

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

JOHNNY ADKINS, et al.,

Plaintiffs,

v.

CIVIL ACTION No. 2:09-1052

WILLIAMS TRANSPORT, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), filed by defendant Williams Holdings, LLC, on December 15, 2009. Plaintiffs did not file a response to defendant's motion.

In support of its motion, defendant has attached an affidavit from Dan Williamson. According to Fed. R. Civ. P. 12(d), "[i]f, on a motion under Rule 12(b)(6) or 12(c), matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under Rule 56. All parties must be given a reasonable opportunity to present all the material that is pertinent to the motion."

THE PARTIES ARE HEREBY NOTIFIED THAT THE MOTION TO DISMISS, FILED ON DECEMBER 15, 2009, MAY BE CONVERTED TO ONE FOR SUMMARY JUDGMENT. IF ANY PARTY WISHES TO PRESENT MATERIAL

PERTINENT TO THAT MOTION, IT SHOULD DO SO NO LATER THAN JUNE 7, 2010.

The Clerk is directed to send copies of this Memorandum Opinion and Order to all counsel of record.

IT IS SO ORDERED this the 24th day of May, 2010.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", written over a horizontal line.

David A. Faber

Senior United States District Judge