

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 06-cv-01797-MSK-PAC

LEON BRITTON, Derivatively on behalf of Delta Petroleum Corporation,

Plaintiff,

v.

ROGER A. PARKER,
ALERON H. LARSON, JR.,
KEVIN K. NANKE,
JOHN R. WALLACE,
JERRIE F. ECKELBERGER,
JAMES B. WALLACE,
RUSSELL S. LEWIS,
JORDAN R. SMITH,
NEAL A. STANLEY,
KEVIN R. COLLINS,
JAMES P. VAN BLARCOM,
TERRY D. ENRIGHT, and
JOHN P. KELLER,

Defendants,

and

DELTA PETROLEUM CORPORATION, a Delaware corporation,

Nominal Defendant.

ORDER GRANTING MOTION TO CONSOLIDATE

THIS MATTER comes before the Court on the parties' Joint Motion to Consolidate Cases (#11). The parties ask the Court to consolidate this case with Civil Action No. 06-cv-01922-REB-CBS and Civil Action No. 06-cv-02017-EWN-MJW. The motion has been joined by the Plaintiffs from all three cases. Pursuant to D.C.COLO.LCivR 42.1, the motion is determined in the oldest numbered case.

Pursuant to Fed. R. Civ. P. 42(a), “When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.”

All three civil actions are derivative shareholder actions commenced by a shareholder of Delta Petroleum Corporation on behalf of the company against its Board of Directors and senior executives. All of the Defendants named in Civil Action No. 06-cv-01922-REB-CBS and Civil Action No. 06-cv-02017-EWN-MJW are also named in the instant case. The claims asserted in the three cases are overlapping and based upon many of the same factual allegations. No answer or other responsive pleading has yet been filed in any of the cases. Under these circumstances, consolidation is appropriate.

In their joint motion, the parties also ask the Court to set a schedule for the filing of a consolidated complaint and responses thereto. They propose that the deadline for filing an Amended Complaint be 45 days from the date of this Order, and that the Defendants be allowed 60 days after the Amended Complaint is filed to file a responsive pleading. They also ask for a particularized schedule for responding to any motions that are filed with regard to the Amended Complaint, which deviates from the time frames set forth in D.C.COLO.LCivR 7.1(C). The parties also request that the Court designate particular law firms to serve as lead counsel.

The parties have not shown good cause for their proposed deadlines. There is no indication that an Amended Complaint will differ in substance from the complaints which have already been filed. As for the parties’ request that the Court designate law firms as lead counsel, pursuant D.C.COLO.LCivR 83.3(B), law firms do not enter appearances. Therefore, the Court will appoint the attorneys from those firms who have entered appearances to serve as lead

counsel.

IT IS THEREFORE ORDERED that:

- (1) The Joint Motion to Consolidate Cases (#11) is **GRANTED**. Civil Action No. 06-cv-01922-REB-CBS and Civil Action No. 06-cv-02017-EWN-MJW are hereby consolidated with Civil Action No. 06-cv-01797-MSK-PAC.
- (2) Every pleading filed in this consolidated action shall bear the following caption:

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 06-cv-01797-MSK-PAC
(Consolidated with Civil Action No. 06-cv-01922 and Civil Action No. 06-cv-02017)

LEON BRITTON, Derivatively On Behalf of DELTA PETROLEUM CORPORATION,

Plaintiff,

v.

ROGER A. PARKER,
ALERON H. LARSON, JR.,
KEVIN K. NANKE,
JOHN R. WALLACE,
JERRIE F. ECKELBERGER,
JAMES B. WALLACE,
RUSSELL S. LEWIS,
JORDAN R. SMITH,
NEAL A. STANLEY,
KEVIN R. COLLINS,
JAMES P. VAN BLARCOM,
TERRY D. ENRIGHT, and
JOHN P. KELLER,

Defendants,

and

DELTA PETROLEUM CORPORATION, a Delaware corporation,

Nominal Defendant.

- (3) The Plaintiffs shall file an Amended Complaint on or before **November 29, 2006**, asserting any and all derivative claims they intend to assert against the Defendants. The Defendants shall file a responsive pleading no later than **December 29, 2006**. This Order supercedes prior extensions of time to respond.
- (4) The motion by Defendant John R. Wallace (#23) for an extension of time to respond to the Complaint is **DENIED**, as moot.
- (5) The Lead Counsel for the Plaintiffs in this consolidated action are Jeffrey A. Berens and Kip B. Schuman of Schuman & Berens, LLP, and Travis E. Downs, III, William S. Lerach, and Darren J. Robbins of Lerach, Coughlin, Stoia, Geller, Rudman & Robbins, LLP.

Dated this 30th day of October, 2006

BY THE COURT:



Marcia S. Krieger
United States District Judge