



IN THE CIRCUIT COURT OF RALEIGH COUNTY, WEST VIRGINIA

IN RE: GAVIN LANDFILL LITIGATION

CIVIL ACTION NO. 16-C-8000

THIS DOCUMENT APPLIES TO ALL CASES

**ORDER REGARDING FOURTH RECOMMENDED  
DECISION OF DISCOVERY COMMISSIONER**

The Presiding Judges have reviewed the *Fourth Recommended Decision* of the Discovery Commissioner filed on January 10, 2018 (Transaction ID 61553191) regarding *Plaintiffs' Motion to Compel* (Transaction ID 61400014) and *Plaintiffs' Motion to Compel and for Sanctions* (Transaction ID 61425574). The time for filing exceptions to the *Fourth Recommended Decision* has expired with no exceptions filed.

The Court adopts the Findings of Fact and Conclusions of Law set forth in the *Fourth Recommended Decision*, and rules that:

1. *Plaintiffs' Motion to Compel* (Transaction ID 61400014) is **ORDERED HELD IN ABEYANCE** pending the parties' attempt to voluntarily work out the privilege log issues. If the parties cannot work out the privilege log issues, Plaintiffs have leave to re-file the motion to compel, setting forth specific discovery requests wherein the Plaintiffs set forth their challenges to the AEP Defendants' claims of privilege.
2. *Plaintiffs' Motion to Compel and for Sanctions* (Transaction ID 61425574) is **GRANTED IN PART and DENIED IN PART**. The AEP Defendants are **ORDERED** to reproduce the corporate deponents to be deposed at the same location where they were originally deposed. Counsel for the AEP Defendants are admonished, in line with *Detoy v. City of San Francisco*, 196 F.R.D. 362, 367 (N.D. Cal. 2000) that, "Counsel shall refrain from instructing a witness not to answer, except as provided in Rule 30(d)(1) of the [West Virginia Rules of Civil Procedure], to preserve a privilege, to enforce a limitation on evidence directed by the

court, or to present a motion under paragraph (3), that the deposition is being conducted in bad faith or in such a way as unreasonably to annoy, embarrass or oppress the deponent or a party.”

3. Because there is no published decision in West Virginia that addresses the proper scope of questions at a Rule 30(b)(7) deposition, and because the language in the *Litigation Handbook on the West Virginia Rules of Civil Procedure* (5<sup>th</sup> Ed.) expresses a preference for the district court’s ruling in *Paparelli v. Prudential Ins. Co. of Am.*, 108 F.R.D. 727 (D. Mass. 1985), the AEP Defendants could have thought that ruling would control in this case. Accordingly, the Court **FINDS** the AEP Defendants has a good faith basis to object to the questions outside the designated topics at the Rule 30(b)(7) depositions and, therefore, the AEP Defendants will not be sanctioned for their conduct.
4. The Discovery Commissioner has found that Plaintiffs and the AEP Defendants each had some merit in their positions on the aforesaid motions, but the Plaintiffs substantially prevailed on *Plaintiffs’ Motion to Compel and for Sanctions* (Transaction ID 61425574). Accordingly, as recommended by the Discovery Commissioner, the Plaintiffs are **ORDERED** to pay one-quarter and the AEP Defendants’ are ordered to pay three-quarters of the total amount of \$4,500.00 for the Discovery Commissioner’s costs in this matter.
5. Plaintiffs shall deliver payment in the amount of \$1,125.00 and the AEP Defendants shall deliver payment of \$3,375.00 to the Discovery Commissioner for receipt **no later than February 2, 2018.**

It is so **ORDERED**.

**ENTER:** January 18, 2018.

/s/ Derek C. Swope  
Lead Presiding Judge  
Gavin Landfill Litigation