

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

DAVID SMITH, *et al.*

PLAINTIFFS

v.

No. 4:09CV00679 JLH

FRAC TECH SERVICES, LTD.

DEFENDANT

**ORDER**

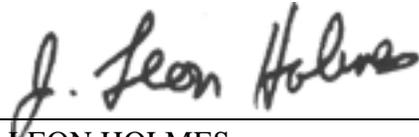
The plaintiffs have filed a motion to strike and for protective order in which they ask the Court to strike supplement to answers to interrogatories submitted on the last day of discovery containing 142 witnesses. That list was provided as a supplement to a response to an interrogatory submitted in November of 2009 requesting the identities of lay witnesses. The plaintiffs correctly point out that the defendant cannot possibly expect to call 142 witnesses. The defendant argues, in part, that the plaintiffs failed to confer in good faith before filing the motion as required by Local Rule 7.2(g). The defendant concedes that it “will likely not call everyone listed,” but states that it felt compelled to provide a list of all names of witnesses with information who could be called or who had discoverable information.

The Court is convinced that this is an issue that could be resolved by competent counsel conferring in good faith. Both sides are represented by competent counsel. Counsel can and should work together to identify those persons who will be called as witnesses and to make sure that each side has a fair opportunity to prepare for trial. The motion to strike and for protective order is therefore DENIED without prejudice to the right of the plaintiffs to renew the motion after conferring in good faith. Document #217.

In this context, conferring in good faith requires more than writing a demand letter or sending a note by electronic mail. The Court expects the lawyers to sit down together, discuss the case, and

disclose openly whom they expect to call as witnesses so that both sides can prepare for trial and neither side is ambushed. If after such a conference a dispute remains that needs resolution by the Court, plaintiffs may renew their motion.

IT IS SO ORDERED this 30th day of September, 2010.

A handwritten signature in black ink that reads "J. Leon Holmes". The signature is written in a cursive style with a horizontal line underneath it.

J. LEON HOLMES  
UNITED STATES DISTRICT JUDGE