

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

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

*Plaintiff*<sup>1</sup>,

v.

Civil Action No. 18-C-14  
Honorable H. Charles Carl, III

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

*Defendant.*

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TRIAL ORDER  
DAY THREE: AUGUST 28, 2020

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1. On the 28th day of August, 2020, this matter came on before the Court for a jury trial. The Plaintiff was present by its in-house counsel, Jamie Chapman, and attorneys W. Henry Lawrence and John D. Pizzo; and Defendant was present by its corporate representative Kevin Onishenko, and attorneys Christopher Kamper and Sean P. McGinley.

2. Prior to bringing the jury into the courtroom, the Court reviewed the Day Order from yesterday, and discussion ensued with regard to paragraph number 22. Counsel agreed upon the following stipulation: With regard to the field tickets, Plaintiff advised they will stipulate that Mr. Onishenko will testify that if a field ticket shows an employee was there, he or she was there, and he will testify that he knows that because he told them to be there.

3. Thereafter, the jury was brought into the courtroom and, upon inquiry, the jurors reported they had no problems after they were dismissed yesterday.

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<sup>1</sup> Pursuant to the *Day Order from March 19, 2020 Pretrial Conference*, to avoid juror confusion due to the remaining claims to be tried, Antero is now designated the "Plaintiff" and Directional One is now designated the "Defendant."

FILED

AUG 31 2020

Candy L. Warner  
Tyler Co. Circuit Clerk

4. Thereafter, Mr. Onishenko was re-called to the stand for direct examination.

During the testimony of Mr. Onishenko, the Court admitted the following exhibit into evidence, without objection: **Exhibit 129** (Field tickets).

5. During the testimony of Mr. Onishenko, the Court recessed to chambers to consider an objection to Defendant's demonstrative exhibit, and the Court heard argument from counsel, which discussion and ruling are more fully set forth on the record. Following the recess, the testimony of Mr. Onishenko resumed.

6. During the testimony of Mr. Onishenko, the Court admitted the following exhibit into evidence, without objection: **Exhibit 126** (ADP Approvals of Daily Rate, Mob/Demob, and Standby Charges, AD1-003359 to 003667).

7. Thereafter, the Court recessed for a brief break.

8. After the break, to clarify the record from yesterday's proceedings, the Court admitted the following exhibits into evidence, without objection: **Exhibit 2** (August 25, 2014 Directional One Rate Sheet; and **Exhibit 99** (Master Services Agreement eff. August 29, 2014).

9. Thereafter, the direct examination of Mr. Onishenko resumed. During the testimony of Mr. Onishenko, the Court admitted the following exhibits into evidence, without objection: **Exhibit 128** (Antero Wellview data AD1-007832 to 7893; AD1-007710 to 7756; AD1-008517 to 8552; AD1-009784 to 009811; AD1-009948 to 9979; AD1-011568 to 011603).

10. After the direct examination of Mr. Onishenko, the Court recessed for a brief break.

11. Following the break, the cross-examination of Mr. Onishenko began.

12. During the cross-examination of Mr. Onishenko, the Court recessed for a lunch break.

13. After the lunch break, prior to bringing the jury into the courtroom, the Court recessed to chambers with regard to Plaintiff's intention to use certain impeachment evidence, which discussion and ruling are more fully set forth on the record. Following the recess, the cross-examination of Mr. Onishenko resumed.

14. During the cross-examination of Mr. Onishenko, the Court recessed to chambers to consider an objection with regard to certain text messages, which discussion and ruling are more fully set forth on the record. Following the recess, the cross-examination of Mr. Onishenko resumed.

15. Following the cross-examination of Mr. Onishenko, his testimony continued with re-direct examination.

16. At this point, the Defendant rested.

17. Thereafter, the Court and counsel recessed to chambers and Defendant renewed its Motion for judgment as a matter of law pursuant to Rule 50 of the West Virginia Rules of Civil Procedure and the Court heard argument from Mr. McGinley and Mr. Pizzo. The Court DENIED the motion, with the Court's findings more fully set forth on the record.

18. Then, the Court and counsel reviewed the jury instructions/charge and counsel suggested certain changes, which the Court granted and incorporated into the jury instructions/charge, which discussion is more fully set forth on the record. Proposed instructions submitted by counsel were either included, included as amended, or not included in the Court's jury instructions/charge, as set forth in the Court's jury instructions/charge.

19. Plaintiffs moved that a copy of the jury instructions/charge go back with the jury during deliberations and the Court GRANTED the motion.

20. The Court and counsel then reviewed proposed verdict forms, which discussion is more fully set forth on the record. A *Verdict Form* was prepared, with the Court's assistance, and approved by counsel.

21. Plaintiff's counsel asked to reserve 40 minutes for closing arguments, with Plaintiff's counsel splitting his time into 30 minutes and 10 minutes, and with 2-minute warnings. Defendant's counsel asked to reserve 40 minutes for closing argument, and with 2-minute warnings. There being no objection by either side to the requested amounts of time, it was so ORDERED.

22. Thereafter, the Court read the *Jury Instructions and Charge* to the jury. Counsel did not have any objections or corrections to the Court's reading.

23. Thereafter, Mr. Pizzo and Mr. Kamper presented their closing arguments.

24. Upon the conclusion of closing arguments, Mark A. Klages and Gary L. Nichols were identified as the alternate jurors and were not permitted to retire to the jury room for deliberations. The alternate jurors were dismissed with appreciation from the Court.

25. Thereafter, the jury retired to the jury room to consider whether to stay for deliberations tonight or return tomorrow morning. The *Jury Instructions and Charge*, and the *Verdict Form* were then sent back to the jury room.

26. Thereafter, the Court went back on the record and instructed counsel to consult with the Circuit Clerk to verify the exhibits being sent back to the jury. Further, to clarify the record, Plaintiff's **Exhibits 4 and 5** were admitted into evidence, without objection.

27. Thereafter, the jury informed the Court that they wanted to return tomorrow between 9:00 and 9:30 a.m. to begin deliberations. At that point, the jury was dismissed for the day.

28. At 6:26 p.m., the proceedings adjourned for the day.

It is **ORDERED**:

- ❖ The Circuit Clerk shall send this Order to all counsel of record.
- ❖ The Court notes the objections and exception of the parties to any adverse findings or rulings herein.

ENTERED this 31<sup>st</sup> day of August, 2020.



H. CHARLES CARL, III, JUDGE  
22ND JUDICIAL CIRCUIT

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