

**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,

vs.

**Civil Action No. 18-C-14
Presiding Judge: H. Charles Carl, III
Resolution Judge: Christopher C. Wilkes**

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

Defendant.

FILED

JUN -3 2019

Gandy L. Warner
Tyler Co. Circuit Clerk

ORDER GRANTING IN PART PLAINTIFF'S THIRD MOTION TO COMPEL

This matter came before the Court this 3rd day of June, 2019, upon Plaintiff's Third Motion to Compel. The Plaintiff, Directional One Services Inc. USA, by counsel, Sean P, McGinley, Esq., and Defendant, Antero Resources Corporation, by counsel, W. Henry Lawrence, Esq., have fully briefed the issues necessary. The Court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process. So, upon the full consideration of the issues, the record, and the pertinent legal authorities, the Court rules as follows.

FINDINGS OF FACT

1. This matter was commenced with the filing of the Complaint on April 6, 2018¹, alleging claims of Breach of Contract (Count I); Lien Foreclosure (Count II); Estoppel (Count III); Mutual Mistake/Equitable Reformation of Contract (Count IV);

¹ The Court notes the court file reflects that a First Amended Complaint with Jury Demand was filed April 19, 2018, but the causes of action are the same.

and Negligent Misrepresentation (Count V). *See* Compl. ¶¶44-79. The allegations involve a dispute between Plaintiff, Directional One Services Inc. USA (hereinafter “Plaintiff”), a directional drilling contractor, and Defendant, Antero Resources Corporation (hereinafter “Defendant”), an oil and gas well owner and operator. *See* Pl’s Mot., p. 3.

2. On August 3, 2018, Defendant filed its Answer and Counterclaim, alleging Breach of Contract for Lost In Hole Charges (Count I); Breach of Contract for Lost In Hole Insurance Charges (Count II); Breach of Contract for Repair Charges (Count III); and Breach of Contract for Day-Rate and Standby Charges (Count IV). *See* Counterclaim, ¶¶ 40-28. Specifically, Count IV, Breach of Contract for Day-Rate and Standby Charges, is relevant to the instant motion.
3. Standby charges are defined as those that a drilling contractor, such as Plaintiff, charges for days when the well operator, such as Defendant, required the drilling contractor to keep its personnel available, on or near the drilling rig, on days when they were not actually engaged in active drilling. *See* Pl’s Mot., p. 3.
4. Daily rates are the charges that the drilling contractor would bill to the well operator for days when its workers were actively engaged in drilling a well from the rig. *Id.*
5. On August 2, 2018, Plaintiff served its Second Set of Discovery Requests on Defendant. Relevant to the instant motion are Interrogatory No. 18 and Interrogatory 19. *See* Pl’s Mot., p. 4; *see also* Pl’s Mot., Ex. 1.
6. On November 5, 2018, Plaintiff served its Fourth Set of Discovery Requests. Relevant to the instant motion are Interrogatory No. 29, Request for Production No.

- 18, Request for Admission No. 13, and Request for Admission No. 14. *See* Pl's Mot., p. 4; *see also* Pl's Mot., Ex. 2.
7. On January 22, 2019, Plaintiff served its Fifth Set of Discovery Requests. Relevant to the instant motion is Request for Production No. 20. *See* Pl's Mot., p. 4; *see also* Pl's Mot., Ex. 3.
8. Defendant filed Responses to these requests for discovery; however, the responses to the requests related to the instant motion include objections, which Plaintiff claims are improper. *See* Pl's Mot., p. 4.
9. On or about April 9, 2019, Plaintiff filed the instant Plaintiff's Third Motion to Compel.
10. On April 19, 2019, Defendant filed its Response in Opposition to Directional One Services Inc. USA's Third Motion to Compel.
11. On May 1, 2019, Plaintiff filed its Reply Brief in Support of Third Motion to Compel.

CONCLUSIONS OF LAW

12. Plaintiff seeks to compel Defendant to fully respond to Plaintiff's Interrogatories Nos. 18 and 19 served August 2, 2018; Interrogatory No. 29, Request for Production No. 18, and Request for Admission Nos. 13 and 14 served November 5, 2018; Request for Production No. 20 served January 22, 2019; and Interrogatory No. 33 served March 7, 2019. *See* Pl's Mot., p. 5.

13. As an initial matter, the disputed discovery requests are as follows. Interrogatory No. 18 requests the following:

"Identify all facts pertaining to each affirmative allegation of fact in Your Counterclaims, including facts that tend to support or refute such allegations. Include in your answer identification of all documents pertaining to such allegations and all witnesses known to You with knowledge or information pertaining to the same."

See Pl's Mot., Ex. 1.

14. Interrogatory No. 19 requests the following:

"Set forth an itemized account of all damages for which You seek recovery, including an itemized account of all attorneys' fees for which You seek recovery."

See Pl's Mot., Ex. 1.

15. Interrogatory No. 29 requests the following:

"Identify each date for which you are claiming that Directional One improperly billed either a daily or a standby rate, including in your answer all information that support or refutes your claim, which could include all field tickets, all Wellview data pertaining to the claim, and all internal communications or documents relating to such claim."

See Pl's Mot., Ex. 2.

16. Request for Production No. 18 requests the following:

"Provide all documents evidencing, supporting, or relating to your answers to Plaintiff's Interrogatories 1 through 31."

See Pl's Mot., Ex. 2.

17. Request for Admission No. 13 requests the following:

"Admit that employees of Directional One were at Antero's disposal on each and every date or occasion for which standby charges were invoiced to and paid by Antero."

See Pl's Mot., Ex. 2.

18. Request for Admission No. 14 requests the following:

"Admit that employees of Directional One were at the well site reflected in the applicable field ticket and performed work for Antero on each and every date or occasion for which a daily rate was invoiced to and paid by Antero."

See Pl's Mot., Ex. 2.

19. Request for Production No. 20 requests the following:

“All documents that concern or are relevant to Count Four of Your Counterclaims against Directional One, including but not limited to Wellview, ADP entries, and data.”

See Pl’s Mot., Ex. 3.

20. Interrogatory No. 33 served March 7, 2019 was not provided to the Court.

21. Defendant brought its motion to compel under Rule 37 of the West Virginia Rules of Civil Procedure. Generally,

Civil discovery is governed by the West Virginia Rules of Civil Procedure, Rules 26 through 37. The Rules of Civil Procedure generally provide for broad discovery to ferret out evidence which is in some degree relevant to the contested issue.

Syl. Pt. 1, in part, *Evans v. Mutual Min.*, 199 W.Va. 526, 485 S.E.2d 695 (1997) (internal quotations and citations omitted).

22. Rule 33 provides, in pertinent part, that “any party may serve upon any other party written interrogatories ... to be answered by the party served”. W.Va. R. Civ. P. 33 (a). The Rule goes on to require that “[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. Requests for Production are governed by Rule 34 of the West Virginia Rules of Civil Procedure with provides, inter alia, “[a]ny party may serve on any other party a request (1) to produce ... any designated documents...” This Rule requires parties to respond to this type of request within certain time frames and to “organize and label them to correspond with the categories in the request.” W.Va. R. Civ. P. 34 (b).

23. Further, Rule 37 of the West Virginia Rules of Civil Procedure provides, in pertinent part:

(2) *Motion*. If a deponent fails to answer a question propounded or submitted under Rule 30 or 31, or a corporation or other entity fails to make a designation under Rule 30(b)(7) or 31(a), or a party fails to answer an interrogatory submitted under Rule 33, or if a party, in response to a request for inspection submitted under Rule 34, fails to respond that inspection will be permitted as requested or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. The motion must include a certification that the movant in good faith has conferred or attempted to confer with the person or party failing to make the discovery in an effort to secure the information or action without court action.

W. Va. R. Civ. P. 37.

24. As an initial matter, Defendant contends that the motion to compel should be denied because it is not required to respond to the discovery requests identified in the motion until discovery has closed; however, the Court finds this argument inapplicable as discovery has closed on May 10, 2019. *See* Def's Resp., p. 1.

25. Further, Defendant contends it is not required to respond to the broad contention interrogatories until discovery has closed or another later time. *See* Def's Resp., p. 2. Defendant makes this argument as to Interrogatory Nos. 18, 19 and 29, as well as Requests for Admission Nos. 13 and 14. *Id.* at 3.

26. West Virginia Rules of Civil Procedure 33 provides guidance with regard to contention interrogatories. West Virginia Rules of Civil Procedure 33(c) provides that a "court may order that such an interrogatory need not be answered until after designated discovery has been completed or until a pre-trial conference or other later time. W. Va. R. Civ. P. R. 33. A contention interrogatory is defined as "any question that asks another party to indicate what it contends or...questions that ask another party whether it makes some specified contention or...asks an opposing party to state all the facts on which it bases some specified contention

or...asks an opponent to state all the evidence on which it bases some specified contention. *Shreve v. Warren Assoc. Inc.*, 177 W.Va. 600, 605, n. 10 (1987).

27. Further, Defendant argues it is waiting for Plaintiff to provide information in discovery. Defendant avers the discovery requests seek broad information that supports Count IV of the Counterclaim, but *Plaintiff* objected to *Defendant's* discovery request seeking all employment, personnel, and payroll records for Plaintiff's employees or agents that worked on Antero's well sites during the relevant time period. *See* Def's Resp., p. 3. As a result, Defendant avers its "delay is merited because additional information from Plaintiff is necessary for Antero to determine the full extent of its claim." *Id.* In response to this argument, Plaintiff avers it has provided Defendant with the field tickets that reflect all of its standby charges (and did so in September 2018, shortly after the Counterclaim was asserted). *See* Pl's Reply, Ex. 1; *see also* Pl's Reply, p. 4.

28. The field tickets reflect the date the standby was charged to Defendant, the personnel of Plaintiff kept on site, and identity of the Antero field representative who reviewed and signed off on the field ticket, as well as the Antero supervisors who also reviewed and signed off on the field ticket. *Id.* In addition, the Court notes Plaintiff avers these field tickets are the most detailed information Plaintiff has that is potentially responsive to Defendant's claim. *Id.* In fact, Plaintiff deems these field tickets as the "ultimate source" of information utilized for its corporate records generated in the "payroll and paycheck process". *Id.* Because Plaintiff has turned over its field tickets evidencing details of the standby charges and personnel kept on site, the Court finds Defendant's argument that *Plaintiff* objected to Defendant's own discovery requests surrounding the same issue irrelevant, and therefore, must fail. The Court does not find this a compelling reason to support denial of Plaintiff's motion to compel.

29. Given the standards of law, and the court's analysis above, the Court will take up the disputed discovery requests in turn.

Interrogatory No. 18

30. First, the Court addresses the motion to compel as it relates to Interrogatory No. 18². Interrogatory No. 18 very broadly seeks "all facts" pertaining to the counterclaims. *See* Pl's Mot., Ex. 1. The Court finds this request interminable. Answering this broad of a request could never truly be complete.

31. Further, Defendant stated in its Answer to Interrogatory No. 18 that the "factual basis for its counterclaims are set forth in the counterclaims". *Id.* This Court's review of the Answer and Counterclaim confirms the factual allegations are sufficiently laid out in this pleading.

32. Moreover, Interrogatory No. 18 also asked for identification of "all witnesses known to You with knowledge or information pertaining to [the Counterclaims]." *Id.* The Court's review of Defendant's Answer to Interrogatory No. 18 reveals Defendant identified nine (9) individuals, their job titles, and their addresses in response to Interrogatory No. 18. The Court finds Interrogatory No. 18 has been meaningfully answered. As to Plaintiff's motion to compel more information in response to the broad request contained in Interrogatory No. 18, the Court finds this request must be denied. For this reason, the Court finds the motion to compel shall be denied as to Interrogatory No. 18.

Interrogatory No. 19

² Interrogatory No. 18 requests the following: "Identify all facts pertaining to each affirmative allegation of fact in Your Counterclaims, including facts that tend to support or refute such allegations. Include in your answer identification of all documents pertaining to such allegations and all witnesses known to You with knowledge or information pertaining to the same." *See* Pl's Mot., Ex. 1.

33. Next, the Court considers Interrogatory No. 19 served August 2, 2018. Interrogatory No. 19 requests an itemized account of all damages for which Defendant seeks recovery, including attorney's fees. *See* Pl's Mot., Ex. 1. The Court finds and considers the fact that many of Defendant's discovery responses, including that regarding Interrogatory No. 19, indicated it would supplement and provide the requested information. Defendant's answer to Interrogatory No. 19 was that it was "reviewing its records and will supplement this response when the requested information is ascertained." *Id.* The Court finds Defendant must fully answer this request. Discovery has now closed, the parties have participated in mediation, the scheduling order has been set in place, and the case will be proceeding to trial in just over three months, in September of this year. Defendant should now be able to supplement this discovery request to provide details regarding damages it seeks in its Counterclaim, including attorney's fees, and the Motion to Compel is **granted** as to Interrogatory No. 19.

Interrogatory No. 29

34. Interrogatory No. 29 seeks the identity of each date Defendant claims Plaintiff improperly billed a daily or standby rate, as well as "all information that supports or refutes your claim". *See* Pl's Mot., Ex. 2. The Court finds and considers the fact that many of Defendant's discovery responses, including that regarding Interrogatory No. 29, indicated it would supplement and provide the requested information. Defendant answered Interrogatory No. 29, averring it was "premature as discovery in this matter is ongoing" and that it would "supplement this response". *Id.*

35. The Court notes Defendant claims the field tickets were turned over and that was all the information they had for the second part of the request; however, the Court finds Defendant shall supplement its answer, to the extent it has not done so, as to the identity of the dates it

claims improper billing occurred. Discovery is no longer ongoing³, and Defendant should now be prepared to supplement its response like it said it would in its answer to Interrogatory No. 29. Accordingly, the Court finds Defendant must fully answer this request and the motion to compel is **granted** as to Interrogatory No. 29.

Request for Production No. 18

36. Next, Request for Production No. 18 requests all documents relating to Interrogatories Nos. 1 through 31. *See* Pl's Mot., Ex. 2. Defendant answered this discovery request by claiming that it has no additional responsive documents. *Id.* As Defendant has averred it has no other documents responsive to this request, other than what has been turned over, and Plaintiff has not proffered any evidence showing this is not the case, the motion to compel must be **denied** as to Request for Production No. 18.

Request for Admission Nos. 13 and 14

37. Further, Request for Admission No. 13 requests Defendant to "admit that employees of [Plaintiff] were at [Defendant's] disposal on each and every date or occasion for which standby charges were invoiced to and paid by [Defendant]." *See* Pl's Mot., Ex. 2. Likewise, Request for Admission No. 14 requests that Defendant "[a]dmit that employees of [Plaintiff] were at the well site reflected in the applicable field ticket and performed work for [Defendant] on each and every date or occasion for which a daily rate was invoiced to and paid by [Defendant]." *Id.*

38. Defendant's objection to each was that this request is "vague where the dates of

³ Discovery closed May 10, 2019.

such invoices with stand-by charges are not identified” and “vague where the dates of such invoices with daily rates are not identified”, respectively. *Id.* Indeed, Defendant stated that is “currently without sufficient information to respond to this Request”. *Id.*

39. As the dates for which Defendant is claiming that Plaintiff allegedly improperly billed for a daily or standby charge have been ordered to be produced above (Interrogatory No. 29), the Court finds Request for Admission No. 13 and Request for Admission No. 14 must be answered in relation to those dates. These requests should no longer be vague and shall be answered, therefore the Motion to Compel as to Request for Admission Nos. 13 and 14 is **granted**.

Request for Production No. 20

40. Next, as to Request for Production No. 20, which seeks all documents that concern or are relevant to Count IV of the Counterclaim, Defendant avers it has produced the only document responsive to this request, which is the 2015 Master Services Agreement between Plaintiff and Defendant. *See Def’s Resp.*, p. 4; *see also* Pl’s Mot., Ex. 3. As Defendant has averred it has no other documents responsive to this request, and Plaintiff has not proffered any evidence showing this is not the case, the motion to compel must be **denied** as to Request for Production No. 20.

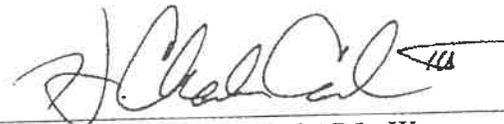
Interrogatory No. 33

41. Finally, Interrogatory No. 33 served March 7, 2019 was not provided to the Court. *See* Pl’s Mot., Exs. 1-3. The Court does not know what information was sought in that discovery request. As a result, the motion to compel is **denied** as to Interrogatory No. 33 as the Court has not been able to analyze and consider the same.

CONCLUSION

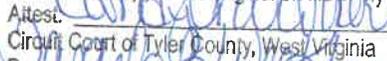
Accordingly, it is hereby ADJUDGED and ORDERED that Plaintiff's Third Motion to Compel is hereby GRANTED IN PART and DENIED IN PART as detailed in this Order. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Clerk shall enter the foregoing and forward attested copies hereof to all counsel, and to the Business Court Central Office at Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

ENTERED this 3rd day of June, 2019.



JUDGE H. CHARLES CARL, III
West Virginia Business Court Division

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

Attest:  Clerk
Circuit Court of Tyler County, West Virginia

By:  Deputy