



43rd Judicial District Court

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Re: Cause No. CV11-0798, Steven and Shyla Lipsky vs. Durant, Carter, Coleman, LLC et al

Counsel:

The Court has reviewed the briefs and supplements provided for review relating to the arguments, law and evidence presented in court on May 3, 2012 regarding third party discovery of Ms. Sharon Wilson and her objections to such discovery.

In review of Texas Civil Practices and Remedies Code Section 22.021 and 22.023 as it relates to privileges accorded to journalists, the Court observes that Ms. Wilson's employment contracts both plainly describe her as employed as first, an "organizer". More precisely, and often in her own words, the evidence clearly characterizes Ms. Wilson as an "activist".

Ms. Wilson repeats in her blogs that she is not a journalist and in fact claims to be an activist. Ms. Wilson has no background as a journalist, makes no claims of objectivity, does not adhere to rules of professional journalistic ethics, and often frankly admits that her blogging activities are part of her war with the oil and gas industry. Further, Earthworks also characterizes Ms. Wilson as an activist who counsels environmental groups to "organize and fight." None of this supports that Ms. Wilson is a journalist.

The Court finds that she is what she holds herself out to be: an activist.

Assuming *arguendo* that part of Ms. Wilson's activism involves attempts or acts as a journalist, and hence, could be afforded the possible protections given to professional journalists in their demanding and necessary work and research, then the Court looks to Section 22 privileges and protections. The Shield Law discussed in Section 22 of the Tex. Civ. Prac. & Rem. Code also defines a journalist, for protection purposes, as "a person. . .who for a substantial portion of the person's livelihood or for substantial financial gain [does certain journalistic acts]." (TCPRC Sec. 22.021(2)). Ms. Wilson's request for privilege here is misguided.

By her own testimony, Ms. Wilson's income begins, ironically, from an oil and gas lease and also includes multiple other sources of substantial income. Ms. Wilson's employment at Earthworks is a comparative supplement. Further, her percentage of time possibly acting as a journalist at Earthworks, compared to her other stated roles as an organizer and activist divide and diminish any possible finding that she has a substantial financial gain or livelihood derived as a journalist there.

Therefore, given her oil and gas income et al, it confuses the Court's ability to construe Ms. Wilson's income with Earthworks as an "organizer" to fall within the plain meaning of TCPRC Sections 22.021 and .023. Ms. Wilson is not a journalist and her actions that may be journalistic do not produce a significant portion of her livelihood.

Alternatively, Ms. Wilson is ordered to produce the documents requested because Range has made a clear and specific showing required by Section 22.024. Ms. Wilson is a central and recurring character in the conspiracy lawsuit to defame Range as she has posted on her blog the video she received from Plaintiffs entitled "Hydraulic Fracturing turns garden hose into flamethrower." Ms. Wilson further writes that she has dozens of videos and hundreds of photos that show how Range Resources likes to cut corners at every opportunity and has total disregard for people who live in the Gas Patch and the

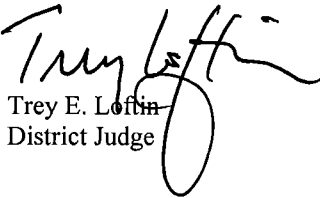
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rules and laws they are supposed to follow. Ms. Wilson's actions and communications with Plaintiffs are therefore relevant to the conspiracy, defamation and disparagement claims against Lipsky and Rich.

It is Therefore Ordered that Range's Motion to compel is granted and Ms Wilson's Motion to Quash and for Protective Order and First Amended Motion to Quash and for Protective Order is denied pursuant to the "ORDER GRANTING RANGE RESOURCES CORPORATION'S AND RANGE PRODUCTION COMPANY'S MOTION TO COMPEL AGAINST SHARON WILSON AND DENYING SHARON WILSON'S MOTION TO QUASH AND FOR PROTECTIVE ORDER."

Sincerely,



Trey E. Loftin
District Judge

STEVEN and SHYLA LIPSKY	§	IN THE DISTRICT COURT
	§	
	§	
v.	§	
	§	
DURANT, CARTER, COLEMAN	§	
LLC, SILVERADO ON THE BRAZOS	§	
DEVELOPMENT COMPANY #1	§	
LTD, JERRY V. DURANT, Individually	§	
JAMES T. COLEMAN, Individually,	§	PARKER COUNTY, TEXAS
ESTATE OF PRESTON CARTER,	§	
RANGE PRODUCTION COMPANY,	§	
And RANGE RESOURCES	§	
CORPORATION	§	
	§	
v.	§	
	§	
ALISA RICH	§	43 RD JUDICIAL DISTRICT

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1. Range Production Company (“Range”) seeks documents from Sharon Wilson. Wilson claims that she is entitled to the qualified journalist’s privilege set forth in Section 22.023 of the Texas Civil Practice and Remedies Code.

2. The qualified privilege in Section 22.023 applies to information, documents, or items obtained by a journalist while acting as a journalist. Section 22.021(2) defines a journalist as a person, “who for a substantial portion of the person’s livelihood or for substantial financial gain, gathers, compiles, prepares, collects, photographs, records, writes, edits, reports, investigates, processes, or publishes news or information that is disseminated by a news medium or communication services provider” Section 22.021(3) defines a “news medium” as “a newspaper, magazine or periodical, book publisher, news agency, wire service, radio or television station or network, cable, satellite, or other transmission system or carrier or channel ... that disseminates news or information to the public by any means”

3. Wilson has failed to prove that she is a journalist or that her employer, Earthworks, is a news medium.

4. Wilson has maintained her blog, “Texas Sharon Bluedaze Drilling Reform” since 2006 or 2007.

5. Wilson did not create her blog for the purpose of making money.

6. Wilson began her blog to promote better drilling practices and the preserve clean air and water.

7. At the time Wilson began her blog in 2006 or 2007, she was employed full-time at the University of North Texas as an administrative assistant.

8. Wilson’s annual salary from her full-time employment at the University of North Texas was approximately \$30,000.00.

9. Wilson was employed full-time at the University of North Texas until May 2011.

10. Wilson, as Lessor, signed an oil and gas lease (the “Lease”) to Braden Exploration, LLC dated October 23, 2008, regarding her mineral interest in 42.01 acres of land in Wise County, Texas.

11. Pursuant to the Lease, Wilson received a bonus of \$21,000.00 and has received approximately \$50,000.00 in royalties.

12. Wilson has used money that she received from the Lease to fund her blogging activities.

13. In January 2010, Wilson was hired by Earthworks as an independent contractor to be an organizer, on a very part-time basis, with Earthwork’s Texas Oil and Gas Accountability Project.

14. Wilson's job activities as an independent contractor for Earthworks were: organizing; coalition building; legislative and regulatory advocacy; assisting in the writing of grant proposals and reports; participating in fundraising activities; writing action alerts, opinion editorials, blog entries, news releases and articles for Earthworks newsletters.

15. Since 2006, Wilson has received \$620.00 per month in child support.

16. In 2011, Wilson sold 26 acres of land for approximately \$150,000.00, pursuant to which she receives note payments in the amount of \$1,200.00 per month.

17. Earthworks is an organization comprised of environmental activists and lobbyists "dedicated to protecting communities and the environment from the impacts or irresponsible mineral and energy development."

18. From January 2010 to May 2011, Wilson worked approximately 10 hours per week in connection with her part-time job as an organizer for Earthworks.

19. Wilson was paid \$833.33 per month (\$10,000.00 per year) as a part-time, independent contractor organizer for Earthworks from January 2010 to May 2011.

20. In May 2011, Wilson became a full-time employee with Earthworks as Gulf Regional Organizer.

21. Wilson has the same job activities under her employment agreement with Earthworks – including blogging – that she previously had under her independent contractor agreement with Earthworks.

22. Workshop planning and execution is the only job activity in Wilson's employment agreement that was not included in her previous independent contractor agreement.

23. Wilson has continued to maintain her blog in the same manner as before her employment with Earthworks.

24. Wilson determines the content of information contained on her blog.

25. Although Earthworks may make suggestions to Wilson concerning her blog, Wilson exercises sole control of her blog.

26. Wilson, individually, claims copyright ownership for her blog.

27. Earthworks does not exercise control over the content or details of Wilson's blog.

28. There is no evidence that Earthworks exercises editorial control over the content of Wilson's blog.

29. Earthworks maintains a separate and distinct blog entitled EARTHblog.
30. Even if Wilson had an employment relationship with Earthworks regarding her blog, there is no evidence that a substantial portion of Wilson's salary is attributable to her activity regarding her blog.
31. Wilson has no background as a journalist.
32. Wilson does not have any education or training in the field of journalism.
33. On her blog, Wilson has denied that she is a journalist. Instead, Wilson claims that she is an activist.
34. With respect to her blog, Wilson has stated that she makes no claims of objectivity.
35. Wilson views her blogging activities as part of some kind of war with the oil and gas industry.
36. Wilson has no independence from her blog and no independence from the sources and subjects that she writes about.
37. Wilson does not adhere to rules of ethics applicable to professional journalists.
38. According to ethics rules promulgated by the Society of Professional Journalists and the Project for Excellence in Journalism, journalists are expected to act independently from those they cover, maintain objectivity, and avoid conflicts of interest.
39. Wilson displays none of the central characteristics of the journalism profession.
40. Wilson denies being a journalist, rejects the importance of objectivity, and is intimately involved in the events and activities that she discusses in her blog.
41. When Wilson began her full-time position with Earthworks in May 2011, Earthworks announced that Wilson had been hired as "Gulf Regional Organizer" and emphasized that "her skills, experience and energy" would help Earthworks in "working with communities to prevent and minimize the impacts caused by energy development."
42. Earthworks has stated that Wilson "runs her own Barnett Shale blog, Bluedaze: Drilling Reform," and is an organizer with Earthwork's Texas Oil and Gas Accountability Project.
43. Earthworks has also characterized Wilson as an activist, expert, advocate, career organizer, and go-to person who "counsel[s] community groups, ... provides assistance to the nation's big environmental groups," "organize[s,] and fights."

44. From Earthworks's perspective, Wilson was hired to be an activist, not a journalist.

45. Earthworks is not a "news medium," as defined by Section 22.021(3).

46. Earthworks is an environmental activist and reform organization that organizes communities and citizens in efforts to resist oil and gas development and production.

47. Earthworks is not a news media organization.

48. Earthworks is not engaged in journalism.

49. None of the directors or staff members of Earthworks is a journalist.

50. There is no evidence that Wilson makes a living as a journalist.

51. From 2006 to May 2011, Wilson's blogging activity was not performed for a substantial portion of Wilson's livelihood or for substantial financial gain.

52. From May 2011 to the present, Wilson's blogging activity has not been performed for a substantial portion of Wilson's livelihood or for substantial financial gain.

53. Wilson supports her blogging activity "on her own nickel."

54. Wilson supports her blogging activity from income received from leasing her minerals under the Lease.

55. Wilson's income from the Lease helps "fund her fight and [ensure that] she doesn't have to seek advertisers for her web site."

56. Wilson does not engage in journalistic activities for "a substantial portion of [her] livelihood or for substantial financial gain" inasmuch as she funds her private blog with income from a wholly unrelated source.

57. Between January 2010 and May 2011, Wilson worked for Earthworks on a very part-time basis as an independent contractor.

58. That Wilson worked for Earthworks on a very part-time basis between January 2010 and May 2011 is no evidence that all of Wilson's activities relevant to the documents requested by Range were for "a substantial portion of [her] livelihood or for substantial financial gain."

59. There is no evidence that the documents requested by Range were obtained or prepared by Wilson while acting as a journalist, as required by Section 22.023(a).

60. Wilson's conclusory statement in her affidavit that "[t]he documents and materials requested ... are all related to the gathering, compiling, reporting and publishing of news and information on my blog" constitutes no evidence that the requested documents were obtained or prepared by Wilson while acting as a journalist.

61. Wilson is not a journalist, as defined by Section 22.021(2).

62. The qualified privilege in Section 22.023 does not apply because Wilson is not a journalist.

63. The qualified privilege in Section 22.023 does not apply because the documents requested by Range were not obtained or prepared by Wilson while acting as a journalist.

64. Even if it were assumed that Wilson sufficiently proved that she is a journalist and that the documents requested by Range were obtained or prepared by her while acting as a journalist, the Court may properly compel Wilson to produce the documents requested by Range because Range has made the clear and specific showing required by Section 22.024.

65. All reasonable efforts have been exhausted by Range to obtain the requested documents from alternative sources.

66. The Fort Worth Court of Appeals has stayed all discovery between the parties (except as to the Durant Defendants) pending resolution of the Lipskys' and Rich's interlocutory appeal from the order denying their Chapter 27 motions to dismiss.

67. Pursuant to the Fort Worth Court of Appeals's stay order, Range may not obtain from the Lipskys or Rich documents evidencing communications between Wilson and the Lipskys or Rich.

68. Is it not reasonable to require Range to wait until the resolution of the interlocutory appeal to obtain documents evidencing communications between Wilson and the Lipskys or Rich because the Fort Worth Court of Appeals stay order expressly allows Range to seek documents from non-parties to this suit.

69. As to the requested documents evidencing communications between Wilson and the Lipskys or Rich, Wilson is the only reasonably available source of the discovery.

70. As to the requested documents and communications between the Environmental Protection Agency ("EPA") and Wilson, the EPA has previously stated that it will treat document requests from Range as Freedom of Information Act ("FOIA") requests, pursuant to EPA's *Touhy* regulations.

71. According to EPA, any challenge to EPA's response to a FOIA request is a lengthy administrative process that includes an administrative appeal and the filing of a lawsuit.

72. It probably will take an excessive amount of time for Range to obtain the requested documents and communications between EPA and Wilson under a FOIA request to EPA.

73. It is not reasonable to require Range to incur the time and expense of pursuing a FOIA request to EPA to obtain the requested documents and communications between EPA and Wilson.

74. As to the requested documents and communications between Wilson and EPA, Wilson is the only reasonably available source of the discovery.

75. For the same reasons, Wilson is the only reasonably available source of the requested documents and communications between Wilson and other governmental agencies, such as the United States Department of Justice and the United States Government Accountability Office.

76. It is not reasonable to require Range to incur the time and expense of pursuing the discovery of requested documents and communications with Wilson from persons or entities who reside or have their principal place of business outside of Texas.

77. Wilson is the only reasonably available source of the requested documents and communications between Wilson and persons or entities who reside or have their principal place of business outside of Texas, such as Josh Fox, Wilma Subra, The Environmental Defense Fund, Jeremy Nichols, Wild Earth Guardians, and Public Citizen.

78. It is not reasonable to require Range to incur the time and expense of pursuing the discovery of requested documents and communications with Wilson from persons or entities residing or having their principal place of business outside the 150-mile subpoena range of this Court.

79. Wilson is the only reasonably available source of the requested documents and communications between Wilson and persons or entities who reside or have their principal place of business outside the 150-mile subpoena range of this Court, such as Ramon Alvarez, Tom "Smitty" Smith, Kelly Haragan, and the Environmental Clinic of the University of Texas.

80. It is not reasonable to require Range to incur the time and expense of pursuing the discovery of requested documents and communications with Wilson from actual members of the media because of the journalist privilege that members of the media may invoke pursuant to Section 22.023.

81. Wilson is the only reasonably available source of the requested documents and communications between Wilson and members of the media.

82. Range's subpoena and document requests to Wilson are not overbroad, unreasonable, or excessive.

83. Range's subpoena and document requests to Wilson are reasonably tailored to the discovery of documents and communications that are relevant to the facts, claims, and parties in this case.

84. Wilson is a central character in the Lipskys' and Rich's conspiracy to defame and disparage Range.

85. Wilson admits that she has had communications with Mr. Lipsky concerning his deceptive video and concerning this lawsuit.

86. Wilson posted on her blog the video that she received from Mr. Lipsky entitled "Hydraulic Fracturing turns gardenhose into flamethrower."

87. Wilson has had a pre-existing relationship with Ms. Rich concerning environmental issues.

88. On her blog, Wilson has recommended that people hire Ms. Rich to do testing for alleged oil and gas contamination.

89. Wilson has had a pre-existing relationship with Dr. Al Armendariz, who was the Administrator of EPA Region 6 when EPA Region 6 issued its *ex parte* Order against Range on December 7, 2010 (the "EPA Order").

90. Dr. Armendariz communicated with Wilson immediately after the EPA Order was issued on December 7, 2010, and thanked her for helping to educate him on the public's perspective of the issues.

91. Earthworks has stated that Wilson "is considered the leading citizen expert in the Texas Barnett Shale and the go-to person whether it's top EPA officials from D.C., major national news networks and national environmental organizations wanting an educational tour"

92. In 2010, the Environmental Defense Fund paid to fly Wilson to the EPA's offices in North Carolina to present case studies of the alleged health impacts caused by shale gas production in the Barnett Shale.

93. Wilson met with EPA officials in the Office of Air Quality Planning and Standards who were working on new rules for the oil and gas industry.

94. The EPA officials in North Carolina "were so impressed by the information I [Wilson] had presented to them that [the Environmental Defense Fund] then flew me [Wilson] to D.C. to meet with Gina McCarthy's team to present the same case study."

95. Gina McCarthy is assistant administrator of EPA's Office of Air and Radiation.

96. Wilson has written that she “would like to volunteer my services to Stewart [the Lipskys’ attorney in this suit]. I have dozens of videos and hundreds of photos that show how Range Resources likes to cut corners at every opportunity and has total disregard for people who live in the Gas Patch and the rules and laws they are supposed to follow.”

97. Wilson’s communications with the Lipskys, Rich, EPA, members of the media, and other environmental activists or entities, are relevant and essential to the maintenance of Range’s conspiracy and defamation/disparagement claims against the Lipskys and Rich.

98. Range’s subpoena and document requests are not being used to obtain peripheral, nonessential, or speculative information.

99. In this case, Range’s interest in subpoenaing the requested documents and communications outweighs any interest or concern of Wilson in gathering and disseminating the information sought by Range.

100. Under Section 22.022, the Legislature intended to strike a balance between ensuring the “fair administration of justice” and preserving the “free flow of information [and] a free and active press.”

101. Wilson does not observe rules of ethics applicable to those who engage in journalism as a profession or to make a living.

102. Wilson does not claim to be objective in her blogging, is a key figure in the information that she blogs, and considers herself to be engaged in a kind of war against the oil and gas industry.

103. Given Wilson’s lack of independence, Wilson is not a member of a “free” press.

104. Even if it were assumed that Wilson disseminated “news,” Range’s, and the public’s, interests in discovering the truth and in the fair administration of justice are substantial and outweigh any interest in the gathering and dissemination of news.

105. Wilson was served with the subpoena and document requests on February 28, 2010.

106. Wilson does not claim that she was not given reasonable and timely notice of Range’s demand that she produce the requested documents.

107. Wilson was given reasonable and timely notice of Range’s demand that she produce the requested documents.

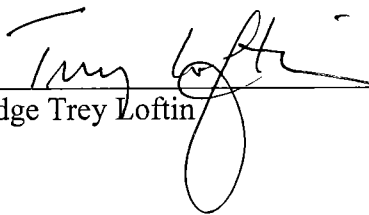
IT IS THEREFORE ORDERED that Range Resources Corporation and Range Production Company’s Motion to Compel is hereby granted in its entirety and Sharon Wilson is

hereby ordered to produce to Range all responsive documents and communications requested by Range's Subpoena Duces Tecum no later than 5:00 p.m. (CST) on May 18, 2012.

IT IS FURTHER ORDERED that Sharon Wilson shall produce said documents and communications by delivering them to Range's counsel, Harris, Finley & Bogle, P.C., at 777 Main Street, Suite 3600, Fort Worth, Texas 76102.

IT IS FURTHER ORDERED that Sharon Wilson's Motion to Quash and for Protective Order and First Amended Motion to Quash and for Protective Order are hereby denied and that Sharon Wilson's objections to the requests for production in Range's Subpoena and Subpoena Duces Tecum and her objections to the evidence presented in the Appendix in Support of Range's Response to Sharon Wilson's Amended Motion to Quash are overruled.

Signed this 15th day of May, 2012.



Judge Trey Loftin

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