

IN THE CIRCUIT COURT OF MONONGALIA COUNTY, WEST VIRGINIA
BUSINESS COURT DIVISION

WEST VIRGINIA RADIO CORPORATION,

Plaintiff,

vs.

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Civil Action No. 13-C-468
(Circuit Judge Thomas C. Evans, III)

WEST VIRGINIA UNIVERSITY BOARD OF
GOVERNORS, WEST VIRGINIA UNIVERSITY
FOUNDATION, INC., WEST VIRGINIA MEDIA
HOLDINGS, LLC, ANDREW A. PAYNE, III, DAVID B.
ALVAREZ, ALBERT BRAY CARY, JR., RALPH
BALLARD, RICHARD BALLARD, OLIVER LUCK,
JAMES P. CLEMENTS, and IMG COLLEGE, LLC,

Defendants.

ORDER

(Re: "Motion for a Protective Order Defendant Andrew A. Payne, III")

Pending is the motion of Defendant Andrew A. Payne, III for a protective order pursuant to Rule 26(c), WVRCivP, submitted under cover dated March 25, 2015. On March 28, 2015, there was submitted to the court Plaintiff's "West Virginia Radio Corporation's Brief in Opposition to the Motion for Protective Order of Andrew A. Payne, III."

As set forth in the motion and Plaintiff's response, the discovery deposition of Defendant Payne is scheduled for March 30 and 31, 2015. Defendant Payne is agreeable to being deposed for one day but objects to being deposed for two days. He claims it is unnecessary, because he "lacks knowledge or involvement in many of the subjects contained in the Amended Complaint and only peripheral knowledge or involvement in others." The motion requests that the court limit the deposition to but one day, and, further, order that inquiry may only be made of Mr. Payne "into matters about which he has personal knowledge, which are relevant to the claims asserted."

An expedited decision was requested by the Plaintiff on the basis that Defendant Payne's deposition is scheduled to begin March 30, 2015.

According to the Plaintiff, the Defendant, Mr. Payne, in addition to be a party to the litigation, is also the former Chairman of Defendant WVU Board of Governors, an investor in Defendant West Virginia Media Holdings, LLC, and the friend of numerous defendants.

Plaintiff's Verified Supplemental and Amended Complaint sets forth various claims for relief against the Defendants, including WVU Board of Governors and Defendant Andrew A. Payne, III.

Rule 26(b)(1), WVCivP, sets forth the scope of discovery. It provides, in pertinent part, as follows:

"(b) Discovery Scope and Limits. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence."

In order to obtain a protective order relating to discovery, there must be "good cause shown" for its issuance. See *Rule 26(c), WVCivP*.

One of the reasons put forth for seeking a protective order seeking to limit discovery is that several witnesses already deposed have not testified that Mr. Payne "participated in

or attempted to participate in any decision making process or vote, or to influence any vote taken, if any." Further, that witnesses have testified that "they have no knowledge of Mr. Payne related to the matter and had no discussions with him about it." Finally, it is asserted that Plaintiff's counsel have extensively examined witnesses in deposition relating to documents that the witness had never previously seen; did not author; were not the subject of the document; and, had no knowledge of what the author and/or recipient intended or meant by the document.

These reasons do not establish good cause to arbitrarily limit the deposition of Mr. Payne to one day, because of the breadth of the claims for relief asserted, the alleged involvement of this Defendant in many of the claims for relief, the very nature of concerted conduct in terms of how such claims are proved, if at all, and the uncertainty of precisely what the testimony of Mr. Payne will be.

Relating to the request of the movant to limit the scope of his deposition by way of a protective order, it is also denied. The motion is not sufficiently specific in identifying which areas of inquiry should be foreclosed, only areas in which Mr. has no personal knowledge. Generally, the fact that a witness may not have personal knowledge of a matter does not have a legitimate objection to providing the requested discovery, because a witness may have gained information about the subject matter in another way, i.e, examination of a document or having been told the information by another. The fact that information may not be admissible at trial is not a valid basis for objection to providing the discovery, so long as the "information sought appears reasonably calculated to lead to the discovery of admissible evidence." *Rule 26(b)(1)*.

Discovery is expressly allowed by the rule regarding any matter which is "relevant to the subject matter involved in the pending action." *Id.* The area of inquiry to which Mr.

Payne must respond in discovery, therefore, does not have to be specifically relevant to any of the claims for relief or defenses of any of the parties in the case, only relevant to the subject matter of the litigation.

The Plaintiff's objections to the motion for a protective order, as set forth in Brief, are sustained. The motion is therefore denied and overruled.

The Clerk shall deliver a true and correct copy of this order to the attorneys of record for each party.

All of which is **ORDERED**, accordingly.

ENTER: March 29, 2015



Thomas C. Evans, III, Presiding Judge
Business Court Division
State of West Virginia

ENTERED March 29, 2015
DOCKET LINE #: 918
JEAN FRIEND, CIRCUIT CLERK