

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

FILED

AUG 19 2020

Candy L. Warner
Tyler Co. Circuit Clerk

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
(Hon. H. Charles Carl III, Presiding Judge)

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

Defendant.

**ORDER GRANTING DIRECTIONAL ONE'S MOTION IN LIMINE CONCERNING
ITS ENTERTAINMENT EXPENDITURES**

On a previous day came Directional ONE Services, Inc. USA ("Directional One"), by counsel, who moved in limine to preclude Antero Resources Corporation ("Antero") from discussing at oral argument or introducing evidence concerning Directional One entertainment expenditures. Thereafter, Antero, by counsel, responded in opposition. Oral argument on the motion was heard by the Court on June 21, 2019, and again on March 19, 2020. Upon consideration of the briefing and oral argument of the parties, and for the reasons that follow, the Court **GRANTS** Directional One's Motion in Limine concerning entertainment expenses.

1. Defendant Directional One's motion in limine contends that, during discovery, Plaintiff Antero sought information concerning Directional One's corporate entertainment expenditures for sporting events, with the intent of eliciting testimony or arguing or stating to the jury that Defendant's entertainment expenditures are relevant to why Antero approved invoices submitted by Directional One. Defendant argues Antero has no supporting evidence sufficient to suggest to the jury that during the three years it paid Directional One's invoices,

that Antero's payments for such invoices were not the result of its contractual obligations, but instead were the result of Directional One inviting Antero's agents to entertainment events, paid for as part of Defendant's entertainment/client development expenditures. Defendant contends the probative value of such argument and/or testimony, if it is relevant at all, is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, and generally wasting time, and therefore should be precluded pursuant to Rule 403 of the *West Virginia Rules of Evidence*.

2. Directional One further argues for the invoices Antero paid, but now contests, that Antero had multiple agents and representatives review each such invoice, and approve them, prior to making payment; that Antero's invoice review and approval process included agents who were authorized to review and approve the invoices, and in most instances included Antero agents who reviewed and approved Directional One's invoices but who never even were invited by Directional One to attend any sporting event. According to Directional One, Antero intends to argue to the jury that the invoices it approved and paid, but now contests, were the result of Plaintiff's entertainment expenditures, including those approved by agents of Antero who never even were invited or accepted an invitation to attend a entertainment event.
3. Directional One argues that, as of April, 2019, none of the Antero agents who accepted Directional One's entertainment invitations had been reprimanded or terminated for doing so, and that Antero produced no documents in discovery discussing any of its employees accepting Directional One's invitations to entertainment/sporting events.
4. Plaintiff further points out that not only was almost all of the field level approvals of

Directional One's invoices Antero now contests was given by an Antero employee who never was invited to or received any entertainment invitation from Directional One, and that the great majority of the Antero employees who approved the invoices at other levels never was invited to or received any entertainment invitation from Directional One.

5. Directional One argues any probative value such argument or testimony might have would be far outweighed by the danger of unfairly prejudicing the jury against Directional One, or misleading the jury as to invoices that were approved by Antero's agents who never attended a entertainment/sporting event at Directional One's invitation.
6. Directional One further points out that Antero's primary witness, Kevin Kilstrom, testified that when Antero employees approve invoices like Directional One's, that approval does not mean anything other than the fact that they looked at the invoice, and that by giving approval, the employee is not certifying that the information in the invoice is correct.
7. Antero argues in response that the parties' contract did not require Antero to pay the invoices for double billing or overbilling. Further, Antero argues in response that the invoices for double billing and overbilling were paid mistakenly or inadvertently, and argues the entertainment expenditures are relevant to show why they were paid. Antero further argues that as a result of the entertainment expenses, its employees were induced to ignore or relax their review of invoices it alleges to be improper.
8. The Court concludes the probative value of the introduction by Antero of argument and/or testimony concerning Directional One's entertainment/sporting event expenditures, if it is relevant at all, is substantially outweighed by the danger of unfair prejudice, confusing the issues, misleading the jury, and generally wasting time, and therefore should be precluded

pursuant to Rule 403 of the *West Virginia Rules of Evidence*.

- 9. Based on the all of the foregoing, the Court **GRANTS** Defendant Directional One's Motion in Limine to preclude evidence and argument by Antero at trial concerning Directional One entertainment/sporting event expenditures. The Court notes Antero's objection and exception.

The Clerk is directed to send a certified copy of this Order to all counsel of record.

ENTERED: 8/19/20



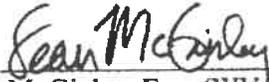
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Hon. H. Charles Carl III, Presiding Judge

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

Attest: *[Handwritten signature]* Clerk
 Circuit Court of Tyler County, West Virginia
 By: *[Handwritten signature]* Deputy

Prepared By:



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