

IN THE CIRCUIT COURT OF TYLER COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

DIRECTIONAL ONE SERVICES INC. USA,
a foreign corporation authorized to do business
in the State of West Virginia,

Plaintiff,

v.

Civil Action No.: 18-C-14
(Presiding Judge H. Charles Carl, III)

ANTERO RESOURCES CORPORATION,
a foreign corporation authorized to do business
in the State of West Virginia,

Defendant.

ORDER

On the 5th day of April 2019, came Plaintiff, Directional ONE Services Inc., USA, (“Directional One”), by its counsel, Christopher Kamper and Sean P. McGinley, and Defendant, Antero Resources Corporation (“Antero”), by its counsel, W. Henry Lawrence and John D. Pizzo, for a telephonic case management and scheduling conference. Whereupon the Court heard oral arguments by both parties pertaining to Antero’s *Motion for Protective Order* seeking to prohibit the deposition of Antero’s Chairman and Chief Executive Officer, Paul M. Rady (“Mr. Rady”). After reviewing the briefs and hearing oral argument by both parties, the Court **GRANTS** the motion and concludes and finds as follows:

1. West Virginia has adopted the “apex deposition rule,” under which a party seeking to depose a high-ranking corporate official must begin by “making a good faith effort to obtain the discovery through less intrusive methods.” Syl. Pt. 3, *State ex rel. Massachusetts Mut. Life Ins. Co. v. Sanders*. 228 W. Va. 749, 751, 724 S.E.2d 353, 355 (2012).

FILED

APR 24 2019

Gandy L. Warner
Tyler Co. Circuit Clerk

2. After such efforts, the Court may allow a party to depose the high ranking corporate official, but only if the party seeking the deposition can show “(1) that there is a reasonable indication that the official’s deposition is calculated to lead to the discovery of admissible evidence, and (2) that the less intrusive methods of discovery are unsatisfactory, insufficient or inadequate.” *Id.*

3. Antero submitted the sworn affidavit of Mr. Rady, in which he denied any specific, unique, or personal knowledge related to Directional One’s pricing proposals or other related documents. Further, Mr. Rady denied any specific, unique, or personal knowledge related to any of the facts relevant to this litigation.

4. Directional One provided insufficient evidence to contradict Mr. Rady’s denial of any specific, unique, or personal knowledge, and, as such, there is no “reasonable indication that the [Mr. Rady’s] deposition is calculated to lead to the discovery of admissible evidence.” *Id.*

5. Further, Directional One failed to establish that it had yet sought through less intrusive means the specific information sought through the deposition of Mr. Rady, such as by specific interrogatories or requests for the production of documents. Consequently, there currently was no evidence establishing that “less intrusive methods of discovery are unsatisfactory, insufficient or inadequate.” *Id.*

6. The Court therefore finds that both factors set forth in Syllabus Point 3 of *Sanders* weigh in favor of granting Antero’s motion. *See id.*

7. Consequently, the Court **GRANTS** Antero’s Motion for Protective Order and **ORDERS** that Directional One may not depose Mr. Rady.

8. The Court **GRANTS** Directional One additional time to submit interrogatories and requests for production of documents as described by Plaintiff's counsel during the hearing, including Mr. Rady's personal knowledge of Directional One's pricing, a description of the form and content of Defendant's "rolled up pricing" as may have been reviewed by Mr. Rady, and communications between Mr. Rady and Mr. Black concerning Directional One's pricing. Such discovery shall be served by April 15, 2019.

9. Antero's response to Directional One's interrogatories and requests for production of documents shall be served by May 15, 2019.

10. Following the hearing to address Antero's *Motion for Protective Order*, the Court addressed the scheduling of this case. Based upon the Court's ruling, above, and the additional time afforded for discovery in this matter, the Court **ORDERS** that a second scheduling conference will be held on Tuesday, April 16, 2019, at 9:00 a.m., whereby the Parties may appear telephonically. The parties are directed at said time to call the designated conference call number (1-877-278-2734) and enter the participant PIN 333017.

11. Finally, the Court hereby **ORDERS** the parties to meet and confer prior to the second scheduling conference and to submit a revised proposed scheduling order to the Court by no later than April 15, 2019.

It is so **ORDERED**.

The Court directs the Clerk to forward a copy of this Order to all counsel of record.

ENTERED 4/23/19



Judge H. Charles Carl, III

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest: Candice W. Wines Clerk

Circuit Court of Tyler County, West Virginia

By: Terrela P. Wesley Deputy

received
4/19/19

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