



IN THE CIRCUIT COURT OF OHIO COUNTY, WEST VIRGINIA

IN RE: MARCELLUS SHALE LITIGATION

Civil Action No. 14-C-3000

THIS DOCUMENT APPLIES TO ALL CASES

PROTECTIVE ORDER

This matter came before the Court upon the agreement of the parties seeking the entry of a protective order to facilitate discovery. In considering the agreement, the Court takes into account the fact that the discovery in these matters may include confidential medical information which would otherwise not be in the public domain, as well as confidential and proprietary information which is not in the public domain, but could, if released to the public, cause financial harm and irreparable damage to the Defendants. Because the cases could not proceed in an orderly fashion without the production of the information referenced herein, the Court FINDS that the privacy and proprietary interests of the parties are properly accommodated and preserved through the entry of this protective order. As such, the Court ORDERS:

1. That the parties may designate certain disclosures or other items of information produced or provided as "CONFIDENTIAL," which designation shall make such items and all copies, prints, summaries, or other reproductions of the information, in whole or in part, subject to this Protective Order. All such documents or other tangible items so produced will be stamped or labeled to indicate that they are subject to this Protective Order, and reports, deposition testimony or other accounts based upon such documents or tangible items shall be similarly designated in clear terms.

2. The parties shall designate as being confidential under this Protective Order only such documents and materials which they have determined in good faith to contain confidential information.

3. Information and documents subject to this Protective Order may be disclosed only to the parties and (a) attorneys in these cases for a party and their paralegals and clerical staff, (b) non-attorney experts or consultants retained by a party for assistance in trial preparation or for testimony, or (c) witnesses during the course of a deposition or during the course of a trial. The use of information subject to the Protective Order at deposition will not waive the confidential nature of the information. The parties may show a witness information subject to this Protective Order, and may question a witness on the information, but the witness will not be permitted to retain a copy. To the extent confidential information is made an exhibit to a deposition, it will retain its confidential nature. With respect to the use of confidential information at trial, prior to trial the party wishing to use confidential information shall identify the same to the party having so designated the information confidential. The parties shall meet and confer and determine if a redacted version of the information is sufficient for trial or otherwise determine the manner in which such information will be used at trial. Should the parties fail to come to an agreement on a method of use that both protects the interest of the designating party in the confidential nature of the information and the need of the other party to use the information at trial, the parties shall seek the guidance of the Court. Disclosure shall be made to such persons only as necessary for the prosecution or defense of this lawsuit and only after the person to whom disclosure is made has been provided with a copy of this Protective Order and agreed to be bound by it. Designated information shall not be disclosed to any person or in any manner not specified in this Protective Order or used for any purpose other than the prosecution or defense of this lawsuit.

4. All parties are forbidden and prohibited from revealing or disclosing information or documents subject to this Protective Order, except as set forth in this Order.

5. The parties and their representatives shall act to preserve the confidentiality of designated information. If such information is to be filed with the Court, it shall be filed under seal and with notation of the application of this Protective Order.

6. In the event that a party disagrees with the propriety of a party's designation of any item or information as being confidential under this Protective Order, counsel for the objecting party shall serve a written notice upon the other party specifying the item in question. In the event that an agreement cannot be reached between counsel concerning the propriety of the designation, the objecting party may file a motion seeking Court adjudication of the propriety of the designation under applicable court rules or statutes. Any such item or items shall continue to be treated as confidential and subject to this Protective Order until such time as the Court has ruled on the motion.

7. If any party wishes to modify this Protective Order, that party shall first request modification from the other party, and, if no satisfactory agreement is reached, may petition the Court for modification at any time prior to termination of this lawsuit. Modification of this Protective Order after termination of this lawsuit, by judgment, settlement or otherwise, shall not be permitted. Until modification is granted by agreement or order, the terms of this Protective Order will govern. Provision for use of such information at trial shall be similarly made by agreement or by pretrial order governing use and protection of the record.

8. This Protective Order shall not preclude the parties from exercising any rights or raising any objections otherwise available to them under the rules of discovery and evidence. This Protective Order shall not preclude the Court or its personnel from reviewing any documents or information designated as confidential or proprietary as

necessary for the conduct of this litigation.

9. Insofar as the trial of this action, and any potential hearings involving a public hearing, a party is not in breach of this agreement by using at trial or during a hearing a document, testimony, or information previously designated as "CONFIDENTIAL," even though the use of such document, testimony, or information may involve the disclosure to individuals not identified in paragraph 3.

10. If the party that claims a document, testimony, or information is CONFIDENTIAL believes that a hearing or trial should be closed, it is the responsibility of the claiming party to make such a request. However, the failure to request a closed hearing by any party does not constitute a waiver of the protection of this Protective Order. In the event this matter is appealed to any appellate court, the parties understand that such appellate court may require that a new Protective Order be entered by such Court. Accordingly, in the event of an appeal, it is the responsibility of any party seeking to protect CONFIDENTIAL documents or information to seek a new Protective Order from the appellate court. Until the appellate court has ruled on any Protective Order, any filings with the appellate court that include CONFIDENTIAL documents or information must be filed under seal in accordance with Paragraph 5, unless the appellate court will not accept documents filed under seal.

11. Upon termination of this litigation, by judgment, settlement, or otherwise, counsel for the party who has received documents pursuant to this Protective Order shall, at such counsel's options either:

- (a) Return to the providing party, through its counsel of record, all documents and information subject to this Protective Order; or

- (b) Provide a written statement that all documents and information subject to this Protective Order, including all copies, prints, summaries, and other reproductions of such information, have been destroyed in a secure manner. With respect to this requirement, documents or information in the possession of each retained non-attorney expert or consultant will be returned to counsel and will be actually destroyed by counsel for the party who received documents pursuant to this Protective Order.

It is so **ORDERED**.

ENTERED: January 12, 2015

/s/ Alan D. Moats
Lead Presiding Judge,
Marcellus Shale Litigation