

**IN THE CIRCUIT COURT OF DODDRIDGE COUNTY, WEST VIRGINIA  
BUSINESS COURT DIVISION**

**ANTERO RESOURCES CORPORATION,**

Petitioner,

v.

**CIVIL ACTION NO. 17-AA-1 & 17-AA-3  
PRESIDING JUDGE: WILKES**

**THE HONORABLE DALE STEAGER,  
West Virginia Tax Commissioner,  
THE HONORABLE DAVID SPONAUGLE,  
Assessor of Doddridge County, and  
THE COUNTY COMMISSION OF DODDRIDGE COUNTY,  
Sitting as the Board of Equalization and Review,**

Respondents.

**ORDER DENYING PETITIONER'S MOTION FOR RELIEF FROM ORDERS UNDER  
RULE 60(B) AND MOTION FOR PRELIMINARY INJUNCTION**

This matter came before the Court this 13<sup>th</sup> day of January 2021, upon the Petitioner's Motion for Relief from Orders Under West Virginia Rule of Civil Procedure 60(b) and Motion for a Preliminary Injunction. The Petitioner, Antero Resources Corporation, by counsel, John J. Meadows, Esq., and Respondents, The Honorable Dale W. Steager, West Virginia Tax Commissioner and The Honorable David Sponaugle, Assessor of Doddridge County, by counsel, L. Wayne Williams, Esq., and The County Commission of Doddridge County, sitting as the Board of Equalization and Review, by counsel, Jonathan Nicol, Esq., have fully briefed the issues necessary. Oral argument was heard before the undersigned on August 24, 2020 and January 8, 2021. So, upon the full consideration of the issues, the record, the oral argument presented to the undersigned, and the pertinent legal authorities, the Court rules as follows.

## **I. Findings of Fact**

1. Petitioner Antero Resources Corporation (hereinafter “Petitioner” or “Antero”) is a producer for numerous Marcellus Shale horizontal wells in Doddridge County, West Virginia. See Pet’s Mot., p. 3.

2. On a prior day, the West Virginia Supreme Court of Appeals decided the case of *Dale W. Steager, WV State Tax Commissioner, et al., v. CONSOL Energy, Inc., dba, CNX Gas Company, LLC, et al.*, 242 W. Va. 209, 832, S.E.2d 135 (2019), remanding the matter to the Business Court Division to determine the final valuation of wells in Doddridge and Ritchie Counties<sup>1</sup>.

### Civil Action No. 17-AA-1; TY 2016

3. In Civil Action No. 17-AA-1, Antero provided a list of wells for TY 2016 subject to re-valuation by the Tax Commissioner. Thereafter, Antero filed a Motion for Summary Judgment, seeking summary judgment in its favor that the true and actual value of its Marcellus Shale horizontal wells should be set at \$808,176,064 for TY 2016 in Doddridge County.

4. In response, Respondents The Honorable Dale W. Steager, West Virginia Tax Commissioner and The Honorable David Sponaule, Assessor of Doddridge County (collectively, “Tax Department”) filed “Response of WV Tax Department and The Honorable David Sponaule, Assessor of Doddridge County, Opposing Antero Resources’ Motion for Summary Judgment”, arguing the motion should be denied as the Tax Department re-valued the aforementioned wells in Doddridge County consistent with the Supreme Court’s remand at \$812,541,283 for TY 2016. Further, Respondents proffered their valuation and methodology for calculation was supported by

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<sup>1</sup> The Court notes said decision affirmed the Business Court’s decision in part, reversed the decision in part, and remanded the matter to the Business Court Division for further proceedings consistent with the opinion. See Pet’s Mot., p. 3.



the Affidavit of Cynthia R. Hoover, Tax & Revenue Manager of the West Virginia Property Tax Division, Special Properties Section, which was attached as an Exhibit to its own motion for summary judgment in the instant civil action. Additionally, likewise, on a prior day, Respondent the County Commission of Doddridge County filed its Response of the County Commission of Doddridge County to Petitioner's Motion for Summary Judgment, requesting the Court deny Antero's motion for summary judgment and reject its valuation, and instead utilize the Tax Department's valuation of \$812,541,283 for TY 2016. The Court notes a Reply was also filed, wherein Antero reiterated its position that the actual value of its Marcellus Shale horizontal wells should be set at \$808,176,064 for TY 2016 in Doddridge County.

5. On June 15, 2020, this Court entered its Order denying Antero's motion for summary judgment and valuing the wells at \$812,541,283 for TY 2016. This Order is currently on appeal before the West Virginia Supreme Court of Appeals. *See Tax Dept.'s Resp.*, p. 5.

*Civil Action No. 17-AA-3; TY 2017*

6. In Civil Action 17-AA-3, Antero provided a list of wells for TY 2017 subject to re-valuation by the Tax Commissioner. Thereafter, Antero filed a Motion for Summary Judgment, seeking summary judgment in its favor that the true and actual value of its Marcellus Shale horizontal wells should be set at \$489,492,958 for TY 2017 in Doddridge County.

7. In response, the Tax Department its Response, arguing the motion should be denied as the Tax Department re-valued the aforementioned wells in Doddridge County consistent with the Supreme Court's remand at \$507,215,246 for TY 2017. Further, Respondents proffered their valuation and methodology for calculation was supported by the Affidavit of Cynthia R. Hoover, Tax & Revenue Manager of the West Virginia Property Tax Division, Special Properties Section, which was attached as an Exhibit to its own motion for summary judgment in the instant civil

action. Additionally, likewise, on a prior day, Respondent the County Commission of Doddridge County filed its Response of the County Commission of Doddridge County to Petitioner's Motion for Summary Judgment, requesting the Court deny Antero's motion for summary judgment and reject its valuation, and instead utilize the Tax Department's valuation of \$507,215,246 for TY 2017. The Court notes a Reply was also filed, wherein Antero reiterated its position that the actual value of its Marcellus Shale horizontal wells should be set at \$489,492,958 for TY 2017 in Doddridge County.

8. On June 15, 2020, this Court entered its Order denying Antero's motion for summary judgment and valuing the wells at \$507,215,246 for TY 2017. This Order is currently on appeal before the West Virginia Supreme Court of Appeals. *See Tax Dept.'s Resp.*, p. 5.

17-AA-1 and 17-AA-3

9. It is from these orders that Antero brings the instant 60(b) motion. This Court entered these Orders as final orders which re-valued Antero's wells in Doddridge County pursuant to the West Virginia Supreme Court of Appeals's opinion and mandate in *Steager*. Antero filed a notice of appeal to the West Virginia Supreme Court of Appeals on both aforementioned Orders, and on August 13, 2020, West Virginia Supreme Court of Appeals entered a scheduling order for Antero's appeal of the two aforementioned Orders. *See Tax. Dept.'s Second Supp. Br.*, p. 4.

10. With the appeal of the two Orders pending, and a scheduling order entered by West Virginia Supreme Court of Appeals, on or about August 19, 2020, Antero also filed the instant Motion for Relief from Orders Under West Virginia Rule of Civil Procedure 60(b) and Motion for a Preliminary Injunction<sup>2</sup> with this Court, seeking "relief from the Court's June 15, 2020 orders by reopening these cases." *See Pet's Mot.*, p. 1. Additionally, Antero moved the Court for a

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<sup>2</sup> The Court notes Antero submitted a memorandum of law in support of the 60(b) motion, as well as a memorandum of law in support of the motion for preliminary injunction, contemporaneously with the aforementioned motion.



preliminary injunction to “enjoin Respondents from overcharging Antero...in *ad valorem* taxes on natural gas wells”. *Id.* Specifically, Antero argued the Tax Department’s June 30, 2020 Notice constitutes newly discovered evidence which requires the Court reopening the action. *Id.* Antero argues its wells have been over-valued in TY 2016, 2017, 2018, 2019, and 2020. *See* Tax Dept.’s Resp., p. 2. Specifically, in the motion for preliminary injunction, Antero seeks this Court “suspend” its payment obligations for TY 2020. *Id.*

11. Meanwhile, on or about June 30, 2020, the West Virginia Tax Commissioner issued a certain notice entitled “IMPORTANT NOTICE TO PRODUCERS OF NATURAL GAS AND OIL FOR PROPERTY TAX YEAR 2021”. The Court notes on July 15, 2020, Antero filed its Notices of Appeal with the West Virginia Supreme Court of Appeals.

12. The instant motion was fully briefed. Initial briefing was received and reviewed by the Court. Then, a hearing was conducted on August 24, 2020, and the Court directed the parties to file supplemental briefing as to the 60(b) motion. *See* Tax. Dept.’s Second Supp. Br., p. 4. Also at the hearing, the Court ruled that it did not have jurisdiction to entertain the relief requested by Antero for TY 2020. It denied Antero’s motion for preliminary injunction without prejudice on these grounds by Order dated September 4, 2020.

13. After the hearing, supplemental briefing was received and considered by the Court.

14. Then, on or about October 9, 2020, Tax Commissioner Steager issued a *Notice of Withdrawal of Important Notice to Producers of Natural Gas and Oil for Property Tax Year 2021* (hereinafter, *Notice of Withdrawal*) and filed a copy of the *Notice of Withdrawal* with this Court. Because of this, Antero filed Antero’s Motion for Leave to File Supplemental Briefing and for Hearing Regarding Tax Department’s Change In Position, which was granted by this Court.

15. Following this, additional briefing was received and considered by the Court.

16. A second hearing was held on January 8, 2021, in order to hear the parties' updated oral argument in light of the October 2020 Notice of Withdrawal.

17. The Court now finds the instant Motion is ripe for adjudication.

## **II. Legal Standard**

A motion for relief from a circuit court's judgment under Rule 60(b) of the WV Rules of Civil Procedure is "addressed to the sound discretion of the circuit court" and reviewed based on an "abuse of . . . discretion" standard. *Builders' Service and Supply Co. v. Dempsey*, 224 W. Va. 80, 83, 680 S.E. 95, 99 (2009) (per curiam) (quoting Syl. Pt. 5, *Toler v. Shelton*, 157 W. Va. 778, 204 S.E.2d 85 (1975)). Clearly, Antero bears the burden of persuading this Court to exercise that discretion. *Dempsey*, 224 W. Va. at 86, 680 S.E.2d at 101. And that burden is heavy. *State ex rel. Charleston Area Med. Ctr., Inc. v. Kaufman*, 197 W. Va. 282, 289, 475 S.E.2d 374, 381 (1996), *overruled on other grounds by*, *Burkes v. Fas-Check Food Mart Inc.*, 217 W. Va. 291, 298, 617 S.E.2d 838, 845 (2005)).

However, when a circuit court acts "only by virtue of a statute" its jurisdiction is "limited" to the power the statute grants, *Cruikshank v. Duffield*, 138 W. Va. 726, 735, 77 S.E.2d 600, 605 (1953), and it can only exercise jurisdiction accordingly. *State ex rel. Dale v. Stucky*, 232 W. Va. 299, 303-04, 752 S.E.2d 330, 334-35 (2013). If jurisdiction is lacking, it "must take no further action in the case other than to dismiss it from the docket." Syl. Pt. 1, *Hinkle v. Bauer Lumber & Home Bldg. Center, Inc.*, 158 W. Va. 492, 211 S.E.2d 705 (1975).

## **III. Conclusions of Law**

In this matter, Antero filed the instant Motion for Relief from Orders Under West Virginia Rule of Civil Procedure 60(b) and Motion for a Preliminary Injunction, seeking "relief from the Court's June 15, 2020 orders by reopening these cases." *See* Pet's Mot., p. 1. Additionally, Antero



moved the Court for a preliminary injunction to “enjoin Respondents from overcharging Antero...in *ad valorem* taxes on natural gas wells”. *Id.* Specifically, Antero argued the Tax Department’s June 30, 2020 Notice constitutes newly discovered evidence<sup>3</sup> which requires the Court reopening the action. *Id.* Antero argues its wells have been over-valued in TY 2016, 2017, 2018, 2019, and 2020. *See* Tax Dept.’s Resp., p. 2. Specifically, in the motion for preliminary injunction, Antero seeks this Court “suspend” its payment obligations for TY 2020. *Id.*

When the West Virginia Supreme Court of Appeals renders a decision in a case and remands the matter to the circuit court, the circuit court has limited jurisdiction.

Upon remand of a case for further proceedings after a decision by this Court, the circuit court must proceed in accordance with the mandate and the law of the case as established on appeal. The trial court must implement both the letter and the spirit of the mandate, taking into account the appellate court’s opinion and the circumstances it embraces.

Syl. Pt. 3, *State ex rel. Frazier & Oxley, L.C. v. Cummings*, 214 W. Va. 802, 805, 591 S.E.2d 728, 731 (2003). The remand may “be either general or limited in scope.” Syl. Pt. 2, *id.* But where the remand “explicitly outline[s] the issues” the circuit court may address, it constitutes a limited remand and it “creates a narrow framework within which the circuit court must operate.” *Id.* In such cases, the mandate prohibits the circuit court from “re-hear[ing] . . . any matter . . . decided” by the appellate court. *Quicken Loans, Inc. v. Brown*, 236 W. Va. 12, 19, 777 S.E.2d 581, 588 (2014) (quoting Syl. Pt. 1, *Johnson v. Gould*, 62 W. Va. 599, 59 S.E. 611 (1911)).

When the Supreme Court remanded *Steager v. CONSOL Energy*, to the Business Court, the remand was clear and limited. The Supreme Court ruled:

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<sup>3</sup> The Court also notes that with regard to the Notice, Antero also argued in supplemental briefing that the October 9, 2020 Notice of Withdrawal evidences that State has accepted what Antero has argued all along by changing its position 180 degrees when it issued the October 2020 Notice of Withdrawal.

As such, we conclude that the business court's relief erroneously required use of a percentage, rather than a monetary average operating expense deduction and reverse to that extent. However, "this Court does not have the authority to fix the assessment of appellant's property ... [rather,] the trial court is invested by statute with such authority and the case [should] be remanded for that purpose." *In re Tax Assessments Against Pocahontas Land Corp.*, 158 W. Va. 229, 240, 210 S.E.2d 641, 649 (1974); *see also Matter of U. S. Steel Corp.*, 165 W. Va. 373, 379, 268 S.E.2d 128, 132 (1980) ("This Court does not have the authority to fix assessments because such authority is vested by statute in the circuit courts."). Consequently, we remand to the business court for entry of an order consistent with this opinion.

*Steager v. CONSOL Energy*, 225, 151. The Supreme Court remanded *Steager v. CONSOL*, to this Court for the limited purpose of fixing the assessments for Antero Resources's producing oil and gas wells in Doddridge County for the 2016 TY and the 2017 TY and in Ritchie County for the 2016 TY<sup>4</sup>, which this Court has done. Consequently, this Court can do nothing more with regards to *Steager v. CONSOL*.

Granting Antero Resource's *Rule 60(b) Motion* asks this Court to exceed the directives of the limited remand of this Court received in *Steager v. CONSOL Energy*, 242 W. Va. 209, \_\_\_, 832 S.E.2d 135, 138 (2019). the *Rule 60(b) Motion* would exceed this Court legitimate powers. Therefore, the Motion must be denied.

Further, the Court finds that the final orders from which Antero seeks Rule 60(b) relief have been appealed to the West Virginia Supreme Court of Appeals. In fact, on August 13, 2020, the West Virginia Supreme Court of Appeals entered a scheduling order for Antero's appeal of the two aforementioned Orders. *See Tax. Dept.'s Second Supp. Br.*, p. 4. With the appeal of the two Orders pending, and a scheduling order entered by West Virginia Supreme Court of Appeals, Antero then also filed the instant Motion for Relief from Orders Under West Virginia Rule of Civil

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<sup>4</sup> The Court notes that the Ritchie County valuation is not part of the instant motion. The parties acknowledged at the January 8, 2021 hearing that no pleadings have been filed in the Ritchie County civil action.



Procedure 60(b) and Motion for a Preliminary Injunction<sup>5</sup> with this Court, seeking “relief from the Court’s June 15, 2020 orders by reopening these cases.” *See* Pet’s Mot., p. 1.

Rule 60(b) “is not a substitute for” such “an appeal”. *Hatfield v. Painter*, 222 W. Va. 622, 629 n. 13, 671 S.E.2d 453, 460 n.13 (2008). Once jurisdiction of proceeding has been taken by the West Virginia Supreme Court of Appeals, the circuit court is without jurisdiction to act further in the proceeding. *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990). In the absence of statutory or constitutional provision to the contrary, when a proceeding in its entirety is removed from a lower court to an appellate court, the jurisdiction to the lower court as to such proceeding is lost and ceases until the proceeding is decided by the appellate court and the lower court does not again acquire jurisdiction of such proceeding until the decision of the appellate court is certified to the lower court and regularly entered of record. Syl. Pt. 1, *State ex rel. Chambers v. Cty. Court of Mingo Cty.*, 146 W. Va. 846, 123 S.E.2d 241 (1961).

From 1928 in *Pure Oil Co. v. O'Brien*, 106 W.Va. 10, 144 S.E. 564 (1928), which was cited by the Court in its decision in *Fenton v. Miller*, 182 W. Va. 731, 735, 391 S.E.2d 744, 748 (1990), to the Supreme Court’s recent decision in October 2020 in *In re N.R.*, the Supreme Court has recognized this principle. *See In re N.R.*, No. 20-0202, 2020 WL 5889363, at \*5 (W. Va. Oct. 2, 2020) (“Once this Court takes jurisdiction of a matter pending before a circuit court, the circuit court is without jurisdiction.” *citing* Syl. Pt. 3, *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990)). The Supreme Court has been consistent in holding that circuit courts are deprived of jurisdiction once the matter has been appealed.

Therefore, here, this Court lacks jurisdiction to grant such relief because these orders are currently on appeal before the West Virginia Supreme Court of Appeals. This Court is deprived

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<sup>5</sup> The Court notes Antero submitted a memorandum of law in support of the 60(b) motion, as well as a memorandum of law in support of the motion for preliminary injunction, contemporaneously with the aforementioned motion.

of jurisdiction now that it has entered its Final Order within contemplation of West Virginia Code §58-5-1, and that Final Order has been appealed to the West Virginia Supreme Court of Appeals. *Bartles v. Hinkle*, 472 S.E.2d 827, 196 W. Va. 381 (1996).

As such, this Court concludes that now that the West Virginia Supreme Court of Appeals has taken jurisdiction over these civil actions, this Court is without jurisdiction to enter further Orders in these civil actions except by specific leave of the West Virginia Supreme Court of Appeals and no such specific leave has been granted by the West Virginia Supreme Court of Appeals. Syl. Pt. 3, *Fenton v. Miller*, 182 W. Va. 731, 391 S.E.2d 744 (1990). Further, the Court notes the circuit court would only ask the West Virginia Supreme Court of Appeals for such leave for a remand if it thinks the plaintiff would be successful on the Rule 60(b) motion.

As the Court has concluded that it is without jurisdiction, accordingly, for this reason alone, Antero's 60(b) motion must be denied. Because of this, the rest of the arguments raised in the motion need not be analyzed by this Court. Likewise, the motion for preliminary injunction must also be denied, as the Court does not have jurisdiction to grant the Rule 60(b) motion and further "enjoin Respondents from overcharging Antero...in *ad valorem* taxes on natural gas wells". See Pet's Mot., p. 1.

#### IV. Conclusion

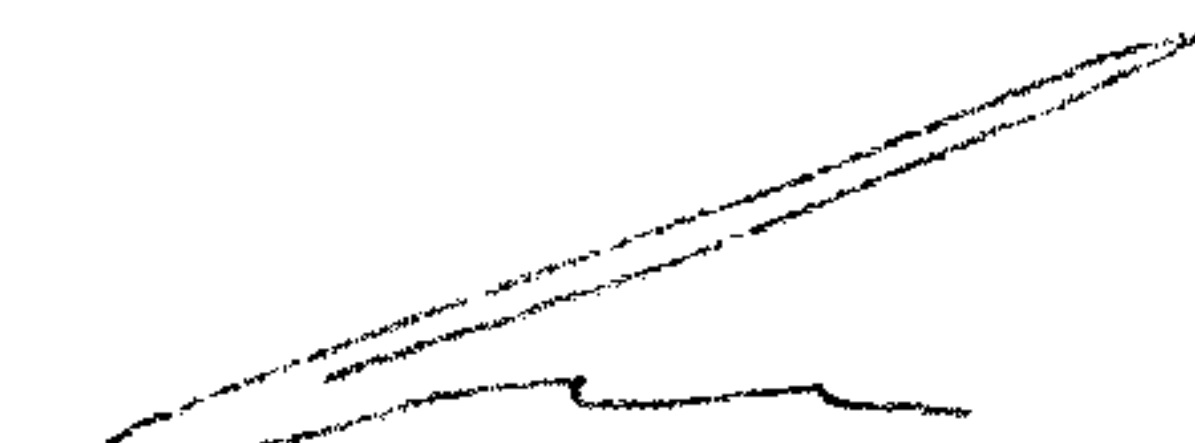
WHEREFORE, based on the forgoing, it is hereby ADJUDGED and ORDERED that the Court hereby DENIES Antero's Motion for Relief from Orders Under West Virginia Rule of Civil Procedure 60(b) and Motion for a Preliminary Injunction.

There being no further issues to be decided, this matter is **DISMISSED**, with prejudice, and forever stricken from the Court's docket. The Clerk is directed to enter this Order as of the date first hereinabove appearing, and send attested copies to all counsel of record, as well as to



the Business Court Central Office at Business Court Division, 380 West South Street, Suite  
2100, Martinsburg, West Virginia, 25401.

Enter this 13<sup>th</sup> day of January 2021.



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CHRISTOPHER C. WILKES, JUDGE  
WEST VIRGINIA BUSINESS COURT  
DIVISION