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March 20, 2014

VIA EMAIL AND HAND DELIVERY

The Hon. Mark R. Abel
Joseph P. Kinneary U.S. Courthouse,
Room 218
85 Marconi Boulevard
Columbus, Ohio 43215

Re: ***American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886***

Dear Judge Abel:

We write on behalf of Defendants American Energy Partners, LP ("Partners"), American Energy – Utica, LLC ("Utica") and Aubrey K. McClendon to address the discovery issues Plaintiff American Energy Corporation ("Plaintiff") indicated it intends to raise with the Court.

Introduction

Plaintiff's purported discovery disputes must be viewed in the context of this case. This case involves a single issue, whether Partners' and Utica's use of their names, which incorporate the formative "American Energy" to identify their goods (of which there currently are none) is likely to cause confusion among relevant purchasers with respect to the goods offered or sold by Plaintiff. There is no such likelihood of confusion.

Plaintiff asserts in its March 19 letter to the court that Defendants improperly focus on Plaintiff's trademark infringement claim as the central issue in this case, and ignore Plaintiff's claims of deceptive trade practices, unfair competition, and trade name infringement. Plaintiff attempts in its March 19 letter to distinguish and emphasize its trade name infringement claim, as if this might affect the central issue of the dispute. However, the existence of a protectable trademark or trade name, and a likelihood of confusion as to the same, are essential to each of the four claims advanced by Plaintiff in this suit. Plaintiff has yet to show any actual use of AMERICAN ENERGY or AMERICAN ENERGY CORPORATION in any manner that could

afford it with the benefit of the common law rights needed to establish protectable trademark or trade name rights, or to successfully claim infringement of the same.

Both the Complaint and First Amended Complaint claim that "American Energy Corporation is both a common law trade name and trademark" and collectively refer to the alleged name and mark as the "Mark." The operative Complaint refers to their business name registration with the Ohio Secretary of State. The business name registration covers "American Energy Corporation."

A business name in Ohio does not automatically convey any trademark rights to the business name registrant. See *Hinckley Chamber of Commerce v. Hinckley Chamber of Commerce, Inc.*, 501 N.E.2d 47, 49 (Ohio Ct. App. 1985). ("[Business name] statutes are primarily to assist the public in identifying these corporations and do not bestow any substantive rights in the name to the applicant. Such rights are acquired under common law by actual use.") See also *Younker v. Nationwide Mut. Ins. Co.*, 175 Ohio St. 1, 6-7, 191 (Ohio 1963) ("The qualified property rights in such names and marks and the right to protection thereof arise as a matter of common law, not as a matter of statute.")[1]

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[1] The cases that Plaintiff cites for its new "trade name" argument do not support their position. In *Nat'l City Bank of Cleveland v. Nat'l City Window*, 174 Ohio St. 510 (1963), the Ohio Supreme Court determined the "longtime use of the words, 'National City' during a period of nearly a century" at great expense and "only in connection" with the plaintiff's business could, upon sufficient proof of actual confusion, establish the plaintiff's title in the community. Id. at 512, 514. "American" and "Energy" are not such a unique and distinctive combination of words to be afforded this level of protection. Further, Plaintiff has not consistently, continuously, or exclusively used "AMERICAN ENERGY" or "AMERICAN ENERGY CORPORATION" as a trade name or trademark to acquire such distinctiveness.

In *Ferrari S.P.A. Esercizio Fabriche Automobili E Corse v. Roberts*, 944 F.2d 1235 (6th Cir. 1991), the language cited by Plaintiff (i.e., "evidence of actual confusion is not limited to purchasers") is little more than a statement about an observation made on the survey evidence submitted in the case. As the Sixth Circuit later explained, the central inquiry is always consumer confusion and *Esercizio* is an outlier case in which "post-sale confusion" was found on unique facts. *Gibson Guitar Corp. v. Paul Reed Smith Guitars, LP*, 423 F. 3d 539, 552 (6th Circuit 2005). *Esercizio* was "a trade-dress case" in which the court found that Ferrari's cultivated image of expensive exclusivity "could be damaged by the marketing of" the defendant's "[clearly inferior] replicas." *Gibson Guitar Corp.*, 423 F. 3d at 552. Further, the cited section of the *Esercizio* case is discussing actual confusion, of which there is absolutely no evidence in the instant case.

In *Perini Corp. v. Perini Constr., Inc.*, 915 F.2d 121 (4th Cir. 1990), the court determined there was a likelihood of confusion where Plaintiff established strong and long-standing

As briefed in Defendants' Motion to Dismiss, Plaintiff does not even possess a protectable interest in the formative – "American Energy" – that it seeks to assert in this case. Related thereto, the United States Patent & Trademark Office (the "PTO") recently issued an Office Action on a pending trademark application by Plaintiff's parent company, Murray Energy Corporation in which Murray Energy Corporation sought to register the mark "MURRAY AMERICAN ENERGY, INC." Pertinent to this case, the PTO's Office Action requires Murray Energy Corporation to "disclaim the geographically descriptive wording 'AMERICAN ENERGY, INC. and the outline of the United States' apart from the mark as shown because it merely describes where applicant, a corporation, produces and sells its energy commodity in the nature of coal, in the United States."[2] In other words, the PTO found the formative "American Energy" unsuitable for trademark status.

Given Plaintiff's lack of a protectable interest in the formative "American Energy," it is not surprising that for the last 13-14 years, Plaintiff has done nothing while another company unrelated to Defendants, American Energy Associates, Inc., drilled 80+ oil wells right in Plaintiff's backyard in Northeast Ohio (http://americanenergyassociatesinc.com/), all of which was done with no apparent confusion between American Energy Associates and Plaintiff.

It also must be noted that Plaintiff filed this case the Friday before Labor Day 2013 as an emergent matter seeking a preliminary injunction. While that motion was pending, the parties agreed to engage in expedited discovery. However, Plaintiff failed to notice a single deposition or bring any discovery issues before the Court despite the fact that Plaintiff did not withdraw its motion for a preliminary injunction until January 10, 2014 – less than a month before fact discovery was set to close regarding that motion.

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rights in the *Perini* name for construction services, and Defendant adopted an identical name, for identical services, with knowledge of Plaintiff's prior rights. The parties marketed through the same trade channels and even bid on the same projects. Notably, the 4th Cir. in this case acknowledged the sophistication of the relevant buyers and held that "in a market of extremely sophisticated buyers, the likelihood of consumer confusion cannot be presumed on the basis of similarity in trade name alone, particularly without trial."

In *Moore Business Forms, Inc. v. Seidenburg*, 619 F. Supp. 1173 (W.D. La. 1985), as with the other cited cases, Plaintiff's mark in the *Moore* case was determined to be very strong. In *Moore*, unlike in this case, the Defendant used the Plaintiff's strong and well established "Moore Business" mark as a part of its trade name *on and in connection with* the sale of the same types of goods offered by Plaintiff.

[2] *See* March 13, 2014 Office Action issued by the PTO (citing 15 U.S.C. § 1506 (requiring disclaimer of unregistrable matter)), a copy of which is attached as Exhibit "1."

As Plaintiff knows from Defendants' discovery responses and document production, Partners and Utica have not sold or offered for sale any natural gas or oil. Moreover, Utica's intended purchasers – midstream gas transporters – are markedly different from the purchasers of Plaintiff's goods – electric generation plants. Indeed, at the recent Rule 16 Conference, Plaintiff conceded that it is unaware of any damages caused to it due to Partners' or Utica's use of their names.

The disputes raised by Plaintiff are asserted for the purpose of generating purported disputes and deflecting from the merits of its case. Indeed, as detailed below, Plaintiff persists with certain disputes despite being informed multiple times by Defendants, including in written discovery responses, that Defendants possess no discoverable information.

Defendants address each of the disputes Plaintiff has raised as follows:[3]

There Is No Dispute Regarding Plaintiff's Request For Information Regarding Affiliated Entities (Interrogatory 1 and Request for Production 27 to Utica)[4]

Defendants believe that this dispute is resolved. On March 3, 2014, Partners and Utica produced organization charts to Plaintiff.[5]

This production was made by Partners and Utica despite the fact that this issue had already been addressed and resolved by them prior to receiving Plaintiff's most recent February 21, 2014 discovery dispute letter and prior to Partners' and Utica's production of organization charts. On December 18, 2013, Plaintiff delivered a letter to Defendants stating that if Defendants did not identify all "affiliates," Plaintiff would serve subpoenas on various

[3] Pursuant to the Court's request at the Rule 16 Conference, Defendants attach the parties meet-and-confer correspondence in chronological order as Exhibit "2." Defendants note that their January 27 and February 3, 2014 letters are incorrectly dated 2013. Additionally, several letters contain information marked "Attorneys Eyes Only" pursuant to the Protective Order entered by the Court. Defendants submit these letters for *in camera* review by the Court and respectfully request that these letters not be filed on the Court's public docket.

[4] Excerpts from Defendants' Responses to Plaintiff's discovery requests are attached as Exhibit "3."

[5] Copies of the organization charts produced by Partners and Utica are attached as Exhibit "4." These charts are marked "Attorneys Eyes Only" pursuant to the Protective Order entered by the Court. Accordingly, Utica discloses these charts to the Court for *in camera* review and respectfully requests that they not be filed on the Court's public docket.

companies.[6] Despite the fact that Plaintiff served those subpoenas without awaiting Defendants' response, Partners and Utica responded to Plaintiff's December 18, 2013 letter by identifying all subsidiaries and subsidiaries of subsidiaries of American Energy Partners with the formative "American Energy" in their name.[7] This included 18 separate entities. Plaintiff accepted this information only to demand additional information about other "affiliates."

Plaintiff's continued insistence that a dispute remains between the parties as to this topic appears geared solely to generate disputes where none exist. For example, Plaintiff's February 21, 2014 letter, claims that Defendants did not identify American Energy Ohio Holdings, LLC. However, that entity was specifically disclosed by Utica in response to Plaintiff's Interrogatory No. 1.[8] Additionally, as stated above, to resolve this dispute and put it behind the parties, on March 3, 2014, Partners and Utica produced organization charts. This is despite the fact, as Defendants previously informed Plaintiff, Plaintiff served no discovery request on Partners seeking information related to Partners' "affiliates."[9]

Plaintiff's Request For Documents Allegedly In The Possession of Affiliates Is Baseless And Should Be Denied
(General Objection 5)

It is unclear what information Plaintiff seeks regarding Partners' or Utica's affiliates or what information Plaintiff believes Partners' or Utica's affiliates may possess that is responsive to Plaintiff's discovery requests that are addressed solely to Partners and Utica.

In connection with this dispute, Plaintiff takes issue with Partners' and Utica's General Objection No. 5, which objects to producing information not known to Defendants, nor reasonably ascertainable by Defendants, because such material is in the hands of or under the control of third parties not within Defendants' control.[10] Plaintiff's claims to the contrary, Defendants' objection does not refer to "affiliates."

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[6] *See* December 18, 2013 letter from John E. Jevicky to Matthew A. Taylor and Jeffrey S. Pollack.

[7] *See* January 6, 2014 letter from Jeffrey S. Pollack to John E. Jevicky.

[8] *See* February 21, 2014 letter from Thomas M. Connor to Matthew A. Taylor and Jeffrey S. Pollack; February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

[9] *See* January 27, 2014 letter from Jeffrey S. Pollack to John E. Jevicky (incorrectly dated 2013); February 3, 2014 letter from Jeffrey S. Pollack to John E. Jevicky (incorrectly dated 2013).

[10] *See* Partners' and Utica's Responses to First Set of Interrogatories, Request for Production, and Requests for Admissions, at Exh. "3."

Additionally, Plaintiff's discovery requests directed to Partners and Utica do not extend to "affiliates." First, the definition of "you" provided in Plaintiff's discovery requests does not include "affiliates."[11] Second, those discovery requests uniformly refer to "Defendants," "Defendant," or to Defendants by name. For example, Plaintiff cannot contend that Request For Production No. 13 asking Defendant American Energy Partners to "[p]roduce all documents or correspondence referring to Defendants' vendors or potential vendors"[12] also extends to documents or correspondence referring to the vendors of Partners' "affiliates." Such a construction strains the English language. Thus, Plaintiff's demand for information allegedly in the possession of Defendants' affiliates is without basis. It has not been requested.

The reference in Plaintiff's February 21, 2014 letter to the subpoenas served on Partners' and Utica's affiliates illustrates precisely why the information Plaintiff seeks via this purported dispute is not reasonably calculated to lead to the discovery of admissible evidence.[13] Plaintiff is not seeking information related to Partners' or Utica's use of their names to identify goods. Instead, Plaintiff is seeking information about the business activities of Partners' and Utica's "affiliates," none of which are parties to this action.

Regardless, even if there was some basis within the four corners of Plaintiff's discovery requests to extend those requests to "affiliates," the law in this district is that "[w]hen a party argues that one company has the legal right to demand documents from another company, courts closely analyze the relationship between the two companies." *In re Porsche Cars N. Am., Inc.*, 2012 U.S. Dist. LEXIS 136954 (S.D. Ohio Sept. 25, 2012). A motion to compel will not be granted absent evidence, which is the movant's burden to demonstrate, that a company operates "another as its alter ego, that [a] company acted as the agent of the other in the transaction giving rise to the suit, or that [a] company has access to the documents of another in the regular course of business." *Id.* Partners' and Utica's affiliates are separate and independent companies.

[redacted]

[11] *See* the definitions to Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admission to Defendants American Energy Partners, LP, and Aubrey McClendon and Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admission to Defendant American Energy – Utica, LLC at Exh. 5.

[12] *See* Partners' and Utica's Responses to Request for Production No. 13, Exh. "3."

[13] *See* February 21, 2014 letter from Thomas M. Connor to Matthew A. Taylor and Jeffrey S. Pollack; *see also* February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

Plaintiff could have learned this at any time during the last several months through a deposition of Utica.[14]

Finally, Plaintiff's suggestion that it needs discovery into Defendant's affiliates "to determine whether ... to amend its complaint to add additional defendants" is only further proof that Plaintiff's "trade name" claim has no basis. After all, if the mere use of the "American Energy" formative was evidence of infringement, Plaintiff would need no further discovery to determine proper defendants.

Partners has 18 separate subsidiaries and subsidiaries of subsidiaries that use the formative "American Energy" in their names. As Plaintiff was informed during several meet-and-confers with Defendants, only one of those companies has had contact with Ohio. The geographic designations in the names of these companies indicate where their business operations are conducted.[15] Plaintiff provides no basis, in a lawsuit involving no damages, to compel Partners to review and produce documents from its files and those of 18 other non-parties. Accordingly, for each of these reasons, Plaintiff's demand for production from Partners' and Utica's "affiliates" should be denied.

Utica Has Produced Business Plans And Related Documents; Its Redactions To Those Documents Relate To Matters That Are Not Responsive To Plaintiff's Discovery Requests, Not Reasonably Calculated To Lead to the Discovery Of Admissible Evidence And Are Highly Confidential And Proprietary
(Requests for Production 12, 14-16 and 26)

There should be no dispute regarding the production of business plans and related documents. Partners and Utica are new companies that have not even made a single sale. Nonetheless, last year, Utica produced an Investor Presentation responsive to Plaintiff's requests (Utica00046-00118). After the Rule 16 Conference, at which Plaintiff raised an issue regarding this document, counsel for Utica offered to stay in the Court's conference room with Plaintiff's counsel to explain how this document is responsive to the information Plaintiff seeks. Notably, that invitation was declined.[16]

The Investor Presentation identifies matters requested by Plaintiff: (1) Utica's management structure, (2) proposed business operations, (3) midstream pipeline operators to which Utica may sell natural gas and who may transport and resell that natural gas, and (4) a business plan showing Utica's business plan for its first 12 months. Following the Rule 16 Conference, Utica withdrew some redactions from this document to further show the midstream

[14] February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

[15] February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

[16] *See* February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

pipeline operators to which it was contemplating selling natural gas as of the date of the presentation.

Utica also supplemented its production with (1) an Offering Memorandum, dated February 19, 2014, related to a debt offering by Utica (Utica00305 - 00463) and (2) a second Investor Presentation, dated February 2014 (Utica00464-00507).[17] The Offering Memorandum provides Plaintiff with detailed information regarding Utica's business, including information regarding Utica's management team, corporate structure, midstream and downstream service providers, business strategy, and risk factors. The Investor Presentation provides additional information regarding Utica's management team, corporate structure, and midstream partnerships.

Defendants produced a redaction log to Plaintiff on February 21, 2014, describing the information that was redacted from these documents. That redaction log was updated on March 14, 2014.[18] Plaintiff has provided no explanation for why the information produced is not responsive to its discovery requests, nor has Plaintiff individually challenged any of the redactions made to the Investor Presentations or Offering Memorandum.

This case is about one thing, Partners' and Utica's alleged use of their names to sell goods and services and whether that use is likely to cause *consumer* confusion. *Gutter Topper, Ltd. v. Sigman & Sigman Gutters, Inc.*, 2006 U.S. Dist. LEXIS 78438, 14-15 (S.D. Ohio Oct. 27, 2006) (To establish liability for trademark infringement, a plaintiff must prove "(1) that it owns a valid, protectable trademark; (2) that the defendant used the mark in commerce and without the registrant's consent; and (3) there was a likelihood of consumer confusion."). The redacted information does not relate to and is not reasonably calculated to lead to the discovery of admissible evidence related to Partners' or Utica's names in commerce or the alleged likelihood of consumer confusion, nor is it related to the matters listed in Plaintiff's February 21, 2014 letter: intended customers, geographic market, and channels of trade.[19] As indicated on Partners'

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[17] The February 2014 Offering Memorandum is attached as Exhibit "6." This document is marked "Attorneys Eyes Only" pursuant to the Protective Order entered by the Court. Accordingly, Utica discloses this documents to the Court for *in camera* review and respectfully requests that they not be filed on the Court's public docket.

[18] *See* Updated Redaction Log, a copy of which is produced as Exhibit "7." The February 21, 2014 Redaction Log was marked as "Attorneys Eyes Only" pursuant to the Protective Order. The Updated Redaction Log was not, but should be, also marked as Attorneys Eyes Only pursuant to the parties' Protective Order and Defendants respectfully request that it not be filed on the public docket.

[19] Plaintiff's letter also seeks information regarding production locations. Defendants fail to see how Utica's highly confidential acreage locations are reasonably likely to lead to the discovery

and Utica's redaction log, the redacted information relates to highly proprietary information regarding, *inter alia*, geological studies, acreage locations, the acquisition of mineral rights and valuations, well production analysis, water usage, projected well and rig development, and the terms of the notes offered by Utica.

Plaintiff certainly would not be entitled to this highly confidential and competitive information that has no bearing on the claims and defenses in this case if it was set forth in a stand-alone document. Accordingly, there is no reason such information should be produced simply because it is included alongside other information.

The Southern District of Ohio has held that it is appropriate to redact confidential information that is not reasonably likely to lead to the discovery of admissible evidence. In *N. Am. Rescue, Inc. v. Bound Tree Med., LLC*, 2010 U.S. Dist. LEXIS 39695 (S.D. Ohio Mar. 25, 2010), the defendant moved to compel information regarding a change of ownership of the plaintiff. In granting the defendant's motion to compel, the court ordered plaintiff to produce a bill of sale but directed that, if it contained information "that is both irrelevant to the issue of ownership . . . and commercially sensitive," that the document be produced such that "irrelevant and sensitive material has been redacted." *Id.* at *5. Likewise, in *Thompson v. Village of Mt. Pleasant*, 2011 U.S. Dist. LEXIS 740 (S.D. Ohio Jan. 4, 2011), the court considered whether an unredacted interview should be produced in full simply because portions of the interview were responsive to a party's discovery requests and reasonably likely to lead to the discovery of admissible evidence. In rejecting that argument, the court, after an *in camera* review, held that "the portions of the interview are simply not relevant to any party's claim or defense in this action." See Fed. R. Civ. P. 26(b)(1)." *Id.* at *4. "[P]roduction of the redacted portions," the Court held, "is[, therefore,] not necessary to plaintiff's ability" to prosecute its case. *Id.* Accordingly, the court held that "defendants need not produce to plaintiff an unredacted version of the interview." *Id.* The same is equally true here.

Additionally, the Protective Order entered in this case permits the parties to seek additional protections for confidential or proprietary documents.[20] Indeed, such protections appear necessary in this case due to Plaintiff's insistence on compelling information related to the redacted portions of Utica's extremely confidential Investor Presentations and Offering Memorandum which are not reasonably calculated to lead to the discovery of admissible evidence. Utica's concerns about Plaintiff's continued demands for this information are heightened by the fact that Plaintiff expressed the intent, albeit unsubstantiated, to enter into the natural gas and oil industry.[21] In an industry where knowledge and information regarding

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of admissible evidence regarding the claims at issue – the use of Partners' and Utica's names to identify their goods (of which there are none).

[20] *See* Protective Order ¶ 32, attached hereto as Exh. 8.

geology, expected fossil fuel production levels, and the availability of the equipment and infrastructure to extract and transport fossil fuels are paramount, such information should not be ordered to be disclosed where it has no bearing on the claims at issue – the use of Partners' and Utica's names to identify their alleged products or services.

Because Utica has produced detailed information regarding its business and intended customers, the midstream pipeline operators,[22] Plaintiff's demand for additional information or documents related to business plans should be denied.

Partners Produces No Products, Has No Intended Customers And Cannot Be Compelled To Provide Plaintiff With Additional Information Related Thereto
(Interrogatories 17 & 22 to Partners)

Partners has no customer base or intended customer base.[23] Plaintiff's statement in its February 21, 2014 letter that it does not believe Partners on this point is not a basis for a motion to compel. Partners cannot be compelled to provide a different response because its response is different from what Plaintiff might want it to be.

Defendants Are Not Withholding Confidential Material, Rendering Plaintiff's Request To Compel Moot
(General Objection 2)

There is no dispute regarding Plaintiff's claim that Defendants are purportedly withholding information on the basis of third-party confidentiality. Defendants repeatedly informed Plaintiff that no documents are being withheld on the basis of confidentiality.

Defendants' General Objection 2 objects to Defendants' discovery requests to the "extent that they call for confidential and/or proprietary documents and things." Although no documents are being withheld on this basis, this objection is proper and necessary to preserve Defendants' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. *See Apple Inc. v. Samsung Elecs. Co.*, 2012 U.S.

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[21] *See* Plaintiff's Memorandum of Law in Support of its Withdrawn Amended Motion for a Preliminary Injunction at 13-14, Doc. 19.

[22] With respect to Partners, Partners' discovery responses show that it sells no goods or services and has no intended customers. *See* Partners' Response to Plaintiff's Interrogatories 17 and 22, Exh. 3; *see also* January 27, 2014 letter from Jeffrey S. Pollack to John E. Jevicky (incorrectly dated 2013. Thus, Plaintiff's demand for documents regarding intended customers, geographic market and channels of trade is a *non-sequitur* as to Partners.

[23] *See* Fn. 22, *supra.*

Dist. LEXIS 96302, at *20-22 (N.D. Cal. July 11, 2012) (party not required to produce documents subject to third-party confidentiality restrictions).

Finally, as discussed above the Protective Order permits the parties to seek additional protections for confidential or proprietary documents.

Defendant Aubrey K. McClendon Properly Objected To Engaging In Merits-Discovery Based Upon His Limited Appearance In This Case To Contest The Court's Personal Jurisdiction Over Him; Regardless Any Discovery Directed To Mr. McClendon, The CEO Of Partners And Utica, Is Cumulative

Mr. McClendon's objections to Plaintiff's merits-based discovery requests is appropriate. Mr. McClendon moved to dismiss this case for lack of personal jurisdiction. To preserve his limited appearance for purposes of that motion, Mr. McClendon objected to Plaintiff's merits-based discovery, but agreed to respond to discovery related to matters of personal jurisdiction. *See Clarke v. Marriott Int'l, Inc.*, 2013 U.S. Dist. LEXIS 125963 (D.V.I. Sept. 4, 2013) ("[a] defendant can waive its objection to personal jurisdiction by engaging in litigation on the merits without first securing a court's determination on its jurisdictional challenge."). Even Plaintiff concedes that Mr. McClendon's objections were necessary and proper. In the declaratory judgment action filed by Partners in the Western District of Oklahoma, Plaintiff refused to participate in a Rule 26 conference on the same grounds, stating "[a]s we are contesting the exercise of personal jurisdiction over our client in Oklahoma, we believe that to protect our client's rights it is not yet the appropriate time for a Rule 26 discovery planning conference in the Oklahoma case."[24] Plaintiff cannot have it both ways and its request that Mr. McClendon be compelled to respond to its discovery requests should be denied.[25]

Additionally, opening this case up to merits-based discovery regarding Mr. McClendon is cumulative and unnecessary. It would also be inconsistent with the Court's order directing the parties to engage in Rule 30(b)(6) depositions before seeking additional discovery. As stated above, the claims at issue center around Partners' and Utica's use of their names to identify any goods they offer or sell. Mr. McClendon is the CEO of Partners and Utica. Thus, addressing discovery to him individually would be cumulative of what has already been produced by Partners' and Utica.

Mr. McClendon Provided Plaintiff's With The Information Sought Related To His Personal Contacts With The State Of Ohio And Plaintiff's Opposed Mr.

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[24] *See* November 22, 2013 Email from Thomas M. Connor to Jeffrey S. Pollack.

[25] Further underscoring the fact that this is a non-issue is the fact that Plaintiff never raised it until February 21, 2014 – after the parties Rule 16 Conference with the Court. *See* February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

McClendon's Motion By The Date Agreed Upon In The Parties Rule 26 Report
(Interrogatory 2 To Mr. McClendon)

There should be no dispute regarding the insufficiency of Mr. McClendon's jurisdictional contacts with Ohio. Mr. McClendon responded to this Interrogatory, which asks him to identify any land purchased or leased in Ohio and whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio. Mr. McClendon informed Defendants that he has not personally purchased or leased any land in Ohio nor has he applied to the Ohio Secretary of State's Office to do business in the State of Ohio. Based on this response, there should be nothing in controversy.

Consistent with the foregoing, during a January 17, 2014 conference call between counsel for the parties, Plaintiff agreed that no further discovery was needed regarding Mr. McClendon's motion to dismiss on personal jurisdiction.[26] Accordingly, Plaintiff responded to Defendants' Motion to Dismiss, on the date agreed upon in the Parties joint Rule 26 Report, without raising any discovery disputes.[27] Plaintiff's demand for a different response to this Interrogatory by Mr. McClendon should, therefore, be denied.

Plaintiff's Request For Vendor Information Is Facially Overbroad And Not Reasonably Calculated To Lead To the Discovery Of Admissible Evidence; Partners And Utica Have Appropriately Limited Their Responses To The Identification Of Resellers Of Goods Or Services That May Be Offered For Sale By Defendants
(Interrogatory 4 and Request for Production 13)

Plaintiff's request for "*any* vendors" that have been contacted or used by Defendant is facially overbroad and not reasonably calculated to lead to the discovery of admissible evidence. First, despite the fact that Plaintiff does not claim to possess national trademark rights, this request is not geographically limited. Second, and more to the point, this Interrogatory encompasses all possible manner of vendors, including those who sell goods to Partners and Utica. This includes, among others, paper and office supply salesman, companies that provide janitorial services, trash collectors, landscaping companies, FedEx, and other service providers.

The central issue in this case is alleged trademark infringement. Information that is reasonably calculated to lead to the discovery of admissible evidence relates to the manner in which Partners and Utica identify their goods and services (of which there are none). The test for likelihood of confusion in the Sixth Circuit is the following:

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[26] February 28, 2014 letter from Jeffrey S. Pollack to Thomas M. Connor.

[27] Additionally, the law in this district is clear. Ohio does not recognize general jurisdiction. *Lexon Ins. Co. v. Devinshire Land Dev.*, LLC, 2013 U.S. Dist. LEXIS 66958, at *6-7 (S.D. Ohio May 10, 2013). Thus, Mr. McClendon responded to this Interrogatory despite the fact that the information sought is not reasonably calculated to lead to the discovery of admissible evidence.

> (1) the strength of [plaintiff's] marks, (2) the relatedness of the [good or services sold], (3) the similarity of the marks, (4) the evidence of actual confusion, (5) the marketing channels used, (6) the likely degree of purchaser care and sophistication, (7) [defendant's] intent in selecting its mark; and (8) the likelihood of expansion of the [parties] using the marks. ***Under this test, the "ultimate question" is "whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way.***"

Lucky's Detroit, LLC v. Double L, Inc., 533 Fed. Appx. 553, 555-556 (6th Cir. Mich. 2013) (Citing *Frisch's Rests., Inc. v. Elby's Big Boy of Steubenville, Inc.*, 670 F.2d 642, 648 (6th Cir. 1982)) (emphasis added). *Lucky's Detroit*, which was decided last year, makes it clear that the focus in trademark cases is on "relevant consumers," not on vendors or any other class of individuals. Accordingly, Partners and Utica appropriately narrowed their responses to this Plaintiff's Interrogatories and Document Requests seeking vendor information to the identification of potential "resellers of goods or services that may be offered for sale by Defendants."

Plaintiff's attempt to open the inquiry further than this is improper and aimed only at burdening Defendants with overbroad discovery requests that bear no reasonable relation to this case and are not reasonably likely to lead to the discovery of admissible evidence.

Plaintiff's Request For Information Regarding *Any* Use Of "American Energy" By Defendants Is Facially Overbroad And Not Reasonably Calculated To Lead To the Discovery Of Admissible Evidence
(Interrogatory 5)

Plaintiff's request that Defendants "identify instances where the trade name 'American Energy Partners' [or 'American Energy – Utica'] have been used in connection with ***any document circulated or displayed by your business***" is facially overbroad. (Emphasis added).

First, it is unclear if Interrogatory No. 5 seeks information regarding the trademark or ordinary "use" of the names American Energy Partners or American Energy – Utica. If this Interrogatory seeks information regarding the alleged trademark "use" of Defendants' names, Defendants already responded that they do not use the formative "American Energy" as a trademark.[28]

If, however, this Interrogatory seeks information regarding the ordinary "use" of Defendants' names, it is grossly overbroad and not at all reasonably calculated to lead to the

[28] *See* Partners' Response to Plaintiff's Request for Admission No. 3; Utica's Response to Plaintiff's Request for Admission No. 3 at Exhibit 3.

discovery of admissible evidence. This Interrogatory might as well request every letter, every email, and every document bearing Defendants' name whether or not those documents are related to the claims and defenses at issue. As Plaintiff should be aware from Defendants' document production, Partners' and Utica's names appear in their letterhead, business cards, and stationary. Partners' and Utica's names are included on documents countless times every day in letters, email, and other documents. Plaintiff cannot contend that it is entitled to every document and every communication ever authored by Partners and Utica containing their names. This is plainly improper. *See e.g., Am. Eagle Outfitters, Inc. v. Payless Shoesource, Inc.*, 2009 U.S. Dist. LEXIS 3781 (E.D.N.Y. Jan. 21, 2009) (request for "all documents" concerning marketing or promotion of goods under a specific mark overbroad and not reasonably calculated to lead to the discovery of admissible evidence); Fed. R. Civ. Pro. 34 (requests for production "must describe with reasonable particularity each item or category of items to be inspected.").

Here, Partners and Utica have produced: specimens of their letterhead, business cards, and stationary. And Partners has produced numerous advertisements featuring its name and logo. Plaintiff's request for every document ever created containing Partners' and Utica's names, without limitation, would require Partners and Utica to open their entire files to Plaintiff. This plainly goes beyond the bounds of what is reasonably calculated to lead to the discovery of admissible evidence.[29]

Partners And Utica Have No Trademark/Trade Name Searches In Their Possession (Interrogatory 6 and Request For Production 21)

Plaintiff's request to compel the production of trademark/trade name searches is a non-sequitur. In pressing this issue, it is apparent that Plaintiff ignored Partners' letter dated December 26, 2013 stating that American Energy Partners is presently unaware of any 'searches' in its possession potentially responsive to these discovery requests. Any "searches," however that term is defined, that may be responsive to these discovery requests were conducted by American Energy Partners' outside counsel and are privileged. Further, Plaintiff has ignored Utica's written discovery responses. Utica's response to Plaintiff's Request for Production 5 states that it "does not possess documents responsive to this request."[30]

Additionally, Plaintiff has Defendants' privilege log in its possession.[31] The log confirms what Defendants have said in correspondence and in written discovery responses. Specifically, no documents appear on that log related to "searches and opinions related to the American

---

[29] Notably, Plaintiff has not produced every letter, invoice, or other document containing its name. Should Partners and Utica be ordered to make their entire file available to Plaintiff, which they strongly oppose, Plaintiff should be compelled to do the same.

[30] Utica's Response to Plaintiff's Request for Production 5, Exh. "3."

[31] *See* Privilege Log, a copy of which is attached as Exhibit "9."

Energy Partners trade name and trademark." Thus, it again appears that Plaintiff raises disputes with no basis and that its request to compel should be denied.[32]

CONCLUSION

For each of the foregoing reasons, Defendants believe the discovery disputes raised by Plaintiff are without merit and should be denied.

Defendants respectfully request the opportunity to formally brief these issues to make a full record for the Court.

Sincerely,

Jeffrey S. Pollack

JSP:

cc: Matthew A. Taylor, Esquire (via e-mail)
James L. Beausoleil, Esquire (via email)
William G. Porter, Esquire (via e-mail)
William A. Sieck, Esquire (via email)
John E. Jevicky, Esquire (via e-mail)
Thomas M. Connor, Esquire (via email)
John W. McCauley, Esquire (via e-mail)
Allison G. Davis, Esquire (via e-mail)

[32] Even if Defendants did have such searches in their possession, the law Plaintiff relies upon in its correspondence to Defendants is not availing. "Documentation evidencing the performance of trademark searches and the resulting search reports themselves are . . . protected by the attorney-client privilege." *Flagstar Bank, FSB v. Freestar Bank, N.A.*, 2009 U.S. Dist. LEXIS 76842 (N.D. Ill. Aug. 25, 2009).

EXHIBIT 1

To:	Murray Energy Corporation (april.besl@dinsmore.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 86118789 - MURRAY AMERICAN ENERGY, INC. - 35801-6
Sent:	3/13/2014 6:34:40 AM
Sent As:	ECOM118@USPTO.GOV
Attachments:	Attachment - 1 Attachment - 2 Attachment - 3 Attachment - 4 Attachment - 5 Attachment - 6 Attachment - 7

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)
OFFICE ACTION (OFFICIAL LETTER) ABOUT APPLICANT'S TRADEMARK APPLICATION

U.S. APPLICATION SERIAL NO. 86118789

MARK: MURRAY AMERICAN ENERGY, INC.

86118789

CLICK HERE TO RESPOND TO
http://www.uspto.gov/trademarks/teas/r

CORRESPONDENT ADDRESS:
APRIL L. BESL
DINSMORE & SHOHL
255 E 5TH ST STE 1900
CINCINNATI, OH 45202-1971

APPLICANT: Murray Energy Corporation

CORRESPONDENT'S REFERENCE/DOCKET NO :
35801-6
CORRESPONDENT E-MAIL ADDRESS:
april.besl@dinsmore.com

PRIORITY ACTION

STRICT DEADLINE TO RESPOND TO THIS LETTER

TO AVOID ABANDONMENT OF APPLICANT'S TRADEMARK APPLICATION, THE USPTO MUST RECEIVE APPLICANT'S COMPLETE RESPONSE TO THIS LETTER **WITHIN 6 MONTHS** OF THE ISSUE/MAILING DATE BELOW.

ISSUE/MAILING DATE: 3/13/2014

DATABASE SEARCH: The trademark examining attorney has searched the USPTO's database of registered and pending marks and has found no conflicting marks that would bar registration under Trademark Act Section 2(d). TMEP §704.02; *see* 15 U.S.C. §1052(d).

ISSUES APPLICANT MUST ADDRESS: On 3/10/13 April Besl and the trademark examining attorney discussed the issues below. Applicant must timely respond to these issues. *See* 15 U.S.C. §1062(b); 37 C.F.R. §2.62(a); TMEP §§708, 711.

TEAS PLUS APPLICANTS MUST SUBMIT DOCUMENTS ELECTRONICALLY OR SUBMIT FEE: Applicants who filed their application online using the reduced-fee TEAS Plus application must continue to submit certain documents online using TEAS, including responses to Office actions. *See* 37 C.F.R. §2.23(a)(1). For a complete list of these documents, see TMEP §819.02(b). In addition, such applicants must accept correspondence from the Office via e-mail throughout the examination process and must maintain a valid e-mail address. 37 C.F.R. §2.23(a)(2); TMEP §§819, 819.02(a). TEAS Plus applicants who do not meet these requirements must submit an additional fee of $50 per international class of goods and/or services. 37 C.F.R. §2.6(a)(1)(iv); TMEP §819.04. In appropriate situations and where all issues can be resolved by amendment, responding by telephone to authorize an examiner's amendment will not incur this additional fee.

Disclaimer

Applicant must disclaim the geographically descriptive wording "AMERICAN ENERGY, INC. and the outline of the United States" apart from the mark as shown because it merely describes where applicant, a corporation, produces and sells its energy commodity in the nature of coal, in the United States. *See* 15 U.S.C. §1056(a); TMEP §§1213, 1213.03(a). Please note attached dictionary definitions.

The computerized printing format for the Office's *Trademark Official Gazette* requires a standardized format for a disclaimer. TMEP §1213.08(a)(i). The following is the standard format used by the Office:

> **No claim is made to the exclusive right to use "AMERICAN ENERGY, INC." and the outline of the United States apart from the mark as shown.**

TMEP §1213.08(a)(i); *see In re Owatonna Tool Co.*, 231 USPQ 493 (Comm'r Pats. 1983).
A disclaimer does not physically remove the disclaimed matter from the mark, but rather is a written statement that applicant does not claim exclusive rights to the disclaimed wording and/or design separate and apart from the mark as shown in the drawing. TMEP §§1213, 1213.10.

The following cases further explain the disclaimer requirement: *Dena Corp. v. Belvedere Int'l Inc* ., 950 F.2d 1555, 21 USPQ2d 1047 (Fed. Cir. 1991); *In re Brown-Forman Corp.*, 81 USPQ2d 1284 (TTAB 2006); *In re Kraft, Inc.*, 218 USPQ 571 (TTAB 1983).

Response Guidelines

Applicant should include the following information on all correspondence with the Office: (1) the name and law office number of the trademark examining attorney, (2) the serial number and filing date of the application, (3) the date of issuance of this Office action, (4) applicant's name, address, telephone number and e-mail address (if applicable), and (5) the mark. 37 C.F.R. §2.194(b)(1); TMEP §302.03(a).

Applicant is encouraged to telephone or e-mail the assigned trademark examining attorney to resolve the issues raised in this Office action by examiner's amendment. Although a formal response may never be submitted by e-mail, an applicant may communicate informally by phone or e-mail with the trademark examining attorney to agree to a proposed amendment to the application that will immediately place the application in condition for publication for opposition, issuance of a registration, or suspension. *See* TMEP §707.

/John E. Michos/
Trademark Attorney
Law Office 118
571 272-9197
john.michos@uspto.gov

TO RESPOND TO THIS LETTER: Go to http://www.uspto.gov/trademarks/teas/response_forms.jsp. Please wait 48-72 hours from the issue/mailing date before using the Trademark Electronic Application System (TEAS), to allow for necessary system updates of the application. For *technical* assistance with online forms, e-mail TEAS@uspto.gov. For questions about the Office action itself, please contact the assigned trademark examining attorney. **E-mail communications will not be accepted as responses to Office actions; therefore, do not respond to this Office action by e-mail.**

All informal e-mail communications relevant to this application will be placed in the official application record.

WHO MUST SIGN THE RESPONSE: It must be personally signed by an individual applicant or someone with legal authority to bind an applicant (i.e., a corporate officer, a general partner, all joint applicants). If an applicant is represented by an attorney, the attorney must sign the response.

PERIODICALLY CHECK THE STATUS OF THE APPLICATION: To ensure that applicant does not miss crucial deadlines or official notices, check the status of the application every three to four months using the Trademark Status and Document Retrieval (TSDR) system at http://tsdr.uspto.gov/. Please keep a copy of the TSDR status screen. If the status shows no change for more than six months, contact the Trademark Assistance Center by e-mail at TrademarkAssistanceCenter@uspto.gov or call 1-800-786-9199. For more information on checking status, see http://www.uspto.gov/trademarks/process/status/.

TO UPDATE CORRESPONDENCE/E-MAIL ADDRESS: Use the TEAS form at http://www.uspto.gov/trademarks/teas/correspondence.jsp.

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american alligator
american aloe

American

A·mer·i·can [uh-mer-i-kuh n] Show IPA

adjective
1. of or pertaining to the United States of America or its inhabitants: *an American citizen.*
2. of or pertaining to North or South America; of the Western Hemisphere: *the American continents.*
3. of or pertaining to the aboriginal Indians of North and South America, usually excluding the Eskimos, regarded as being of Asian ancestry and marked generally by reddish to brownish skin, black hair, dark eyes, and prominent cheekbones.

noun
4. a citizen of the United States of America.
5. a native or inhabitant of the Western Hemisphere.
6. an Indian of North or South America.
7. American English.
8. a steam locomotive having a four-wheeled front truck, four driving wheels, and no rear truck.

Matching Quote
"*... the struggle against sexism demands the destruction of the American state, and ... the immediate personal nature of sexism requires struggle against men who enforce that oppression as well as its institutions.*"
–Women of The Weather Underground
MORE

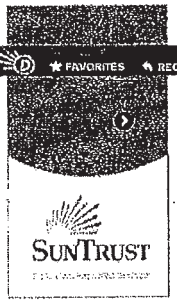
What Is Americanism? How Many Americans Have Computers? What Is American Sign Language?
When Was American Football Invented? How Many Americans Are Uninsured? What Is An American Manicure?

Origin:
1570–80; Americ(a) + -an

Related forms
A·mer·i·can·ly, *adverb*
A·mer·i·can·ness, *noun*

American, The
noun
a novel (1877) by Henry James.

Dictionary.com Unabridged
Based on the Random House Dictionary © Random House, Inc. 2014



American (əˈmerikən) [?]

— adj

1. of or relating to the United States of America, its inhabitants, or their form of English
2. of or relating to the American continent

— n

3. a native or citizen of the US
4. a native or inhabitant of any country of North, Central, or South America
5. the English language as spoken or written in the United States

Word Origin & History Etymonline

American
17c., from America (q.v.); originally in ref. to what are now called Native

AN ENCYCLOPÆDIA BRITANNICA COMPANY

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energy

?!

Quiz

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energy

Save

Popularity

38 ENTRIES FOUND

energy

energy balance

energy budget

en·er·gy *noun* \e-nər-jē\

: ability to be active : the physical or mental strength that allows you to do things

: natural enthusiasm and effort

: usable power that comes from heat, electricity, etc.

plural **en·er·gies**

Like 53

Full Definition of ENERGY

1 a : dynamic quality <narrative *energy*>

b : the capacity of acting or being active <intellectual *energy*>

c : a usually positive spiritual force <the *energy* flowing through all people>

2 : vigorous exertion of power : EFFORT <investing time and *energy*>

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What To Call That Groove Above Your Lip
Words For Things You Didn't Know Have

energy >

3 : a fundamental entity of nature that is transferred between parts of a system in the production of physical change within the system and usually regarded as the capacity for doing work

4 : usable power (as heat or electricity); *also* : the resources for producing such power

See energy defined for English-language learners »
See energy defined for kids »

Examples of ENERGY

- The kids are always so full of *energy*.
- They devoted all their *energy* to the completion of the project.
- They devoted all their *energies* to the completion of the project.
- She puts a lot of *energy* into her work.
- The newer appliances conserve more *energy*.

Origin of ENERGY

Late Latin *energia*, from Greek *energeia* activity, from *energos* active, from *en* in + *ergon* work — more at WORK

First Known Use: 1599

Related to ENERGY

Synonyms
aura, chi (*or* ch'i *also* qi), ki, vibe(s), vibration(s)

Antonyms
lethargy, listlessness, sluggishness, torpidity

Related Words
inner light, light, nature, orgone, soul, spirit; élan vital, life, lifeblood, Shakti (*also* Sakti), world soul; karma, mana

Near Antonyms
indolence, laziness; debilitation, debility, delicacy, disablement, enfeeblement, faintness, feebleness, frailness, frailty, impotence, impotency, infirmity, powerlessness, puniness, slightness, softness, tenderness, weakness; enervation, exhaustion, inanition, prostration

more
See Synonym Discussion at power

See Synonym Discussion at power

Other Physics Terms

amplitude, centrifugal, centripetal, convection, gradient, hysteresis, kinetic, lase, quantum

en·er·gy noun \en-ər-jē\ *(Medical Dictionary)*

plural **en·er·gies**

Medical Definition of ENERGY

1 : the force driving and sustaining mental activity <in psychoanalytic theory the source of psychic *energy* is the id>

2 : the capacity for doing work

energy noun *(Concise Encyclopedia)*

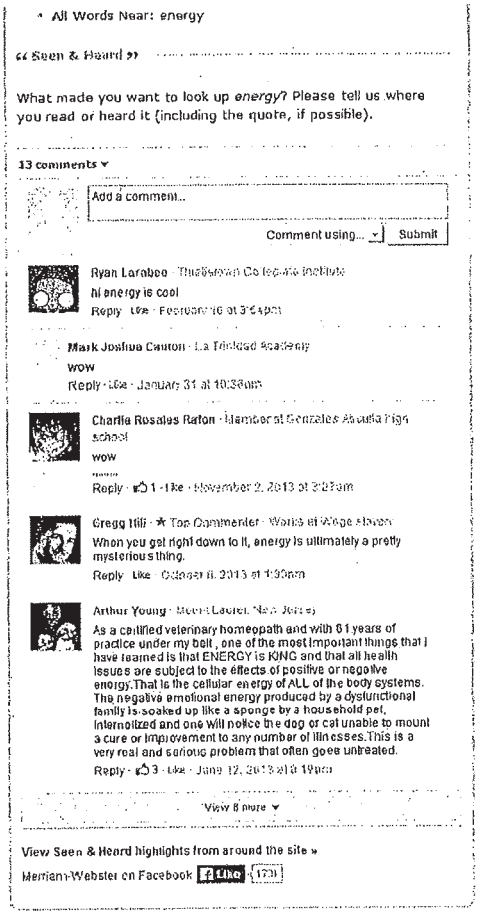
Capacity for doing WORK. Energy exists in various forms—including KINETIC, POTENTIAL, THERMAL, CHEMICAL, electrical (*see* ELECTRICITY), and NUCLEAR—and can be converted from one form to another. For example, fuel-burning heat engines convert chemical energy to thermal energy; batteries convert chemical energy to electrical energy. Though energy may be converted from one form to another, it may not be created or destroyed; that is, total energy in a closed system remains constant. All forms of energy are associated with MOTION. A rolling ball has kinetic energy, for instance, whereas a ball lifted above the ground has potential energy, as it has the potential to move if released. HEAT and work involve the transfer of energy; heat transferred may become thermal energy. *See also* ACTIVATION ENERGY, BINDING ENERGY, IONIZATION ENERGY, MECHANICAL ENERGY, SOLAR ENERGY, ZERO-POINT ENERGY.

Learn More About ENERGY

Thesaurus: All synonyms and antonyms for "energy"
Spanish Central Translation: "energy" in Spanish

Browse

- Next Word in the Dictionary: energy balance
- Previous Word in the Dictionary: energumen
- All Words Near: energy



• All Words Near: energy

"Seen & Heard"

What made you want to look up *energy*? Please tell us where you read or heard it (including the quote, if possible).

13 comments

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Ryan Larabee · Thaddeus Co legiate Institute
hi energy is cool
Reply · Like · February 16 at 3:44pm

Mark Joshua Canton · La Trinidad Academy
wow
Reply · Like · January 31 at 10:38am

Charlie Rosales Rafon · Member at Gonzales Akaulia High school
wow
Reply · 1 · Like · November 2, 2013 at 3:27am

Gregg Hill · Top Commenter · Works at Wage Slaves
When you get right down to it, energy is ultimately a pretty mysterious thing.
Reply · Like · October 8, 2013 at 1:30am

Arthur Young · Mount Laurel, New Jersey
As a certified veterinary homeopath and with 61 years of practice under my belt , one of the most important things that I have learned is that ENERGY is KING and that all health issues are subject to the effects of positive or negative energy.That is the cellular energy of ALL of the body systems. The negative emotional energy produced by a dysfunctional family is soaked up like a sponge by a household pet, internalized and one will police the dog or cat unable to mount a cure or improvement to any number of illnesses.This is a very real and serious problem that often goes untreated.
Reply · 3 · Like · June 12, 2013 at 1:19pm

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The Merriam-Webster Unabridged Dictionary

To:	Murray Energy Corporation (april.besl@dinsmore.com)
Subject:	U.S. TRADEMARK APPLICATION NO. 86118789 - MURRAY AMERICAN ENERGY, INC. - 35801-6
Sent:	3/13/2014 6:34:40 AM
Sent As:	ECOM118@USPTO.GOV
Attachments:	

UNITED STATES PATENT AND TRADEMARK OFFICE (USPTO)

IMPORTANT NOTICE REGARDING YOUR U.S. TRADEMARK APPLICATION

USPTO OFFICE ACTION (OFFICIAL LETTER) HAS ISSUED
ON **3/13/2014** FOR U.S. APPLICATION SERIAL NO. 86118789

Please follow the instructions below:

(1) TO READ THE LETTER: Click on this link or go to http://tsdr.uspto.gov, enter the U.S. application serial number, and click on "Documents."

The Office action may not be immediately viewable, to allow for necessary system updates of the application, but will be available within 24 hours of this e-mail notification.

(2) TIMELY RESPONSE IS REQUIRED: Please carefully review the Office action to determine (1) how to respond, and (2) the applicable response time period. Your response deadline will be calculated from **3/13/2014** (*or sooner if specified in the Office action*). For information regarding response time periods, see http://www.uspto.gov/trademarks/process/status/responsetime.jsp.

Do NOT hit "Reply" to this e-mail notification, or otherwise e-mail your response because the USPTO does NOT accept e-mails as responses to Office actions. Instead, the USPTO recommends that you respond online using the Trademark Electronic Application System (TEAS) response form located at http://www.uspto.gov/trademarks/teas/response_forms.jsp.

(3) QUESTIONS: For questions about the contents of the Office action itself, please contact the assigned trademark examining attorney. For *technical* assistance in accessing or viewing the Office action in the Trademark Status and Document Retrieval (TSDR) system, please e-mail TSDR@uspto.gov.

WARNING

Failure to file the required response by the applicable response deadline will result in the

ABANDONMENT of your application. For more information regarding abandonment, see http://www.uspto.gov/trademarks/basics/abandon.jsp.

PRIVATE COMPANY SOLICITATIONS REGARDING YOUR APPLICATION: Private companies **not** associated with the USPTO are using information provided in trademark applications to mail or e-mail trademark-related solicitations. These companies often use names that closely resemble the USPTO and their solicitations may look like an official government document. Many solicitations require that you pay "fees."

Please carefully review all correspondence you receive regarding this application to make sure that you are responding to an official document from the USPTO rather than a private company solicitation. All official USPTO correspondence will be mailed only from the "United States Patent and Trademark Office" in Alexandria, VA; or sent by e-mail from the domain "@uspto.gov." For more information on how to handle private company solicitations, see http://www.uspto.gov/trademarks/solicitation_warnings.jsp.

EXHIBIT 2

Pollack, Jeffrey S.

From: Connor, Thomas <thomas.connor@dinsmore.com>
Sent: Friday, November 22, 2013 5:47 PM
To: Pollack, Jeffrey S.
Cc: Beausoleil, James L.; Jevicky, John; CTowns@therodriguezfirm.com
Subject: RE: American Energy Partners, LP v. American Energy Corporation

Jeff,

As we are contesting the exercise of personal jurisdiction over our client in Oklahoma, we believe that to protect our client's rights it is not yet the appropriate time for a Rule 26 discovery planning conference in the Oklahoma case. I note, however, that discovery on the relevant issues is already well under way in the parallel Ohio case.

With respect to the Ohio discovery, we are in receipt of your November 19, 2013 letter (I note for clarity that the letter is dated Nov. 14, but was emailed to us on Nov. 19). Your letter poses various questions relating to American Energy's discovery responses in the Ohio case, as well as Murray Energy Corporation's response to a subpoena in that case. We are reviewing the letter and intend to provide a prompt reply.

Tom

Dinsmore

Thomas M. Connor
Attorney

Dinsmore & Shohl LLP • Legal Counsel
255 East Fifth Street
Suite 1900
Cincinnati, OH 45202
T (513) 977-8454 • F (513) 977-8141
E thomas.connor@dinsmore.com • dinsmore.com

From: Pollack, Jeffrey S. [mailto:JSPollack@duanemorris.com]
Sent: Tuesday, November 19, 2013 11:14 AM
To: Jevicky, John; Connor, Thomas
Cc: Beausoleil, James L.
Subject: American Energy Partners, LP v. American Energy Corporation

John and Tom:

Are you available this week for a Rule 26 conference on the Oklahoma action?

Thanks,

Jeff

Jeffrey S. Pollack | Duane Morris LLP
215-979-1299 o | 215-689-4942 f

Dinsmore

Legal Counsel.

DINSMORE & SHOHL LLP
255 East Fifth Street ^ Suite 1900 ^ Cincinnati, OH 45202
www.dinsmore.com

John E. Jevicky
(513) 977-8301 (direct) ^ (513) 977-8141 (fax)
john.jevicky@dinsmore.com

December 10, 2013

VIA EMAIL & U.S. MAIL

Matthew A. Taylor
Jeffrey S. Pollack
Samuel W. Apicelli
DUANE MORRIS LLP
30 South 17th Street
Philadelphia, PA 19103
Email: mataylor@duanemorris.com
jspollack@duanemorris.com
swapicelli@duanemorris.com

William G. Porter
Gerald P. Ferguson
William A. Sieck
Christopher C. Wager
VORYS, SATER, SEYMOUR
AND PEASE LLP
52 East Gay Street
Columbus, OH 43215
Email: wgporter@vorys.com
gpferguson@vorys.com
wasieck@vorys.com
ccwager@vorys.com

Re: *American Energy Corporation v. American Energy Partners, LP, et al.*
U.S. District Court, Southern District of Ohio, Eastern Division
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I write to address significant deficiencies in Defendants' written discovery responses (dated November 7, 2013), and document production (dated November 18, 2013). I request that Defendants rectify these deficiencies within the next 10 days.

General Objection No. 2 – This objection states that "Defendants object to Plaintiff's requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things." I am aware of no legal support for objecting to discovery on these grounds. A Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. Any information or documents withheld on the grounds expressed in General Objection No. 2 should be immediately produced.

Interrogatory No. 1: This interrogatory requested that general and limited partners be identified with an address provided. Defendants' response fails to provide an address for any of the identified persons and entities.

Interrogatory No. 2: This interrogatory requests the identification of contacts with the state of Ohio. Aubrey K. McClendon's response states that "he has not personally purchased or leased any land in Ohio nor has he personally applied to do business in the State of Ohio." To the extent that this response may exclude actions taken by Mr. McClendon on behalf of some other person or entity, such actions are plainly within the scope of this request, and directly related to the question of the exercise of personal jurisdiction over Mr. McClendon by a court in Ohio. Please clarify whether this response excluded any such actions taken on behalf of others, and if, so identify all such actions as requested by the interrogatory.

Interrogatory No. 4: This interrogatory simply requests the name and address of vendors used by Defendants, including those used in Ohio. American Energy Partners claims not to understand the term "vendor" in this context. To assist you in the preparation of a complete response to this interrogatory, you may use the definition of vendor as set forth in the American English version of the Cambridge Dictionary: "a person or company that sells goods or services." Defendants' response to this interrogatory unilaterally applies the limitation that Defendants will disclose only "information regarding resellers of goods or services that may be offered for sale by Defendants." But the limitation is not contained in the interrogatory itself, and applying it here yields a response that provides no information whatsover.

American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon.

Interrogatory No. 5: This straightforward interrogatory requests that Defendants "identify instances where the trade name American Energy Partners has been used in connection with any document circulated or displayed by your business." Defendants' response then takes issue with American Energy's "characterization of 'American Energy Partners' as a trademark. The interrogatory makes no such characterization, and this objection is without merit. Defendants' objection that the interrogatory calls for confidential material is simply not a valid objection. We also question the claim that fully responding to this interrogatory is an undue burden, given that American Energy Partners was only recently formed and appears to employ only a small number of individuals. Producing representative documents showing the use of a particular trademark is not nearly responsive to this request. Furthermore, the documents that were produced appear to be largely unused letterhead and mock advertising rather than documents actually circulated or displayed by Defendants.

Interrogatory Nos. 6, 7, 8, 9; Request for Production Nos. 5, 21: These discovery requests seek information about trade name / trademark searches. No

substantive response is provided to any of them, presumably because of the claim of privilege. I note, however, that such information is not protected from disclosure by claims of privilege. *See Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 USPQ 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 USPQ 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Defendants must respond fully and substantively to the interrogatories. If Defendants persist in asserting such privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests.

Interrogatory Nos. 13 and 14: Defendant American Energy Partners responds to these interrogatories stating that "it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine." There is not, however, any Plaintiff by that name. Perhaps American Energy Partners is simply engaging in tactical wordplay here to better suit its litigation theories, but the result is an answer that is not responsive to the request. Please respond to the request as it was asked with regard to American Energy Corporation.

Interrogatory No. 19; Request for Production No. 9: These discovery requests seek information about published advertising, including the names and dates of publications and documents relating to same. Defendants refer to unspecified documents that contain information from which a response can be derived. Yet the documents produced appear to reflect mock-up advertising, and in any event show no date or publication information, and no documents relating to the publishing of any advertising material have been produced. If there are documents that fully respond to this interrogatory, please identify them by bates number, because we cannot identify them. If not, these materials should be produced.

Interrogatory Nos. 20 and 21: These interrogatories present simple factual questions about where Defendants claim that their trade name is known. Defendants provide no substantive answer, but instead assert a series of dubious objections. Defendants object because of American Energy's "characterization of 'American Energy Partners' as a trademark. But the interrogatory makes no mention or even reference to trademarks. Defendants also object because the interrogatory is a "contention interrogatory" that seeks a "legal conclusion." Yet F.R.C.P. 33 expressly provides that "An interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion..." This objection is therefore improper.

Interrogatory No. 22: This interrogatory asks what products or services are sold or are intended to be sold by American Energy Partners. Defendants object because of American Energy's "characterization of 'American Energy Partners' as a trademark. But the interrogatory makes no mention or even reference to trademarks. To the extent that American Energy Partners does respond, it fails to respond to the part of the interrogatory that seeks information about products or services *intended to be sold* by American Energy Partners.

Request for Production Nos. 1, 2, 3: Each of these Requests seeks documents relating to Defendants' creation, consideration, design, development, selection, or adoption of trade names and trademarks. Defendants' response to Interrogatory No. 10 states that the American Energy Partners, LP name was selected on or about February 27, 2013. Yet, the produced documents relating to this all appear to be from late March - mostly just March 20 and 21, 2013. Please confirm that Defendants have identified and produced all responsive documents to these requests.

Request for Production No. 13: This request simply asks for the identification of vendors used by Defendants, including those used in Ohio. American Energy Partners claims not to understand the term "vendor." To assist you in the preparation of a complete response to this request, you may use the definition of vendor as set forth in the American English version of the Cambridge dictionary: "a person or company that sells goods or services." Defendants' response to this interrogatory unilaterally applies a limitation ("information regarding resellers of goods or services that may be offered for sale by Defendants") that is not contained in the request itself, and that leads to a response that provides no information whatsoever.

American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon.

Request for Production No. 20: This request seeks documents in Defendants' possession, custody or control relating to coal. To assist in the identification of responsive documents, American Energy specifically seeks all documents relating to coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States.

Request for Admission No. 3: This request asks about Defendants' use of "American Energy" in trade names or trademarks. American Energy Partners responds that it denies using American Energy in any trademark, but does not respond with regard to any trade names. Please either confirm that this silence is an admission of

the stated proposition as it relates to trade names, or respond fully and substantively to the request.

Request for Admission No. 6: This request asks about whether coal and natural gas are competitive commercially. American Energy Partners' response states that it denies competing with American Energy for customers, but does not respond to the general proposition actually set forth in the request. Please respond to the request as written.

Request for Admission No. 8: This request asks whether the Defendants have had contact with EnerVest "regarding land in Ohio."

[redacted]

Sincerely,

John E. Jevicky

JEJ

2598632v1

Dinsmore

Legal Counsel.

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December 18, 2013

VIA EMAIL & U.S. MAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*
U.S. District Court, Southern District of Ohio, Eastern Division
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

In American Energy – Utica, LLC's Responses to Plaintiffs' First Set of Interrogatories, Requests for Production of Documents and Requests for Admission ("Discovery Responses"), that were provided to American Energy Corporation on December 11, 2013, we learned of the existence of a company named American Energy Ohio Holdings, LLC. Those same discovery requests sought to obtain information about any other related entities, including affiliates, of American Energy - Utica. *See* American Energy - Utica Interrogatory Nos. 1 and 24, Request for Production No. 27. The written responses, however, largely do not provide the requested information apparently on the grounds that American Energy – Utica does not know what "affiliate" means in this context.

To assist you in this regard, you may refer to the following definition of "Affiliate": *Two parties are "affiliates" if either party has the power to control the other, or a third party controls or has the power to control both. Affiliation also exists (a) in interlocking*

directorates or ownership, (b) in identity of interests among members of a family and (c) where employees, equipment and/or facilities are shared. (*See* businessdictionary.com)

Over the past week, we have conducted initial research into American Energy Ohio Holdings, LLC, which has indicated a potential need to file a Second Amended Complaint adding them as a defendant.

During the course of our research into American Energy Ohio Holdings, LLC, we also became aware of the existence of multiple other companies, which may be controlled by Defendant Aubrey McClendon and affiliated with Defendant American Energy – Utica, and that also contain the term "American Energy" in their names. These companies are listed on the Oklahoma Secretary of State website and have the same registered agent as American Energy – Utica, LLC and American Energy Partners, LP. However, as they have not been disclosed in Discovery Responses as affiliates of Defendants, we are presently unable to fully assess whether these entities belong in this case, or what discoverable information they may have. We have prepared subpoenas directed to all of these newly discovered companies, including American Energy Ohio Holdings, LLC and plan on serving them imminently.

In the spirit of cooperative discovery and judicial efficiency, however, we believe that open communication between counsel would prevent the need for ongoing discovery debates about basic terminology, repeated amendments to the parties and claims in this case, and the resulting impact on the case schedule set by the Court. To that end, we ask that you identify, at a minimum, all affiliates of the existing Defendants in this case that use some combination of the terms "American" and "Energy" in their names by Friday, December 20th.

Sincerely,

John E. Jevicky

JEJ

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December 26, 2013

VIA EMAIL

John E. Jevicky
Dinsmore & Shohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Re: ***American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886***

Dear John:

We write on behalf of Defendant American Energy Partners, LP ("American Energy Partners") in response to Plaintiff's December 10, 2013 letter. The following responds to each of the issues raised by Plaintiff.

General Objection No. 2 – This objection is proper to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents.

Interrogatory No. 1: Regarding your request for the addresses of American Energy Partners' general and limited partners, all inquiries to such parties may be directed through American Energy Partners' counsel at Duane Morris.

Interrogatory No. 2: Interrogatory No. 2's request for "any contact" with the State of Ohio is overbroad, vague, and ambiguous. Moreover, there is no basis in the text of this Interrogatory for Plaintiff's request, set forth in its December 10, 2013 letter, for information regarding actions taken by Mr. McClendon on behalf of some other person or entity. This Interrogatory is directed simply to any direct contact Defendants may have with Ohio. Moreover, Plaintiff's demand for such information is not reasonably calculated to lead to the discovery of admissible evidence as the Sixth Circuit only recognizes specific, not general jurisdiction.

Interrogatory No. 4/Request for Production 13: Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Put simply, it encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy Partners is not relevant to this inquiry. As such, American Energy Partners and Mr. McClendon have appropriately limited their responses to resellers of goods or services that may be offered for sale by Defendants.

Interrogatory No. 5: Interrogatory No. 5 is facially overbroad seeking every document containing the name American Energy Partners. This would require the identification of virtually every document ever created by American Energy Partners. Additionally, American Energy Partners' objection that this Interrogatory improperly characterizes American Energy Partners as a trademark is appropriate given Plaintiff's confusing definition of "trade name," which includes both trade names and trademarks. With respect to the validity of American Energy Partners' objection based upon confidentiality, American Energy Partners incorporates it response to Plaintiff's complaints regarding General Objection 2.

Interrogatory Nos. 6, 7, 8, 9; Request for Production Nos. 5, 21: The phrase "search" is vague and subject to multiple interpretations. Regardless, American Energy Partners is presently unaware of any "searches" in its possession potentially responsive to these discovery requests. Any "searches," however that term is defined, that may be responsive to these discovery requests were conducted by American Energy Partners' outside counsel and constitute attorney work product.

Interrogatory Nos. 13 and 14: Contrary to the assertions in Plaintiff's letter, American Energy Partners is not engaged in tactical wordplay. It has truthfully responded that it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine until it received the August 23, 2013 demand letter from Michael McKown. Plaintiff's argument that there is no Plaintiff by that name is itself wordplay. As Plaintiff's own documents show, Plaintiff uses the name American Energy Corporation – Century Mine. Regardless, to resolve this issue, American Energy Partners responds that it also was not aware of Plaintiff "American Energy Corporation" until it received the August 23, 2013 demand letter from Michael McKown.

Interrogatory No. 19: Plaintiff's argument that American Energy Partners produced mock-up advertisements is not accurate. American Energy Partners produced actual advertisements that were run. Plaintiff's request that American Energy Partners identify the name and date of all publications in which these advertisements were run is overbroad and not reasonably calculated to lead to the discovery of admissible evidence. We note that Plaintiff has, itself, refused to identify any advertisements it has run, objecting that such information is publicly available.

Interrogatory Nos. 20 and 21: It is not clear what these Interrogatories seek regarding "the name of each territorial area in which you claim the trade name of your business is known." First, it is unclear what Plaintiff means by "known." Second, American Energy Partners cannot respond about what others know.

Interrogatory No. 22: American Energy Partners responded to this Interrogatory – it does not sell any products or services. No further response is possible or warranted. Additionally, American Energy Partners' objection that this Interrogatory improperly characterizes American Energy Partners as a trademark is appropriate given Plaintiff's confusing definition of "trade name," which includes both trade names and trademarks.

Request for Production Nos. 1, 2, 3: Subject to a reasonable search, American Energy Partners has produced the documents in its possession regarding the creation, consideration, design, development, selection, or adoption of the American Energy Partners name.

Request for Production No. 20: This Request for Production for documents "relating to coal" is vague and ambiguous. It is also overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Based upon the guidance provided by Plaintiff, American Energy Partners will advise if it possesses any documents related to coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States."

Request for Admission No. 3: American Energy Partners' response to Request for Admission No. 3 is appropriate given Plaintiff's definition of "trade name," which includes trademarks. Regardless, if Plaintiff is asking if American Energy Partners uses, "American Energy" in its name, the response to that inquiry is self-evident.

Request for Admission No. 6: This request does not request, as Plaintiff claims, information about whether coal and natural gas are competitive commercially. It asks whether natural gas directly competes with coal for customers. American Energy Partners responded that it does not compete with Plaintiff for customers. Regardless to resolve this dispute, American Energy Partners will amend its response to deny this Request for Admission more generally – that sellers of natural gas do not directly compete with sellers of coal for customers.

Request for Admission No. 8: [redacted] **[This Response Is Designated Attorneys' Eyes Only]**

To address the matters raised in your letter dated December 18, 2013, the term affiliate remains susceptible to multiple definitions. Nonetheless, to resolve any perceived dispute by Plaintiff, Defendants were prepared to identify subsidiaries and subsidiaries of subsidiaries of American Energy Partners, L.P. that have "American Energy" in their name. From the correspondence received from Century Mine today, however, it appears that no response is

required. We will respond to the issues raised in Plaintiff's December 26, 2013 letter after we have conferred with our clients.

We believe that this adequately addresses each of the issues raised by Plaintiff, if not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,

Jeffrey S. Pollack

JSP:
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)
William G. Porter, Esquire (via e-mail)

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January 6, 2014

VIA EMAIL

John E. Jevicky
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Re: ***American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886***

Dear John:

We write on behalf of Defendants American Energy Partners, LP ("American Energy Partners") and American Energy – Utica, LLC ("American Energy – Utica") in response to Plaintiff's December 18, 2013 letter and as a follow up to the parties' January 2, 2013 meet-and-confer.

The following lists the subsidiaries and subsidiaries of subsidiaries of American Energy Partners that have "American Energy" in their name. The provision of this information is not an admission that it is responsive to any discovery request propounded by Plaintiff, nor is it an admission that that any of the entities listed below possess relevant or discoverable information or that they have engaged in or are potentially liable for any of the alleged conduct asserted in Plaintiff's Amended Complaint. The information provided in this letter is designated as "**Attorneys' Eyes Only**" and is provided to help streamline and expedite discovery in this case. American Energy Partners and American Energy – Utica provide this information subject to the objections asserted in their responses to Plaintiff's discovery requests including, without limitation, its relevance to this action. American Energy Partners and American Energy – Utica further reserve the right to object to the admissibility of the information provided on any grounds at any trial or hearing in the above-referenced action.

[redacted]

DuaneMorris

[redacted]

Please contact us with any questions that you may have regarding this correspondence.

Sincerely,

Jeffrey S. Pollack

JSP:
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)
William G. Porter, Esquire (via e-mail)

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January 17, 2014

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*
U.S. District Court, Southern District of Ohio, Eastern Division
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I wrote to you on December 10, 2013 to address significant deficiencies in American Energy Partners' and Aubrey McClendon's ("Defendants") written discovery responses (dated November 7, 2013), and document production (dated November 18, 2013). On December 26, 2013, Mr. Pollack wrote to me in response, but for the following reasons that letter failed to adequately address the issues I raised. I request that Defendants rectify these deficiencies, which are detailed below, within the next 10 days.

As an initial matter, I take issue with Defendants' apparent continuing refusal to provide information and documents relating to, or in the possession of, the various affiliated entities we are still discovering through media reports and public corporate filings. This refusal extends throughout the discovery responses of American Energy Partners, American Energy – Utica, and Aubrey McClendon, as well as the non-responses to the subpoenas served on affiliated entities. This refusal is wholly improper. Defendants' discovery obligations extend to materials within their

possession, custody, or control – and this clearly includes affiliated entities. Furthermore, we are entitled to conduct discovery to identify proper parties to this case, and Defendants' repeated refusal to cooperate borders on obstruction. The identification of all proper parties is now a central issue in this litigation, and one that we must bring to the attention of the Court if Defendants do not significantly alter the scope and content of their responses. With respect to the law on this question, I invite you to review the opinion from the Southern District of Ohio in *Evenflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342 (S.D. Ohio, June 5, 2006). *See also Steele Software Sys. v. Dataquick Info. Sys.*, 237 F.R.D. 561, 564 (D. Md. 2006) and *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468, 470-471 (S.D. Fla. 2011).

General Objection No. 2 – The objection states that "Defendants object to Plaintiff's requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things." As I previously noted, a Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. Defendants' letter states that the purpose of this objection is to shield from production documents that are covered by confidentiality agreements with third parties. Defendants' letter is ambiguous as to whether additional classes of documents are also being withheld because, as Defendants' claim, "the Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents."

As to the first issue, Defendants appear to be claiming that they can avoid participating in document discovery pursuant to the Federal Rules of Civil Procedure simply by contracting with a third party that the parties will agree to conceal their information. Federal courts have addressed this issue and the objection is without merit. *See e.g. High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, 10-11 (D. Kan. Sept. 9, 2011) ("the Court finds that High Point's purpose in asserting its confidentiality objection, after a protective order limiting the use and disclosure of confidential information had already been entered in the case, was merely to maximize the number of objections to the requested discovery.")

If you intend to persist with this objection, we ask that you provide sufficient details about the withheld documents, and the confidentiality agreements that you believe justify withholding those documents so that Plaintiff, and the Court, can fully assess the legitimacy of the objection.

As to the second issue, if Defendants are withholding additional documents despite the existence of an agreed protective order that includes Attorneys Eyes Only protections, I ask that you either withdraw the objection and produce such materials, or detail why you believe these documents cannot be adequately protected by the existing agreed protective order, and identify what further protections you believe to be necessary.

Interrogatory No. 1: This interrogatory requested that general and limited partners be identified with an address provided for each identified person or entity.

Defendants' initial response failed to provide an address for any of the identified persons and entities. The interrogatory response indicates that the general partner of American Energy Partners is non-party McClendon Energy Operating LLC, and that one of the limited partners is non-party Kathleen B. McClendon. Your letter indicated that these individuals can be contacted through counsel at Duane Morris. Please confirm that you are engaged as counsel on behalf of these two entities for purposes of this litigation. Otherwise, identify the contact information as requested.

Interrogatory No. 2: This interrogatory simply requests the identification of contacts with the state of Ohio. Aubrey K. McClendon's response states that "he has not personally purchased or leased any land in Ohio nor has he personally applied to do business in the State of Ohio."

It seems plain that Defendants' response seeks to parse out acts that Mr. McClendon has personally engaged in through the corporate entities he personally created to do business in Ohio. In so doing, Defendants elevate textual formalism over a plain and fair reading of the interrogatory. In any event, Plaintiffs are entitled to discover facts that would allow for a veil-piercing jurisdictional analysis as to Mr. McClendon and his business ventures directed at Ohio. *See e.g. Redhawk Global, LLC v. World Projects Int'l*, 2012 U.S. Dist. LEXIS 172054 (S.D. Ohio Dec. 4, 2012) (Sargus, J.)

Defendants then correctly discern that part of the motivation behind this inquiry is the identification of jurisdictionally-relevant contacts with the State of Ohio, given Mr. McClendon's apparent belief that he is not subject to the personal jurisdiction of the Court. Defendants object on the grounds that "the Sixth Circuit only recognizes specific, not general jurisdiction." First, this is a debatable statement of Ohio law (*See Id.* at note 2), but need not be resolved here as Ohio's long-arm statute governing specific jurisdiction is "very broadly worded and encompasses defendants who are transacting any business in Ohio, even if the defendant has never visited the state." *Id.* Unless you intend to also deny the applicability of Ohio's long-arm statute to the jurisdictional analysis, Mr. McClendon's contacts with Ohio as he initiates his new business ventures are highly relevant to this case and to the issues raised in the Motion to Dismiss filed by Mr. McClendon on November 6, 2013 in this matter.

By way of context, Forbes recently reported that "Aubrey McClendon has had no trouble finding money to play with since leaving Chesapeake Energy. As of October, his American Energy Partners LP had raised $1.7 billion in equity and debt. The closely held company has been busy buying up acreage in the Utica play of Ohio." *See* Forbes, Dec. 16, 2003, *You'd Be Crazy To Invest In Aubrey McClendon's New IPO.* We should be learning of Mr. McClendon's and American Energy Partners' relevant activities through good faith responses to our discovery requests, not through the media as we have been.

We ask that you respond fully to the interrogatory. If you will not, it appears that we are unfortunately at an impasse requiring resolution by the Court.

Interrogatory No. 4: This interrogatory simply requests the name and address of vendors used by Defendants, including those used in Ohio. We have clarified that you may define vendors as "a person or company that sells goods or services" for purposes of our requests. As previously explained, American Energy is entitled to know the identity of those vendors that American Energy Partners has used in the course of its operations to ascertain American Energy Partners' use of American Energy's protected rights and also to lead to the discovery of admissible evidence relating to American Energy Partners' intended business plans, and the steps taken in furtherance of those plans. These same considerations apply with respect to Mr. McClendon. Mr. McClendon's use of vendors from, or operating in, Ohio also goes directly to the issue of the exercise of personal jurisdiction over Mr. McClendon. Defendants have answered with what is substantively a non-response. You limit the response to "resellers of goods or services," which is a convenient limitation for entities that claim not to have yet sold any goods or services.

American Energy is entitled to discover facts relating to potential confusion that may arise relating not just to the "identification of goods and services," but to other aspects of Defendants' business that could lead to confusion. *See, e.g., Beacon Mut. Ins. Co. v. OneBeacon Ins. Group*, 376 F.3d 8, 16 (1st Cir. 2004) ("We also hold that the likelihood of confusion inquiry is not limited to actual or potential purchasers, but also includes others whose confusion threatens the trademark owner's commercial interest in its mark"). Consequently, Defendants cannot unilaterally refuse to produce vendor information that may go to other aspects of Defendants' activities simply because they are not "resellers" for American Energy Partners' as yet non-existing goods and services.

We appear to be at an impasse on this question (these same considerations also apply to the related Request for Production No. 13). Unless you advise differently, we intend to take this issue to the Court.

Interrogatory No. 5: This straightforward interrogatory requests that Defendants "identify instances where the trade name American Energy Partners has been used in connection with any document circulated or displayed by your business." You object, in part, on the grounds that such instances of American Energy Partners' use of "American Energy" in a trade name dispute with American Energy are somehow beyond the broad scope of permissible discovery, and you suggest this would create an undue burden. I note, however, that American Energy Partners was only recently formed, and that Defense counsel has, on multiple occasions, explained that there are consequently relatively few responsive documents in existence. This interrogatory goes to a fundamental issue in this case. If Defendants are unwilling to amend their response to fully and fairly meet the substance of the request, we will have no choice but to raise the issue with the Court.

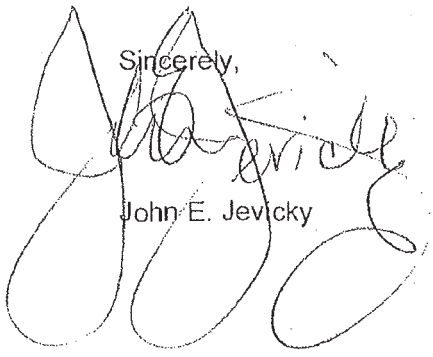
Interrogatory No. 22: This interrogatory asks what products or services are sold or are intended to be sold by American Energy Partners. American Energy Partners fails to respond to the part of the interrogatory that seeks information about products or

services that it intends to sell. As in the example cited above, numerous media reports suggest that American Energy Partners and/or Mr. McClendon have raised well in excess of $1 billion to further their business plans. Presumably to do so, they must intend to sell something, and must communicate this to, at a minimum, investors, partners, and/or vendors. If Defendants have no intention to offer for sale any particular goods or services, then please so state. Otherwise, respond fully to the interrogatory.

Request for Production No. 20: In your December 26 letter, you indicated that we could expect a further response to this request. Please advise as to the status of that response.

We are open to conferring on any of these points if you believe it would be productive to do so. I am hopeful that that we can resolve these issues in the spirit of cooperative and transparent discovery. If not, we regret that it will be necessary to seek the assistance of the Court to obtain the discovery information and documents to which our client is entitled.

Sincerely,



John E. Jevicky

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January 23, 2014

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*
U.S. District Court, Southern District of Ohio, Eastern Division
Case No. 2:13-CF-00886-GCS-MRA

Dear Counsel:

I write to address significant deficiencies in Defendant American Energy - Utica's written discovery responses (dated December 11, 2013), and document production (dated December 23, 2013). I request that Defendant rectify these deficiencies within the next 10 days.

General Objection No. 1 – This objection states that American Energy – Utica objects to the extent the requests or interrogatories seek information or documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. American Energy – Utica asserts this as an objection to many of Plaintiff's requests; however, a corresponding privilege log has not been provided to American Energy as required by instruction no. 3 of American Energy's discovery requests. Please provide a privilege log to corroborate any claims of privilege that American Energy – Utica makes.

General Objection No. 2 – This objection states that "American Energy - Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things." I am aware of no legal support for objecting to discovery on these grounds. A Protective Order was entered by the Court on October 15, 2013, which addresses the handling of any confidential documents disclosed in discovery. If Defendants are withholding additional documents despite the existence of an agreed protective order that includes Attorneys Eyes Only protections, I ask that you either withdraw the objection and produce such materials, or detail why you believe these documents cannot be adequately protected by the existing agreed protective order, and identify what further protections you believe to be necessary.

Moreover, to the extent Defendant claims this objection is to shield from production documents that are covered by confidentiality agreements with third parties, Defendant's objection also fails. Federal courts have addressed this issue and the objection is without merit. *See e.g. High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, 10-11 (D. Kan. Sept. 9, 2011) ("the Court finds that High Point's purpose in asserting its confidentiality objection, after a protective order limiting the use and disclosure of confidential information had already been entered in the case, was merely to maximize the number of objections to the requested discovery"). If you intend to persist with this objection on this ground, we ask that you provide sufficient details about the withheld documents, and any confidentiality agreements that you believe justify withholding those documents so that Plaintiff, and the Court, can fully assess the legitimacy of the objection.

General Objection No. 4 – This objection states that "American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are overbroad, unduly and unreasonably burdensome, oppressive and vague." Additionally, American Energy – Utica objects to many discovery requests on this basis. American Energy – Utica has been in existence for less than a year. Furthermore, the document production proffered by American Energy – Utica consists of only 15 documents. If you intend to rely on this objection, we ask that it be supported with something more than formulaic objection language or we will be forced to conclude that this objection is not properly asserted.

General Objection No. 5 – This objection states that "American Energy – Utica objects to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for information, documents and things not known to American Energy – Utica, nor reasonably ascertainable by American Energy – Utica, because such material is in the hands or under the control of third parties not within American Energy – Utica's control." It appears, however, that American Energy – Utica has relied upon this objection to avoid producing information and documents from affiliated entities. For instance, despite identifying 18 subsidiaries of American Energy – Utica and/or American Energy Partners in a January 6, 2014 letter to Plaintiff, Defendant has provided no documents related to nearly all of those subsidiaries. This is also true with

respect to additional affiliates that American Energy partners neglected to identify in its January 6 letter.

The law is clear that even if American Energy – Utica does not have responsive documents that it "is obligated to seek any such documents from its parent or sister companies." *Evenflo Co. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342, at *10 (S.D. Ohio June 5, 2006). Therefore, please produce responsive documents to these discovery requests that may be in the possession of affiliated entities.

Interrogatory No. 1, Request for Production No. 27: The interrogatory requests the name and address of any members, subsidiaries or affiliates of American Energy – Utica. The request seeks all documents sufficient to identify the business affiliates of American Energy - Utica. As an initial matter, Defendant's interrogatory response fails to provide an address for the one identified member. Additionally, the written responses to both the interrogatory and the request largely do not provide the requested information apparently on the grounds that American Energy – Utica does not know what "affiliate" means in this context. To assist you in this regard, you may refer to the following definition of "Affiliate:" Two parties are "affiliates" if either party has the power to control the other, or a third party controls or has the power to control both. Affiliation also exists (a) in interlocking directorates or ownership, (b) in identity of interests among members of a family and (c) where employees, equipment and/or facilities are shared. (See businessdictionary.com).

Interrogatory No. 2: This interrogatory requests an identification of American Energy – Utica's attempts to do business in Ohio. Although, American Energy – Utica states that it is registered to conduct business in Ohio it does not identify either "all documents relating to such an attempt" or "the names of persons who acted for Defendant in connection therewith" as requested. Please fully respond to this interrogatory.

Interrogatory No. 4, Request for Production No. 13: The interrogatory simply requests the name and address of vendors used by Defendant, including those used in Ohio. Similarly, the request simply asks for documents referring to vendors used by Defendant in Ohio. American Energy – Utica claims not to understand the term "vendor" in these contexts. To assist you in the preparation of a complete response to this interrogatory and request, you may use the definition of vendor as set forth in the American English version of the Cambridge Dictionary: "a person or company that sells goods or services." Defendant's response to this interrogatory and the request unilaterally applies the limitation that Defendant will disclose only "information regarding resellers of goods or services that may be offered for sale by American Energy - Utica." But the limitation is not contained in the interrogatory or request, and applying it here yields responses that are incomplete.

American Energy is entitled to know the identity of those vendors/suppliers that American Energy – Utica has used in the course of its operations to ascertain American Energy – Utica's use of American Energy's protected rights and also to lead to the

discovery of admissible evidence relating to American Energy – Utica's intended business plans, and the steps taken in furtherance of those plans.

Interrogatory No. 5: This straightforward interrogatory requests that Defendant "identify instances where the trade name or trademark American Energy – Utica has been used in connection with any document circulated or displayed by your business." Defendant's response then takes issue with American Energy's "characterization of 'American Energy – Utica' as a trademark." The interrogatory makes no such characterization, and this objection is without merit. Defendant's objection that the interrogatory calls for confidential material is not a valid objection in light of the Court's entry of a protective order. We also question the claim that fully responding to this interrogatory is an undue burden, given that American Energy – Utica was only recently formed and appears to employ only a small number of individuals, especially considering that American Energy – Utica produced only 15 documents total responsive to all discovery requests. Identifying and producing representative documents showing the use of a particular trademark is not nearly responsive to this request. Please fully respond to this interrogatory.

Interrogatory Nos. 6, 7; Request for Production Nos. 5, 21: These discovery requests seek information about trade name / trademark searches. While American Energy – Utica states that it has not made or caused to be made a trade name / trademark search, the answer is limited because of the claim of privilege. I note, however, that such information is not protected from disclosure by claims of privilege. *See Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 USPQ 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 USPQ 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 USPQ 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Defendant must respond fully and substantively to the interrogatories and requests. If Defendant persists in asserting such privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests.

Interrogatory No. 8: This interrogatory asks American Energy – Utica to "identify and describe any contact that American Energy – Utica has had with Red Hill Development related to the development, production, extraction or sale of natural gas in Ohio, or related to the acquisition of land in Ohio." Defendant's response indicates that it has formed a joint venture with RHDK Oil and Gas, LLC of Dover but provides no additional information about the contact with the company. This is incomplete. Please refer to the definition of "identify" in the definitions section of Plaintiff's requests. Given

that no responsive documents have been produced, American Energy must assume that all contact with RHDK Oil and Gas, LLC has been in the form of an oral communication. As such, please state (a) the date, place, and circumstances such oral communication was made; (b) the identity of each person who was present at or who participated in such oral communication; (c) the substance of such oral communication; and (d) the identity of each document reflecting, summarizing or memorializing such oral communication, (or attach copies of each such document to your answers). If instead the contact had been via documents, please produce the documents.

Interrogatory Nos. 14, 21: These interrogatories ask for an identification of Defendant Aubrey McClendon's "roles and responsibilities" as it relates to the "creation and incorporation" of American Energy – Utica and as it relates to the "management and operation" of American Energy – Utica." American Energy – Utica's answer merely provides Aubrey McClendon's official title as its response to both interrogatories which is incomplete. Please supplement this response to identify what responsibilities Aubrey McClendon had in both the "creation and incorporation" of American Energy – Utica and in the "management and operation" of American Energy – Utica.

Interrogatory No. 20: This interrogatory presents a simple factual question about where Defendant claims that its name is known. Defendant provides no substantive answer. Instead, Defendant objects because the interrogatory is a "contention interrogatory" that seeks a "legal conclusion." Yet F.R.C.P. 33 expressly provides that "[a]n interrogatory otherwise proper is not objectionable merely because an answer to the interrogatory involves an opinion, contention, or legal conclusion..." This objection is therefore improper.

Interrogatory No. 23: This interrogatory asks American Energy – Utica to identify "contact related to land acquisition in Ohio, including any land purchased or leased in Ohio, contact with land agents working in Ohio and with potential sellers of land in Ohio." American Energy – Utica provides no substantive answer and instead merely asserts a string of stock objections. For example, American Energy – Utica objects to American Energy's request that it identify contact related to land acquisition on the basis that it does not specify "by whom and with whom said contact is made." American Energy seeks in this interrogatory to determine with whom American Energy – Utica has made contact with regarding land acquisition. It is American Energy – Utica that has the ability to specify this, not American Energy. Furthermore, American Energy – Utica objects to this interrogatory because it is not limited to a reasonable time period. As American Energy – Utica states in its response to Interrogatory No. 10, it did not even select its name until June 14, 2013. This question is, by operation of the facts in this case, limited to a reasonable time period. Also, to the extent American Energy – Utica does not understand the term "land agent," American Energy provides the following definition: "a person who deals with the sale of land." (See http://www.oxforddictionaries.com).

Request for Production Nos. 2, 3: Each of these Requests seeks documents relating to Defendant's creation, consideration, design, development, selection, or

adoption of trade names and trademarks. Defendant's response indicates that no such documents exist but limit such answer to claims of privilege. If Defendant has documents relevant to such requests but subject to privilege claims, these claims must be supported with the privilege log information required by instruction no. 3 of American Energy's discovery requests. Please confirm whether such documents exist and, if so, provide an appropriate privilege log.

Request for Production No. 4: This request seeks "bills and invoices which contain the name 'American Energy – Utica.'" Defendant improperly limits its response to bills and invoices sent from American Energy – Utica and therefore excludes from its response bills and invoices sent to American Energy – Utica. There is no basis for such a limitation as the request is reasonably calculated to lead to the discovery of admissible evidence. Please immediately produce bills and invoices sent to American Energy – Utica.

Request for Production No. 9: This request merely asks for all documents that contain "advertisements with the name 'American Energy – Utica.'" Plaintiff objects to this request on the basis that the phrase "advertisements with the name 'American Energy Partners'" is vague and ambiguous and further objects on the basis that the request is overbroad. First, we have here requested advertisements containing the name "American Energy – Utica" not "American Energy Partners." Second, as American Energy – Utica has been in existence for less than a year, Plaintiff fails to see how the request is overbroad. Finally, to assist you with the alleged ambiguous phrase American Energy will provide you with the following definition for "advertisement:" "a notice or announcement in a public medium promoting a product, service, or event or publicizing a job vacancy." (See http://www.oxforddictionaries.com). Please confirm whether documents exist responsive to this request and whether such documents have been or will be produced.

Request for Production No. 17: This request asks for "documents and things that refer to any source of sponsorship, funding or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Defendant's products and services, including to the extent possible, a breakdown of amounts spent and market share per product." Despite the fact that Defendant's counsel understood this request enough to produce an answer in discovery requests propounded to American Energy Partners, they now apparently find it so objectionable as to not answer. The request is reasonably calculated to lead to the discovery of admissible evidence and should be responded to fully by Defendant.

Request for Production No. 20: This request seeks documents in Defendant's possession, custody or control relating to coal. To assist in the identification of responsive documents, American Energy specifically seeks all documents relating to coal as a competitive product to natural gas, as well as all documents relating to Defendant's intention or desire to reduce the usage of coal in the United States. Given the following clarification, please produce all responsive documents to this request.

Requests for Production- Redactions for Relevancy: American Energy – Utica has produced documents with redactions that appear to be unsupported by a claim of privilege and instead presumably done for some other reason such as claims of relevance. *See e.g.* Utica00037- 42; Utica00046 – 118; Utica00127 – 133; Utica00134 – 294; Utica00295-297; Utica 00298-00300; Utica00301-304. American Energy – Utica's attempt to redact for relevancy improperly strips these relevant and responsive documents of context and meaning. *See e.g. Beverage Distribs. v. Miller Brewing Co.*, 2010 U.S. Dist. LEXIS 50732 (S.D. Ohio Apr. 28, 2010). Please confirm whether the redactions are done for relevancy, privilege, or for some other reason. If done for reasons other than privilege, please immediately produce unredacted versions of the clearly relevant and responsive documents listed above. If done for privilege, provide supporting privilege log entries.

Request for Admission No. 3: This request asks about Defendant's use of "American Energy" in trade names or trademarks. American Energy – Utica responds that it denies using American Energy in any trademark, but does not respond with regard to any trade names. Please either confirm that this silence is an admission of the stated proposition as it relates to trade names, or respond fully and substantively to the request.

Request for Admission No. 4: This request asks American Energy – Utica to admit that they had knowledge of "the existence of American Energy Corporation" prior to the selection of American Energy – Utica as Defendant's trade name or trademark. Defendant poses a host of formulaic objections and does not provide an answer to the request, despite the fact that counsel for Defendant found that the exact same question was answerable as it pertains to American Energy Partners in their discovery responses submitted on November 7, 2013. Please either confirm that this silence is an admission of the stated proposition, or respond fully and substantively to the request.

Sincerely,

Thomas M. Connor

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January 27, 2013

VIA EMAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886*

Dear John:

We write on behalf of Defendant American Energy Partners, LP ("American Energy Partners") in response to Plaintiff's January 17, 2013 letter. The following responds to each of the issues raised by Plaintiff.

"Affiliated" Entities: First, we disagree with the assertions made in Plaintiff's letter regarding discovery related to "affiliated" entities. This case was filed by Plaintiff against American Energy Partners, LP ("American Energy Partners"), American Energy – Utica, LLC ("American Energy – Utica"), and Aubrey K. McClendon. The definitions of "you" provided by Plaintiff in its discovery requests does not extend to "affiliates." Moreover, Plaintiff's discovery requests addressed to American Energy – Utica, (the only discovery requests that seek information regarding "affiliates") did not define the term "affiliate." Nonetheless, in an effort to compromise and resolve any purported dispute regarding this issue, American Energy Partners and American Energy – Utica identified all subsidiaries and subsidiaries of subsidiaries of American Energy Partners that have "American Energy" in their name (despite the fact that no such request was directed to American Energy Partners). Plaintiff's demand for additional information regarding the purported "proper parties to this case" is unnecessary and vexatious. As we discussed during our January 17, 2014 conference call, Plaintiff's First Amended Complaint already purports to seek injunctive relief extending to American Energy Partners, LP, American Energy – Utica, LLC, "their parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them." Additionally, to the extent your email is

addressed to the subpoenas issued last month to non-parties, those subpoenas are improper for the reasons set forth in the objections to those subpoenas. By way of example, and without limitation, those subpoenas are improper because (1) one subpoena was directed to a party to this case, Aubrey K. McClendon, after the deadline set by the Court to serve Mr. McClendon with written discovery and (2) the subpoenas are not reasonably calculated to lead to the discovery of admissible evidence regarding Plaintiff's claims against the Defendants in this case.

General Objection No. 2: As previously stated, this objection is proper and necessary to preserve American Energy Partners' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents. To respond to the questions raised in Plaintiff's most recent letter, no documents have not been produced on the basis of confidentiality.

Interrogatory No. 1: Regarding your request for the addresses of American Energy Partners' general and limited partners, all inquiries to such parties may be directed to American Energy Partners' counsel at Duane Morris. As you know, counsel are prohibited from contacting represented parties; this extends to partners in a partnership.

Interrogatory No. 2: We reiterate our response to Plaintiff's December 26, 2013 letter. Interrogatory No. 2's request for "any contact" with the State of Ohio is overbroad, vague, and ambiguous. Moreover, as previously stated, there is no basis in the text of this Interrogatory for Plaintiff's request, set forth in its December 10, 2013 letter, and now its January 17, 2014 letter, for information regarding actions taken by Mr. McClendon on behalf of some other person or entity. This Interrogatory is directed simply to any direct contact Defendants may have with Ohio. Moreover, Plaintiff's demand for such information is not reasonably calculated to lead to the discovery of admissible evidence as the Sixth Circuit only recognizes specific, not general jurisdiction. Contrary to the arguments raised in Plaintiff's January 17, 2014 letter, this is controlling precedent. We also note that during our January 17, 2014 conference call, Plaintiff agreed that no further discovery would be needed regarding the motion to dismiss on personal jurisdiction. And, finally, the First Amended Complaint contains no allegations, nor could it, stating a claim for a "veil-piercing jurisdictional analysis," which theory Plaintiff states, for the first time, in its January 17, 2014 letter, thereby evidencing Plaintiff's ever-shifting tactics to maintain this baseless case.

Interrogatory No. 4/Request for Production No. 13: American Energy Partners stands by the response in its December 26, 2013 letter. Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Put simply, it encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy Partners is not relevant to this inquiry. The First Circuit case law cited in Plaintiff's January 17, 2014 letter is not consistent with Sixth

Circuit law and not persuasive authority. As such, American Energy Partners and Mr. McClendon have appropriately limited their responses to resellers of goods or services that may be offered for sale by Defendants.

Interrogatory No. 5: As previously stated, Interrogatory No. 5 is facially overbroad seeking every document containing the name American Energy Partners. This would require the identification of virtually every document ever created by American Energy Partners. Even for a relatively new company such as American Energy Partners, this is an extraordinary burden. Every letter, every email, every document bearing American Energy Partners' name would have to be produced whether related or unrelated to the claims and defenses at issue. That is plainly improper.

Interrogatory No. 22: American Energy Partners responded to this Interrogatory – it does not sell any products or services. Further, as stated in response to Interrogatory 17, American Energy Partners has no intended customer base. Thus, no further response is possible or warranted.

Request for Production No. 20: As previously stated, this Request for Production for documents "relating to coal" is vague and ambiguous. It is also overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Plaintiff's offer to limit this request to documents related to "coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States" is no less vague or ambiguous. Nonetheless, subject to the General and Specific objections asserted by American Energy Partners, it is presently unaware of any such documents, and reserves the right to supplement its response as discovery progresses.

We believe that this addresses each of the issues raised by Plaintiff. If not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,

Jeffrey S. Pollack

JSP:
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)
William G. Porter, Esquire (via e-mail)

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February 3, 2013

VIA EMAIL

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Cincinnati, Ohio 45202

Re: ***American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886***

Dear John:

We write on behalf of Defendant American Energy – Utica, LLC ("American Energy – Utica") in response to Plaintiff's January 17, 2013 letter. The following responds to each of the issues raised by Plaintiff.

General Objection 1: Defendant's will provide a privilege log to Plaintiff to the extent there are any relevant privileged documents responsive to Plaintiff's requests. We note that Plaintiff has also yet to produce a privilege log and request that such a log be produced to the extent documents are being withheld on the basis of privilege or work product.

General Objection No. 2: As previously stated by Defendant American Energy Partners, LP ("American Energy Partners"), this objection is proper and necessary to preserve American Energy Partners' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. Moreover, the Protective Order does not prohibit the parties from seeking additional protections for confidential or proprietary documents.

General Objection No. 4: Various of Plaintiff's requests are facially overbroad. By way of example, and without limitation, American Energy – Utica responded to Interrogatory No. 23's demand for information regarding "any contact" as overbroad and burdensome seeking information regarding hundreds, if not thousands, of communications related to "land" however that term is construed. Other discovery requests, even for a relatively new company, are

similarly overbroad on their face in terms of the amount and irrelevance of information sought. Moreover, this objection is necessary and appropriate to preserve rights as litigation progresses.

General Objection No. 5, Interrogatory No. 1, Request for Production 27: As stated in our letter to Plaintiff's January 17, 2014 letter, responding on behalf of American Energy Partners, we disagree with the assertions made by Plaintiff regarding discovery related to "affiliated" entities. This case was filed by Plaintiff against American Energy Partners, LP ("American Energy Partners"), American Energy – Utica, LLC ("American Energy – Utica"), and Aubrey K. McClendon. The definitions of "you" provided by Plaintiff in its discovery requests does not extend to "affiliates." Moreover, Plaintiff's discovery requests addressed to American Energy – Utica, (the only discovery requests that seek information regarding "affiliates") did not define the term "affiliate." Nonetheless, in an effort to compromise and resolve any purported dispute regarding this issue, American Energy Partners and American Energy – Utica identified all subsidiaries and subsidiaries of subsidiaries of American Energy Partners that have "American Energy" in their name (despite the fact that no such request was directed to American Energy Partners). Plaintiff's demand for additional information regarding the purported "proper parties to this case" is unnecessary and vexatious. As we discussed during our January 17, 2014 conference call, Plaintiff's First Amended Complaint already purports to seek injunctive relief extending to American Energy Partners, LP, American Energy – Utica, LLC, "their parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them."

Interrogatory No. 2: We refer Plaintiff to the documents produced showing American Energy – Utica's registration to do business in Ohio Bates stamped Utica00121-126 pursuant to Rule 33(d).

Interrogatory No. 4/Request for Production Nos. 4 & 13: American Energy – Utica incorporates by reference the response of American Energy Partners' previous letters responding to Plaintiff's request for information regarding vendors. Put simply, Plaintiff's request for information regarding all vendors is overbroad, overly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. It encompasses all possible manner of vendors. The central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. In this regard, the identification of vendors that sell goods and services to American Energy – Utica is not relevant to this inquiry. For the same reason, only bills and invoices sent from American Energy – Utica regarding any goods or services that may be sold by American Energy – Utica are relevant.

Interrogatory Nos. 6, 7; Request for Production Nos. 5, 21: The term "search" is vague and subject to multiple interpretations. Regardless, American Energy – Utica is presently unaware of any "searches" in its possession potentially responsive to these discovery requests.

Interrogatory No. 8: This Interrogatory simply states: "[i]dentify and describe any contact that American Energy – Utica has had with Red Hill Development related to the development, production, extraction or sale of natural gas in Ohio, or related to the acquisition of land in Ohio." American Energy – Utica directly responded to that interrogatory. Contrary to the statement in Plaintiff's letter, there is no request for documentation related to such contact, nor does the definition of "Identify" have any impact on this Interrogatory which does not request American Energy – Utica to identify any document or communication. Moreover, requests related to land acquisitions are not relevant or reasonably likely to lead to the discovery of relevant information in this case. As noted above, the central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. There is no reason to extend discovery to the highly proprietary and confidential terms of American Energy – Utica's relationship with RHDK other than to harass and annoy.

Interrogatory Nos. 14 & 21: These Interrogatories, seeking information regarding the roles and responsibilities of Defendant Aubrey K. McClendon regarding the creation, incorporation (Interrogatory 14) and management and operation (Interrogatory 21) of American Energy – Utica are overbroad, vague and ambiguous. Mr. McClendon's role is that of CEO. It would be impractical to describe everything Mr. McClendon does in that role in a written interrogatory response. To the extent a further response to Interrogatory 14 can be provided, we refer Plaintiff to documents Bates Stamped Utica00121-126 pursuant to Rule 33(d).

Interrogatory No. 20: It is not clear what this Interrogatory seeks regarding "the name of each territorial area in which you claim the trade name of your business is known." First, it is unclear what Plaintiff means by "known." Second, American Energy – Utica cannot respond about what others know.

Interrogatory No. 23: As stated above, requests related to land acquisitions are not relevant or reasonably likely to lead to the discovery of relevant information in this case. As noted above, the central issue in this case is alleged trademark infringement. Thus, all that is relevant is American Energy Partners' identification of its goods and services. Moreover, this Interrogatory is overbroad for the reasons stated in American Energy – Utica's objections.

Requests for Production Nos. 2 & 3: As stated above, American Energy - Utica will produce a privilege log to Plaintiff. To the extent there are any relevant privileged documents responsive to these requests, they will be logged.

Request for Production No. 9: American Energy – Utica is presently unaware of any advertisements with the name American Energy – Utica.

Request for Production No. 17: [redacted]

[redacted] [This Is Designated Attorneys' Eyes Only]

Request for Production No. 20: As previously stated by American Energy Partners, this Request for Production for documents "relating to coal" is vague and ambiguous. It also has no relevance to this action, regarding alleged trademark infringement. Furthermore, it is overbroad, seeking newspapers that are not kept in the ordinary course of business that may reference coal. Plaintiff's offer to limit this request to documents related to "coal as a competitive product to natural gas, as well as all documents relating to Defendants' intention or desire to reduce the usage of coal in the United States" is no less vague or ambiguous. Nonetheless, subject to the General and Specific objections asserted by American Energy – Utica, it is presently unaware of any such documents, and reserves the right to supplement its response as discovery progresses.

Redactions: American Energy – Utica produced documents in an effort to provide information responsive to what was requested by Plaintiff. Plaintiff is not entitled to anything more than that. Utica00037-42 identifies individuals employed by or associated with American Energy – Utica. Plaintiff did not ask for and is not entitled to any other information that is not responsive to Plaintiff's requests. Utica00046-127 is a highly confidential and proprietary investor presentation subject to, among other things, third-party confidentiality obligations. Additionally, it contains information that is not responsive to and has no relevance to Plaintiff's requests. The unredacted portions are sufficient to respond to, *inter alia*, Plaintiff's requests regarding management, intended operations, customers, territorial areas in which American Energy – Utica intends to extract, offer, or deliver fossil fuels, and channels of trade. Finally, Utica00127-300 relates and responds to Plaintiff's requests for documents related to "contact" between American Energy – Utica and EnerVest. The redacted documents show that "contact." These documents, which do not involve the sale of any good or service by American Energy – Utica, are not relevant to any claim in this case, and Plaintiff is not entitled to discover, the confidential terms of American Energy – Utica's agreements with Enervest.

Request for Admission No. 3: American Energy – Utica's response to Request for Admission No. 3 is appropriate given Plaintiff's definition of "trade name," which includes trademarks. Regardless, if Plaintiff is asking if American Energy – Utica uses, "American Energy" in its name, the response to that inquiry is self-evident.

Request for Admission No. 4: The objections to this Request for Admission are appropriate. American Energy – Utica cannot answer to what it "knew" before it even existed.

We believe that this addresses each of the issues raised by Plaintiff, if not, we are willing to meet-and-confer to discuss any further issues Plaintiff may have.

Sincerely,

Jeffrey S. Pollack

JSP:
Enclosure

cc: Matthew A. Taylor, Esquire (via e-mail)
William G. Porter, Esquire (via e-mail)

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February 21, 2014

VIA EMAIL & U.S. MAIL

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Re: *American Energy Corporation v. American Energy Partners, LP, et al.*
U.S. District Court, Southern District of Ohio, Eastern Division
Case No. 2:13-CV-00886-EAS-MRA

Dear Counsel:

We have spoken and exchanged a series of letters over the last weeks regarding deficiencies in the discovery responses of defendants American Energy Partners ("AEP"), American Energy – Utica ("Utica"), and Aubrey McClendon ("McClendon"). To date, despite serving numerous discovery requests, we have received little information and very few documents from defendants. AEP has produced a total of 101 documents, McClendon has produced 1 document, and Utica has produced 15—many of which are heavily redacted. In your most recent letters (dated January 27, 2014 and February 3, 2014), you continue to take the position that defendants' existing responses and production are sufficient.

It appears that we are at an impasse regarding several of the discovery disputes addressed in our letters. With the parties' Rule 30(b)(6) depositions taking place between now and mid-April pursuant to Magistrate Judge Abel's directive, it is imperative that we resolve these disputes. I am therefore writing in a final attempt to reach an extra-judicial resolution. If we cannot resolve the disputes summarized below,

we will bring them before Magistrate Judge Abel via informal telephone conference (the procedure Judge Abel instructed us to use at the recent case management conference).

If your position has changed with regard to any of the matters below, please let us know by Friday, February 28. Otherwise, we will contact the Court to schedule a discovery conference.

A. Information about Affiliated Entities (Interrog. 1 and RFP 27 to Utica)

Based on media reports, information in the few documents defendants have produced to date, and based on statements by defense counsel, it has become clear to us that the current defendants in this case are but a portion of a larger family of entities controlled by defendant Aubrey McClendon, all or many of which use "American Energy" in their names. We believe that several of these affiliated entities, in addition to the currently named defendants, are part of the same course of conduct identified in the complaint as infringing on American Energy Corporation's ("AEC") rights.

We served two requests on Utica to learn the identity and role of the various McClendon companies: Interrog. 1 asks Utica to identify its affiliates, and RFP 27 requests documents sufficient to identify "all affiliates or related business entities." You objected that "affiliate" was undefined, did not respond to the interrogatory (other than to identify the sole member of Utica), and have not produced the requested documents.

We need this information for two main reasons: (1) to identify all of the McClendon companies that are infringing on AEC's rights, so that we can, if necessary, add them as parties; and (2) to identify all of the entities that may have relevant documents and information about the McClendon companies' infringing activities in the Ohio region. These are essential, threshold issues. Unfortunately, defendants' continued refusal to provide information and documents related to or in the possession of the affiliated entities is preventing the orderly and timely conduct of this litigation.

You say (in your Jan. 27 and Feb. 3 letters) that we have no need to add additional defendants because the Amended Complaint seeks injunctive relief extending to defendants' "parent corporations, affiliates, subsidiaries, officers, directors, agents, employees, servants, attorneys, successors, assigns and any others controlling them, or controlled by or affiliated with them." But even though AEC believes it is entitled to—and would certainly welcome the Court granting—the full relief for which it prays in the Amended Complaint, it would be presumptuous for any party to assume that the court will tailor a remedy in the precise fashion demanded. It is more than reasonable for AEC to bring affiliated entities into the case as parties.

You also suggest that the affiliates are somehow irrelevant to this action because the only currently named defendants are AEP, Utica, and McClendon. (Jan. 27 Letter at p. 1; Feb. 3 Letter at p. 2.) This objection is improper in the first place because Utica did not object to the original requests on relevance grounds. Regardless, the information sought is directly relevant, and well within the broad scope of discovery. We

now know that there are multiple affiliated entities using "American Energy" in their names. How and where these entities are using and intend to use their trademarks and/or trade names are relevant to this litigation, as is the role that these entities may play in furthering the business objectives of McClendon and his various companies, including the existing defendants. *See Evenflo Co., Inc. v. Hantec Agents Ltd.*, No. C-3-05-346, 2006 U.S. Dist .LEXIS 36342, at *7 (S.D. Ohio June 5, 2006) (finding defendant's relationships with affiliated entities to be relevant to how defendant may have been using the plaintiff's proprietary information that was at issue in the lawsuit). AEC's discovery requests are designed to discover relevant information related to whether the affiliated entities created by Mr. McClendon are (or will be) using "American Energy" in a manner that is likely to cause confusion or misunderstanding as to an affiliation with American Energy Corporation. This issue is, of course, at the heart of this dispute. For you to withhold information on the basis of a purported lack of relevance is therefore unjustified.

Finally, you point to your Jan. 6, 2014 letter listing roughly 20 subsidiaries of AEP as evidence of your sufficient compliance. (Feb. 3 Letter, p. 2.) But that list is, at best, incomplete; for example, it does not identify any parent entities or sister companies, such as American Energy - Ohio, LLC, American Energy Ohio Holdings, LLC and American Energy Incentive Holdings, LLC who we suspect are additional undisclosed affiliates of the defendants. Moreover, Utica still has not answered the interrogatory. Nor has Utica provided any information or documents about its affiliates or their relationship to the named defendants.

B. Documents in the Possession of Affiliates (Gen. Obj. 5)

All three defendants objected to providing information "in the hands of or under the control of third parties not within [defendants'] control." (Utica Gen. Obj. 5; AEP & McClendon Gen. Obj. 5.) On this basis, defendants have apparently withheld responsive documents in the possession of other, affiliated McClendon companies. (*See* Feb. 3 Letter, p. 2.) This is improper. Defendants must produce documents in their "possession, custody, or control." Fed. R. Civ. P. 34(a)(1). This extends to documents in the possession of affiliates, including subsidiaries, parents, and sister companies. *See Evenflo Co.*, 2006 U.S. Dist. LEXIS 36342, at *10. Moreover, McClendon (or the other defendants) has ultimate control over the affiliated entities, and therefore must produce their documents. *See Steele Software Sys. v. Dataquick Info. Sys.*, 237 F.R.D. 561, 564 (D. Md. 2006); *Costa v. Kerzner Int'l Resorts, Inc.*, 277 F.R.D. 468, 470-471 (S.D. Fla. 2011).

Defendants' objection is particularly improper because, when AEC served multiple subpoenas directly on defendants' affiliates, the affiliates also refused to produce any documents. Your position is effectively that we cannot obtain the affiliates' documents either from the parties under Rule 34 or from the affiliates themselves under Rule 45. That is an untenable position; the affiliates are not immune from discovery obligations.

The types of information we would expect to see, but have not received, include information about defendants' (and their affiliates') business plans, products and services, intended customers, intended geographical area, and the selection of the "American Energy" formative name and/or trademark. Some of these categories are also addressed separately below. This information and documentation should be produced regardless of which of the various McClendon companies possess them.

C. Business Plans and Related Documents (RFP's 12, 14-16, and 26)

We served multiple document requests aimed at understanding defendants' business plans. RFP 26 to Utica expressly requested "business plans," and RFP's 12, 14, 15, and 16—which were served on all three defendants—seek documents about their intended customers, geographical market, production locations, and channels of trade.

AEP responded that it has no responsive documents. That is hard to believe. AEP and McClendon's other companies have raised well over $1 billion in investment, according to numerous media reports. Surely they have some plan for how they are going to invest that capital, what they will sell, whom their customers will be, and the like. Even if those documents are in the possession of one of AEP's affiliates rather than AEP itself, as discussed above, AEP has a duty to produce them all the same.

Utica responded that, subject to its objections, it will produce responsive documents "to the extent" it has any. But, with the exception of one heavily redacted presentation (discussed below), we still have not received any of these documents. This appears to be another instance where defendants are wrongly withholding documents in their affiliates' possession.

Defendants' business plans and related documents are important and discoverable because, among other reasons, they would shed light on what kind of presence the "American Energy" entities will have in the region, whether they will compete with AEC for customers, and whether customers and others in the industry are likely to be confused about whether there is an affiliation or connection between plaintiff and defendants. All of these are central issues in this case.

D. Products and Customers (Interrogs. 17 and 22 to AEP)

These interrogatories ask AEP to identify its customers or intended customers, and the products or services it sells or intends to sell. AEP responded that it "has no customer base or intended customer base" and "does not sell any products or services." (AEP Response to Interrog. 17; Jan. 27 Letter, p. 3.) If we are to understand you correctly, AEP and McClendon have raised well in excess of $1 billion to further an endeavor in which AEP has no intended customers and does not sell or intend to sell anything. Again, that is hard to believe.

Perhaps you mean that one of AEP's affiliates, rather than AEP itself, will sell product to customers, in partnership with AEP. If so, this only intensifies the need for information regarding affiliated entities and their business plans.

E. Redacted Investor Presentation

The only document we have received to date that resembles a business plan is an apparent investor presentation, bates-labeled Utica00046 – 118. The document, however, was heavily redacted. It is my understanding from the February 6 pretrial conference that you explained these redactions by characterizing the document as "90 percent irrelevant." But this belief does not justify unilaterally redacting a responsive document. Your redaction for supposed "relevancy" strips the document of all context and meaning. That is why courts regard relevancy redactions as improper. *See e.g. ArcelorMittal Cleveland, Inc. v. Jewell Coke Co., L.P.*, No. 1:10-cv-362, 2010 U.S. Dist. LEXIS 133263, at *9 (N.D. Ohio Dec. 16, 2010) (finding no reason for responding party to have redacted documents on "relevancy" grounds "where [redacted] information appears in a document that contains otherwise relevant or responsive information"); *see also Beverage Distribs. v. Miller Brewing Co.*, 2010 U.S. Dist LEXIS 50732, at *11-16 (S.D. Ohio Apr. 28, 2010). AEC is not obligated to simply take your word for what is relevant and what is not.

F. Withholding of "Confidential" Material (Gen. Obj. 2)

In General Objection No. 2, all three defendants have objected to AEC's requests "to the extent that they call for confidential and/or proprietary documents and things." Even though there is a protective order in place, with attorney's eyes only protection where appropriate, you have maintained that you have the right to shield documents that are "protected from disclosure by confidentiality agreements with third parties" and that the protective order does not prohibit the parties from "seeking additional protections for confidential or proprietary documents." (Jan. 27 Letter, p. 2; Feb. 3 Letter, p. 1.)

It appears that Utica (at least) is withholding responsive documents on this basis. Yet, you have not provided any details as to what documents are being withheld, what confidentiality agreements are in place, or why these agreements justify withholding discoverable documents. And you have not responded as to what "additional protections" you require or why the existing protective order is inadequate.

In any event, confidentiality agreements with third parties are not a valid basis for withholding discoverable information, particularly in light of the fact that there is a strong protective order in place that provides whatever confidentiality protection is needed. *See e.g. High Point Sarl v. Sprint Nextel Corp.*, 2011 U.S. Dist. LEXIS 101700, at *10-11 (D. Kan. Sept. 9, 2011) (finding that a party's confidentiality objection, when a protective order was already in place, to be a tactic "merely to maximize the number of objections to the requested discovery").

G. McClendon's "Limited Appearance" Objection

McClendon refuses to answer interrogatories or produce documents on the basis that "he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any Requests other than those related to the question of jurisdiction." (Responses of AEP and McClendon, Gen. Obj. No. 13.) McClendon repeats this objection throughout the discovery responses. (*Id.*, Responses to Interrogs. 3, 5 - 22; Responses to RFP Nos. 2 - 12, 14 - 21; Responses to Requests for Admission Nos. 1 - 7.) Mr. McClendon cannot use this objection to avoid responding to the discovery requests. First, McClendon's jurisdictional arguments do not excuse him from participating in merits discovery. Second, the requests are relevant to the issue of personal jurisdiction, as well as the merits of the case.

The requests seek information and documents related to defendants' activities in and directed at Ohio. Such activities are germane to the question of whether McClendon took actions that fall under the coverage of Ohio's broad long-arm statute (O.R.C. § 2307.382(A)). McClendon cannot create a family of companies, under his personal control, and then claim that he is immune from discovery about his actions in setting up and naming those companies, as well as immune from responding to discovery about his actions in furtherance of those companies' business endeavors in Ohio. McClendon is the central actor in the events that form the entire basis of this litigation, and he must respond fully and substantively to discovery if this case is to move forward.

H. McClendon's Contacts with Ohio (Interrog. 2)

This interrogatory requests the identification of contacts with the state of Ohio. You have taken the position that there is "no basis" for seeking information concerning Mr. McClendon's actions in Ohio taken "on behalf of some other person or entity." (Jan. 27 Letter, p. 2.) But this is simply not true. Mr. McClendon's actions in Ohio, even those taken on behalf of a business entity, are relevant to establishing personal jurisdiction. *See Kehoe Component Sales, Inc. v. Best Lighting Prods., Inc.*, 2009 U.S. Dist. LEXIS 74852, at *22 (S.D. Ohio Aug. 19, 2009).

You also take the position that defendants' contacts with Ohio are "not reasonably calculated to lead to the discovery of admissible evidence" because "the Sixth Circuit only recognizes specific, not general jurisdiction." We disagree with your statement of the law, but in any event, this information is relevant to the specific jurisdiction inquiry since defendants' contacts are highly likely to reveal actions that fall within the very broad scope of O.R.C. § 2307.382(A).

I. Vendor Information (Interrog. 4 and RFP 13)

Interrog. 4 and RFP 13, which AEC propounded to all three defendants, requests information and documents related to defendants' vendors and potential vendors. You

take the position that the "central issue ... is alleged trademark infringement"; thus, "all that is relevant" is AEP's and Utica's identification of their own goods and services. (Jan. 27 Letter, p. 2; Feb. 3 Letter, p. 2.) That is incorrect. AEC seeks to protect both its trademark and its trade name. This case is therefore not solely about the confusion that will result from defendants' marketing and sale of goods and services under the trademark "American Energy." It also, and just as importantly, concerns the confusion that will result in other aspects of AEC's business if members of the industry perceive a false association or connection between American Energy Corporation and American Energy Partners or American Energy - Utica. *See, e.g., Beacon Mut. Ins. Co. v. OneBeacon Ins. Group*, 376 F.3d 8, 16 (1st Cir. 2004) ("We also hold that the likelihood of confusion inquiry is not limited to actual or potential purchasers, but also includes others whose confusion threatens the trademark owner's commercial interest in its mark").[1]

Vendors are one of the groups of people in the industry who could be confused by defendants' use of "American Energy" as both a trademark **and** a trade name. AEC's requested discovery is reasonably calculated to lead to evidence of the unwanted confusion that may arise with respect to defendants and AEC being related entities.

J. Use of "American Energy" Name (Interrog. 5)

This interrogatory asks defendants to identify instances in which the trademarks or trade names "American Energy Partners" or "American Energy – Utica" have been used in connection with any document circulated or displayed by the business. You object, in part, on the grounds that such instances of American Energy Partners' use of "American Energy" in a trade name dispute with American Energy are somehow beyond the broad scope of permissible discovery, and you suggest this would create an undue burden. To the extent you have committed to producing responsive documents, you have indicated that defendants will produce a "representative" sample of documents evidencing use of the "American Energy Partners" and "American Energy – Utica" names.

You have provided no context necessary to meaningfully evaluate your conclusory assertion of "undue burden," and the document productions to date have been of trivial size. AEP and Utica were formed relatively recently and defense counsel has, during the course of this litigation, explained that there are few responsive documents in existence. But your objection here leads us to believe that there are many more otherwise responsive documents being withheld. The information sought in

[1] Though you state in your Jan. 27 letter that *Beacon Mut. Ins. Co.* "is not consistent with Sixth Circuit law," you cite no case to support your position. Notably, a close reading of *Beacon Mut. Ins. Co.* shows that the First Circuit was applying (in substance) the same eight-factor test as the Sixth Circuit (*i.e.*, the *Frisch* factors). *See id.* at 15. Even more notably, the First Circuit relied on Sixth Circuit authority as support for the above-quoted parenthetical statement that you say is "not consistent" with Sixth Circuit law. *Id.* at 16 (citing *Champions Golf Club, Inc. v. The Champions Golf Club, Inc.*, 78 F.3d 1111, 1119-20 (6th Cir. 1996)).

this interrogatory is plainly relevant to Defendants' use of "American Energy," which is a fundamental issue in this case. Your unilateral limitation on the response and your limited production of documents is unjustified.

K. Trademark/Trade Name Searches (Interrog. 6 and RFP 21)

Interrogatory No. 6 asks for information about trademark searches performed by the Defendants. In related requests, RFP No. 21 (and also RFP No. 5 as to American Energy—Utica) seeks documents related to any trademark searches conducted by Defendants. While American Energy—Utica responded that it conducted no trademark searches and has no documents relating to such searches, American Energy Partners has simply objected to the requests without providing a response.

You claim "attorney-client privilege" and "attorney work product doctrine," but neither of these doctrines shields trademark searches from disclosure. The searches themselves are not protected from disclosure from claims of privilege. *See Flagstar Bank, FSB v. Freestar Bank, N.A.*, 2009 U.S. Dist. LEXIS 104414 (D.N.H. 2009) (holding that trademark searches are not privileged even though legal advice based on the searches is privileged); *Fisons Ltd. v. Capability Brown Ltd.*, 209 U.S.P.Q. 167, 170 (TTAB 1980); *Goodyear Tire & Rubber Co. v. Tyrco Industries*, 186 U.S.P.Q 207, 208 (TTAB 1975) (fact that an opinion concerning trademark validity or possible conflicts regarding applicant's adoption and use of mark was given to applicant is not privileged); *Miles Laboratories, Inc. v. Instrumentation Laboratory, Inc.*, 185 U.S.P.Q. 432, 434 (TTAB 1975); *Amerace Corp. v. USM Corp.*, 183 U.S.P.Q. 506, 507 (TTAB 1974) (only attorney comments are privileged); *Masterpiece of Pennsylvania, Inc. v. Consolidated Novelty Co.*, 183 U.S.P.Q. 344 (S.D.N.Y. 1974) (holding that trademark searches by date with the name of the trademark services were discoverable and not protected by the work product doctrine).

Moreover, your claim of "attorney work product" is curious. Such an objection is proper only for materials prepared in anticipation of litigation. Thus, your objection on "attorney work product" grounds essentially states that your client conducted name searches and/or prepared documents concerning such name searches in anticipation of specific litigation. The inference from an "attorney work product" objection is that defendants expected some legal objection—perhaps by AEC—arising from the selection of "American Energy" in their trade name and trademark.

Regardless, defendants must produce responsive information and documents, as these requests are undoubtedly proper and relevant to this litigation.

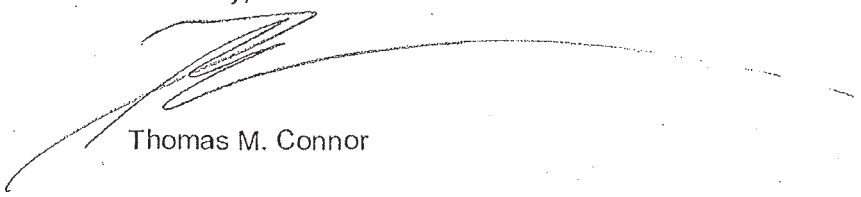
* * *

In identifying the foregoing areas of dispute, AEC does not intend to waive its right to obtain additional information and documents that the parties referenced in the previous discovery letters. We simply highlight the above specific disputes as the most urgent to address in light of the timetable set by Magistrate Judge Abel for our

completion of the Rule 30(b)(6) depositions. It is entirely reasonable for AEC to obtain information and documents responsive to its discovery requests before taking its Rule 30(b)(6) deposition, such that we can take a meaningful deposition of defendants' 30(b)(6) designee.

Unless we hear otherwise from you by Friday, February 28, 2014, we will move forward in seeking the resolution of the impasses regarding these issues. Accordingly, we will contact the chambers of Magistrate Judge Abel to schedule a discovery conference with his Honor to take place as soon as practicable for the Court.

Sincerely,



Thomas M. Connor

cc: John E. Jevicky

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MIRANDA & ESTAVILLO

February 28, 2014

VIA EMAIL

Thomas M. Connor
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Cincinnati, Ohio 45202

Re: ***American Energy Corporation v. American Energy Partners, LP, et al., No. 13-886***

Dear Tom:

We write to address the issues most recently raised in Plaintiff's letter dated February 21, 2014.

Introduction

Plaintiff's purported discovery disputes must be viewed in the context of this case. This case involves a single issue, whether Defendants American Energy – Partners, LP's ("Partners") and American Energy – Utica, LLC's ("Utica") use of their names to identify their goods (of which there are none) is likely to cause confusion among relevant purchasers with respect to the goods offered or sold by Plaintiff. There is no such likelihood of confusion.

As briefed in Defendants' Motion to Dismiss, Plaintiff does not even possess a protectable interest in the formative – "American Energy" – that it seeks to assert in this case. Moreover, for the last 13-14 years, Plaintiff has done nothing while another company unrelated to Defendants, American Energy Associates, Inc., drilled 80+ oil wells right in Plaintiff's backyard in Northeast Ohio (http://americanenergyassociatesinc.com/), all of which was done with no apparent confusion between American Energy Associates and Plaintiff.

It also must be noted that Plaintiff filed this case the Friday before Labor Day 2013 as an emergent matter seeking a preliminary injunction. While that motion was pending, the parties agreed to engage in expedited discovery. However, Plaintiff failed to notice a single deposition

or bring any discovery issues before the Court despite the fact that Plaintiff did not withdraw its motion for a preliminary injunction until January 10, 2014 – less than a month before fact discovery was set to close regarding that motion.

As Plaintiff knows from Defendants' discovery responses and document production, Partners and Utica have not sold or offered for sale any natural gas or oil. Moreover, Utica's intended purchasers – midstream gas transporters – are markedly different from the purchasers of Plaintiff's goods – electric generation plants. Indeed, at the recent Rule 16 Conference, Plaintiff conceded that it is unaware of any damages caused to it due to Partners' or Utica's use of their names.

As follows, the disputes raised by Plaintiff are asserted without basis for the sole purpose of generating purported disputes. Indeed, as detailed below, Plaintiff persists with certain disputes despite being informed multiple times by Defendants, including in written discovery responses, that Defendants possess no discoverable information.

We address each of the disputes raised in Plaintiff's February 21 letter as follows:

Information Regarding Affiliated Entities
Interrogatory 1 and Request for Production 27 to Utica

Defendants understood this issue to be resolved. On December 18, 2013, Plaintiff delivered a letter to Defendants stating that if Defendants did not identify all "affiliates," Plaintiff would serve subpoenas on various companies. Despite the fact that Plaintiff served those subpoenas without awaiting Defendants' response, Partners and Utica responded to Plaintiff's December 18, 2013 letter by identifying all subsidiaries and subsidiaries of subsidiaries of American Energy Partners with the formative "American Energy" in their name. This included 18 separate entities. Plaintiff accepted this information only to demand additional information about other "affiliates."

Plaintiff's continued insistence that a dispute remains between the parties as to this topic appears geared solely to generate disputes where none exist. For example, Plaintiff claims that Defendants did not identify American Energy Ohio Holdings, LLC. However, that entity was specifically disclosed by Utica in response to Plaintiff's Interrogatory No. 1.

The identity of *all* "affiliates" most of which have no connection to Ohio and do not use the formative "American Energy" in their name is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff's citation to *Evenflo Co., Inv. v. Hantec Agents Ltd.*, 2006 U.S. Dist. LEXIS 36342 (S.D. Ohio Jun. 5, 2066) does not suggest a different conclusion. As Plaintiff's letter points out, *Evenflo* involved the use of alleged proprietary information by a defendant and its affiliates. This case involves no such claims.

Regardless, to resolve this dispute, Partners and Utica will produce an organization chart. This is despite the fact, which we have previously pointed out, that Plaintiff served no discovery request on Partners seeking information related to Partners' "affiliates."

Documents Allegedly In The Possession of Affiliates
General Objection 5

General Objection 5 objects to producing information not known to Defendants, nor reasonably ascertainable by Defendants, because such material is in the hands of or under the control of third parties not within Defendants' control. Defendants' objection does not refer to "affiliates." Regardless, the law in this district is that "[w]hen a party argues that one company has the legal right to demand documents from another company, courts closely analyze the relationship between the two companies." *In re Porsche Cars N. Am., Inc.*, 2012 U.S. Dist. LEXIS 136954 (S.D. Ohio Sept. 25, 2012). A motion to compel will not be granted absent evidence, which is the movant's burden to demonstrate, that a company operates "another as its alter ego, that [a] company acted as the agent of the other in the transaction giving rise to the suit, or that [a] company has access to the documents of another in the regular course of business." *Id.* As you know from Defendants' discovery responses, Defendants are separate companies with different ownership structures.

[redacted] Plaintiff could have learned this at any time during the last several months through a deposition of Utica.

Partners has 18 separate subsidiaries and subsidiaries of subsidiaries that use the formative "American Energy" in their names. As discussed, all but one of these companies have no contact with Ohio. The geographic designations in the names of these companies indicate where their business operations are conducted. Plaintiff provides no basis, in a lawsuit involving no damages, to compel Partners to produce documents from its files and those of 18 other non-parties.

Finally, the reference in Plaintiff's letter to the subpoenas served in this case illustrates precisely why the information Plaintiff seeks by raising this purported dispute is not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff is not seeking information related to Partners' or Utica's use of their names to identify goods. Instead, Plaintiff is seeking information regarding the business activities of Partners' and Utica's "affiliates." Those "affiliates" are not parties to this action and the definition of "you" provided in Plaintiff's discovery requests does not extend to "affiliates." Additionally, Plaintiff's Requests for Production are uniformly addressed to "Defendants," "Defendant," or refer to Defendants by name. For example, Plaintiff cannot contend that Request No. 13 asking Defendant American Energy Partners to "[p]roduce all documents or correspondence referring to Defendants' vendors

or potential vendors" also extends to documents or correspondence referring to the vendors of Partners' "affiliates." Such a construction strains the English language.

Business Plans And Related Documents
Redacted Investor Presentation
Requests for Production 12, 14-16 and 26

Utica produced an Investor Presentation responsive to this request. After the Rule 16 Conference, at which Plaintiff raised an issue regarding this document, we offered to stay in the Court's conference room with Plaintiff's counsel to explain how this document is responsive to the information Plaintiff seeks. Our invitation was declined.

Defendants produced a redaction log showing what information was redacted from this document. The redacted information relates to highly proprietary information regarding, *inter alia*, geological studies, acreage locations, acquisitions and valuations, well production analysis, and water usage that, along with other information contained in the Investor Presentation, is not reasonably calculated to lead to the discovery of admissible information, nor to the matters listed in Plaintiff's February 21, 2014 letter: intended customers, geographic market, and channels of trade.[1] Plaintiff certainly would not be entitled to this highly confidential and competitive information that has no bearing on the claims and defenses in this case if it was set forth in a stand-alone document. Accordingly, there is no reason such information should be produced simply because it is included alongside other information.

The Southern District of Ohio has held that it is appropriate to redact confidential information that is not reasonably likely to lead to the discovery of admissible evidence. In *N. Am. Rescue, Inc. v. Bound Tree Med., LLC*, 2010 U.S. Dist. LEXIS 39695 (S.D. Ohio Mar. 25, 2010), the defendant moved to compel information regarding a change of ownership of the plaintiff. In granting the defendant's motion to compel, the court ordered plaintiff to produce a bill of sale but directed that, if it contained information "that is both irrelevant to the issue of ownership . . . and commercially sensitive," that the document be produced such that "irrelevant and sensitive material has been redacted." *Id.* at *5. Likewise, in *Thompson v. Village of Mt. Pleasant*, 2011 U.S. Dist. LEXIS 740 (S.D. Ohio Jan. 4, 2011), the court considered whether an unredacted interview should be produced in full simply because portions of the interview were responsive to a party's discovery requests and reasonably likely to lead to the discovery of admissible evidence. In rejecting that argument, the court, after an *in camera* review, held that "the portions of the interview are simply not relevant to any party's claim or defense in this action. See Fed. R. Civ. P. 26(b)(1)." *Id.* at *4. "[P]roduction of the redacted portions," the

[1] Plaintiff's letter also seeks information regarding production locations. Defendants fail to see how Utica's highly confidential acreage locations are reasonably likely to lead to the discovery of admissible evidence regarding the claims at issue – the use of Partners' and Utica's names to identify their goods (of which there are none).

Court held, "is[, therefore,] not necessary to plaintiff's ability" to prosecute its case. *Id.* Accordingly, the court held that "defendants need not produce to plaintiff an unredacted version of the interview." *Id.* The same is equally true here.

Additionally, as stated in our February 21 letter, we are evaluating what redactions can be withdrawn. We expect to produce a revised document over the weekend or by Monday morning. We will also supplement Utica's production, at the same time, which will include another investor presentation, dated February 19, 2014, which provides detailed information regarding "the business." We expect that the production of this document should address and resolve any dispute between the parties. Raising any dispute with the Court before the production of this document would be premature and counterproductive.

With respect to Partners, as explained in our January 27, 2014 letter (incorrectly dated 2013), Partners' discovery responses show that it sells no goods or services and has no intended customers. *See* (Partners' Response to Plaintiff's Interrogatories 17 and 22). Plaintiff's demand for documents regarding intended customers, geographic market and channels of trade, therefore, is a *non-sequitur* as to Partners.

Products and Customers
Interrogatories 17 & 22 to Partners

Plaintiff's statement that it does not believe that Partners has no customer base or intended customer base is not a basis for a motion to compel with the Court. Partners cannot be compelled to provide a different response because its response is different from what Plaintiff might want it to be.

Alleged Withholding Of Confidential Material
General Objection 2

This purported dispute is a non-issue. Defendants repeatedly informed Plaintiff that no documents are being withheld on the basis of confidentiality.

Additionally, as previously stated, this objection is proper and necessary to preserve Defendants' right to shield any documents from production that may be protected from disclosure by confidentiality agreements with third parties. *See Apple Inc. v. Samsung Elecs. Co.*, 2012 U.S. Dist. LEXIS 96302, at *20-22 (N.D. Cal. July 11, 2012) (party not required to produce documents subject to third-party confidentiality restrictions).

Finally, the Protective Order permits the parties to seek additional protections for confidential or proprietary documents. (*See* Protective Order ¶ 20.) Indeed, such protections appear necessary in this case due to Plaintiff's insistence on compelling information related to the redacted portions of Utica's extremely confidential Investor Presentation which are not reasonably calculated to lead to the discovery of admissible evidence. Utica's concerns about

Plaintiff's continued demands for this information are heightened by the fact that Plaintiff expressed the intent, albeit unsubstantiated, to enter into the natural gas and oil industry.

Defendant Aubrey K. McClendon's Limited Appearance Objection

Your February 21, 2014 letter is the first letter that raises any issue regarding Defendant Aubrey K. McClendon's limited appearance objection. Regardless, this dispute is baseless.

Mr. McClendon moved to dismiss this case for lack of personal jurisdiction. To preserve his limited appearance for purposes of that motion, Mr. McClendon objected to Plaintiff's merits-based discovery. *See Clarke v. Marriott Int'l, Inc.*, 2013 U.S. Dist. LEXIS 125963 (D.V.I. Sept. 4, 2013) ("[a] defendant can waive its objection to personal jurisdiction by engaging in litigation on the merits without first securing a court's determination on its jurisdictional challenge."). Mr. McClendon's objections were necessary and proper. Indeed, in the Oklahoma action, Plaintiff refused to participate in a Rule 26 conference on the same grounds. Plaintiff cannot have it both ways.

Consistent with preserving his limited appearance, Mr. McClendon offered to and has engaged solely in discovery related to personal jurisdiction and his personal contacts with Ohio.

Finally, opening this case up to merits-based discovery regarding Mr. McClendon is cumulative and unnecessary. It would also be inconsistent with the Court's order directing the parties to engage in Rule 30(b)(6) depositions before seeking additional discovery. As stated above, the claims at issue center around Partners' and Utica's use of their names to identify any goods they offer or sell. Mr. McClendon is the CEO of Partners and Utica. Thus, addressing discovery to him individually would be cumulative of what has already been produced by Partners' and Utica.

McClendon's Alleged Contacts With Ohio
Interrogatory 2

Defendants do not understand why this matter is in dispute. As discussed during our January 17, 2014 conference call, Plaintiff agreed that no further discovery was needed regarding the motion to dismiss on personal jurisdiction. And, Plaintiff responded to Defendants' Motion to Dismiss without raising any discovery disputes.

Additionally, the law in this district is clear. Ohio does not recognize general jurisdiction. *Lexon Ins. Co. v. Devinshire Land Dev.*, LLC, 2013 U.S. Dist. LEXIS 66958, at *6-7 (S.D. Ohio May 10, 2013). Thus, Mr. McClendon's individual contacts with Ohio are not reasonably calculated to lead to the discovery of admissible evidence. Regardless, Mr. McClendon responded to this Interrogatory, which asks him to identify any land purchased or leased in Ohio and whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio. Mr. McClendon informed Defendants that he has not personally purchased or leased any land in Ohio nor has he applied to the Ohio Secretary of State's Office

to do business in the State of Ohio. Based on this response, there should be nothing in controversy.

Vendor Information
Interrogatory 4 and Request for Production 13

Plaintiff's request for "*any* vendors" that have been contacted or used by Defendant is facially overbroad and not reasonably calculated to lead to the discovery of admissible evidence. First, despite the fact that Plaintiff does not claim to possess national trademark rights, this request is not geographically limited. Second, and more to the point, this Interrogatory encompasses all possible manner of vendors, including those who sell goods to Partners and Utica. This includes, among others, paper and office supply salesman, companies that provide janitorial services, trash collectors, landscaping companies, FedEx, and other service providers.

The central issue in this case is alleged trademark infringement. Information that is reasonably calculated to lead to the discovery of admissible evidence relates to the manner in which Partners and Utica identify their goods and services (of which there are none). The test for likelihood of confusion in the Sixth Circuit is the following:

> (1) the strength of [plaintiff's] marks, (2) the relatedness of the [good or services sold], (3) the similarity of the marks, (4) the evidence of actual confusion, (5) the marketing channels used, (6) the likely degree of purchaser care and sophistication, (7) [defendant's] intent in selecting its mark; and (8) the likelihood of expansion of the [parties] using the marks. ***Under this test, the "ultimate question" is "whether relevant consumers are likely to believe that the products or services offered by the parties are affiliated in some way."***

Lucky's Detroit, LLC v. Double L, Inc., 533 Fed. Appx. 553, 555-556 (6th Cir. Mich. 2013) (Citing *Frisch's Rests., Inc. v. Elby's Big Boy of Steubenville, Inc.*, 670 F.2d 642, 648 (6th Cir. 1982)) (emphasis added). As this case, decided last year, makes clear, the focus in trademark cases is on "relevant consumers," not on vendors or any other class of individuals. Accordingly, Partners and Utica appropriately narrowed their responses to this Interrogatory to the identification of potential "resellers of goods or services that may be offered for sale by Defendants."

Plaintiff's attempt to open the inquiry further than this is improper and aimed only at burdening Defendants with overbroad discovery requests that bear no reasonable relation to this case and are not reasonably likely to lead to the discovery of admissible evidence.

Use Of American Energy Name
Interrogatory 5

Plaintiff's request that Defendants "identify instances where the trade name 'American Energy Partners' [or 'American Energy – Utica'] have been used in connection with ***any document circulated or displayed by your business***" is facially overbroad. (emphasis added).

First, it is unclear if this Interrogatory seeks information regarding the trademark or ordinary "use" of the names American Energy Partners or American Energy – Utica. If this Interrogatory seeks information regarding the alleged trademark "use" of Defendants' names, Defendants already responded that they do not use the formative "American Energy" as a trademark. (*See* Partners' Response to Plaintiff's Request for Admission No. 3; Utica's Response to Plaintiff's Request for Admission No. 3).

If, however, this Interrogatory seeks information regarding the ordinary "use" of Defendants' names, it is grossly overbroad and not at all reasonably calculated to lead to the discovery of admissible evidence. This Interrogatory might as well request every letter, every email, and every document bearing Defendants' name whether or not those documents are related to the claims and defenses at issue. As Plaintiff should be aware from Defendants' document production, Partners' and Utica's names appear in their letterhead, business cards, and stationary. Without doubt, Partners' and Utica's names are included on documents countless times every day in letters, email, and other documents. Plaintiff cannot contend that it is entitled to every document and every communication ever authored by Partners and Utica containing their names. This is plainly improper. *See e.g., Am. Eagle Outfitters, Inc. v. Payless Shoesource, Inc.*, 2009 U.S. Dist. LEXIS 3781 (E.D.N.Y. Jan. 21, 2009) (request for "all documents" concerning marketing or promotion of goods under a specific mark overbroad and not reasonably calculated to lead to the discovery of admissible evidence); Fed. R. Civ. Pro. 34 (requests for production "must describe with reasonable particularity each item or category of items to be inspected.").

Trademark/Trade Name Searches
Interrogatory 6 and Request For Production 21

It appears that Plaintiff has ignored our letter dated December 26, 2013 stating that American Energy Partners is presently unaware of any 'searches' in its possession potentially responsive to these discovery requests. Any "searches," however that term is defined, that may be responsive to these discovery requests were conducted by American Energy Partners' outside counsel and are privileged. Further, Plaintiff has ignored Utica's written discovery responses. Utica's response to Plaintiff's Request for Production 5 states that it "does not possess documents responsive to this request." (Utica's Response to Plaintiff's Request for Production 5.)

Additionally, Plaintiff has Defendants' privilege log in its possession. The log confirms what Defendants have said in correspondence and in written discovery responses. Specifically, no documents appear on that log related to "searches and opinions related to the American Energy Partners trade name and trademark." Again, it appears that disputes are being raised with no basis.[2]

We believe that the disputes discussed above are baseless. Nonetheless, if Plaintiff intends to raise these matters with the Court, we request that counsel for Defendants be included on any call Plaintiff makes to the Court regarding this matter. Further, we believe that it would be most helpful for any issues Plaintiff may raise to be fully briefed and put before the Court.

Sincerely,

Jeffrey S. Pollack

JSP:

cc: Matthew A. Taylor, Esquire (via e-mail)
James L. Beausoleil, Esquire (via email)
William G. Porter, Esquire (via e-mail)
William A. Sieck, Esquire (via email)
John E. Jevicky, Esquire (via e-mail)
John W. McCauley, Esquire (via e-mail)
Allison G. Davis, Esquire (via e-mail)

[2] Even if Defendants did have such searches in their possession, the law Plaintiff cites is not availing. "Documentation evidencing the performance of trademark searches and the resulting search reports themselves are . . . protected by the attorney-client privilege." *Flagstar Bank, FSB v. Freestar Bank, N.A.*, 2009 U.S. Dist. LEXIS 76842 (N.D. Ill. Aug. 25, 2009).

EXHIBIT 3

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN ENERGY CORPORATION PLAINTIFF, V. AMERICAN ENERGY PARTNERS, LP & AUBREY MCCLENDON, DEFENDANTS.	Case No. 2:13-cv-00886-EAS-MRA Judge Edmund A. Sargus Magistrate Judge Mark R. Abel JURY TRIAL DEMANDED

DEFENDANTS AMERICAN ENERGY PARTNERS, LP'S AND AUBREY K. MCCLENDON'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Defendant American Energy Partners, LP ("American Energy Partners") hereby answers the following interrogatories, requests for production, and requests for admission (collectively "Requests").

Defendant Aubrey K. McClendon has made a special and limited appearance in this case for the purpose of contesting personal jurisdiction. Mr. McClendon objects to responding to all Requests other than those related to the question of jurisdiction. Unless otherwise stated, all responses to Plaintiff's Requests are provided by American Energy Partners. By responding to Plaintiff's Requests related to the question of jurisdiction, Mr. McClendon does not waive but reserves his objections to the Court's personal jurisdiction over him.

Defendants' responses to the Requests are subject to the following general objections:

GENERAL OBJECTIONS

1. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

2. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for confidential and/or proprietary documents and things.

3. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things regarding matters not relevant to the subject matter of this action and not reasonably calculated to lead to the discovery of admissible evidence.

4. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are overbroad, unduly and unreasonably burdensome, oppressive and vague.

5. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they call for information, documents and things not known to Defendant, nor reasonably ascertainable by Defendant, because such material is in the hands of or under the control of third parties not within Defendant's control.

6. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they seek information, documents and things already in the possession of Plaintiff or documents and things available to Plaintiff from sources other than Defendant which are equally accessible to Plaintiff and to Defendant.

7. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they are so vague and ambiguous that they are not subject to reasoned interpretation.

8. Defendants object to Plaintiff's Requests and the instructions and definitions to the Requests to the extent that they impose requirements to respond or supplement responses to Requests beyond those that are provided for in the applicable rules governing this matter.

9. Defendants object to the use of certain undefined terms in the Requests to the extent that they have or may have different legal meanings depending upon the context in which they are used.

10. Defendants object to the definition of the terms "you," "your," or "Defendant" because it is overbroad, vague, and ambiguous, treating Defendants American Energy Partners and Aubrey K. McClendon as a single entity, which they are not. Defendants further object to this definition to the extent it purports to include entities which are not parties to this litigation. Unless the following Requests relate to the question of personal jurisdictional or the text of the Request specifically refers to Defendant Aubrey K. McClendon, Defendants will interpret "you," "your," or "Defendant" to refer to Defendant American Energy Partners.

11. Defendants object to the definition of the terms "identify" and "state the identity of" as overbroad, vague, ambiguous. Defendants further object to this definition to the extent it expands Plaintiff's interrogatories into multiple subparts in excess of what is permitted by the Federal Rules of Civil Procedure. Defendants further object to this definition to the extent it imposes any other obligations on Defendants in excess of what is required by the Federal Rules of Civil Procedure, the Local Rules, or any applicable case law.

12. Defendants object to the definition of the terms "trademark" and "trade name" as overbroad, vague, and ambiguous. The terms "trademark" and "trade name" do not have the same legal or ordinary meaning. Defendants, therefore, further object to this definition to the extent it purports to give "trademark" or "trade name" a meaning different from their ordinary or legal meaning.

13. Defendant Aubrey K. McClendon separately objects to Plaintiff's Requests on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any Requests other than those related to the question of jurisdiction.

13. The general objections asserted above shall be deemed to be applicable to and continuing with respect to each of Plaintiff's Requests. The general objections asserted above are incorporated into each and every one of Defendant's responses set forth herein. Such objections are not waived, nor in any manner limited, by any responses to any specific Request or any specific objection raised thereto. Defendant reserves the right to amend, supplement or alter its responses to Plaintiff's Requests at any time.

RESPONSES TO INTERROGATORIES

Interrogatory 1

Identify, by stating the name and address, the general partners and limited partners of Defendant American Energy Partners.

RESPONSE: Subject to and without waiving the general objections,[1] American Energy Partners responds that the general partner of Defendant American Energy Partners is McClendon Energy Operating, LLC. Its limited partners are Aubrey K. McClendon and Kathleen B. McClendon.

Interrogatory 2

Identify all contact with the State of Ohio, including any land purchased or leased in Ohio, whether and when Defendant ever attempted to obtain qualification to do business in the State of Ohio, and the result of such attempt, and identify all documents relating to such attempt, including the names of the persons who acted for Defendant in connection therewith.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory on the basis that the term "contact," depending on its interpretation, may require a legal conclusion. Further, the terms "all contact" and "any land," without context, are vague and overbroad. Defendants further object to this interrogatory as overbroad and unduly burdensome. Defendants further object to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it has not purchased or leased any land in Ohio, nor has it applied to the Ohio Secretary of State's Office to do business in the State of Ohio.

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1 Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, Aubrey K. McClendon responds that he has not personally purchased or leased any land in Ohio nor has he personally applied to the Ohio Secretary of State's Office to do business in the State of Ohio. Mr. McClendon has, on occasion, traveled to Ohio.

Interrogatory 3

Identify whether and how the "American Energy Partners" trade name has been used in connection with any goods or services sold or rendered by you.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not and has not sold any goods or services.

Interrogatory 4

Identify, by stating the name and address, any vendors that have been contacted or used by Defendant, including those in Ohio.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory because the term "vendors," which is not defined, is vague and ambiguous. Defendants further object to this interrogatory as overbroad and unduly burdensome and seeks

information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of the preceding interrogatory 3, Defendants interpret this interrogatory as seeking information regarding resellers of goods or services that may be offered for sale by Defendants. Defendants further object to this interrogatory because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not and has not sold any goods or services.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds that he personally does not and has not sold any goods or services.

Interrogatory 5

Identify instances where the trade name "American Energy Partners" has been used in connection with any document circulated or displayed by your business.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it calls for a legal conclusion. Defendants further object to this interrogatory as overbroad and unduly burdensome and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, seeking every document ever created by Defendants in which "American Energy Partners" appears. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and

limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not use "American Energy Partners" as a trademark. American Energy Partners further responds that it will produce representative documents evidencing American Energy Partners' use of the following logo:

Interrogatory 6

State whether and when Defendant ever caused a search to be made to determine the availability for the use of the trade name "American Energy Partners" including the words as part thereof, or as part of a trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 7

Identify the individual(s) who requested the search described in interrogatory number 6.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 8

Identify the individual(s) who conducted the search described in interrogatory number 6, and the sources of information investigated.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants object to Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 9

State whether the results of the search described in interrogatory number 6 were reported to Defendant in writing; if in writing, include the date and recipient thereof; if oral, include the date of such report and the recipient thereof.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants object to Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 10

State the date, by month and year, when Defendant first adopted the "American Energy Partners" as part of a trade name or trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it does not use "American Energy Partners" as a trademark. The American Energy Partners, LP name was selected on or about February 27, 2013.

Interrogatory 11

Identify the financial sales and revenue of Defendant American Energy Partners.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it has had no sales or revenue.

Interrogatory 12

Identify the partner of Defendant, or the employee competent to bind the Defendant, most familiar with the selection and adoption by defendant of the trade name "American Energy Partners" and the decision to use same in a commercial enterprise.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory to the

extent it calls for a legal conclusion regarding the partner or employee competent to bind "Defendant." Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that the person most knowledgeable about American Energy Partners' selection and adoption of the American Energy Partners, LP name is Defendant Aubrey K. McClendon.

Interrogatory 13

~~Did any partner, employee or agent of Defendant know at the time Defendant adopted the~~ name "American Energy Partners," of the existence of a business known as "American Energy Corporation"?

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory as overbroad and unduly burdensome, seeking information regarding what every partner, employee or agent of Defendant (undefined but presumably referring to American Energy Partners) knew at the time American Energy Partners adopted the business name American Energy Partners, LP regardless of whether such employees or agents were employed or retained by American Energy Partners at that time. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this

case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that it was not aware of the existence of Plaintiff American Energy Corporation – Century Mine until it received the August 23, 2013 demand letter from Michael McKown.

Interrogatory 14

If the answer to interrogatory No. 13 is in the affirmative, state the name, current position and business address of each person with such knowledge. If the answer to interrogatory No. 13 is in the negative, state when Defendant first became aware of the existence of a business known as "American Energy Corporation."

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, seeking information regarding what every partner, employee or agent of Defendant (undefined but presumably referring to American Energy Partners) knew at the time American Energy Partners adopted the business name American Energy Partners, LP regardless of whether such employees or agents were employed or retained by American Energy Partners at that time. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners incorporates by reference its response to interrogatory 13.

Interrogatory 15

Identify all persons, by their current positions and business addresses, who participated in the original selection by Defendant of the name "American Energy Partners," and identify all documents substantiating the foregoing.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome and not reasonably likely to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that Aubrey K. McClendon and Scott Mueller participated in the selection of the name American Energy Partners, LP.

Interrogatory 16

State whether Defendant ever filed an application to register "American Energy Partners" or any variation thereof as a trademark in the United States Patent Office, or any State of the United States; identify all such applications by Serial Number, filing date; and describe the present status of any such application.

RESPONSE: Subject to and without waiving the general objections, American Energy Partners responds that it has not filed an application to register "American Energy Partners" or any

variation thereof as a trademark in the United States Patent (and Trademark) Office, or any State of the United States.[2]

Interrogatory 17

Identify Defendant's customer base or intended customer base.

RESPONSE: Subject to and without waiving the general objections, American Energy Partners responds that it has no customer base or intended customer base.[3]

Interrogatory 18

Identify any customer or marketing surveys conducted by Defendant.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it calls for confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners responds that it has not conducted any customer or marketing surveys.

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2 Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

3 Defendant Aubrey K. McClendon objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 19

Identify the name and date of the publication of all advertisements of Defendant's trade name "American Energy Partners," including all documents relating to and confirming such advertising and promotion, and the person(s) having custody and/or control thereof.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory as overbroad and unduly burdensome, and seeking information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiver of the foregoing and general objections, American Energy Partners responds that it will produce documents from which the response to this interrogatory can be derived.

Interrogatory 20

What is the name of each territorial area in which you claim the trade name of your business is known?

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory because it is vague and ambiguous, seeking information regarding "each territorial area in which . . . the trade name of your business is known" whether by one or more individuals, known or unknown to Defendants. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendants further object to this interrogatory because it is a contention interrogatory and to the extent it seeks to elicit a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 21

On what facts do you base such claim described in interrogatory number 20?

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this interrogatory because it is vague and ambiguous, seeking information regarding "each territorial area in which . . . the trade name of your business is known" whether by one or more individuals, known or

unknown to Defendants. Defendants further object to this interrogatory because it seeks information that is not in their possession, custody, or control. Defendants further object to this interrogatory because it is a contention interrogatory and to the extent it seeks to elicit a legal conclusion. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Interrogatory 22

Describe each and every kind and type of product and service sold, or intended to be sold by Defendant under the trade name "American Energy Partners."

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendant Aubrey K. McClendon separately objects to this interrogatory on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any interrogatory other than those related to the question of jurisdiction.

Subject to and without waiver of the foregoing and general objections, American Energy Partners responds that it does not sell any products or services.

Interrogatory 23

Identify any contact with any land agents working in Ohio.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory because the terms "land agents," which is not defined, and "any contact" are vague and ambiguous. Defendants further object to this request to this interrogatory as vague and ambiguous because it seeks information regarding any contact with any land agents working in Ohio no matter by whom. Defendants further object to this interrogatory as overbroad and unduly burdensome and because it seeks information not in their possession custody or control. Defendants further object to this interrogatory because it is not limited to a reasonable time period. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds [redacted]

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds [redacted]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

Interrogatory 24

Identify any direct or indirect ownership or other interests in gas wells located in Ohio by Defendant Aubrey K. McClendon.

RESPONSE: In addition to the general objections set forth above, Defendants object to this interrogatory because the terms "gas wells" and "indirect ownership," which are not defined, are vague and ambiguous. Defendants further object to this interrogatory as overbroad. Defendants further object to this interrogatory because it is not limited to a reasonable time period. Defendants further object to this interrogatory to the extent it seeks confidential and/or proprietary documents and things.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds [redacted]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production 1

Please produce all documents and things which were identified, consulted, reviewed, and/or relied upon in Defendant's answers to Plaintiff's First Set of Interrogatories to Defendants.

RESPONSE: Defendants object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Subject to the general objections set forth above, Defendants respond that to the extent they possesses non-privileged documents responsive to this request for production, such documents will be produced.

Request for Production 2

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of the "American Energy Partners" trade name and trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above,

American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

Request for Production 3

Please produce all documents and things which refer to Defendant's creation, consideration, design, development, selection or adoption of all other trade names or trademarks not listed in Request No. 2 above.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence, Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

Request for Production 4

Please produce all bills and invoices which contain the name "American Energy Partners."

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production as overbroad and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence to the extent it seeks bills and invoices sent to American Energy Partners in addition to any bills and invoices that may have been sent from American Energy Partners. Defendants interpret this Request as seeking bills and invoices sent from Defendant American Energy Partners. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that does not possess documents responsive to this request.

Request for Production 5

Please produce copies of all documents and correspondence, containing the results of any search conducted to determine the availability of the trade name "American Energy Partners."

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately

objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Request for Production 6

Please produce all documents and correspondence related to any application to register the name "American Energy Partners" as a trademark in the United States Patent Office, or any State of the United States.

RESPONSE: Subject to and without waiver of the general objections set forth above, American Energy Partners responds that does not possess documents responsive to this request.[4]

Request for Production 7

Please produce all documents and correspondence relating to Defendant's knowledge of Plaintiff American Energy Corporation.

RESPONSE: Defendants object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine.

Subject to and without waiver of this and the general objections set forth above, American Energy Partners refers Plaintiff to Plaintiff's August 23, 2013 letter.[5]

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4 Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

5 Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Request for Production 8

Please produce representative business documents such as letterhead, business cards, stationery and envelopes that contain the name "American Energy Partners."

RESPONSE: Subject to and without waiver of these and the general objections set forth above, American Energy Partners will produce documents responsive to this request.[6]

Request for Production 9

Please produce all documents that contain advertisements of the name "American Energy Partners."

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because the phrase "advertisement of the name 'American Energy Partners'" is vague and ambiguous. Defendants further object to this request for production as overbroad. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiver of these and the general objections set forth above, American Energy Partners responds that to the extent it possesses non-privileged documents responsive to this request for production, they will be produced.

Request for Production 10

Please produce all documents and things evidencing Defendant's use of Defendant's trade name and trademark in connection with fossil fuels extracted and/or produced in Ohio.

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6 Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without and waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request for production.

Request for Production 11

Please produce all documents and things that show Defendant's volume of sales for all of Defendant's products or services.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal

jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without any waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 12

Please produce all documents referring to Defendant's customers or potential customers.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production as overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without and waiver of these and the general objections set forth above, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 13

Please produce all documents or correspondence referring to Defendant's vendors or potential vendors.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because the term "vendors," which is not defined, is vague and ambiguous. Defendants further object to this request for production as overbroad and unduly burdensome and seeks information that is not relevant or reasonably calculated to lead to the discovery of admissible evidence including, among other things, information regarding office supply vendors, food vendors, and the like. In light of interrogatory 3, Defendants interpret this request for production as seeking information regarding resellers of goods or services that may be offered for sale by Defendants. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendants further object to this request for production because it is not limited to a reasonable time period.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Subject to and without waiving the foregoing or general objections, Mr. McClendon responds that he possesses no documents responsive to this request.

Request for Production 14

Please produce all documents and things that refer to the territorial areas in the United States where Defendant currently offers or intends to offer fossil fuels.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 15

Please produce all documents and things that refer to the territorial areas in the United States where Defendant manufactures, develops or creates or plans to manufacture, develop or create fossil fuels.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and

things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 16

Please produce all documents and things that refer to the channels of trade through which Defendant offers or intends to offer products or services related to fossil fuels.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 17

Please produce all documents and things that refer to any source of sponsorship, funding or other financial support for the creation, distribution, manufacturing, marketing, promotion, and/or sale of Defendant's products and services, including to the extent possible, a breakdown of amounts spent and market share per product.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendants further object to this request for production to the extent it seeks confidential and/or proprietary documents and things. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 18

Please produce all documents and things that relate to any consumer or market testing Defendant has received or conducted relating to Defendant's trade name or trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this

request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 19

Please produce all documents and things which relate or refer to any instances of actual or possible confusion, mistake, or deception of any kind between Defendant's trade name or trademark and Plaintiff's trade name or trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production because it is overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners responds that it possesses no documents responsive to this request.

Request for Production 20

Please produce all documents and correspondence which relate to or refer to coal.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for "all documents and correspondence which relate or refer to coal" as overbroad, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

Request for Production 21

Please produce all searches and opinions related to the American Energy Partners trade name and trademark and selection specifically.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for production based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for production because it is overbroad, unduly burdensome, vague, and ambiguous. Defendants further object to this request for production to the extent it seeks information and documents protected by the Attorney/Client Privilege or the Attorney Work Product Doctrine. Defendant

Aubrey K. McClendon separately objects to this request for production on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for production other than those related to the question of jurisdiction.

RESPONSES TO REQUESTS FOR ADMISSION

Request for Admission No. 1

Admit that Defendant has not yet commenced use of Defendant's trade name and trademark in Ohio in connection with the sale of its goods and/or services.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners admits that it has not sold any goods or services.

Request for Admission No. 2

Admit that coal and natural gas can both be used for power generation.

RESPONSE: In addition to the general objections set forth above, Defendant American Energy Partners admits that both coal and natural gas can be used for power generation.[7]

Request for Admission No. 3

Admit that both Defendant and Plaintiff use the name "American Energy" in their trade name and trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission because Plaintiff does not define its alleged "trade name" or "trade mark." Defendants interpret Plaintiff's reference to its alleged "trade name" or "trade mark" in this request for admission to refer to "American Energy" or "American Energy Corporation" as Plaintiff has defined those terms in its Complaint; American Energy Partners, however, does not concede that such terms are trademarks. Defendants further object to this request for admission to the extent it calls for a legal conclusion. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

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7 Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing or general objections, American Energy Partners denies that it or Plaintiff uses "American Energy" in any trademark.

Request for Admission No. 4

Admit that Defendant knew of the existence of American Energy Corporation prior to the selection of "American Energy Partners" as Defendant's trade name or trademark.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission based upon Plaintiff's definition of trade name and characterization of "American Energy Partners" as a trademark. Defendants further object to this request for admission because Plaintiff does not define "American Energy Corporation" as referring to itself or any other company with "American Energy Corporation" in its name. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies that it knew of Plaintiff's existence prior to selecting the name American Energy Partners, LP.

Request for Admission No. 5

Admit that natural gas directly competes with coal for market-share in the electricity generation market.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission as vague and ambiguous. Defendants further object to this request for admission because it calls for a legal conclusion. Defendant Aubrey K. McClendon separately

objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies this request for admission.

Request for Admission No. 6

Admit that natural gas directly competes with coal for customers.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission as vague and ambiguous. Defendants further object to this Request as vague and overbroad because it fails to identify any specific sellers of or customers for natural gas or coal. Defendant Aubrey K. McClendon separately objects to this request for admission on the grounds that he entered a special and limited appearance in this case for the purpose of contesting personal jurisdiction, and objects to responding to any request for admission other than those related to the question of jurisdiction.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies that it competes with Plaintiff for customers.

Request for Admission No. 7

Admit that Defendant is involved in the purchase and/or lease of land in Ohio, including Southeastern Ohio (*e.g.*, Jefferson, Harrison, Guernsey, Noble, Monroe, and Belmont Counties).

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission's use of the word "involved" is vague and ambiguous. Defendants

interpret "involved" to mean whether Defendants have, themselves, purchased or leased land in Ohio. Defendants further object to this request for admission to the extent it calls for a legal conclusion.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies this request for admission.

Subject to and without waiving the foregoing and general objections, Defendant Aubrey K. McClendon [redacted]

[This Response Is Designated Confidential]

Request for Admission No. 8

Admit that Defendant has had contact with EnerVest, Ltd., regarding land in Ohio.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission as overbroad, vague, and ambiguous.

Subject to and without waiving the foregoing and general objections, American Energy Partners [redacted]

Subject to and without waiving the foregoing and general objections, Aubrey K. McClendon [redacted]

[This Response Is Designated Attorneys' Eyes Only – Confidential]

Request for Admission No. 9

Admit that Defendant has signed an agreement to purchase over 20,000 acres of land in Ohio.

RESPONSE: In addition to the general objections set forth above, Defendants object to this request for admission's use of the words "Defendant" and "signed" are vague and ambiguous. Defendants interpret this request for admission as inquiring about whether Defendants have, themselves, entered into an agreement to purchase over 20,000 acres of land in Ohio.

Subject to and without waiving the foregoing and general objections, American Energy Partners denies this request for admission.

Subject to and without waiving the foregoing and general objections, Defendant Aubrey K. McClendon denies this request for admission.

Dated: November 7, 2013

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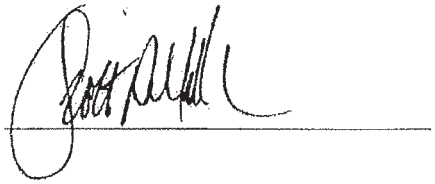
Counsel to Defendants
American Energy Partners, LP &
Aubrey K. McClendon

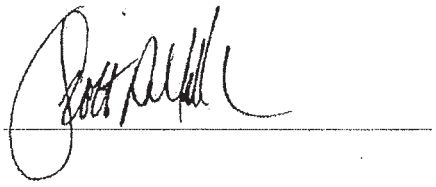
VERIFICATION

I, Scott R. Mueller, depose and say that I am the Chief Financial Officer of American Energy Partners, LP, Defendant in the above-entitled action, and that I am authorized by American Energy Partners, LP to verify answers to the foregoing interrogatories and that the answers thereto are true and correct to the best of my knowledge, information and belief, and I further state that some of the matters set forth therein are not within my personal knowledge, that the facts stated therein have been assembled by counsel for American Energy Partners, LP, and that I am informed and believe that the facts stated therein are true and correct.



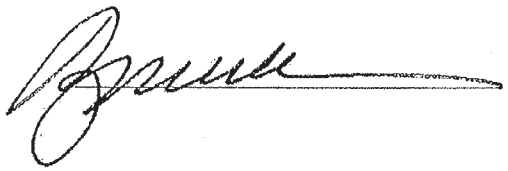
VERIFICATION

I, Scott R. Mueller, depose and say that I am the Chief Financial Officer of American Energy Partners, LP, Defendant in the above-entitled action, and that I am authorized by American Energy Partners, LP to verify answers to the foregoing interrogatories and that the answers thereto are true and correct to the best of my knowledge, information and belief, and I further state that some of the matters set forth therein are not within my personal knowledge, that the facts stated therein have been assembled by counsel for American Energy Partners, LP, and that I am informed and believe that the facts stated therein are true and correct.



VERIFICATION

I, Aubrey K. McClendon, verify that the answers provided by me in the foregoing interrogatories are true and correct to the best of my knowledge, information and belief.



CERTIFICATE OF SERVICE

I certify that November 7, 2013 that the foregoing was served via first-class mail postage prepaid on the following:

John E. Jevicky
Dinsmore & Sohl, LLP
255 East Fifth Street, Suite 1900
Cincinnati, Ohio 45202

Attorneys for Plaintiff

Jeffrey S. Pollack

EXHIBIT 4

REDACTED

Material Designated Confidential Pursuant to Protective Order

EXHIBIT 5

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN ENERGY CORPORATION,	:	**CASE NO. 2:13-CV-00886-GCS-MRA**
Plaintiff,	:	**Judge Edmund A. Sargus, Jr.**
v.	:	
AMERICAN ENERGY PARTNERS, LP,	:	**PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION TO DEFENDANTS AMERICAN ENERGY PARTNERS, LP, AND AUBREY MCCLENDON**
and	:	
AUBREY McCLENDON	:	
Defendants.	:	

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Plaintiff American Energy Corporation directs Defendant American Energy Partners, LP and Defendant Aubrey McClendon to answer the following requests for admission, requests for production and interrogatories separately and fully in writing and to produce the documents requested herein by October 27, 2013 at the offices of Dinsmore & Shohl, 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202. The interrogatories and requests are continuing, and any responsive information discovered after answering these interrogatories must be disclosed by supplemental answer as provided in Rule 26 of the Federal Rules of Civil Procedure.

In answering these interrogatories and requests, you must furnish all information available to you, your attorneys, investigators, agents and representatives of your attorneys. Certain terms used in the interrogatories and requests have the following definitions:

DEFINITIONS

1. "You," "your" or "Defendant" shall mean Defendant American Energy Partners, LP ("American Energy Partners") or anyone authorized to act on American Energy Partners' behalf, and Defendant Aubrey McClendon.

2. Whenever the singular form of a word is used, it shall also include the plural.

3. "And" and "or" as used herein are both conjunctive and disjunctive.

4. "Identify" or "state the identity of" has the following meanings:

a) When used in reference to a natural person, it means to state the person's full name, title, residence, business address and telephone number or, if unknown, the last known residence, business address and telephone number;

b) When used in reference to a partnership or corporation, it means to state its full name, the addresses and telephone numbers of its principal offices and if incorporated, its date and state of incorporation.

c) When used in reference to a document it means to provide the following information about the document: (a) its date; (b) the identity of its author and addressee(s); (c) type of document (e.g., letter, memorandum, telegram, chart, etc.); (d) its title, and (e) a summary of pertinent contents. In lieu of summarizing such document, Defendant may attach a copy of the document to its/his answers. If any document required to be identified was, but is no longer, in your possession or subject to your control, state what disposition was made of it, and identify each person who currently has possession, custody or control of such document or has knowledge of its current location.

d) When used in reference to an oral communication, means to state: (a) the date, place, and circumstances such oral communication was made; (b) the identity of each person who was present at or who participated in such oral communication; (c) the substance of such oral communication; and (d) the identity of each document reflecting, summarizing or memorializing such oral communication, (or attach copies of each such document to your answers).

5. "Document" shall be any form of correspondence, book, pamphlet, manual, record, report, test, analysis, videotape, audio recording, film, photograph, negative, slide, and/or any other writing or method of recording words or images.

6. The terms "trademark" and "trade name" are used interchangeably and each term should be construed to include the other; the terms "services" and "goods" should also be construed to include the other.

INSTRUCTIONS

1. These interrogatories and requests are continuing in nature and shall be supplemented and updated in accordance with the Federal Rules of Civil Procedure promptly upon your receipt or discovery of responsive information not previously provided.

2. If you claim that any information is subject to a privilege, then in each instance provide the exact nature of the privilege and the identity of the person that has knowledge of the privileged matter.

3. With respect to responsive documents that you withhold on a claim of any privilege or for any other reason, state for each such document: its name or title; its date, the identity of the author and all person(s) to whom it was addressed or sent; the identities of all persons believed to have received or seen a copy thereof; its present location(s); the identity of its present custodian(s); and a brief description of the nature of the document and its contents and the reason it is being withheld.

4. If any document subject to any request cannot be produced because it is no longer in your possession or control or in existence, then for each such document, state whether it is missing or lost, has been destroyed, has been transferred to others, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition thereof and state the approximate date of such disposition.

INTERROGATORIES

Respectfully submitted,

s/ John E. Jevicky
John E. Jevicky, Esq. (Ohio 0012702)
John W. McCauley, Esq. (Ohio 0086101)
Thomas M. Connor, Esq. (Ohio 082462)
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E-mail: michael.crites@dinsmore.com

Attorneys for Plaintiff American Energy Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by email and U.S. Mail, this 27th day of September, 2013 upon the following:

William G. Porter, Trial Attorney (0017296)
William A. Sieck, Of counsel (0071813)
Christopher C. Wager, Of counsel (0084324)
VORYS, SATER, SEYMOUR AND PEASE LLP
52 East Gay Street
Columbus, OH 43215 Tel: 614.464.5448
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Email: wgporter@vorys.com, wasieck@vorys.com & ccwager@vorys.com

Attorneys for Defendants
American Energy Partners, LP & Aubrey McClendon

s/ John E. Jevicky

2540389v1

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN ENERGY CORPORATION,	:	CASE NO. 2:13-CV-00886-GCS-MRA
Plaintiff,	:	Judge Edmund A. Sargus, Jr.
v.	:	
AMERICAN ENERGY PARTNERS, LP	:	PLAINTIFF'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION, AND REQUESTS FOR ADMISSION TO DEFENDANT AMERICAN ENERGY - UTICA, LLC
and	:	
AMERICAN ENERGY - UTICA, LLC,	:	
and	:	
AUBREY McCLENDON	:	
Defendants.	:	

Pursuant to Rules 26, 33, 34 and 36 of the Federal Rules of Civil Procedure, Plaintiff American Energy Corporation directs Defendant American Energy - Utica, LLC to answer the following requests for admission, requests for production and interrogatories separately and fully in writing by December 9, 2013 and to produce the documents requested herein by December 16, 2013 at the offices of Dinsmore & Shohl, 255 East Fifth Street, Suite 1900, Cincinnati, Ohio 45202. The interrogatories and requests are continuing, and any responsive information discovered after answering these interrogatories and requests must be disclosed by supplemental answer as provided in Rule 26 of the Federal Rules of Civil Procedure.

In answering these interrogatories and requests, you must furnish all information available to you, your attorneys, investigators, agents and representatives of your attorneys. Certain terms used in the interrogatories and requests have the following definitions:

DEFINITIONS

1. "You," "your" or "Defendant" shall mean Defendant American Energy - Utica, LLC ("American Energy - Utica") or anyone authorized to act on American Energy - Utica' behalf.

2. Whenever the singular form of a word is used, it shall also include the plural.

3. "And" and "or" as used herein are both conjunctive and disjunctive.

4. "Identify" or "state the identity of" has the following meanings:

a) When used in reference to a natural person, it means to state the person's full name, title, residence, business address and telephone number or, if unknown, the last known residence, business address and telephone number;

b) When used in reference to a partnership or corporation, it means to state its full name, the addresses and telephone numbers of its principal offices and if incorporated, its date and state of incorporation.

c) When used in reference to a document it means to provide the following information about the document: (a) its date; (b) the identity of its author and addressee(s); (c) type of document (e.g., letter, memorandum, telegram, chart, etc.); (d) its title, and (e) a summary of pertinent contents. In lieu of summarizing such document, Defendant may attach a copy of the document to its/his answers. If any document required to be identified was, but is no longer, in your possession or subject to your control, state what disposition was made of it, and identify each person who currently has possession, custody or control of such document or has knowledge of its current location.

d) When used in reference to an oral communication, means to state: (a) the date, place, and circumstances such oral communication was made; (b) the identity of each person who was present at or who participated in such oral communication; (c) the substance of such oral communication; and (d) the identity of each document reflecting, summarizing or memorializing such oral communication, (or attach copies of each such document to your answers).

5. "Document" shall be any form of correspondence, book, pamphlet, manual, record, report, test, analysis, videotape, audio recording, film, photograph, negative, slide, and/or any other writing or method of recording words or images.

6. The terms "trademark" and "trade name" are used interchangeably and each term should be construed to include the other; the terms "services" and "goods" should also be construed to include the other.

INSTRUCTIONS

1. These interrogatories and requests are continuing in nature and shall be supplemented and updated in accordance with the Federal Rules of Civil Procedure promptly upon your receipt or discovery of responsive information not previously provided.

2. If you claim that any information is subject to a privilege, then in each instance provide the exact nature of the privilege and the identity of the person that has knowledge of the privileged matter.

3. With respect to responsive documents that you withhold on a claim of any privilege or for any other reason, state for each such document: its name or title; its date, the identity of the author and all person(s) to whom it was addressed or sent; the identities of all persons believed to have received or seen a copy thereof; its present location(s); the identity of its present custodian(s); and a brief description of the nature of the document and its contents and the reason it is being withheld.

4. If any document subject to any request cannot be produced because it is no longer in your possession or control or in existence, then for each such document, state whether it is missing or lost, has been destroyed, has been transferred to others, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition thereof and state the approximate date of such disposition.

Respectfully submitted,

John E. Jevicky, Esq. (Ohio 0012702)
John W. McCauley, Esq. (Ohio 0086101)
Thomas M. Connor, Esq. (Ohio 082462)
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E-mail: michael.crites@dinsmore.com

Attorneys for Plaintiff American Energy Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served by email and U.S. Mail, this 8th day of November, 2013 upon the following:

William G. Porter, Trial Attorney (0017296)
William A. Sieck, Of counsel (0071813)
Christopher C. Wager, Of counsel (0084324)
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Email: wgporter@vorys.com, wasieck@vorys.com & ccwager@vorys.com

Attorneys for Defendants
American Energy Partners, LP, American Energy - Utica, LLC
& Aubrey McClendon

2569328v1

EXHIBIT 6

REDACTED

Material Designated Confidential Pursuant to Protective Order

EXHIBIT 7

REDACTED

Material Designated Confidential Pursuant to Protective Order

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN ENERGY CORPORATION,	:	
	:	**CASE NO. 2:13-CV-00886-GCS-MRA**
Plaintiff,	:	
	:	**Judge Edmund A. Sargus, Jr.**
v.	:	
	:	
AMERICAN ENERGY PARTNERS, LP,	:	
	:	**STIPULATED PROPOSED**
and	:	**PROTECTIVE ORDER**
	:	
AUBREY McCLENDON,	:	
	:	
Defendants.	:	

Upon the Joint Motion of the parties, to expedite the flow of discovery materials, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that only materials the parties are entitled to keep confidential are subject to such treatment, and to ensure that the parties are permitted reasonably necessary uses of such materials in preparation for and in the conduct of trial, it is hereby ORDERED THAT:

DEFINITIONS

1. "Producing Party" shall mean the parties to this action, and any non-party producing information or material voluntarily or pursuant to a subpoena or court order.

2. "Receiving Party" shall mean any party to this action or non-party receiving information or material produced by a Producing Party.

3. "Designating Party" shall mean the Producing Party that marks particular materials as "Confidential" or "Attorneys' Eyes Only."

4. "Confidential Material" shall mean all information or materials, including but not

limited to documents, communications, materials within the scope of Fed. R. Civ. P. 34, electronically stored information ("ESI"), tangible things, written discovery responses, answers to requests to admit, testimony, transcripts, and exhibits, produced in response to discovery requests in the above-captioned action, that contain trade secrets, competitively sensitive information, or other confidential technical, development, sales, marketing, financial, or other commercial information. "Confidential Material" shall also include any other information that may be disclosed during these proceedings that contains information regarded as Confidential Material, whether embodied in physical objects, documents, or the factual knowledge of persons, and which has been so designated by the Producing Party.

a. The following information is not Confidential Material:

(i) Any information which at the time of disclosure to a Receiving Party is in the public domain;

(ii) Any information which, after its disclosure to a Receiving Party, becomes part of the public domain as a result of publication not involving a violation of this Order;

(iii) Any information which the Receiving Party can show by written records was received by it after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Producing Party; and

(iv) Any information which the Receiving Party can show was independently developed by it after the time of disclosure by personnel who did not have access to the Producing Party's Confidential Material.

5. "Attorneys' Eyes Only Material" shall mean material meeting the definition of "Confidential Material" that constitutes or contains proprietary financial or technical data or commercially sensitive competitive information, including but not limited to strategic plans, pricing information, customer and vendor lists, settlement agreements, and settlement communications, that the Designating Party believes in good faith is so highly sensitive that its

disclosure to third parties, other than those specified in paragraph 17, could reasonably be expected to result in commercial injury to the Designating Party.

DESIGNATION OF MATERIALS AS CONFIDENTIAL OR ATTORNEYS' EYES ONLY

6. Any document or tangible thing containing or including any Confidential Material may be designated as such by the Producing Party by marking it with the legend "Confidential" prior to or at the time copies are furnished to the Receiving Party. If a document, each page of the document shall be marked with the legend "Confidential."

7. At the request of any party, the original and all copies of any deposition transcript, in whole or in part, shall be marked "Confidential" or "Attorneys' Eyes Only" by the reporter. This request may be made orally during the deposition or in writing within fifteen (5) business days of receipt of the final certified transcript. Deposition transcripts shall be treated as Attorneys' Eyes Only until the expiration of the time to make any confidentiality designations. Any portions so designated shall thereafter be treated in accordance with the terms of this Order. In the event that the Receiving Party reasonably believes that timeframes set forth in this paragraph impact the Receiving Party's ability to make timely use of deposition transcripts in this litigation, the parties will confer in good faith to resolve the issue. If no mutually agreeable resolution is reached within a reasonable timeframe, a Receiving Party may seek assistance from the Court.

8. All Confidential Material not reduced to documentary, tangible, or physical form, or which cannot be conveniently designated as set forth in paragraph 6, shall be designated by the Producing Party by informing the Receiving Party of the designation in writing.

9. Any Confidential Material may be further designated as Attorneys' Eyes Only by marking the document or tangible thing with the legend "Attorneys' Eyes Only." If a document,

each page of the document shall be marked with the legend "Attorneys' Eyes Only." All Attorneys' Eyes Only Material not reduced to documentary, tangible, or physical form, or which cannot be conveniently marked, shall be designated by the Producing Party by informing the Receiving Party of the designation in writing.

10. All copies, excerpts, summaries, compilations, testimony, conversations, presentations, documents, or records that include, communicate, or reveal Confidential or Attorneys' Eyes Only Material are themselves deemed to constitute confidential matters of the same type whether or not marked or designated as such.

11. Inadvertent or unintentional production of documents or information containing Confidential or Attorneys' Eyes Only Material which are not marked "Confidential" or "Attorneys' Eyes Only" shall not be deemed a waiver in whole or in part of a claim for confidential treatment. With respect to documents, the Producing Party shall immediately notify the Receiving Party of the error in writing and provide replacement pages bearing the appropriate confidentiality legend. In the event of any unintentional or inadvertent disclosure of Confidential Material other than in a manner authorized by this Order, counsel for the party responsible for the disclosure shall immediately notify opposing counsel of all of the pertinent facts, and make every effort to further prevent unauthorized disclosure including, retrieving all copies of the Confidential Material from the recipient(s) thereof to the extent that the recipient(s) are not authorized to view the newly designated Confidential Material under the terms of this Order. Counsel for the party responsible for the disclosure shall further make every effort to secure the agreement of the recipients not to further disseminate the Confidential Material in any form. Compliance with the foregoing shall not prevent the Producing Party from seeking further relief from the Court.

12. A party to this action may prospectively declare that items and information designated as Confidential Material that is in the custody of a third party and to be produced through discovery in this action, is protected under this Order based on a good-faith belief that such material is Confidential Material within the meaning of this Order. Counsel for the Receiving Party shall treat such items as designated until such time as the Designating Party has had a reasonable opportunity to review and mark the received items and information in accordance with this Order.

13. Any summaries of Confidential Material, or documents or information designated "Attorneys' Eyes Only," which quote from or identify or refer to such Material with such specificity that designated Material can be identified or by reasonably logical extension can be identified, shall be accorded the same status of "Confidential" or "Attorneys' Eyes Only" Material as the underlying Material from which the summaries are made, and shall be subject to the terms of this Order.

CHALLENGES TO CONFIDENTIALITY DESIGNATIONS

14. The parties shall use reasonable care when designating documents or information as Confidential or Attorneys' Eyes Only Material. Nothing in this Order shall prevent a Receiving Party from contending that any or all documents or information designated as Confidential or Attorneys' Eyes Only Material have been improperly designated. A Receiving Party may at any time request that the Producing Party cancel or modify the Confidential or Attorneys' Eyes Only Material designation with respect to any document or information contained therein.

15. A party shall not be obligated to challenge the propriety of a Confidential or Attorneys' Eyes Only Material designation at the time made, and a failure to do so shall not

preclude a subsequent challenge thereto. Such a challenge shall be written, shall be served on counsel for the Producing Party, and shall particularly identify the documents or information that the Receiving Party contends should be differently designated. The parties shall use their best efforts to resolve promptly and informally such disputes. If an agreement cannot be reached, the Receiving Party shall request that the Court cancel or modify a Confidential or Attorneys' Eyes Only Material designation. The burden of demonstrating the confidential nature of any information shall at all times be and remain on the Designating Party.

TREATMENT OF CONFIDENTIAL AND ATTORNEYS' EYES MATERIAL

16. Except as otherwise agreed to by the parties, or ordered by the Court, Confidential Material may be disclosed only to the following persons:

a. The parties and their current officers, directors, in-house counsel, and employees, to the extent necessary for the conduct of the above-captioned action. Confidential Material may also be shown to, but no Confidential Material shall be produced or otherwise placed in the possession or control of, former officers, directors, in-house counsel, and employees, to the extent the Confidential Material relates to the individual's former role and to the extent necessary for the conduct of the above-captioned action upon such individual's signing of "Attachment A," stating that the individual has read and understands this Order and agrees to be bound by its terms;

b. Outside litigation counsel of record for the parties and supporting personnel employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;

c. The Court, its personnel, and stenographic reporters (under seal or with other suitable precautions determined by the Court);

d. Independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; outside copying and computer services necessary for document handling, graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non–technical jury or trial consulting services not including mock jurors; and independent consultants and expert witnesses retained for the purpose of this litigation, to the extent

reasonably necessary for the conduct of this action, subject to all of the terms and conditions of this Order. No such service provider, consultant or expert witness shall be provided any Confidential Material until the form attached hereto as "Attachment A," stating that the service provider, consultant or expert witness has read and understands this Order and agrees to be bound by its terms, has been signed by the consultant or expert witness.. Each party shall be responsible for maintaining a record of the executed Attachment A for the party's service providers, consultants and expert witnesses.

e. Non-parties may be examined or may testify concerning any document containing Confidential Material of a Producing Party which appears on its face or from other documents or testimony to have been previously received by or authored by the non-party upon non-party's, and, if present, the non-party's counsel's, signing of "Attachment A," stating that such individuals have read and understand this Order and agree to be bound by its terms. In the event that such non-party witness or counsel declines to sign such a signed statement prior to the examination, the parties, by their attorneys, shall jointly seek a protective order from the Court prohibiting the individuals from disclosing Confidential Material.

17. Except as otherwise agreed to by the parties, or ordered by the Court, Attorneys' Eyes Only Material may be disclosed only to the following persons:

a. Outside litigation counsel of record for the parties and supporting personnel employed in the law firm(s) of outside litigation counsel of record, such as attorneys, paralegals, legal translators, legal secretaries, legal clerks and shorthand reporters;

b. The Court, its personnel and stenographic reporters (under seal or with other suitable precautions determined by the Court);

c. Independent stenographic reporters and videographers retained to record and transcribe testimony in connection with this action; outside copying and computer services necessary for document handling, graphics, translation, or design services retained by counsel for purposes of preparing demonstrative or other exhibits for deposition, trial, or other court proceedings in the actions; non–technical jury or trial consulting services not including mock jurors; and independent consultants and expert witnesses retained for the purpose of this litigation, to the extent reasonably necessary for the conduct of this action, subject to all of the terms and conditions of this Order. No such service provider, consultant or expert witness shall be provided any Attorneys' Eyes Only Material until the form attached hereto as "Attachment A," stating that the service provider, consultant or expert witness has read and understands this Order

and agrees to be bound by its terms, has been signed by the consultant or expert witness. Each party shall be responsible for maintaining a record of the executed Attachment A for the party's service providers, consultants and expert witnesses.

LIMITATIONS ON THE USE OF CONFIDENTIAL AND ATTORNEYS' EYES ONLY MATERIAL

18. Confidential and Attorneys' Eyes Only Material shall be held in confidence by each person to whom it is disclosed, shall be used only for purposes of this litigation (including appeals), shall not be used for any business purpose, and shall not be disclosed to any person who is not entitled to receive such information as herein provided. All produced Confidential or Attorneys' Eyes Only Material shall be carefully maintained so as to preclude access by persons who are not entitled to receive such information.

19. If a party wants to file a transcript of deposition, exhibits, answers to interrogatories, pleadings, briefs, or other documents submitted to the Court which have been marked as "Confidential" or "Attorneys' Eyes Only" or which contain information so designated, that party shall file a motion in accordance with S.D. Ohio L.R. 79.3 for leave to file the materials under seal with the Court and the case caption of the filing shall contain the notation "Confidential Material – Under Protective Order." Outside attorneys of record for the parties are hereby authorized to be the persons who may retrieve confidential exhibits and/or other confidential matters filed with the Court upon termination of this litigation without further order of this Court, and are the persons to whom such confidential exhibits or other confidential matters may be returned by the Clerk of the Court, if they are not so retrieved. No material or copies thereof so filed shall be released, except by order of the Court, to outside counsel of record, or as otherwise provided for hereunder.

20. Nothing in this Order shall prohibit the transmission or communication of Confidential Material between or among qualified recipients:

a. By hand delivery;

b. In sealed envelopes or containers via mail or an established freight, delivery or messenger service; or

c. By telephone, facsimile, e-mail or other electronic transmission system; where, under the circumstances, there is no reasonable likelihood that the transmission will be intercepted or misused by any person who is not a qualified recipient.

21. Confidential Material shall not be copied or otherwise distributed by a Receiving Party, except for transmission to qualified recipients, without the written permission of the Producing Party, or, in the alternative, by further order of the Court. Nothing herein shall, however, restrict a qualified recipient from making working copies, abstracts, digests and analyses of Confidential Material for use in connection with this litigation and such working copies, abstracts, digests and analyses shall be deemed Confidential Material under the terms of this Order. Further, nothing herein shall restrict a qualified recipient from converting or translating Confidential Material into machine readable form for incorporation into a data retrieval system used in connection with this action, provided that access to Confidential Material, in whatever form stored or reproduced, shall be limited to qualified recipients.

22. Nothing herein shall impose any restrictions on the use or disclosure by a party of information obtained by such party independent of discovery in this action, whether or not such information is also obtained through discovery in this action, or from disclosing its own Confidential Material as it deems appropriate, nor shall this Order be construed to impair the use or admissibility of any document, material, or information in connection with any judicial or administrative proceeding, or at any trial or hearing.

23. Any disclosure of Confidential Material at trial or in any other court proceeding herein shall be made *in camera* unless the Court orders otherwise.

24. Notwithstanding any of the foregoing provisions, this Order has no effect upon, and its scope shall not extend to, any person's use of their own Confidential Material.

25. No Party concedes that any Confidential Material designated by any other person as "Confidential" or "Attorneys' Eyes Only" does in fact constitute Confidential Material or has been properly designated as "Confidential" or "Attorneys' Eyes Only." Any Party may at any time move for (i) modification of this Order, or (ii) relief from the provisions of this Order with respect to specific Material, including the use of "Confidential" Material or "Attorneys' Eyes Only" Material as exhibits at depositions of non-parties to this action, or at depositions of persons who are not employees or agents of parties to this action. In addition, the parties, and, if applicable, any other person producing documents or information protected by this Order, may agree in writing or on the record to necessary modifications of this Order.

NON-PARTY USE OF THIS AGREED PROTECTIVE ORDER

26. A nonparty producing information or material voluntarily or pursuant to a subpoena or a court order may designate such material or information as Confidential Material pursuant to the terms of this Order.

27. A nonparty's use of this Order to protect its Confidential Material does not entitle that nonparty access to Confidential Material produced by any party in this case.

NO WAIVER OF PRIVILEGE

28. Inspection or production of documents (including physical objects) shall not constitute a waiver of the attorney-client privilege or work product immunity or any other applicable privilege if, as soon as reasonably possible after the Producing Party becomes aware

of any inadvertent or unintentional disclosure, the Producing Party designates any such documents as protected from disclosure by attorney-client privilege or work product immunity or any other applicable privilege and requests return of such documents to the Producing Party. Upon request by the Producing Party, the Receiving Party immediately shall return to the Producing Party all copies of such inadvertently produced document(s), all copies thereof and any materials derived from or based thereon to the Producing Party. Notwithstanding this provision, outside litigation counsel of record are not required to delete information that may reside on their respective firm's electronic back-up systems that are overwritten in the normal course of business.

MISCELLANEOUS PROVISIONS

29. Any of the notice requirements herein may be waived, in whole or in part, but only in writing signed by the attorney-in-charge for the party against whom such waiver will be effective.

30. Within sixty (60) calendar days after the entry of a final non-appealable judgment or order, or the complete settlement of all claims asserted against all parties in this action, each party shall, at the option of the Producing Party, either return or destroy all physical objects and documents which embody Confidential Material which were received from the Producing Party, and shall destroy in whatever form stored or reproduced, all physical objects and documents, including but not limited to, correspondence, memoranda, notes and other work product materials, which contain or refer to Confidential Material. All Confidential Material not embodied in physical objects and documents, shall remain subject to this Order. Notwithstanding this provision, outside litigation counsel of record are not required to delete information that may reside on their respective firm's electronic back-up systems that are over-

written in the normal course of business. Outside counsel of record shall be entitled to maintain copies of all pleadings, motions and trial briefs (including all supporting and opposing papers and exhibits thereto), written discovery requests and responses (and exhibits thereto), deposition transcripts (and exhibits thereto), trial transcripts, and exhibits offered or introduced into evidence at any hearing or trial, and their attorney work product which refers or is related to any Confidential Material for archival purposes only. Any copies or documents so retained shall remain subject to this Order. If a Producing Party opts to have its Confidential Material destroyed, the Receiving Party must provide a Certificate of Destruction to the Producing Party.

31. If at any time documents containing Confidential Material are subpoenaed by any court, arbitral, administrative or legislative body, the person to whom the subpoena or other request is directed shall immediately give written notice thereof to every party who has produced such documents and to its counsel and shall provide each such party with an opportunity to object to the production of such documents. If a Producing Party does not take steps to prevent disclosure of such documents within ten (10) calendar days of the date written notice is given, the party to whom the referenced subpoena is directed may produce such documents in response thereto.

32. This Order is entered without prejudice to the right of any party to apply to the Court at any time for additional protection, or to relax or rescind the restrictions of this Order, when convenience or necessity requires.

33. In the event of a dispute concerning the interpretation of the terms of this Order or the documents subject hereto, the parties agree to provide written notice of the dispute to all other parties at least five (5) days before seeking judicial intervention, and agree to engage in a good faith effort to resolve the dispute in order to limit the need for Court involvement.

34. The Honorable Edmund A. Sargus, Jr. of the United States District Court for the Southern District of Ohio, is responsible for the interpretation and enforcement of this Agreed Protective Order. After termination of this litigation, the provisions of this Agreed Protective Order shall continue to be binding except with respect to those documents and information that become a matter of public record. This Court retains and shall have continuing jurisdiction over the parties and recipients of the Confidential Material for enforcement of the provisions of this Agreed Protective Order following termination of this litigation. All disputes concerning Confidential Material produced under the protection of this Agreed Protective Order shall be resolved by The Honorable Edmund A. Sargus, Jr. or another judge or magistrate judge of the United States District Court for the Southern District of Ohio pursuant to the Preliminary Pretrial Conference Order entered in this case.

SO ORDERED AND SIGNED this 15th day of October, 2013.

s/Mark R. Abel
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

AMERICAN ENERGY CORPORATION,	:	
	:	**CASE NO. 2:13-CV-00886-GCS-MRA**
Plaintiff,	:	
	:	**Judge Edmund A. Sargus, Jr.**
v.	:	
	:	
AMERICAN ENERGY PARTNERS, LP,	:	
	:	**STIPULATED PROTECTIVE ORDER**
and	:	
	:	
AUBREY McCLENDON,	:	
	:	
Defendants.	:	

ATTACHMENT A TO THE AGREED PROTECTIVE ORDER
CONFIDENTIALITY AGREEMENT

I, _____, state:

1. I reside at _____.

2. My present employer is _____.

3. My present occupation or job description is _____.

4. I have read the Agreed Protective Order dated _____, 2013, and (if applicable) have been engaged as _____ on behalf of _____ _____ in the preparation and conduct of litigation styled *American Energy Corporation v. American Energy Partners, LP, et. al.*, No. 2:13-cv-00886-GCS-MRA.

5. I am fully familiar with and agree to comply with and be bound by the provisions of said Order. I understand that I am to retain all copies of any documents designated as "Confidential" or "Attorneys' Eyes Only" in a secure manner, and that all copies are to remain in my personal custody until I have completed my assigned duties, whereupon the copies and any writings prepared by me containing any Confidential Material are to be returned to counsel

who provided me with such material.

6. I will not divulge to persons other than those specifically authorized by said Order, and will not copy or use except solely for the purpose of this action, any information obtained pursuant to said Order, except as provided in said Order. I also agree to notify any stenographic or clerical personnel who are required to assist me of the terms of said Order.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ _____, 2013.

_____

Signature

EXHIBIT 9

REDACTED

Material Designated Confidential Pursuant to Protective Order