

Porter Hedges Wins \$46M Defense and puts \$28M in Westcon's Pocket

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By Natalie Posgate

(July 20) – It's one down, two to go for a construction client of Porter Hedges.

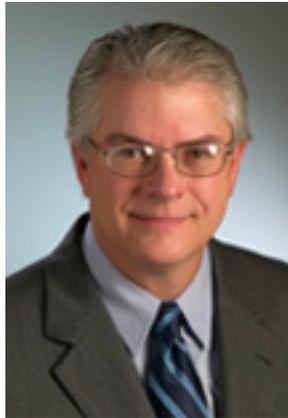
Engineering services firm Bilfinger Westcon has received payment from a \$28 million international arbitration award that found an Austrian steel giant wrongfully terminated Westcon from a project to construct a \$750 million industrial facility near Corpus Christi.

It's a positive first step for a team of Houston lawyers at Porter Hedges that is representing Westcon in a separate pending international arbitration against Linz, Austria-based voestalpine and a tortious interference lawsuit that Westcon filed in Nueces County against its replacement in the project.

Westcon was one of multiple firms that secured a contract to design, engineer, procure, manufacture and construct a hot briquette iron plant. Westcon had two out of the 41 prime contracts. According to court documents, Voestalpine (the company brands itself as 'voestalpine') filed for arbitration shortly after terminating Westcon, alleging Westcon breached the contract. Voestalpine also filed claims against two other major contractors.

Westcon said Voestalpine filed suit when the project was 94 percent complete to avoid paying

the firm \$20 million. Voestalpine claimed it spent \$47 million to correct and complete Westcon's work, which it argued was very delayed. But Westcon countered that only weeks after they signed the contract, it was modified dramatically, with the delivery of more than 50,000 pages of new drawings and documents. This caused widespread problems with the project, including delays of other predecessor projects, which in turn delayed Westcon.



David Peden

"You can't hang up the pipe until the steel facility is constructed first," said David Peden, one of Westcon's lead lawyers.

"A contractor who is in a bad circumstance has a right to stand up and fight, and at the end of the day they should be paid for the work they did. That's what this award does."

The arbitrators delivered the judgment on May 7, and Voestalpine paid the \$28 million award June 21, Peden said.

Chad Theriot of Jones Walker, in Atlanta, said he would have to consult with his client, Voestalpine before commenting.

In the second arbitration, Peden said the parties filed their post-hearing briefs, which "sets the clock" on getting a ruling, on June 29. Though international arbitrations have no deadline to



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render a ruling, Peden said the team hopes to receive one in the next 60 days. In addition to Westcon and Voestalpine, that arbitration involves two other contractors on the project – one from Spain and one from Texas, Peden said.

Both arbitrations occurred in Houston.

In the lawsuit in Nueces County, Peden said Westcon’s core claims are that Voestalpine terminated Westcon based on “false

misrepresentations from a person working for the replacement contractor and Voestalpine at the same time.”

He said that lawsuit, which was filed in December 2016, is still in the early stages, with no trial date set yet.

Peden led the Porter Hedges team with fellow Houston partner John Hawkins.