

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 15th day of October 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 hearing on Antero’s *Motion to Continue* seeking a continuance of the trial in this matter due to unforeseen surgery required by Antero’s primary witness, Kevin Kilstrom. Having reviewed the briefs and hearing oral argument by both parties, the Court **GRANTS** the motion and concludes and finds as follows:

1. Under West Virginia law, a continuance is proper where the testimony of the witness is material and unique to such witness and where such unavailability is only temporary. *See Hutchinson v. Montgomery Mem’l Park Corp.*, 128 W. Va. 419, 424-25, 36 S.E.2d 889, 891-92 (1945).

2. A motion for continuance requires “a showing satisfactory to the trial court that due diligence has been exercised to procure the attendance of the witness; that his testimony

FILED

OCT 21 2019

Candy L. Warner
Tyler Co. Circuit Clerk

is material; that the same facts cannot be proved by any other witness in attendance; that the movant cannot safely go to trial in the absence of such witness; and that there is a probability of procuring the attendance of the witness, or his deposition, if the case is continued.” *State v. Simmons*, 130 W. Va. 33, 40–41, 42 S.E.2d 827, 831 (1947).

3. Antero submitted the sworn affidavit of Mr. Kilstrom, in which he outlined his diagnosis of a detached retina and emergency surgery to correct same on September 19, 2019. Mr. Kilstrom attested that he was directed by his physician not to travel until at least November 14, 2019.

4. Antero would have produced Mr. Kilstrom for the trial as originally scheduled and will present him at trial on the newly scheduled date.

5. Based on his job responsibilities, areas of testimony, and review of the relevant documents as outlined in his affidavit attached to Antero’s motion, Mr. Kilstrom’s testimony would be material.

6. The Court was not sufficiently satisfied that the testimony proposed to be elicited from Mr. Kilstrom could be proved by any other witness.

7. Finally, Antero should not be forced to proceed to trial without its primary witness.

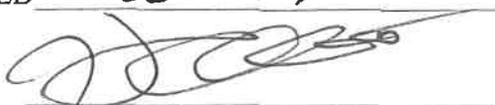
8. The Court therefore finds that, pursuant to the *Simmons* standards, Antero has provided a satisfactory showing to the Court to justify a continuance of the trial this matter.

9. Consequently, the Court **GRANTS** Antero’s Motion to Continue and continues the trial in the matter until **Wednesday, January 8, 2020**. Further, the Court continues the final pretrial conference in this matter until **Monday, December 2, 2019, at 10:00 a.m.**

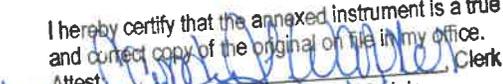
10. The Court **GRANTS** Directional One's oral motion to re-depose Mr. Kilstrom at a time agreed to by the parties.

It is so **ORDERED**.

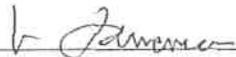
The Court directs the Clerk to forward a copy of this Order to all counsel of record.

ENTERED October 18, 2019


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:  Clerk
Circuit Court of Tyler County, West Virginia
By:  Deputy

Prepared by:



W. Henry Lawrence (WV Bar #2156)
John D. Pizzo (WV Bar #12680)
Eric M. DiVito (WV Bar #12890)
400 White Oaks Boulevard
Bridgeport, WV 26330
(304) 933-8000

Attorneys for Antero Resources Corporation

10428785