

IN THE CIRCUIT COURT OF WETZEL COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

MARKWEST LIBERTY MIDSTREAM
& RESOURCES, LLC

Plaintiff/Counterclaim Defendant

v.

Civil Action No.: 16-C-66
The Hon. H. Charles Carl, III

BILFINGER WESTCON, INC.,

Defendant/Counter-claim Plaintiff/
Third-Party Plaintiff

v.

MARKWEST LIBERTY BLUESTONE, LLC, *et al.*
Third-Party Defendants.

AMENDED STIPULATED PROTECTIVE ORDER REGARDING
CONFIDENTIAL AND PRIVILEGED INFORMATION

Because discovery in this case involves the disclosure of confidential, proprietary, and business information that should otherwise remain confidential and the private property of the parties, and it further appearing that this stipulated protective order is jointly consented to, justified and supported by good cause, and pursuant to the applicable West Virginia Rules of Civil Procedure and law, the Court hereby enters the following ORDER, amending and replacing the Stipulated Protective Order Regarding Confidential and Privileged Information ordered by the Court on January 12, 2017:

1. Definitions:

a. "Document" means all written or graphic matter, however produced or reproduced, and all objects and tangible things, including pleadings, documents, electronically stored data, exhibits, answers to interrogatories, responses to requests for admissions, and deposition transcriptions;

b. "Confidential Information" means information and Documents the disclosure of which would result in the disclosure of trade secrets and/or confidential proprietary, business or commercial information, the disclosure of which to others will likely injure the legitimate business interests of the party or entity producing the information.

c. "Producing Party" means any person or entity who produces or provides Confidential Information for use in this Action or who identifies Confidential Information provided by others for use in this Action.

d. The "Parties" means, collectively, the "Producing Party" and any "Receiving Party" under this Order.

e. This "Action" means this Action in the Circuit Court of Wetzel County, West Virginia, Business Court Division, Civil No. 16-C-66.

f. The "Other Actions," collectively, means the following actions involving certain parties to this Action (and "Other Action," individually, may refer to any of the following actions individually):

- In the Court of Common Pleas of Butler County, Pennsylvania: *Markwest Liberty Bluestone, L.L.C. v. Bilfinger Westcon, Inc. and SNC-Lavalin America, Inc.*, Docket No 16-10409; *Bilfinger Westcon, Inc. v. Markwest Liberty Bluestone, LLC, and SNC-Lavalin America, Inc.*, Docket No. 16-10657; *Bilfinger Westcon, Inc. v. Edward L. Vogel, Margaret J. Vogel, and Markwest Liberty Bluestone, L.L.C.*, Docket No. 16-10658; and *Bilfinger Westcon, Inc. v. Markwest Liberty Bluestone, L.L.C., Edward L. Vogel, and Margaret J. Vogel*, Docket No. 16-10659

• In the Court of Common Pleas of Harrison County, Ohio: *Bilfinger Westcon Inc. v. MarkWest Utica EMG, L.L.C., et al*, CV-G-2017-0131; *Bilfinger Westcon Inc. v. MarkWest Ohio Fractionation Company, L.L.C., et al*, CV-G-2017-0132.

2. Documents produced in this Action are intended for and are solely to be used in this Action and in the Other Actions. The following paragraphs set forth additional restrictions on the use and disclosure of Confidential Information and Privileged Information produced or used in this Action.

3. Notwithstanding any other provision in this Order, Documents produced by The Hartford Steam Boiler Inspection and Insurance Company, TEAM Industrial Services, Inc., Furmanite America, Inc., O'Donnell Consulting Engineers, Inc., CEMI, LLC or Quality Integrated Services, Inc. may not be used in any of the Other Actions without the express consent of the Producing Party.

4. Nothing produced or used in this Action shall be regarded as Confidential Information if it is information that is in the public domain at the time of disclosure, as evidenced by a written document.

5. Any Document or other thing which is properly designated as containing Confidential Information and is produced in this Action shall be governed by the Order.

6. Any Document or other thing produced as part of discovery in this Action may be designated by the Producing Party as containing "Confidential Information" in accordance with the terms of this Order.

7. Any documents designated as "Confidential" by any party under the prior January 12, 2017 Stipulated Protective Order shall be treated for all purposes as if they were designated

"Confidential" under and pursuant to this Amended Stipulated Protective Order and shall be given all protections afforded under this Amended Stipulated Protective Order.

8. The following procedures shall be followed if Confidential Information is discussed or disclosed in a deposition:

a. The Producing Party shall have the right to exclude from attendance at the deposition, during such time as the Confidential Information is to be discussed or disclosed, any person other than the deponent the court reporter, any videographer, and any other persons authorized to receive the Confidential Information under the terms of this Order, which may include a representative of each party authorized to see Confidential Information as contemplated herein;

b. The Confidential Information shall be designated as Confidential Information at the request of counsel for the Producing Party;

c. If a request under subparagraph (b) is made on the record during the deposition, the reporter shall indicate on the cover page of the transcript that the transcript contains Confidential Information;

d. Alternatively, a request under subparagraph (b) may be made in writing within thirty (30) days after the requesting counsel receives a copy of the transcript of the deposition. The transcript shall be considered presumptively designated Confidential until the expiration of this period of time.

9. Documents or things marked or otherwise identified as "Confidential," or copies or extracts therefrom and the information therein, may be given, shown, made available to, or communicated only to (i) any named party in this Action, including its present or former directors, officers, employees, outside or in-house auditors, and insurers; (ii) any other person or

entity to whom/which any party is statutorily obligated to produce Confidential Information; (iii) counsel for any party in this Action and attorneys, paralegals, and secretarial clerical, and other support personnel employed by such counsel's firm when operating under such counsel's supervision and control; (iv) any person identified as an author, recipient, and/or employed or retained by the Producing Party of the material; (v) such persons as are engaged by a party or counsel to act as testifying or consulting experts; (vi) witnesses (including their attorneys) during the course of or, to the extent necessary, in preparation for, depositions or testimony in this Action; (vii) the Court and Court personnel, any jury, certified court reporters, and to the extent necessary to prosecute any appeals in this Action, the judges and court personnel of any appellate court; and (viii) mediators in this Action.

10. Each person permitted to have access to Confidential Information shall (except for counsel and their employees, representatives of the parties with responsibility for administration or management of this case or decisions relating thereto, and any person identified as an author, recipient, and/or employed or retained by the Producing Party of the material), prior to being afforded such access, be shown this Order and shall sign an agreement in the form attached hereto as Exhibit A stating that he or she has read and understands its terms and shall abide by them. A file shall be maintained by the attorneys of record of all written agreements signed by persons to whom such documents have been given.

11. Additional persons or entities that have become or will become parties to this Action shall not have access to Confidential Information produced by or obtained from any Producing Party until the newly joined parties or their counsel endorse a copy of Exhibit A and file it with the Court.

12. This Order shall not govern a party's use of its own Confidential Information.

13. This Order shall not preclude the parties from exercising any rights or raising any objections otherwise available to them under the rules of discovery and evidence.

14. Any person in possession of Confidential Information shall exercise reasonable and appropriate care with regard to the storage, custody, or use of such Confidential Information in order to ensure that the confidential nature of the information is maintained.

15. This Order does not preclude the offer of or admission into evidence of Documents or other items designated "Confidential." Issues associated with the status of the confidentiality designations under those circumstances shall be addressed by the parties and the Court at that time. Offering the Confidential Information into evidence will not change the designation of the Document or other information as "Confidential," unless the Court affirmatively determines otherwise by Order.

16. In the event any pleading or other paper disclosing Confidential Information, whether in the form of interrogatory answers, document production in response to requests for production of documents or subpoenas, responses to requests for admission, deposition notices or transcripts, trial testimony and excerpts thereof motions, affidavits, briefs, memoranda, or other documents, is filed with the Circuit Court Clerk and/or provided to the Court, it shall be filed and/or provided under seal. All such filings and/or submissions will remain under seal, unless the Court subsequently orders otherwise.

17. Counsel for the Producing Party shall designate Confidential Information by affixing on each page thereof a stamp or label marked "Confidential" or some substantially similar legend. The Producing Party shall make such designations prior to making copies of Documents or other items available to opposing counsel. In the event that a Document or other item is not susceptible to marking as "Confidential", a Producing Party shall take sufficient steps

to notify any recipient of the confidential nature of the item. Absent a specific order by this Court or stipulation of the parties, such information, once designated as such, shall be used by the parties solely in connection with litigation on going between the parties, and not for any business, competitive, or governmental purpose or function, and such information shall not be disclosed to anyone except as provided herein. This shall not be construed as a waiver regarding any objection regarding admissibility. By designating a Document or other item as "Confidential," the producing entity represents that it has made a good faith determination that the document or information does, in fact include Confidential Information.

18. Pursuant to the Parties' agreement, Documents and information produced in this Action may be used in any of the Other Actions, subject to compliance with evidentiary rules and protective orders that are applicable in the Other Actions. A Receiving Party that received Confidential Information in this Action may not use or disclose such Confidential Information in the Other Action, unless and until an appropriate protective order has been entered in that Other Action and the Receiving Party, and any party to which the Receiving Party transmits the Confidential Information in the Other Action, are subject to the terms of the protective order in the Other Action.

19. Designation of Documents or other items as Confidential, or the receipt of Documents or other items so designated, shall not be considered as determinative of whether the contents of the Documents or other items specified are entitled to be deemed as such. Documents produced without objection in the Other Actions as Confidential Information shall be presumed accepted as Confidential Information in this Action, subject to this Paragraph and Paragraph 17 hereto. Given the variances in state law applicable to the Other Actions, rulings on objections to such designations are not binding in this Action but may be used as persuasive

authority in any argument regarding Confidential designations in this Action. A party shall not be obligated to challenge the propriety of a designation at the time made, and failure to do so shall not preclude a subsequent challenge. If a party receiving Confidential Information (the "Receiving Party") believes that any Documents or other items or portions thereof have been improperly designated as "Confidential", they shall advise the Producing Party in writing. The notice shall identify the disputed information and shall state the reason such information should not be accorded confidential treatment. Within 10 business days of the receipt of such written notification, the Producing Party shall either agree to remove such "Confidential" designation or provide a written explanation as to why such Documents or other items or portions thereof are confidential. In the event that the Producing Party does not provide a written explanation within 10 business days, the "Confidential" designation shall be deemed to be removed. The Receiving Party may challenge the "Confidential" designation following the receipt of the Producing Party's written explanation by filing a Motion to Remove or Limit Confidential Designation with this Court. In any dispute brought before the Court, the Producing Party shall have the burden of proving that the designation of "Confidential" is appropriate. In such a dispute, the Document or other item shall retain its "Confidential" designation, until such time as the Court rules upon any related motion, and affirmatively makes a determination otherwise by Order.

20. The inadvertent disclosure by the Producing Party of Confidential Information without designating that information as such will not be deemed a waiver in whole or in part of confidentiality, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter. Promptly after discovery of such inadvertent disclosure, the Producing Party is to provide the Receiving Party with written notice of the inadvertent disclosure. Upon notice by the Producing Party that the Confidential

Information was inadvertently disclosed, the Producing Party shall send new copies of the identified information with Confidential Information designations. Upon receipt of the re-designated materials, the Receiving Party will either return or destroy all previous version(s) of the identified information and replace the information with the re-designated materials. If any party objects to such a belated designation, that party may challenge the designation pursuant to the terms of this Order.

21. If Confidential Information is disclosed to any person or in a manner other than as provided in this Order, the party responsible for the disclosure must promptly inform the Producing Party designating such information as Confidential Information of all pertinent facts relating to such disclosure and shall make every effort to prevent re-disclosure by each unauthorized person who received such information.

22. The inadvertent disclosure by the Producing Party of information that is privileged in whole or in part of attorney-client privilege, attorney work product privilege, or other ground of immunity from discovery ("Privileged" or "Protected" Information"), will not be deemed a waiver of such status, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter. After discovery of any such inadvertent disclosure, the Producing Party is to provide the Receiving Party with written notice of the inadvertent disclosure. Upon written notice by the Producing Party, the Receiving Party shall promptly return the originals and all copies of the Documents or items containing the allegedly Privileged or Protected Information. If the Receiving Party disagrees that the information is protected from disclosure, they may move the Court for an order that such information be produced, in which case the Producing Party claiming the privilege or immunity shall have the burden of proving that such privilege or immunity exists. During the pendency of

any dispute regarding the applicability of any of the protections referenced in this Paragraph, such Document or other item shall be afforded the alleged protections until such time as the Court has resolved the dispute as evidenced by an order.

23. If a Receiving Party receives information from a Producing Party that it reasonably believes is Privileged or Protected Information, it shall notify the Producing Party without delay and promptly return the originals and all copies of the Documents or items containing the allegedly Privileged or Protected Information.

24. Upon termination of all of the Actions -- meaning this Action and the Other Actions (including all appeals) -- the originals and all copies of Documents and other items designated as "Confidential" shall be turned over to counsel for the Producing Party or third party who produced such documents or securely destroyed within sixty (60) days of the termination of the action. Notwithstanding, counsel may retain an archival copy of all pleadings, court filings, and orders, deposition transcripts and exhibits, demonstrative exhibits, hearing and trial transcripts, and mediation submissions. The archival copies may be in hard-copy, electronic, magnetic, optical-disk, or other form, or any combination thereof. By way of example and not of limitation, outside counsel may maintain a set of orders, pleadings, briefs, and similar court papers, a set of trial exhibits; a copy of the record on appeal; and a reasonable number of backup tapes (or other electronic media) containing protected information in electronic form that had been maintained on law firm computer networks (i.e., counsel need not specifically purge their firm's backup media of protected information as long as the backup media are kept secure).

25. Notwithstanding the provisions in Paragraph 24, and with respect to The Hartford Steam Boiler Inspection and Insurance Company, TEAM Industrial Services, Inc., Furmanite

America, Inc., O'Donnell Consulting Engineers, Inc., CEMI, LLC and Quality Integrated Services, Inc., the provisions contained in this paragraph shall apply upon termination of this Action. The originals and all copies of Documents and other items designated as "Confidential" produced by The Hartford Steam Boiler Inspection and Insurance Company, TEAM Industrial Services, Inc., Furmanite America, Inc., O'Donnell Consulting Engineers, Inc., CEMI, LLC or Quality Integrated Services, Inc. shall be turned over to counsel for the Producing Party or securely destroyed within sixty (60) days of the termination of this Action. Notwithstanding, counsel may retain an archival copy of all pleadings, court filings, and orders, deposition transcripts and exhibits, demonstrative exhibits, hearing and trial transcripts, and mediation submissions. The archival copies may be in hard-copy, electronic, magnetic, optical-disk, or other form, or any combination thereof. By way of example and not of limitation, outside counsel may maintain a set of orders, pleadings, briefs, and similar court papers, a set of trial exhibits; a copy of the record on appeal; and a reasonable number of backup tapes (or other electronic media) containing protected information in electronic form that had been maintained on law firm computer networks (i.e., counsel need not specifically purge their firm's backup media of protected information as long as the backup media are kept secure).

26. The termination of proceedings in this Action shall not thereafter relieve the parties from the obligation of maintaining the confidentiality of all material designated as "Confidential" which is received pursuant to this Order; provided, however, that this paragraph shall not apply to any material which is or becomes publicly available by affirmative act of the Producing Party.

Reviewed and Approved for Entry:

MARKWEST LIBERTY MIDSTREAM
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EXHIBIT A TO STIPULATED PROTECTIVE ORDER
REGARDING CONFIDENTIAL INFORMATION

ACKNOWLEDGEMENT AND NONDISCLOSURE AGREEMENT

The undersigned has read and understands the Protective Order issued by the Circuit Court of Wetzel County, West Virginia, Business Court Division, in the case of *Mark West Liberty Midstream & Resources, L.L.C. v. Bilfinger Westcon Inc.*, Civil No. 16-C-66. I agree that I will not disclose any information received by me pursuant to the Protective Order, and I will comply with and be bound by the terms and conditions of said Protective Order unless and until modified by further Order of the Court. I hereby consent to the jurisdiction of the Circuit Court of Wetzel County, West Virginia, solely for purposes of enforcing said Protective Order.

Dated _____

Signature: _____

Printed Name: _____

Address: _____
