

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

ANTERO RESOURCES CORPORATION
Petitioner,

v.

Civil Action No. 18-AA-1
The Honorable Judge Sweeney

THE HONORABLE DALE W. STEAGER,
West Virginia State Tax Commissioner,
THE HONORABLE ARLENE MOSSOR,
Assessor of Ritchie County, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,
Respondents.

FILE COPY

**RESPONSE IN OPPOSITION
OF THE WEST VIRGINIA STATE TAX DEPARTMENT
AND THE HONORABLE ARLENE MOSSOR
TO ANTERO RESOURCES' MOTION TO REFER TO BUSINESS COURT DIVISION**

COME NOW Dale W. Steager, State Tax Commissioner of the State of West Virginia, and the Honorable Arlene Mossor, Assessor of Ritchie County, (hereinafter, collectively referred to as "Tax Commissioner" or "Tax Department"), by counsel, in order to oppose *Antero Resources Corporation's Motion to Refer to the Business Court Division* (hereinafter, *Antero's Motion to Refer*) filed in this matter and state as follows.

Antero Resources raises four reasons the West Virginia Supreme Court should refer the instant case to the Business Court Division of the Circuit Court. All of the claimed reasons fail. The case should proceed in the Circuit Court since Antero Resources has allowed the case to remain idle since it was filed in 2018.

First, the case before the Court is not a complex tax appeal contrary to Antero's allegation. The case at bar is the ad valorem tax appeal filed by Antero Resources in Ritchie County for the 2018 tax year (TY). Antero has admitted this case involves the same legal issues and claims that were previously referred by the WV Supreme Court to the Business Court Division for the 2016 TY and the 2017 TY in Doddridge County and Ritchie County.

The Business Court ruled in Antero's favor in the 2016 TY and the 2017 TY. Subsequently, the Tax Department appealed those three Antero cases to the WV Supreme Court, *sub nom*, *Steager v. CONSOL Energy*, 242 W. Va. 209, 832 S.E. 2d 135 (2019)¹. The fundamental issue in this case is whether an oil and gas producer can deduct post-production expenses of gathering and compression, processing, and transportation to market, for ad valorem valuation purposes. In *Steager v. CONSOL*, the Supreme Court ruled that the Tax Department's exclusion of "gathering, compressing, processing, and transportation expenses" was a reasonable construction of the legislative rule. *Id.*, at 221 & 223, 147 & 149.

The Supreme Court has already decided the issue which Antero wants referred to the Business Court Division for the 2018 TY and the 2019 TY. This legal issue is not a complex tax matter. The only thing remaining in this case is to apply the Supreme Court decision in *Steager v. Consol Energy* to the original valuations calculated by the Tax Department prior to the Supreme Court issuing its decision.

Second, Antero demands that the Supreme Court refer six pending cases from the respective circuit courts to the Business Court Division, including the instant appeal.

Antero Resources v. Steager, et al., **2018 TY**
Civil Action No. 18-AA-1
Circuit Court of Doddridge County

¹ *Steager v. CONSOL Energy*, was a consolidated appeal that also include three Business Court decisions in favor of CONSOL Energy, dba CNX Gas, LLC., for the 2016 TY in Doddridge, Lewis and McDowell Counties. The CNX Gas wells have been re-valued by the Tax Department and have been resolved through agreed orders.

Antero Resources v. Steager, et al.,
Civil Action No. 18-AA-1
Circuit Court of Ritchie County

2018 TY

Antero Resources v. Steager, et al.,
Civil Action No. 18-AA-1
Circuit Court of Tyler County

2018 TY

Antero Resources v. Steager, et al.,
Civil Action No. 18-P-235
Circuit Court of Harrison County

2018 TY

Antero Resources v. Steager, et al.,
Civil Action No. 19-AA-1
Circuit Court of Doddridge County

2019 TY

Antero Resources v. Steager, et al.,
Civil Action No. 20-P-83-2
Circuit Court of Harrison County

2019 TY

However, Antero has taken no action to move these cases to resolution since they were filed.

It is significant that the Tax Department has re-valued the oil and gas wells at issue as required by the Supreme Court decision in *Steager v. CONSOL Energy*, for the 2018 TY appeal in Doddridge County, Civil Action No. 18-AA-1 and for the 2019 TY in Harrison County, Civil Action No. 20-P-83-2. However, Antero has neither accepted nor rejected these re-valuations. In the 2019 TY appeals in Doddridge and Harrison Counties, Antero specifically demanded that the Tax Department re-value the wells as required by *Steager v. CONSOL Energy* and the Tax Department has agreed. There is no legal issue to decide since these cases are controlled by the Court's decision in *Steager v. CONSOL Energy*.

Third, referring these six cases to Business Court Division will not promote judicial economy. Each appeal for the 2018 TY and the 2019 TY has a different set of facts and valuations from the cases previously decided by the Business Court Division in Doddridge County and Ritchie County for the 2016 TY and 2017 TY. Regardless of whether the cases are decided by a

Presiding Judge in Business Court or the Circuit Court Judges, the Judge will be presented with new facts to consider. Since the legal issues have already been decided by the Supreme Court in *Steager v. CONSOL Energy*, the Judges in these six cases will be required to review a new set of facts. Every circuit court judge in West Virginia can apply the legal principles clearly enunciated by the Supreme Court in *Steager v. CONSOL Energy* to the facts of the case. Thus, specialized knowledge is not required and referral to the Business Court Division will not promote judicial economy contrary to Antero's argument.

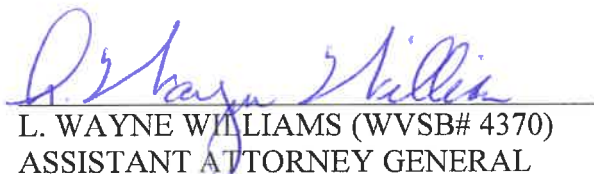
Fourth, Antero argues that the Tax Department issued an *Important Notice to Producers of Natural Gas and Oil for Property Tax Year 2021* (hereinafter, the "2021 TY Notice") and that the 2021 TY Notice should be applied retroactively. However, the 2021 TY Notice has no legal or logical relationship to the valuation of oil and gas wells for the 2018 TY or the 2019 TY.

WHEREFORE, the West Virginia State Tax Department prays the Supreme Court of Appeals deny Antero Resources Motion to Refer with prejudice.

Respectfully submitted,

DALE W. STEAGER,
STATE TAX COMMISSIONER and
THE HONORABLE ARLENE MOSSOR,
ASSESSOR OF RITCHIE COUNTY
By counsel,

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THE HONORABLE DALE STEAGER,
West Virginia State Tax Commissioner,
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Assessor of Ritchie County, and
THE COUNTY COMMISSION OF RITCHIE COUNTY,
Sitting as a Board of Equalization and Review,

Respondents.

CERTIFICATE OF SERVICE

I, L. Wayne Williams, Assistant Attorney General, do hereby certify that the foregoing *Response in Opposition of the West Virginia State Tax Department and the Honorable Arlene Mossor to Antero Resources' Motion to Refer to Business Court Division* was served upon the following by depositing a copy of the same in the United States Mail, via first-class postage prepaid, this 8th day of October, 2020, addressed as follows:

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