

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

DEBRA BISHOP, as Executor of the Estate of Dallas  
Runyon, and DAVID E. RUNYON,

Plaintiffs,

vs.

Civil Action No.: 17-C-108  
Presiding: Judge Akers  
Resolution: Judge Wilkes

CITIZENS TELECOMMUNICATIONS  
COMPANY OF WEST VIRGINIA,  
FRONTIER WEST VIRGINIA, INC., and  
APPALACHIAN POWER COMPANY,

Defendants.

**ORDER DENYING PLAINTIFF'S MOTION TO QUASH DEPOSITION NOTICE  
AND EXCLUDE UNDISCLOSED TESTIMONY OF NORFOLK SOUTHERN**

On this 2nd day of June 2023, came the Court upon Plaintiff's Motion to Quash Deposition Notice and Exclude Undisclosed Testimony of Norfolk Southern filed May 17, 2023. In this motion, Plaintiff seeks to quash Frontier's Notice of 30(b)(7) Deposition for nonparty Norfolk Southern filed on or about May 15, 2023, because Frontier had represented to the Court it was ready for trial at the most recent hearing before the undersigned. *See* Pl's Mot., p. 1.

Rule 26(b) of the West Virginia Rules of Civil Procedure provides that "[t]he frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that:

- (A) The discovery sought is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (B) The party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

(C) The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation.”

W. Va. R. Civ. P. 26.

The Court considers Plaintiff has not argued that the deposition would be unreasonably cumulative or duplicative or is obtainable from some other source, or that the deposition is otherwise unduly burdensome or expensive. Rather, Plaintiff points out that the discovery period has now closed, and that this Notice of Deposition, filed so close to the June 5, 2023 trial date is “creating unnecessary havoc” and notes that it was Frontier who insisted on an immediate trial date. *See* Pl’s Mot., p. 1.

Although the Court recognizes the discovery period in this matter has now closed, the Court finds, especially in light of the continuance of the trial in this matter, this deposition would not wreak havoc or be a “last-minute scramble”. *See* Pl’s Mot., p. 1. Therefore, the instant motion to quash shall be DENIED.

Accordingly, the Court finds Plaintiff’s Motion must be DENIED.

It is hereby ADJUDGED AND ORDERED that Plaintiff’s Motion to Quash Deposition Notice and Exclude Undisclosed Testimony of Norfolk Southern is hereby DENIED. The Court notes the objections and exceptions of the parties to any adverse ruling herein. The Court directs the Circuit Clerk to distribute attested copies of this order to all counsel of record, and to the Business Court Central Office at West Virginia Business Court Division, 380 West South Street, Suite 2100, Martinsburg, West Virginia, 25401.

Enter: June 2, 2023

  
MARYCLAIRE AKERS, JUDGE  
BUSINESS COURT DIVISION