

WILLIAM B. CHANDLER III
CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: October 1, 2007
Decided: October 30, 2007

Jesse A. Finkelstein
Richard P. Rollo
Brock E. Czeschin
Richards Layton & Finger, P.A.
P.O. Box 551
Wilmington, DE 19899

Richard I.G. Jones, Jr.
Andrew D. Cordo
Ashby & Geddes
P.O. Box 1150
Wilmington, DE 19899

Re: *Solow v. Aspect Resources, LLC*
Civil Action No. 20397-CC

Dear Counsel:

I have before me plaintiff's motion to compel discovery from non-party Noble Energy, Inc. ("Noble"). In 1993, plaintiff and defendant Aspect Resources LLC ("Aspect Resources"), forming Aspect/SHS Limited Partnership (the "Partnership"), entered into a limited partnership agreement, which plaintiff now alleges that defendants (Aspect Resources and other Aspect entities) breached.

Plaintiff alleges that Noble was intimately involved in the events at issue in this action. Plaintiff argues that Aspect Resources entered into a series of agreements with Noble, pursuant to which defendants sold wells, leaseholds, and seismic data in return for cash, Noble stock, and an interest in a continuing joint venture to exploit three-dimensional seismic technology in certain regions (collectively, the "December 2001 Transaction"). Plaintiff alleges that, according to his contractual right to participate in Partnership investment opportunities, plaintiff had an interest in some or all of the properties transferred, or should have

had such an interest. Through discovery, plaintiff seeks, essentially, to determine what that interest is or would be.¹

Accordingly, plaintiff served Noble with the subpoena, seeking discovery from Noble relating to: (1) dealings between Aspect entities and Noble (*e.g.*, the December 2001 Transaction); (2) plaintiff; (3) this action (*e.g.*, correspondence with Aspect entities related to this action); (4) the involvement of Aspect entities in certain developments in Louisiana; (5) the financial performance and revenues generated by properties in which Noble and Aspect entities jointly hold any interest; and (6) the financial performance or revenues generated by developments or exploration as a result of the three-dimensional seismic data acquired from Aspect. Plaintiff's request spans January 1993 through the date of the request. In response, Noble has produced approximately 3000 pages of documents, consisting primarily of closing documents from the December 2001 Transaction and some financial documents.

Plaintiff now seeks an order from this Court directing Noble to produce documents responsive to the subpoena *duces tecum* served upon it on January 31, 2007. Having carefully considered all arguments in plaintiff's motion and reply and Noble's answer, I conclude that Noble must produce the documents requested.

First, I conclude that Noble fails to establish that compliance with the subpoena is unduly burdensome. Plaintiff's discovery request is neither overly broad nor vague and complies with the permissible scope of discovery under Rule 26(b)(1).² Noble's non-party status, though relevant, is not controlling in ruling on this motion.³ Noble has not demonstrated to this Court that the production of documents in compliance with the subpoena would impose an undue burden. Instead, Noble merely asserts, in conclusory fashion, that such a weighty burden would exist. If, as Noble contends, it has no relevant documents from before 2001 because it had no contact with plaintiff or defendants before that time, then Noble

¹ Specifically, plaintiff states that he seeks discovery to determine: (1) to what portion of the proceeds of the December 2001 Transaction is plaintiff entitled; (2) whether the December 2001 Transaction was for fair value; (3) what information was provided to Noble regarding the properties involved in the December 2001 Transaction or plaintiff's interests therein; and (4) what amount of Noble stock plaintiff should have received in connection with the December 2001 Transaction.

² Court of Chancery Rule 26(b)(1) permits discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action."

³ *Van De Walle v. Unimation, Inc.*, No. 7046, 1983 WL 8949, at *7 (Del. Ch. Dec. 6, 1983).

may attest to that fact under oath. Certainly Noble cannot produce documents that do not exist. Merely stating, however, that searching for documents generated from 1993 to 2000 would add to some undue burden that Noble does not describe with any precision or particularity does not make that search unduly burdensome. I therefore have not been persuaded that the burdens associated with the production of the documents sought by plaintiff would be undue and, therefore, grant plaintiff's motion to compel.

Second, I conclude that plaintiff need not reimburse Noble for costs or fees incurred in producing the requested documents. Rule 45(c)(2)(b) provides that "an order to compel production shall protect any person who is not a party . . . from significant expenses resulting from the inspection and copying command." Neither side disputes that plaintiff has borne, and will continue to bear, copy and shipment costs. Though other courts have before⁴ and this Court may well here have been persuaded that plaintiff should bear a portion of the expenses in excess of copying costs, Noble fails to do more than merely assert, without adequate factual support, that compliance with the subpoena will cause Noble to incur "significant expenses" so as to require the Court's protection. I therefore deny Noble's request for costs for time spent by its employees configuring and executing the electronic search and attorneys reviewing the results of the search.

Lastly, I deny plaintiff's request for expenses, pursuant to Rule 37(a)(4)(A). Finding that Noble's opposition to the motion was neither vexatious nor frivolous, I conclude that it was substantially justified and therefore deny plaintiff's request for reasonable expenses, including attorneys' fees.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in cursive script that reads "William B. Chandler III". The signature is written in black ink and is positioned above the printed name of the signatory.

William B. Chandler III

WBCIII:mpd

⁴ See, e.g., *Standard Chlorine of Del., Inc. v. Sinibaldi*, 821 F. Supp. 232 (D. Del. 1992).