



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

**IN RE: MARCELLUS SHALE LITIGATION
MIDSTREAM CASES**

CIVIL ACTION NO. 14-C-3001

**THIS DOCUMENT APPLIES TO THE
NORTH CANTON COMPRESSOR STATION TRIAL GROUP**

Thomas V. Bates and Victoria A. Bates
v.
Antero Resources Corporation

Civil Action No. 16-C-22 DOD

Patrick M. Cayton
v.
Antero Resources Corporation

Civil Action No. 16-C-23 DOD

Jack C. Lamp and Linda M. Lamp
v.
Antero Resources Corporation

Civil Action No. 16-C-26 DOD

Michael W. Swiger and Jodi A. Swiger
v.
Antero Resources Corporation

Civil Action No. 16-C-27 DOD

**ORDER GRANTING ANTERO RESOURCES
CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Having reviewed and maturely considered *Antero Resources Corporation's Motion for Partial Summary Judgment* and *Memorandum of Law in Support of Antero Resources Corporation's Motion for Partial Summary Judgment* (Transaction IDs 64807901 and 64807927), *Plaintiffs' Response to Defendant's Motion for Partial Summary Judgment* (Transaction ID 65675346), and the *Reply in Support of Antero Resources Corporation's Motion for Partial Summary Judgment* (Transaction ID 65688787), and having conferred with one another to insure uniformity of their decision, as contemplated by Rule 26.07(a) of the West Virginia Trial Court Rules, the Presiding Judges unanimously **GRANT** Antero Resources Corporation's ("Antero") motion for partial summary judgment on Plaintiffs' negligence claims.

The Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiffs filed their complaints on April 6, 2016, alleging private nuisance and continuing negligence arising from Antero's oil and gas operations involving the Canton North Compressor Station ("Station") located in Doddridge County, West Virginia.

2. In their complaints, Plaintiffs set forth Count II, entitled "Continuing Negligence," in paragraphs 24 through 30.

3. On August 15, 2017, Antero served Plaintiffs with requests for admission, which focused on the damage element of a *prima facie* negligence claim.

4. Plaintiffs' responses to Antero's requests for admission were due on September 18, 2017.

5. As of the filing of Antero's motion for partial summary judgment on March 9, 2020, Plaintiffs had not provided responses to Antero's requests for admission.

6. On June 3, 2020, Plaintiffs served responses and formally admitted all of Antero's requests for admission.

7. In Plaintiffs' response to Antero's motion, Plaintiffs admitted that they have not experienced or identified any medical issues or physical, real and/or personal property damages.

8. Plaintiffs offered no evidence to establish claims for personal injury or property damage.

CONCLUSIONS OF LAW

9. Summary judgment must be granted if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that

there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” W. Va. R. Civ. P. 56(c).

10. As set forth in Syllabus Points 2-3 of Williams v. Precision Coil, Inc., 194 W. Va. 52, 459 S.E.2d 329 (1995):

2. Summary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove.

3. If the moving party makes a properly supported motion for summary judgment and can show by affirmative evidence that there is no genuine issue of a material fact, the burden of production shifts to the nonmoving party who must either (1) rehabilitate the evidence attacked by the moving party, (2) produce additional evidence showing the existence of a genuine issue for trial, or (3) submit an affidavit explaining why further discovery is necessary as provided in Rule 56(f) of the West Virginia Rules of Civil Procedure.

11. Under West Virginia Rule of Civil Procedure 36(a), “[a] party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of Rule 26(b) set forth in the request that relate to statements or opinions of fact or of the application of law to fact” W. Va. R. Civ. P. 36(a). The party to whom the request is directed must respond within 30 days of being served. Id.

12. “The general and prevailing rule is that the failure to respond is deemed to be an admission of the matters set forth in the request. By failing to respond, a party admits the truth of the matters contained therein.” Dingess-Rum Coal Co. v. Lewis, 170 W. Va. 534, 536–37, 295 S.E.2d 25, 27 (1982). See also Prudential Ins. Co. of America v. Couch, 180 W. Va. 210, 212, 376 S.E.2d 104, 106 (1988) (finding requests for admission “were deemed admitted under Rule 36(a) of the West Virginia Rules of Civil Procedure when no objection or answer was filed within thirty days as required by the rule”).

13. Any matter admitted under Rule 36 is conclusively established and may serve as the basis for summary judgment. Dingess-Rum Coal Co., 170 W. Va. at 537, 295 S.E.2d at 28; W. Va. R. Civ. P. 36(b).

14. Antero's requests for admission were deemed admitted when Plaintiffs failed to respond within 30 days of being served. The truth of the matters within those admissions are deemed conclusively established and may serve as a basis for Antero's motion for partial summary judgment. Moreover, in their untimely responses served on June 3, 2020, Plaintiffs formally admitted all of Antero's requests for admission.

15. To prevail on a negligence claim under West Virginia law, a plaintiff must prove duty, breach, causation, and damages. Carter v. Monsanto Co., 212 W. Va. 732, 737, 575 S.E.2d 342, 347 (2002). The plaintiff "must prove by a preponderance of the evidence that the defendant owed a legal duty to the plaintiff and that by breaching that duty the defendant proximately caused the injuries of the plaintiff." Strahin v. Cleavenger, 216 W. Va. 175, 603 S.E.2d 197, 205 (2004)), aff'd, 541 F. App'x 316 (4th Cir. 2013).

16. To recover damages for negligence, Plaintiffs must prove that they have suffered injuries to either person or property. Plaintiffs cannot establish the requisite damages necessary to establish a negligence claim. Plaintiffs admitted that they have not sustained any personal injury or property damage by failing to timely respond to Antero's requests for admission.

17. Furthermore, in their response to Antero's motion, Plaintiffs also admitted and stipulated that they have not experienced or identified any medical issues or physical real and/or personal property damages.

18. Plaintiffs failed to present any evidence to establish that there is a

material, trial-worthy issue on their claim for negligence and, therefore, Antero is entitled to judgment as a matter of law on Plaintiffs' negligence claims.

19. As Antero's motion for partial summary judgment was limited to Plaintiffs' negligence claim, the Panel makes no findings or conclusions regarding the scope of Plaintiffs' nuisance claim and applicable law.

It is therefore **ORDERED** that Antero Resources Corporation's motion for partial summary judgment on Plaintiffs' negligence claims is **GRANTED** in all respects, inclusive of all allegations contained in paragraphs 24 through 30 of Plaintiffs' Complaints.

It is so **ORDERED**.

ENTERED: June 16, 2020

/s/ Derek C. Swope
Lead Presiding Judge
Marcellus Shale Litigation
Midstream Cases