

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
NORTHERN DIVISION**

**JAMES TUCKER; MINDY TUCKER;  
RONALD HOLLARS; FRANCES  
ANN HOLLARS; PHILLIP BERRY; and  
PEGGY BERRY**

**PLAINTIFFS**

**v. Nos. 1:11-cv-44-DPM  
1:11-cv-45-DPM**

**SOUTHWESTERN ENERGY CO.  
and BHP BILLITON PETROLEUM  
(FAYETTEVILLE) LLC**

**DEFENDANTS**

**ORDER**

The Court held a hearing on 10 July 2012 to resolve various discovery disputes and pending motions. The Court gave its reasons on the record for its various rulings. Here is a summary of the Court's decisions, supplemented on a few points.

**The Pleadings and Parties**

- Plaintiffs' motion to amend, *Document No. 140*, granted. The Court notes the complaint has already been filed. Good. This should be the last amendment. New revised deadline for amending pleadings is 31 July 2012.
- Plaintiffs' motion to strike some affirmative defenses, *Document No. 138*,

is denied as moot. (The Court forgot to rule on this at the hearing.) The Court directs Southwestern to scrutinize and winnow its defenses in pleading to the new complaint.

- The Court looks forward to a joint motion to dismiss BHP.

### **The Discovery**

- Southwestern's deadline to produce all Livelink materials about the priority wells is extended until 7 August 2012. Press on; and keep Plaintiffs and the Court posted on progress.
- On the joint report about Plaintiff's discovery responses, *Document No. 142*, Plaintiff will supplement as directed by 24 July 2012 except as to any settlement materials.
- On any settlement materials, Plaintiffs will consult immediately with the other involved counsel, seeking an agreed disclosure subject to the current protective order. If that doesn't work out by 31 July 2012, Plaintiffs and Southwestern should file a joint report and Plaintiffs should send any responsive materials *to chambers only by Federal Express* for filing under seal by hand. The Court is inclined to agree with Southwestern about the necessity of these materials on contribution

issues.\* We'll see.

- On the joint report about e-discovery, *Document No. 128*, the Court ordered a pause and immediate in-person consultation between the lawyers and the parties' consultants. Joint report and proposed plan for reasonable and focused e-mail discovery due by 24 July 2012. Though no expert, the Court wonders whether staging might help on the volume issue: gather and produce e-mails without attachments first; then produce attachments requested by Plaintiffs after they've reviewed responsive e-mails.
- Southwestern's motion for a *Lone Pine* order, *Document No. 131*, is denied without prejudice. The spirit of *Lone Pine* and like cases, however, should preside over the parties' collaborations on discovery going forward.

\* \* \*

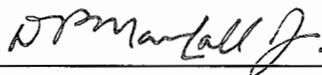
An Amended Final Scheduling Order, postponing expert disclosures and making the minimum amount of other resulting changes, will issue soon.

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\*The case the Court was trying to remember is *Ark. Best Corp. v. General Electric Capital Corp.*, 317 Ark. 238, 878 S.W.2d 708 (1994). It deals with a sealed settlement agreement in the court's file and seems off point.

Motion to amend, *Document No. 140*, granted. Superseded motions, *Document Nos. 135 & 136*, denied as moot. Motion for *Lone Pine* order, *Document No. 131*, denied without prejudice.

So Ordered.



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D.P. Marshall Jr.  
United States District Judge

11 July 2012