

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

EQT PRODUCTION COMPANY,)	
)	
Plaintiff,)	
)	Civil Action No. 14-1053
vs.)	Judge Nora Barry Fischer
)	
TERRA SERVICES, LLC,)	
)	
Defendant.)	
)	

MEMORANDUM ORDER

Presently before the Court is Defendant Terra Services, LLC’s Objections to Special Master Donald E. Ziegler’s Order dated March 15, 2017. (Docket No. [244]). Plaintiff EQT Production Company has filed a response in opposition to Defendant’s Objections. (Docket No. [249]). After careful consideration of the parties’ submissions and Special Master Ziegler’s Order, and for the following reasons, Defendant’s Objections, (Docket No. [244]), are **OVERRULED**, and Special Master Ziegler’s Order dated March 15, 2017, (Docket No. [240]), is **AFFIRMED**.

In so holding, the Court notes that in his Memorandum Order No. 5, Special Master Ziegler granted Defendant’s Motion to Compel the Production of Documents. (Docket No. [240]). Specifically, Special Master Ziegler concluded that the benefits outweighed the costs of requiring Plaintiff to review 18,000 additional documents. (*Id.* at 2-3). Special Master Ziegler ordered Defendant to defray fifty percent of the costs, expenses, and counsel fees of Plaintiff, for the renewed search, to which Defendant now objects. (*Id.* at 3; Docket No. [244]).

The plain language of Special Master Ziegler’s Order provides that Defendant “shall defray fifty percent (50%) of the costs, expenses and counsel fees of EQT, *for the renewed*

search.” (Docket No. [240] at 3 (emphasis added)). Thus, in construing Special Master Ziegler’s Order, the Court finds that the parties the costs, expenses, and counsel fees as to the *search* of the additional documents — not as to the *review* of same — shall be borne evenly by the parties. Plaintiff will be responsible for the costs associated with the review of the additional documents. Such a ruling is consistent with the American Rule, which provides that “litigants are responsible for their own litigation costs and may not recover them from an adverse party unless there is express statutory authorization, a clear agreement of the parties, or some other established exception.” *Wonderland Nurserygoods Co. v. Thorley Indus., LLC*, No. 12-CV-196, 2017 U.S. Dist. LEXIS 15202, at *7 (W.D. Pa. Feb. 3, 2017) (quoting *In re Farnese*, 17 A.3d 357, 370 (Pa. 2011)). Special Master Ziegler’s Order is also consistent with *Zubulake v. UBS Warburg LLC*, 216 F.R.D. 280 (S.D.N.Y. 2003), wherein the Southern District of New York held that “[a]s a general rule, where cost-shifting is appropriate, only the costs of restoration and *searching* should be shifted.” 216 F.R.D. at 290 (emphasis added).

For these reasons,

IT IS HEREBY ORDERED that Defendant’s Objections, (Docket No. [244]), are OVERRULED, and Special Master Ziegler’s Order dated March 15, 2017, (Docket No. [240]), is AFFIRMED.

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

Dated: April 19, 2017

cc/ecf: All counsel of record