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**COUNSEL TO PDC ENERGY, INC.**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: § Chapter 11  
§  
ROCKIES REGION 2006 LIMITED § Case No. 18-33513-sgj-11  
PARTNERSHIP and ROCKIES REGION §  
2007 LIMITED PARTNERSHIP,<sup>1</sup> § (Jointly Administered)  
§  
Debtors. §

**PDC ENERGY, INC.’S RESPONSE IN OPPOSITION TO MOTION TO COMPEL  
FURTHER TESTIMONY OF DARWIN STUMP  
[Relates to Motion at Docket No. 175]**

PDC Energy, Inc. (“PDC”) files this Response in Opposition to Plaintiffs’<sup>2</sup> Motion to Compel Further Testimony of Darwin Stump [Docket No. 175] (the “Motion to Compel”). PDC respectfully represents as follows:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: Rockies Region 2006 Limited Partnership (9573) (“RR2006”) and Rockies Region 2007 Limited Partnership (8835) (“RR2007”).

<sup>2</sup> The Plaintiffs are: Robert R. Dufresne, as Trustee of the Dufresne Family Trust; Michael A. Gaffey, as Trustee of the Michael A. Gaffey and JoAnne M. Gaffey Living Trust dated March 2000; Ronald Glickman, as Trustee of the Glickman Family Trust established August 29, 1994; Jeffrey R. Schulein, as Trustee of the Schulein Family Trust established March 29, 1989; and William J. McDonald, as Trustee of the William J. McDonald and Judith A. McDonald Living Trust dated April 16, 1991.

I. **PRELIMINARY STATEMENT**

1. PDC and Plaintiffs agreed in writing to limit the scope of Darwin Stump's deposition to issues related to the two motions being heard by the Court at the June 20th hearing: (1) Plaintiffs' Amended Motion to Dismiss Chapter 11 Case [Docket No. 140]<sup>3</sup>; and (2) Debtors' Application to Retain Karen Nicolaou as Responsible Party [Docket No. 12]<sup>4</sup> (the "Agreed Topics"). *See* Ex. 1, Email Exchange dated April 23-14, 2019.

2. Plaintiffs deposed Mr. Stump, PDC's Vice President of Accounting, for many hours on May 15, 2019, during which time he answered hundreds of Plaintiffs' counsel's questions.<sup>5</sup> PDC's counsel allowed considerable leeway with regard to having Mr. Stump answer questions that went outside the strict scope of the Agreed Topics.<sup>6</sup> On only a handful of occasions, PDC's counsel instructed Mr. Stump not to answer a question because it was far outside the bounds of the Agreed Topics. As PDC's counsel stated early in Mr. Stump's deposition, "You can ask him what the basis of the bankruptcy filing was in his mind as he understands it, all right? But we're not going to go down the rabbit trail of full-blown merits discovery . . . ." Stump Dep. at 63:22-25.

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<sup>3</sup> Amended Motion for Dismissal of Chapter 11 Case [Docket No. 140] (the "Motion to Dismiss").

<sup>4</sup> Application for Order (i) Authorizing the Retention of Harney Management Partners to Provide the Debtors a Responsible Party and Certain Additional Personnel, (ii) Designating Karen Nicolaou as Responsible Party for the Debtors Effective as of the Petition Date, and (iii) Granting Related Relief [Docket No. 12] (the "Application").

<sup>5</sup> Mr. Stump's deposition started at 9:40 a.m. and concluded at 5:45 p.m. *See* Ex. 2, Tr. of Rule 30(b)(6) Deposition of Darwin Stump, May 15, 2019, PDC Energy, Inc. (the "Stump Dep.").

<sup>6</sup> For example, PDC objected but allowed Mr. Stump to answer questions about: (1) his understanding of "what this dispute between PDC and the EPA and the State of Colorado was all about that affected 29 of the 2006 partnership's wells and 25 of the 2007 partnership's wells"; (2) whether PDC had to advance costs "if more money was needed for tangible or intangible drilling costs"; (3) whether Mr. Stump prepared a notice "to the limited partners of the partnerships that PDC would be withholding a portion of their distributions to pay anticipated costs of plugging and abandoning"; and (4) why PDC "did not reserve enough money out of partnership operations to pay plugging and abandonment costs." Stump Dep. at 47:16-21, 60:3-11, 71:14-25, 74:25-75:7.

3. Plaintiffs argue in the Motion to Compel that Mr. Stump should be compelled to answer ten of the unanswered questions (the “Disputed Questions”). Plaintiffs essentially argue that the Disputed Questions are related to the Motion to Dismiss because they (allegedly) concern PDC’s motives, and motive is a factor in the bad faith filing analysis. But PDC did not make the decision to file bankruptcy. Five months prior to the bankruptcy filing, PDC retained Karen Nicolaou as the Responsible Party to explore strategic alternatives, including a potential bankruptcy. Ms. Nicolaou was vested with decision-making authority for the Debtors, including the authority to file bankruptcy. Plaintiffs deposed Ms. Nicolaou on May 7, 2019—a week before they deposed Mr. Stump—and had the opportunity to ask her at length about her motivations for filing bankruptcy.<sup>7</sup>

4. The Disputed Questions are far down the rabbit trail of full-blown merits discovery. The Disputed Questions, for example, include questions about the meaning of contractual provisions that are not mentioned in the Motion to Dismiss or the Application, why PDC made decisions about whether to hedge production and to refrac PDC’s own vertical wells, and whether PDC is jointly and severally liable for partnership debts and obligations. In granting the Debtors’ motion to exclude the expert report and testimony of Edwin Moritz, the Court recognized that the testimony was not going to be helpful to the Court “in connection with the motion to dismiss because it’s all about the amount of damages these limited partner plaintiffs may have, the size of their claims.” Ex. 3, Hr’g Tr. dated May 17, 2019 at 28:15–17. At this stage, “whether the litigation has value of one dollar versus a million dollars versus a hundred million dollars or more, I don’t think that is going to be absolutely helpful to the Court in deciding if the bad faith/improper purpose is demonstrated here or not.” *Id.* at 29:1–5.

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<sup>7</sup> Ms. Nicolaou’s deposition started at 9:07 a.m. and concluded at 6:04 p.m.

Similarly, the Disputed Questions all go to the merits or claim valuation, not the Motion to Dismiss or the Application.

5. Plaintiffs cannot agree to limit the scope of permissible topics for Mr. Stump's deposition, have PDC prepare Mr. Stump based on the parties' agreement, and then ambush Mr. Stump and demand answers to questions that are far outside the scope of the Agreed Topics. The Disputed Questions are Plaintiffs' attempt to improperly obtain discovery for their currently-stayed civil action (*Dufresne, et al. v. PDC Energy, Inc., et al.*, Case No. 1:17-cv-03079-RBJ, in United States District Court for the District of Colorado) (the "Colorado Litigation"), in violation of the parties' agreement not to proceed with discovery while this bankruptcy proceeding is pending. Plaintiffs' Motion to Compel should be denied.

## **II. BACKGROUND**

6. On October 30, 2018 (the "Petition Date"), the Debtors each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division (the "Court"). The Debtors' chapter 11 cases are being jointly administered under Case No. 18-33513-SGJ-11.

7. Prior to the Petition Date, PDC entered into an engagement agreement, dated as of April 25, 2018, and executed by PDC on May 7, 2018, (the "Engagement Letter") with Bridgepoint Consulting LLC ("Bridgepoint") to provide certain financial advisory and managerial services for RR2006 and RR2007 in relation to analyzing options for wind-down and/or divestiture of RR2006's and RR2007's operations and assets.

8. On October 30, 2018, the Debtors filed their Application to retain Harney Management Partners and designate Ms. Nicolaou as Responsible Party.

9. On November 23, 2018, Plaintiffs filed their Objection to the Application [Docket No. 61].

10. On December 3, 2018, Plaintiffs filed their Motion for Dismissal of Chapter 11 Case [Docket No. 85]. On March 22, 2019, the Plaintiffs filed their Amended Motion to Dismiss.

11. On March 21, 2019, the Court entered the Agreed Scheduling Order [Docket No. 135] setting discovery and related deadlines for the Application and Motion to Dismiss, including setting a hearing date for June 20, 2019, at 9:30 a.m. (the “Hearing”).

12. On April 5, 2019, PDC filed its Objection to Motion for Dismissal of Chapter 11 Case [Docket No. 143] and its Response to the Objection to Debtors’ Application [Docket No. 144].

13. In email correspondence on April 23–24, 2019, all parties agreed in writing that “the scope of the depositions being noticed and scheduled related to the hearing scheduled for June 20–21, 2019 (‘Hearing’) on Movants’ Motion to Dismiss” and “the Application to employ Ms. Nicolaou as Responsible Party for the Partnerships (‘Application’) will be limited to issues related to the Motion and Application.” Ex. 1.

14. Plaintiffs took Ms. Nicolaou’s deposition on May 7, 2019, and Mr. Stump’s deposition on May 15, 2019.

### **III. ARGUMENTS AND AUTHORITIES**

15. Plaintiffs frame their Motion to Compel as involving “presumptively improper” objections by PDC to the relevance of the Disputed Questions. Mot. to Compel at ¶ 19. But PDC’s objections are not general “relevance” objections. Rather, PDC instructed Mr. Stump not to answer the Disputed Questions because they are outside the scope of the parties’ agreement.

16. “While the scope of discovery under the Federal Rules is broad, ‘this right is not unlimited and may be circumscribed.’” *Lopez v. CSX Transp., Inc.*, No. CIV.A. 3:14-257, 2015 WL 5971682, at \*2, 10 (W.D. Pa. Oct. 14, 2015) (quoting *Bayer AG v. Betachem, Inc.*, 173 F.3d 188, 191 (3d Cir. 1999)). In particular, it may be circumscribed by the parties’ agreement. *See id.* (limiting deposition to the scope upon which the parties previously agreed because “requiring the parties to abide by their previous agreement promotes fairness and efficiency.”).

17. Here, the parties agreed to circumscribe the scope of Mr. Stump’s deposition to the Agreed Topics. That agreement should be enforced. *See In re Bayer Healthcare & Meril Ltd. Flea Control Products Mktg. & Sales Practices Litig.*, 752 F.3d 1065, 1074 (6th Cir. 2014) (holding that denial of discovery requests was not an abuse of discretion because “[t]he plaintiffs’ discovery requests relating to depositions, additional documents, and subpoenas clearly fell outside of the scope of the single issue and evidentiary plan that they agreed would govern the outcome of the case.”); *Harris v. Koenig*, 271 F.R.D. 356, 364 (D.D.C. 2010) (holding that defendant was entitled to protective order “limit[ing] discovery to the topics [the parties had] agreed to as the proper scope of the Rule 30(b)(6) deposition”).

18. **Disputed Question 1:**

If you read together Section 1.08(n) . . . and Section 2.01(b), which says PDC pays all tangible costs as well as intangible drilling costs, whose responsibility under those two sections, was it to pay plugging and abandonment expenses for the partnership wells?

Stump Dep. at 62:8–13.

19. **PDC’s Objection:** As PDC’s counsel objected during the deposition, this question calls for a legal conclusion—construction of the partnership agreements—from Mr. Stump, a non-lawyer, and the agreements speak for themselves. *See* Stump Dep. at 62:15–16. More importantly, neither Section 1.08(n) nor Section 2.01(b) are mentioned in the Motion to

Dismiss or in the Application (or, for that matter, in Plaintiffs' 30(b)(6) topics for the deposition). Indeed, plugging and abandonment expenses are mentioned only once (in passing) in the Motion to Dismiss—and only in the context of recompletes. *See* Mot. to Dismiss at ¶ 23. PDC allowed Mr. Stump to answer questions regarding this allegation. In fact, Mr. Stump testified that it was his understanding from the partnership agreements that it was the Debtors' responsibility to pay plugging and abandonment costs. *See* Stump Dep. at 54:16–24, 204:25–205:7. But Disputed Question 1 is outside the scope of the Agreed Topics and the Motion to Compel should be denied.

**20. Disputed Question 2, 7, 8, and 9:**

So with all of that information about what the reserves are, what the costs are to operate, how was it that PDC that's managed more than 75 partnerships didn't reserve sufficiently for the '06 and '07 partnerships to cover plugging and abandonment costs?

Stump Dep. at 77:13–18.

Isn't it a fact, sir, that if they are plugging and abandoning liabilities for which PDC, acting as the managing general partner, has failed to reserve enough monies for out of distributions to the limited partners and distributions to itself, PDC is jointly and severally liable for the debts and obligations of the partnership?

Stump Dep. at 211:6–13.<sup>8</sup>

So in determining this liability for future liabilities to charge the partnerships with forecasted or projected plugging and abandoning expenses, there was no timeline prepared by PDC to plug those wells?

Stump Dep. at 218:8–12.

What criteria is used by PDC to determine when it's going to plug one of the '06 or '07 partnership wells?

Stump Dep. at 219:9–11.<sup>9</sup>

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<sup>8</sup> Again, Mr. Stump testified that it was the Debtors' responsibility to pay plugging and abandonment expenses. *See* Stump Dep. at 54:16–24, 204:25–205:7.

21. **PDC's Objection:** Again, Plaintiffs mention plugging and abandonment expenses in the Motion to Dismiss only in the context of recompletes. *See* Mot. to Dismiss at ¶ 23. PDC allowed Mr. Stump to answer questions on this topic. But PDC's rationale or motivation for allegedly not reserving sufficiently to cover plugging and abandonment costs (Disputed Question 2) is a "[t]otally different thing" from the Responsible Party's "motive for filing the bankruptcy." Stump Dep. at 78:12–17.<sup>10</sup> Likewise, PDC's alleged joint and several liability for Debtors' debts and obligations (Disputed Question 7),<sup>11</sup> whether PDC prepared a timeline to plug wells long before bankruptcy (Disputed Question 8), and the criteria PDC used to determine whether a well should be plugged (Disputed Question 9), have no bearing on the Responsible Party's motivations for filing bankruptcy. Because Disputed Questions 2, 7, 8, and 9 concern decisions that took place long before bankruptcy, not the motivation to file bankruptcy, they are outside the scope of the Agreed Topics.

22. **Disputed Question 3:**

Sir, isn't it a fact that PDC made a decision, as managing general partner, to stop hedging the partnership's production?

Stump Dep. at 82:11–13.

23. **PDC's Objection:** Hedging production is nowhere mentioned in the Motion to Dismiss or the Objection to the Application. The fact that PDC may or may not have stopped hedging the Debtors' production at some point in the past has nothing to do with the Responsible Party's decision to file bankruptcy. Moreover, this question isn't limited to the Debtors, but goes

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<sup>9</sup> Plaintiffs' counsel questioned Mr. Stump on a letter (Exhibit 21 to the deposition) to investor partners advising them that wells would be plugged. *See* Stump Dep. at 79:19–80:18. The letter indicated what the reasons were for the plugging and abandonment. *See id.* at 80:19–24.

<sup>10</sup> *See also* Stump Dep. at 74:25–75:24 (Mr. Stump testified that cash distributions to the investor partners were suspended).

<sup>11</sup> Additionally, Disputed Question 7 calls for a legal conclusion on construction of a provision in the partnership agreements. The agreements speak for themselves.



to any of the limited partnerships that PDC formed between 1996 and 2007 including the two Debtors. As PDC's counsel stated in explaining his objection, while Plaintiffs' counsel was "more than welcome to ask the witness what he's aware of that Ms. Nicolaou did due diligence on, the data that she asked for. All of those are on the table." Stump Dep. at 84:11–14. But "[h]edging is not before the court." *Id.* at 82:14–15. However, hedging *is* before the court in the Colorado Litigation. It is apparent from the context that Disputed Question 3 is an attempt by Plaintiffs' counsel to get discovery in support of Plaintiffs' allegations in the Colorado Litigation that PDC breached its fiduciary duty to the Debtors by not hedging their production when it hedged its own. *See id.* at 81:9–82:3. As Disputed Question 3 is outside the scope of the Agreed Topics, the Motion to Compel should be denied.

**24. Disputed Questions 4, 5, and 6:**

Well, without speculating, based on what you've actually been told by people, what is your understanding of approximately how many wells – horizontal wells PDC has drilled within the Wattenberg Field within 1500 feet of the partnerships' vertical wells?

Stump Dep. at 150:7–12.<sup>12</sup>

Now, isn't it a fact, sir, that PDC stopped that program because it got a better return on investments by drilling horizontal wells rather than refracting on its own vertical wells because the vertical wells had the problems with high line pressure and the problems with the consent decree with the EPA?

Stump Dep. at 161:24–162:5.

And isn't that the same reason that PDC decided to stop refracting partnership wells in 2013 was if it was going to refrac a partnership well, it was kind of counterproductive because you had to take into account if you wanted to put a horizontal well in proximity to it,

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<sup>12</sup> Mr. Stump testified that he did not know how many horizontal wells had been drilled. *See* Stump Dep. at 148:1–9 (“Q. Now, I know it's a big field, the Wattenberg Field, and the PDC has many different horizontal wells there. But has PDC, as the operator, drilled any horizontal wells in the Wattenberg Field within 1500 feet of any of the 2006 or 2007 partnerships' vertical wells? A. Yes, we have. Q. And do you know approximately how many? A. I do not know.”).

you might have to plug and abandon that well or replace the wellhead?

Stump Dep. at 162:25–163:7.

25. **PDC’s Objection:** These three questions have nothing to do with the Responsible Party’s decision to file bankruptcy. Rather, they are Plaintiffs’ counsel’s attempt to get discovery for the Colorado Litigation in violation of the stay and the parties’ agreement. Indeed, Disputed Question 5 is asking why PDC did not refrac its *own* vertical wells—it is not even asking why PDC did not refrac the wells in which Debtors own an interest. *See* Stump Dep. at 160:22–163:7. Disputed Question 6 is asking about “refracting partnership wells in 2013” generally for any of the partnerships PDC formed from 1996 to 2007 and is not even limited to the two Debtors in this bankruptcy proceeding. Stump Dep. at 162:25–163:7.

26. Plaintiffs’ allegations in the in the Colorado Litigation include that “PDC failed its fiduciary obligations to the Partnerships and the Investor Partners” by: “failing to take reasonable steps to recomplete or refracture (‘refrac’) the Partnerships’ existing vertical wells that had been drilled on the Partnerships’ Spacing Units”; and by “failing to utilize alternative means of developing the Partnerships’ Spacing Units by drilling horizontal wells . . . .” Mot. to Dismiss at ¶ 18.

27. Plaintiffs also allege in the Colorado Litigation that PDC breached its fiduciary duties by: “(1) profiting, to the exclusion of the Partnerships and/or the Investor Partners, from the drilling of horizontal wells that pass through the Partnerships’ Spacing Units in the Wattenberg Field; and (2) contracting with third parties to trade a portion of the Partnerships’ Spacing Units for other acreage that is more contiguous with PDC’s own acreage in the Wattenberg Field, allowing PDC to drill longer and more profitable horizontal wells at the expense of the Partnerships’ own working interests in the Prospects.” Mot. to Dismiss at ¶ 19.

28. Plaintiffs' attenuated conspiracy theory is that "PDC drilled horizontal wells so close to the Partnerships' vertical wells as to negatively impact the vertical wells' production, such that they could not pay the P&A costs for the vertical wells." Mot. to Compel at ¶ 28; *see* Ex. 4, Verified Second Amended Complaint, Colorado Litigation, at ¶¶ 12, 15, 40, 53, 55, 58, 85(a), 85(d), 105, 122(a), 122(d). As PDC's counsel stated during Mr. Stump's deposition, "[Y]ou're welcome to ask him if that was the motivation for filing the bankruptcy case or hiring the responsible party; but we're not going to get off into the weeds of your merits case." Stump Dep. at 149:18–22. The parties' agreement prevents Plaintiffs from using this bankruptcy proceeding to obtain discovery for the Colorado Litigation. Because Disputed Questions 4, 5, and 6 concern decisions that took place long before bankruptcy, not the Responsible Party's decision to file bankruptcy here, they are outside the scope of the Agreed Topics.

29. **Disputed Question 10:**

Did you have a discussion with Mr. Graves where he said words to the effect of, Let's talk about what do these partnerships own? Is it a wellbore or is it a – something more? Did you have any conversations like that with him?

Stump Dep. at 224:14–18.

30. **PDC's Objection:** Plaintiffs' Motion to Compel ignores that Mr. Stump told Plaintiffs' counsel exactly what he discussed with Mr. Graves—Plaintiffs' counsel just did not like the answer:

Q. Did you and Mr. Graves have any discussion about what interests the '06 and '07 partnerships had in terms of either a wellbore or an interest in a lease or spacing unit?

A. We provided him information showing him what each partnership – what the well – each partnership's wellbore interest was in the partnership.

Stump Dep. at 224:3–10; *see also id.* at 150:20–152:15 (testifying regarding an email Mr. Stump

sent to Mr. Graves and others to answer a question that Mr. Graves had asked him); *id.* at 155:1–156:12 (testifying that, while it was possible for PDC’s land department to run an analysis “to determine what, if any, interest the 2006 and 2007 partnerships would have had in horizontal wells drilled by PDC in areas surrounding partnership vertical wells,” he did not recall Mr. Graves getting such an analysis).

31. Moreover, what Mr. Graves may or may not have said to Mr. Stump regarding Plaintiffs’ theory that “PDC was required to assign 32-acre spacing units” goes to the merits of the Colorado Litigation. Mot. to Compel at ¶ 40. “[I]t’s all about the amount of damages these limited partner plaintiffs may have, the size of their claims.” Ex. 3 at 28:16-17. It has nothing to do with the Application or the Motion to Dismiss, and thus is outside the Agreed Topics.

#### **IV. CONCLUSION**

PDC is entitled to rely upon counsel’s agreement limiting the limited scope of Mr. Stump’s deposition to the Agreed Topics. Because the Disputed Questions are outside the Agreed Topics, PDC respectfully requests that the Court deny the Motion to Compel, and grant PDC such other and further relief as is just and proper.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the forgoing document was served on May 28, 2019 via the Bankruptcy Court's Electronic Case Filing notification system on those parties registered to receive such notices.

/s/ Joseph P. Rovira  
Joseph P. Rovira