

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

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

**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 12th day of March, 2024.

Christopher J. Burke
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF DELAWARE