



2012. Lance objected to providing much of the requested information until after the class had been certified. After the class was certified, by Order dated January 29, 2013, the parties began to work cooperatively together for Lance to provide the Plaintiff with the voluminous data required to compute the damages for the entire class. This was a large task, given that there are two computer systems for Lance to gather data from and for the Plaintiff to assimilate; and given that the class consists of more than 3,000 members over a ten-year period. Lance was unable to produce all the data within the 30-day period required by the rules. Nevertheless, Plaintiff filed his *Designation of Expert Witness, Expert Report of James Steven Wilson and Exhibits*, on March 21, 2013. That Report thoroughly explains the two issues that have been raised by the Plaintiff on behalf of the class, and it provides the preliminary calculations to quantify the damages associated with those issues, as well as the basic methodology for such calculations. The Report further identified certain information that had not yet been provided by Lance but which was necessary for a complete report. (*See Report, p. 4*) In addition, Mr. Wilson's Affidavit, attached to Plaintiff's Motion for Class Certification, Sept. 4, 2012, explains in detail his theory and approach to calculating Lance's underpayments.

By Order dated May 3, 2013, the Court extended the Expert Witness Designation deadlines to June 7 for the Plaintiff and June 21 for the Defendant. Plaintiff filed his Supplemental Disclosure of Expert Testimony on June 7, with the *First Supplement to Expert Report of James Steven Wilson and Exhibits* attached. This Supplemental Report and Exhibits further refined the report previously filed, incorporating the additional data provided by Lance in the interim. Both the original and the Supplemental Reports made it very clear exactly what two tax deduction issues were addressed, and the methodology

that Mr. Wilson employed to correct them and calculate the amounts due by Lance to the class members.

After the June 7 Supplemental Report, additional information was provided to Plaintiff and Mr. Wilson; most importantly, the SAP journal entries which are critical to identifying the property information necessary to determine the exact counties where production occurred, attached as Exhibit B to Lance's expert report filed June 21, 2013; and information provided by Lance on July 25, 2013 in their responses to Request for Production, which information is necessary to define the correct tax district and county of production. In addition, the opt out period in the class notice ended on June 28, 2013, so the information regarding the exact extent of the class was not available until then. *Wilson Affidavit*, ¶7 (attached to Plaintiff's Motion for Partial Summary Judgment filed this date.)

Further, when Lance designated its expert witness on June 21, he pointed out several minor errors in Mr. Wilson's formula. These include, adjustments for specific tax districts, revisions of the calculations so that there is no overlap for the ad valorem rate issue and the taxable value vs. royalty value issue, and removal of all production outside of Campbell County. Mr. Wilson is making the necessary corrections. *Wilson Affidavit*, ¶8.

During Mr. Wilson's deposition July 25, Lance's counsel was successful in pointing out the imperfections in Mr. Wilson's reports. Mr. Wilson even agreed with him that, as it stood now, his report should not be relied upon by the Court. Mr. Wilson is, however, confident that the conclusions and methodology contained in his reports are sound and reliable. *Wilson Affidavit*, ¶7. He would prefer to make certain adjustments

to achieve a more nearly perfect work product. As Lance's expert, Michael Zeeb, stated in his deposition, it is an "iterative process."<sup>1</sup> Lance is not prejudiced by not having received the final, polished calculations from Mr. Wilson, as Lance has been fully apprised of his methodology and has been provided his calculations in electronic form since the original Report, and as early as his September, 2012 Affidavit. This is illustrated by the Expert Report of Michael Zeeb, pp. 4-6, in which Lance's expert accurately summarizes Mr. Wilson's reports and then points out three very specific errors that he identifies in that Report. Lance's expert had no difficulty in grasping Plaintiff's expert's rationale or methodology.

The Plaintiff could put Mr. Wilson on the stand with a report that needs further refinement, and those refinements could be made at trial; or, with this Court's leave, the Plaintiff could supplement Mr. Wilson's expert report so that Lance and the Court were fully informed of the final, polished result prior to trial. Such a result would be fair and efficient; it would comport with the purpose of WRCP 1 ("to secure the just, speedy and inexpensive determination of every action"), WRE 102 ("to the end that the truth may be ascertained and proceedings justly determined"); it would result in no prejudice to Lance, particularly in light of the fact that Lance's own delay in producing data contributed to the need to make additional adjustments.

WHEREFORE, Plaintiff respectfully requests the opportunity to supplement its Expert Report up to September 3, 2013. Defendant has not agreed to this motion.

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<sup>1</sup> The two expert depositions were taken July 25 and the transcripts are not yet available. Plaintiff will file them with the Court as soon as they are available.

DATED this 31st day of July, 2013.

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of July, 2013, the foregoing was served via U.S. Postal Mail to the following:

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