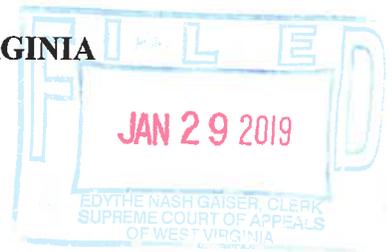


IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA



Directional ONE Services, Inc. USA,

Plaintiff,

vs.

(Circuit Court of Tyler County)

Civil Action No. 18-C-14

Antero Resources Corporation,

(Hon. David W. Hummel, Jr., Chief Judge)

Defendant.

TO: THE HONORABLE CHIEF JUSTICE

**COMBINBED MOTION FOR LEAVE TO FILE, AND REPLY BRIEF IN SUPPORT OF
MOTION TO REFER CASE TO THE BUSINESS COURT DIVISION**

MOTION FOR LEAVE TO FILE

Pursuant to Rule 29 of the West Virginia Trial Court Rules, the Plaintiff herein, by counsel, Sean P. McGinley, Esq., and Christopher Kamper, Esq., respectfully requests leave to file the attached Reply Brief in support of Plaintiff's prior motion, filed December 22, 2018, to refer the above-styled matter to the Business Court Division. In support whereof, Plaintiff states that such briefing may assist the Court in evaluating the arguments advanced by Defendant in its Response brief, filed herein on January 16, 2019. Rule 29 does not expressly provide for, but also does not prohibit, a reply brief by the party seeking transfer. Therefore, out of an abundance of caution, if a motion for leave to file a reply brief is required by Rule 29, Plaintiff so moves.¹

REPLY BRIEF

Pursuant to Rule 29.06 of the West Virginia Trial Court Rules, the Plaintiff herein, by counsel, Sean P. McGinley, Esq., and Christopher Kamper, Esq., respectfully submit this Reply Brief in support of its motion, filed December 22, 2018, to refer the above-styled matter to the Business Court Division.

¹ Undersigned counsel conferred by email with counsel for Defendants on January 25, 2019, to inquire if Defendant would oppose a motion for leave to file a reply brief. Defendant's counsel stated he would oppose a motion for leave, but did not specify grounds for such opposition.

Defendant's Response, filed herein on January 16, 2019, advances two arguments against Plaintiff's Motion: (1) this case is a simple breach of contract matter; and (2) transfer to the Business Court Division will result in delay. Neither argument is well taken.

This case is not simply a breach of contract case. The First Amended Complaint contains claims not only for breach of contract, but also equitable and tort claims including equitable estoppel (Count III), mutual mistake and equitable reformation (Count IV), and negligent misrepresentation (Count V). Each of these claims is best understood in light of industry standard practice in the directional drilling industry as well as the parties' prior course of performance and the written documents that formed the basis of their relationship. Understanding those issues, in turn, will require the Court to grapple with the novel, complex commercial and technological issues that the Business Court Division was specifically created to handle.

As an example of the foregoing, after filing the instant motion (and thus not reflected in the Docket Sheet that Plaintiff provided with its initial motion), Plaintiff recently supplemented its discovery responses to Defendant by providing eight (8) single-spaced pages of narrative containing technical and pricing information concerning just two of the hundreds of equipment sets that are at issue in this litigation. What the equipment consists of, the explanation of how it is priced, the relevant markets in which it is purchased, and other highly technical and complex issues are all relevant and will all be litigated in this action.

Defendant's second argument has no basis in Rule 29. Rule 29 anticipates that a motion to transfer will take place in cases like this one, with ongoing activity and existing deadlines. A motion to transfer is not even proper until the case is "at issue." The intent of Rule 29 was not to delay such proceedings, but rather, as is suggested by the sources Defendant cites in its responses, the opposite. Rule 29 was intended to expedite commercial disputes (see, Rule 29.05(a); Rule 29.08(g)), and no reason exists to believe transfer will not have that effect in the case at bar.

Although this case has been pending since April 2018, no trial date has been set in this matter. Yet, Plaintiff already has completed four depositions and five rounds of written discovery requests, and has submitted its expert disclosures to Defendant. As stated in Rule 29.06(b), the motion to transfer does not operate as a stay of these ongoing proceedings.

Moreover, referral to the Business Court Division will not mean that the parties will start over from zero, thus Defendant's assertion that a fixed, 10-month time frame will commence upon transfer is baseless.

Even if this case cannot be expedited, Plaintiff is prepared to proceed according to the deadlines stated in the Tyler County Circuit Court's existing scheduling order, and Defendant does not indicate anywhere that it will require additional time over and above the generous deadlines already specified therein. The only item in the existing scheduling order that may require adjustment is the Pretrial Conference. Re-setting this conference will depend upon the schedule of the Business Court Division, but it need not necessarily result in any delay of this matter. The initial scheduling conference specified in Rule 29 similarly need not delay the parties or this litigation in any way.

In sum, this commercial dispute is precisely the kind of litigation between businesses the Business Court Division was created to address. The issues herein are not simple or pedestrian as Defendant suggests, and transfer to the Business Court Division need not delay these proceedings. Thus, Defendant's stated concerns are unfounded, and no reason exists to deny the transfer Plaintiff has requested.

WHEREFORE, the undersigned hereby MOVES, pursuant to W.Va. Trial Court Rule 29, the Chief Justice of the West Virginia Supreme Court of Appeals to refer this case to the Business Court Division.

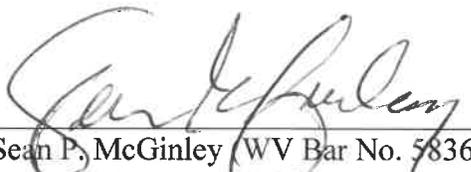
Respectfully submitted January 28, 2019.

Carver Schwarz McNab Kamper & Forbes, LLC



By: _____

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Attorneys for Directional ONE Services Inc. USA

CERTIFICATE OF SERVICE

The undersigned certifies that Plaintiff served its **Combined Motion for Leave to File, And Reply Brief in Support of Motion to Refer Case to the Business Court Division** on January 28, 2019 to the following via US Mail to:

Hon. David W. Hummel, Jr., Chief Judge
Marshall County Courthouse
600 Seventh Street
Moundsville, WV 26041

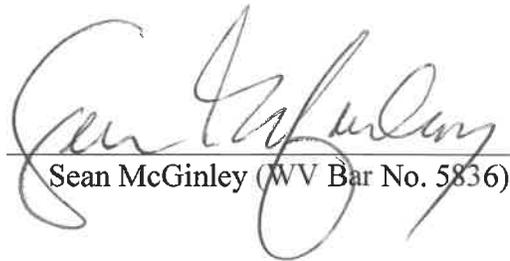
Tyler County Circuit Clerk's Office
Candy L. Warner, Clerk
P.O. Box 8
Middlebourne, WV 26149

Business Court Division Central Office
Berkeley County Judicial Center
380 West South Street, Suite 2100
Martinsburg, WV 25401

And via US Mail and email to:

W. Henry Lawrence
John D. Pizzo
Eric M. DiVito
Steptoe & Johnson PLLC
400 White Oaks Boulevard
Bridgeport, WV 26330
Hank.Lawrence@Steptoe-Johnson.com

By:


Sean McGinley (WV Bar No. 5836)