

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

American Energy Corporation, :
 :
Plaintiff : Civil Action 2:13-cv-00886
 :
v. : Judge Sargus
 :
American Energy Partners, LP, et al., : Magistrate Judge Abel
 :
Defendants :

Discovery Dispute Conference Order

On March 21, 2014, counsel for the parties participated in a telephone discovery dispute conference with the Magistrate Judge. During the conference, the following rulings were made.

Claims for relief. American Energy Corporation brings this action alleging that American Energy Partners and its owner, Aubrey McClendon, have injured it by using "American Energy" in its name while doing business in six eastern Ohio counties. Claims are pleaded for federal trademark infringement and Ohio deceptive trade practices, unfair competition, and infringement of trade name.

Discovery about "American Energy" affiliates. Defendants have provided plaintiff with an organizational chart that includes all its affiliates.

Documents in affiliates' possession. Plaintiff asserts that McClendon's entities are operating as a group to engage in activities in Ohio. It is ORDERED that if a subsidiary or subsidiary or a subsidiary possess a document that is responsive to plaintiff's discovery requests and that document is held under defendants' direction or control, then defend-

ants must produce that document. The Rule 45 subpoenas that were issued in Oklahoma are not currently before this court.

Products and customers. As I understand it, American Energy Corporation is purchasing rights to natural gas/oil/minerals in six eastern Ohio counties. It is not currently producing natural gas, but it intends to do so. When it does, the natural gas will be delivered by a pipeline to a midstream pipeline operator and intermingled with other natural gas. The midstream pipeline operator will purchase the natural gas American Energy Corporation delivers to the pipeline. Later that natural gas will be sold to purchasers who would have no idea whose natural gas they were buying. American Energy Corporation knows who are the midstream pipeline operators in eastern Ohio. The coal American Energy Corporation sells is not transported by pipeline.

Based on this understanding and subject to revision if the facts developed during discovery show otherwise, I find that defendants' discovery responses regarding its products and customers are adequate.

Discovery from Aubrey McClendon. Plaintiff wants to obtain discovery from defendant McClendon. Mr. McClendon is contesting personal jurisdiction. He does not have to participate in merits discovery as a party. Plaintiff is free to serve him with a Rule 45 subpoena.

Business plans: Leases. I find that plans regarding which areas to acquire natural gas leases in are highly confidential and irrelevant to the issues in this law suit as I now understand them. However, it is further ORDERED that defendant American Energy

Partners produce signed leases it owns or which are under its control.¹

I understand plaintiff's argument that they are in direct competition with defendants for leases in six eastern Ohio counties. American Energy Corporation asserts that it owns leases on tens of thousands of acres in these counties and has built up valuable relationships with land owner there.

In response, defendants argue that another entity, American Energy Associates, drilled more than 80 oil wells in that area with no complaints from American Energy Corporation. Defendants argue that it is stretching the law and the credible facts for plaintiff to assert that confusion is likely given that these are sophisticated people who know who they are dealing with.

If there is a dispute regarding production of the leases, plaintiff should brief why the leases are relevant and proffer any evidence it has of land owner confusion about who is seeking to obtain natural gas/oil/mineral leases from them.

Interrogatory No. 5. This interrogatory seeks information about defendants' use of the name "American Energy" or " "American Energy-Utica". Defendants argue that asking for every use of those names is overbroad and burdensome. Plaintiff responds that the interrogatory is broadly worded, but it is directed at an issue at the heart of the case.

I conclude that defendant American Energy Partners's response is generally adequate at this time. I am willing to revisit the issue after plaintiff takes American Energy Partners's Rule 30(b)(6) deposition. It is ORDERED that defendant must provide plaintiff

¹Leases become a matter of record when they are filed.

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with examples from all the categories of materials that use the words "American Energy" or " "American Energy-Utica". For example, I expect American Energy Partners to produce examples of all marketing materials shown to or delivered to land owners and mid-stream pipeline operators. If American Energy Partners solicits bids from vendors or places orders to vendors using "American Energy" or " "American Energy-Utica", then examples should be produced.

s/Mark R. Abel
United States Magistrate Judge