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

2019 DEC -5 AM 10:16
CIRCUIT CLERK
WETZEL COUNTY, WV

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

Plaintiff,

v.

CIVIL ACTION NO. 16-C-82
JUDGE H. CHARLES CARL, III

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

Defendants,

v.

THE LANE CONSTRUCTION
CORPORATION,

Additional Defendant.

ORDER REGARDING MEDIATION OR OTHER METHOD OF DISPUTE RESOLUTION

Pursuant to Trial Court Rule 29.08(e), mediation or other agreed alternate dispute resolution in this action shall be conducted on **January 30, 2020** beginning at 10:00 a.m., at the Charleston office of Robinson & McElwee PLLC, 700 Virginia Street East, Suite 400, Charleston, WV 25301, and shall continue day to day thereafter at the sole discretion of the Resolution Judge. At this time, the mediation is anticipated to be conducted on both January 30, 2020 and January 31, 2020.

Mediation or other agreed method of dispute resolution shall be conducted by Honorable Paul T. Farrell, assigned by the Business Court Division as Resolution Judge.

MEDIATION shall be conducted in accordance with the following procedures:

PRE-MEDIATION CONFERENCE CALL

1. Counsel for the parties shall schedule a conference call with the Resolution Judge to discuss any outstanding issues related to the mediation if needed prior to mediation.

REQUIRED PARTICIPANTS

2. The following persons are required to attend the mediation **in person:**
   a) Corporate and legal entity representative for each party with full authority to enter into and sign a settlement agreement;
   b) Lead trial counsel for each party.

ABSENT GOOD CAUSE SHOWN, FAILURE OF ANY PERSON REQUIRED TO ATTEND MEDIATION IN PERSON SHALL SUBJECT THAT PERSON TO SANCTIONS, UP TO AND INCLUDING THE STRIKING OF PLEADINGS AND DISMISSAL. COUNSEL AND PARTY REPRESENTATIVES MUST ARRIVE AT MEDIATON BY NO LATER THAN **10:00 A.M. ON JANUARY 30, 2020.**

CONFIDENTIALITY

3. The contents of the mediation statements and the mediation discussions, including any resolution or settlement shall remain confidential, shall not be used in the present litigation nor any other litigation (whether presently pending or filed in the future), and shall not be construed as nor constitute an admission. Breach of this provision shall subject the violator to sanctions.

MEDIATION STATEMENTS

4. Mediation statements shall be delivered to the office of Judge Paul T. Farrell for receipt by no later than January 15, 2020. Mediation Statements shall either be hand delivered or delivered by Federal Express, UPS or any other express mail service with tracking capability. Mediation statements shall be also emailed to carol.miller@courtswv.gov.

5. **Mediation statements are confidential.** Mediation statements shall state on their face "CONFIDENTIAL MEDIATION STATEMENT" and shall be placed in envelopes marked "CONFIDENTIAL MEDIATION STATEMENT". Mediation statements **shall not** be filed with the Clerk's office, **shall not** be exchanged among the parties or counsel (unless the parties or counsel so desire), **shall not** be provided to the Presiding Judge and **shall not** become part of the record in this matter.

6. Mediation statements may be in memorandum or letter form. They must be double-spaced, in no less than 12-point font, and be no longer **than fifteen (15) pages.**

7. Mediation statements **must** contain the following information:

   a) **Contact information:** all trial counsel participating in the mediation shall provide: (1) a direct dial telephone work number; (2) a cell phone number; and (3) an electronic mail address where lead trial counsel can be reached.

   b) **Parties:** identify the party/parties represented, describe their relationship, if any, to each other, and by whom each party is represented, including the identity of all representatives who will be participating on behalf of a party/parties during the mediation.

   c) **Factual and Procedural History of the Case:** provide a brief summary of the factual and procedural history of the case, including a statement of the essential facts of the litigation, clearly indicating which material facts are not in dispute and which material facts remain in dispute. Each party shall provide their theories of liability and a one-page itemization of damages claimed, both liquidated and special and shall provide their theories of defense and their position as to the damages claimed, if applicable. The one-page itemization of damages claimed by each party shall be provided to adverse parties by no later than _____.

d) **Critical Deposition Testimony:** provide the deposition synopsis of any critical fact witness or expert witness, or in the alternative, a summary of the testimony of such fact witness or expert witness.

e) **Summary of Applicable Law:** provide a brief summary of the applicable law, including statutes, cases and standards.

f) **Strengths and Weaknesses of the Case:** provide an **honest** discussion of the strengths **and** weaknesses of the party's claims and/or defenses, the likelihood of a verdict in favor of the party, an opinion as to the probable verdict range, and an opinion as to the range of settlement value.

g) **Settlement Efforts:** provide a **brief** discussion of prior settlement negotiations and discussions between the parties, including any outstanding demand made by the parties to settle the litigation, any response by the opposing parties to that demand, and an assessment as to why settlement has not been reached.

h) **Settlement Proposal:** provide the party's term(s) of settlement, including any proposed term(s) that may be non-monetary, as well as any suggestions regarding how the Resolution Judge may assist the parties in reaching a resolution.

i) **Fees and Costs:** list separately (I) attorneys' fees and costs incurred to date; (II) other fees and costs incurred to date; (III) a good faith estimate of additional attorneys' fees and costs to be incurred if this matter is not settled; and (IV) a good faith estimate of additional fees and costs to be incurred if this matter is not settled. Remember, this information is confidential and shall remain so.

j) **Other Settlements:** if applicable, counsel shall provide the gross settlement amount of any other settlements on behalf of a party whose case is being mediated.

k) Other Matters: in addition to the required topics described above, and provided that the mediation statement complies with the page limit stated above, counsel are encouraged to address any other matters they believe may be of assistance to the Resolution Judge.

EXHIBITS TO MEDIATION STATEMENT

8. While counsel may submit documents that will assist the Resolution Judge in understanding the issues and resolving the litigation as exhibits to the mediation statement, counsel is cautioned to limit exhibits to only those documents counsel believes will be crucial to resolution of the litigation.

MEMORIALIZATON OF SETTLEMENT

9. If the parties reach a resolution of their dispute, the Resolution Judge will ensure that it is memorialized before the mediation is deemed concluded.

EX PARTE CONTACTS

10. Before, during and after the scheduled mediation, the Resolution Judge may find it necessary and useful to communicate with one or more parties outside the presence of the other party or parties.

OBLIGATION OF GOOD FAITH PARTICIPATION

11. The required participants shall attend the entire mediation in person and shall be available and accessible throughout the mediation process. No party may be compelled by this Order, the Presiding Judge, or the Resolution Judge to settle a case involuntarily or against the party's judgment. However, the Resolution Judge expects the parties' full and good faith cooperation with the mediation process, and expects the participants to be prepared to participate fully, openly and knowledgably in a mutual effort to examine and resolve issues. The Resolution Judge encourages all participants to keep an open mind in order to reassess their previous positions and to find creative means for resolving the dispute.

ARBITRATION

12. If the parties agree to binding arbitration rather than mediation, they shall notify the resolution judge and tender an agreement signed by the parties, setting out the terms and procedure agreed to. The resolution judge will then schedule the time and place for the arbitration. Traditional rules of evidence and procedure will not apply, but shall be considered as a guide toward full and fair development of the facts. The parties may agree in writing to rely on stipulations and/or statements rather than live testimony of witnesses. At the conclusion of Arbitration, a decision will be rendered promptly.

ARM/MED

13. The parties may also agree to a combination of arbitration and mediation. Arbitration would begin at 10:00 a.m. on January 30, 2020 and the Resolution Judge would be the Arbitrator. The Resolution Judge/Arbitrator would render a decision in writing and seal it in an envelope without disclosure to the parties. The parties would then proceed to mediation. If a resolution is not reached after mediation, the parties would be bound by the decision that is under seal.

Please notify the Resolution Judge by January 15, 2020 as to which form of Alternate Dispute Resolution the parties have agreed to.

If settlement is reached prior to January 30, 2020 the parties must notify the Resolution Judge promptly.

All counsel are reminded of their obligations to read and comply with this Order. To avoid the imposition of sanctions, counsel shall advise the Resolution Judge immediately of any problems regarding compliance with the Order.

It is so ORDERED.

The Clerk shall transmit certified copies to counsel of record and *pro se* parties.

ENTER: December 3, 2019

RESOLUTION JUDGE
BUSINESS COURT DIVISION

I HEREBY CERTIFY THAT THE ANNEXED INSTRUMENT IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN MY OFFICE.
ATTEST: _____ CIRCUIT CLERK
WETZEL CO. WEST VIRGINIA
BY: _____ DEPUTY CLERK