

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

|  |   |                               |
|--|---|-------------------------------|
| MIDWEST ENERGY EMISSIONS                   | ) |                               |
| CORP. and MES Inc.,                        | ) |                               |
|  | ) | <b>JURY TRIAL DEMANDED</b>    |
| Plaintiffs,                                | ) |                               |
|  | ) |                               |
| v.   | ) | <b>C.A. No. 19-1334 (CJB)</b> |
|  | ) |                               |
| ARTHUR J. GALLAGHER & CO., <i>et al.</i> , | ) |                               |
|  | ) |                               |
| Defendants.                                | ) |                               |

**STIPULATION AND [PROPOSED] ORDER REGARDING SUMMARY JUDGMENT  
THAT THE VISTRA AND NRG LICENSES DO NOT PRECLUDE LIABILITY BASED  
ON PRE-EXECUTION ACTIVITIES**

The parties submit this stipulation and attached order in response to the Court’s order that the parties submit a proposed stipulated summary judgment in favor of Plaintiffs with regard to Defendants’ defense of express license. D.I. 696.

On March 23, 2023, the CERT Defendants moved for summary judgment on various issues, including summary judgment that certain Defendants were not liable for indirect infringement with respect to activities at any power plant owned by Vistra or NRG. Specifically, the CERT Defendants argued that Defendant Bascobert (A) Holdings, which sold Refined Coal to Vistra plants, and Defendants Rutledge, Senescence, and Spring Hill, which sold Refined Coal to NRG plants, could not be found liable for indirect infringement based on any activities at Vistra or NRG plants, both before and after the effective date. *See* D.I. 527 (omnibus motion for summary judgment); D.I. 528 (brief in support of motion for summary judgment; D.I. 563 (denoting motion for summary judgment of no infringement based on licensed uses as Summary Judgment Motion No. 1).

On October 13, 2023, the Court denied Defendants’ motion for summary judgment. D.I.

586; D.I. 587. Interpreting the agreements, the Court determined as a matter of law that ME2C preserved the right to pursue claims for indirect infringement claims predating the Effective Dates of the agreements against refined coal entities that operated at Vistra and NRG power plants. D.I. 586 at 9–10. Because Plaintiffs affirmed they did not intend to press claims regarding provision of refined coal to a license power plant after the Effective Dates of the agreements, when the licenses went in to effect, the Court denied that aspect of the Defendants’ motion for summary judgment as moot. *Id.* at 6.

Reserving all rights to appeal the Court’s legal determination that the Vistra and NRG agreements preserved ME2C’s right to pursue indirect infringement claims predating the Effective Dates of the agreements against refined coal entities that operated at Vistra and NRG power plants and for the purpose of resolving that issue into a form proper for appeal, the CERT Defendants stipulate that based on the Court’s interpretation of the Vistra and NRG agreements as a matter of law, Plaintiffs are entitled to summary judgment that the Vistra and NRG agreements do not preclude liability for Defendants Bascobert (A) Holdings, Rutledge, Senescence, and Spring Hill for indirect infringement based on any activities at Vistra or NRG plants before the Effective Dates of the respective agreements.

Consistent with the Court’s order directing the parties’ to submit a stipulated summary judgment in Plaintiffs’ favor on this issue, D.I. 696, and with the Court’s interpretation of the Vistra and NRG agreements as a matter of law, D.I. 586, the parties hereby stipulate to entry of summary judgment in favor of Plaintiffs with regard to Defendants’ defense of express license regarding Plaintiffs’ claims of indirect infringement based on any activities at Vistra or NRG plants before the Effective Dates of the respective agreements.

Dated: March 11, 2024

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Larkwood Energy LLC  
Marquis Industrial Company, LLC  
Rutledge Products LLC  
Senescence Energy Products LLC  
Springhill Resources LLC*

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| <b>CORP. and MES Inc.,</b>                    | ) |                               |
|   | ) | <b>JURY TRIAL DEMANDED</b>    |
| <b>Plaintiffs,</b>                            | ) |                               |
|   | ) |                               |
| v.  | ) | <b>C.A. No. 19-1334 (CJB)</b> |
|   | ) |                               |
| <b>ARTHUR J. GALLAGHER &amp; CO., et al.,</b> | ) |                               |
|   | ) |                               |
| <b>Defendants.</b>                            | ) |                               |

**[PROPOSED] ORDER AND OPINION GRANTING PLAINTIFF’S MOTION FOR  
SUMMARY JUDGMENT THAT THE VISTRA AND NRG LICENSES DO NOT  
PRECLUDE LIABILITY BASED ON PRE-EXECUTION ACTIVITIES**

On March 6, 2024, the Court ordered that the parties submit a proposed stipulated summary judgment in favor of Plaintiffs with regard to Defendants’ defense of express license. D.I. 696.

On March 11, 2024, the parties submitted a stipulation and proposed order in accordance with that order.

Specifically, reserving all rights to appeal the Court’s legal determination that the Vistra and NRG agreements preserved ME2C’s right to pursue indirect infringement claims predating the Effective Dates of the respective agreements against refined coal entities that operated at Vistra and NRG power plants, D.I. 586, the CERT Defendants stipulated that based on the Court’s interpretation of the Vistra and NRG agreements as a matter of law, Plaintiffs are entitled to summary judgment that the Vistra and NRG agreements do not preclude liability for Defendants Bascobert (A) Holdings, Rutledge, Senescence, and Spring Hill for indirect infringement based on any activities at Vistra or NRG plants predating the Effective Dates of the respective agreements.

Consistent with the Court's order directing the parties' to submit a stipulated summary judgment in Plaintiffs' favor on this issue, D.I. 696, and with the Court's interpretation of the Vistra and NRG agreements as a matter of law, D.I. 586, the parties hereby stipulate to entry of summary judgment in favor of Plaintiffs with regard to Defendants' defense of express license.

In D.I. 586, the Court interpreted the Vistra and NRG licenses. The Court reiterates and incorporates that analysis here. Based on the Court's interpretation of the Vistra and NRG licenses as a matter of law, the Court finds that Plaintiffs are entitled to summary judgment that the Vistra and NRG agreements do not preclude liability for Defendants Bascobert (A) Holdings, Rutledge, Senescence, and Spring Hill for indirect infringement based on any activities at Vistra or NRG plants predating the Effective Dates of the respective agreements. Summary judgment is therefore entered against Defendants on their express license defense regarding Plaintiffs' claims of indirect infringement based on any activities at Vistra or NRG plants before the Effective Dates of the respective agreements.

SO ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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UNITED STATES MAGISTRATE JUDGE  
DISTRICT OF DELAWARE