inefficiencies and expenses, adverse weather delays inefficiencies, down time and costs associated with the acceleration to repair and replace Redstone's work;
- h. Extended rental equipment;
- i. Additional labor and material costs arising from excavation of compacted fill and geotextile materials to uncover failed anchors;

- j. Additional testing of failed anchors and anchors uncoupled during water repairs;
- k. Repair of concrete lagging panels cracked during handling and installation;
- l. Additional engineering analysis on failed anchors and design work for corrective actions; and
- m. Double payment for the labor and/or materials provided by the Lien Claimants.

136. Despite demand, Redstone failed and/or refused to comply with its warranty obligations as provided for under the Redstone Subcontract.

137. All of J.F. Allen's damages are the direct and proximate result of Redstone's breach of its warranty as provided for in the Redstone Subcontract.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant Redstone.

C. INDEMNITY

138. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

139. Pursuant to Article 6.19 of the General Conditions, Redstone agreed to indemnify J.F. Allen as follows:

A. To the fullest extent permitted by Laws and Regulations, Subcontractor shall indemnify and hold harmless Owner, Owner's Consultants, Design/Builder, Design/Builder's Consultants and the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them from and against all claims, costs, losses and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) to the extent caused by Subcontractor's performance of the Work, provided that any such claim, cost, loss or damage is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any

negligent act or omission of Subcontractor, or any Subsubcontractor, Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work.

B. In any and all claims against Owner, Design/Builder, Design/Builder's Consultants or any of their respective consultants, agents, officers, directors, members, partners, or employees by any employee (or the survivor or personal representative of such employee) of Subcontractor, any Subsubcontractor, any Supplier, any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.19.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Subcontractor or any such Subsubcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts or other employee benefit acts.

B (*sic*). The indemnification obligations of Subcontractor under Paragraph 6.19.A shall not extend to the liability of Design/Builder's Consultant or to the officers, directors, members, partners, employees, agents, and other consultants and subcontractors of each and any of them arising out of:

1. The preparation or approval of or the failure to prepare or approve, maps, drawings, opinions, reports, surveys, designs, or specifications; or
2. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

140. Redstone negligently performed its work on the Project by failing to properly install lagging and Anchors resulting in alleged damage to the entire Project including, but not limited to, the building pad at the top of the slope for which the wall provides support.

141. Redstone owes indemnity to J.F. Allen for claims raised by the Lien Claimants.

142. Despite demand, Redstone has failed and/or refused to correct its incomplete and defectively installed work and pay the Lien Claimants.

143. Redstone's failure to indemnify J.F. Allen constitutes a material breach of the Redstone Subcontract.

144. As a direct and proximate result of Redstone's failure to indemnify J.F. Allen, J.F. Allen has been damaged as more fully set forth above including attorney fees.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant Redstone.

D. TORTIOUS INTERFERENCE WITH CONTRACTUAL RELATIONSHIPS

145. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

146. Prior to the performance of this project, J.F. Allen enjoyed advantageous contractual and business relations with MarkWest, the owner of the Project.

147. In an effort to harm J.F. Allen, Redstone intentionally interfered with those relationships by wrongfully disparaging J.F. Allen's abilities, workmanship and management during the performance of its work on the Project.

148. Throughout the Project, MarkWest personnel indicated to J.F. Allen that Redstone was defaming J.F. Allen and misrepresenting the quality of its work and progress in maintaining Project schedule.

149. MarkWest's Project Manager Tyler Adams specifically informed Greg Hadjis, President of J.F. Allen, that Redstone was contacting Tyler Adams and making disparaging remarks regarding J.F. Allen's quality of work and progress in maintaining Project schedule.

150. While on a conference call with representatives from Amec, MarkWest and J.F. Allen on June 18, 2015, Jeff Waggett, Chief Operating Officer of Redstone, accused J.F. Allen of poor workmanship including, but not limited to, the fill being placed by J.F. Allen as failing to meet Project specifications. These comments were meant to harm J.F. Allen's relationships with Amec and MarkWest.

151. Upon information and belief, Jeff Waggett, Chief Operating Officer of Redstone had independent discussions with Dan Rowlands, senior project manager for MarkWest, in which Mr. Waggett disparaged J.F. Allen's work and progress in maintaining the Project schedule.

152. Redstone, of its own accord, hired an expert to create a report alleging that the Project was structurally unsound. Redstone proceeded to send this report directly to MarkWest which MarkWest cited in their letter of default to J.F. Allen. The purpose of Redstone's report was to disparage J.F. Allen and negatively impact their relationship with MarkWest.

153. As a result of Redstone's tortious interference, J.F. Allen has seen its relationships damaged with MarkWest and had its reputation as a quality Design/Builder with MarkWest severely harmed.

154. Redstone committed these acts of tortious interference intentionally and with the sole intention of harming J.F. Allen's relationship with MarkWest.

155. As a result of Redstone's acts, J.F. Allen has suffered damages including, but not limited to, money damages for lost opportunity costs and harm to its reputation as a commercial business and a Design/Builder.

156. Additionally, J.F. Allen is entitled to prejudgment interest on these damages as well as an award of punitive damages for Redstone's intentional tortious conduct, and any and all other relief to which the court decides J.F. Allen is entitled.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant Redstone.

E. PROFESSIONAL NEGLIGENCE

157. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

158. Redstone employed a Professional Engineer, Jeff Waggett, at the job site on the Project.

159. Upon information and belief, Jeff Waggett, acting on behalf of Redstone, collaborated with AMEC on the original design and modifications of the design for the Project.

160. Redstone's inputs on the design include, but are not limited to, the request for a 1" bearing width, wall alignment changes and the modification of anchor testing from the slope face to the wall face.

161. Redstone had a duty to perform its professional engineering responsibilities in a manner commensurate with acceptable professional standard of care.

162. Redstone's design changes resulted in numerous design deficiencies that have delayed the project and required extensive repairs and constitutes a breach of its standard of care it owed to J.F. Allen, who reasonably relied upon Redstone's design.

163. By way of example and not limitation, the adequacy of a 1" bearing width has been specifically called into question as a design deficiency by the Project owner.

164. As a result of Redstone's design changes, J.F. Allen has incurred damages, which include, but are not limited to, the following:

- a. Repair/replacement of failed Anchors;
- b. Removal, replacement and redesign of walers that deformed upon testing of anchors at wall face, as requested by Redstone;
- c. Modification of soldier piles to achieve minimum bearing on lagging;
- d. Removal and replacement of dislodged lagging;
- e. Surveying associated with Project monitoring;
- f. Extended quality assurance/quality control costs;

- g. Delays in the completion of the Project resulting in J.F. Allen incurring extended home office overhead, extended general conditions, construction and inefficiencies and expenses, adverse weather delays inefficiencies, down time and costs associated with the acceleration to repair and replace Redstone's work;
- h. Extended rental equipment;
- i. Additional labor and material costs arising from excavation of compacted fill and geotextile materials to uncover failed anchors;
- j. Additional testing of failed anchors and anchors uncoupled during water repairs;
- k. Repair of concrete lagging panels cracked during handling and installation; and
- l. Additional engineering analysis on failed anchors and design work for corrective actions.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant Redstone.

III. CEC

165. The Answers and Affirmative Defenses above to Plaintiff's Complaint are hereby incorporated by reference as though fully set forth herein.

166. Upon information and belief, CEC was responsible for construction quality assurance oversight of the Project.

167. CEC had a duty to perform its professional engineering responsibilities in a manner commensurate with acceptable professional standard of care.

168. CEC allowed design changes which included, but were not limited to, the request for a 1" bearing width, wall alignment changes and the modification of anchor testing from the slope face to the wall face.

169. These design changes resulted in numerous design deficiencies that have delayed the project and required extensive repairs.

170. By way of example and not limitation, the adequacy of a 1" bearing width has been specifically called into question as a design deficiency by the Project owner.

171. CEC did not directly communicate approved design changes to J.F. Allen.

172. CEC failed to ensure that the construction of the Project complied with the design.

173. CEC also failed to ensure that Redstone performed all anchor testing in accordance with the design requirements.

174. CEC failed to ensure that Lane's provision of Rock Fill complied with the Project Specifications.

175. Furthermore, in building the Project J.F. Allen relied upon the Geotechnical reports submitted by CEC.

176. These reports were inaccurate, including differing site conditions such as:

- a. A rock formation with flowing groundwater which washed away grout;
- b. Rock Fill that was 17% heavier than indicated in the original design calculations; and
- c. Colluvium at depths differing from the geotechnical report.

177. CEC's directive that J.F. Allen proceed with fill placement, with CEC's full knowledge of the impact of the unforeseen condition of the increased fill density on the Global

Factor of Safety of the Project and agreement to accept a reduced Global Factor of Safety, was a misrepresentation and a breach of the standard of care CEC owed to J.F. Allen.

178. As a result of CEC failures to comply with the applicable professional standards of care, J.F. Allen has incurred damages which include, but are not limited to, the following:

- a. Repair/replacement of failed Anchors;
- b. Removal, replacement and redesign of walers that deformed upon testing of anchors at wall face, as requested by Redstone;
- c. Modification of soldier piles to achieve minimum bearing on lagging;
- d. Removal and replacement of dislodged lagging;
- e. Surveying associated with Project monitoring;
- f. Extended quality assurance/quality control costs;
- g. Delays in the completion of the Project resulting in J.F. Allen incurring extended home office overhead, extended general conditions, construction and inefficiencies and expenses, adverse weather delays inefficiencies, down time and costs associated with the acceleration to repair and replace Redstone's work;
- h. Extended rental equipment;
- i. Additional labor and material costs arising from excavation of compacted fill and geotextile materials to uncover failed anchors;
- j. Additional testing of failed anchors and anchors uncoupled during waler repairs;
- k. Repair of concrete lagging panels cracked during handling and installation;
- l. Additional engineering analysis on failed anchors and design work for corrective actions; and

m. Other additional labor costs.

179. Accordingly, any damages sustained by MarkWest and/or J.F. Allen as a result of the alleged Quality Control or Monitoring deficiencies would be the sole responsibility of CEC as they were allegedly incurred due to Quality Control deficiencies or monitoring deficiencies that would constitute a professional negligence on behalf of CEC.

WHEREFORE, J.F. Allen Company respectfully requests that judgment be entered in its favor and against the Plaintiff with costs sustained. Additionally, J.F. Allen Company respectfully requests that Judgment be entered on its Cross-Claims against Defendant CEC.

Respectfully Submitted,

BAILEY & WYANT, PLLC

BY: David L. Wyant
David L. Wyant, Esquire
Mark A. Kepple, Esquire
Attorneys for J.F. Allen Company

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IN CIRCUIT COURT OF WETZEL COUNTY WEST VIRGINIA

FILED
2016 OCT 12 AM 9:17
SHARON H. BOLANNEY
CIRCUIT CLERK
WETZEL COUNTY, WV

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

Plaintiff,

v.

Case No. 16-C-82
Judge Cramer

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

Defendants,

CERTIFICATE OF SERVICE

Service of the foregoing **DEFENDANT J.F. ALLEN COMPANY, INC.'S ANSWER**

TO COMPLAINT was had upon the following by mailing a true and correct copy thereof by

United States mail, postage prepaid, this 11th day of October, 2016:

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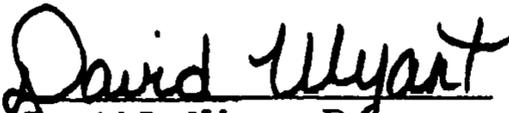
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