

## Chapter 5

# *Lone Pine* or Folk Lore? A Survey of Case Developments Regarding Lone Pine Orders in Oil and Gas Litigation

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**§ 5.01. Introduction.**

“*Lone Pine*” orders are modified case management orders designed to promote judicial efficiency and economy by requiring plaintiffs to produce a measure of evidence to support their claims early in a case, before or during discovery. Typically, the orders require plaintiffs to produce (1) evidence of exposure to chemicals (identity and quantity); (2) a diagnosis of disease, illness, or property damage; and (3) expert reports or affidavits supporting causation.

*Lone Pine* orders are most often used in complex litigation to identify meritless claims and to streamline litigation. They can be very effective

case management tools because they can be used to dismiss cases early before defendants are forced to spend significant time and expense engaging in discovery and retaining experts.

However, the use of *Lone Pine* orders is not without critics. Plaintiffs in one instance described the *Lone Pine* order as, among other things, a “merits determination akin to summary judgment, but without the corresponding protections offered by Rule 56 and the mutual discovery processes found in Rules 26 through 37.”<sup>1</sup> Alternatively, defendants argued that a *Lone Pine* order “seeks information that should have been in plaintiffs’ counsels’ possession as part of the prefiling investigation requirements imposed by Rule 11.”<sup>2</sup> Courts, exercising their considerable discretion on discovery issues and docket management, are left to balance these competing claims when deciding whether to utilize *Lone Pine* orders.

Oil and gas contamination cases are a type of toxic tort case that may present circumstances justifying the utilization of *Lone Pine* orders. This chapter explains the background and use of *Lone Pine* orders, while advocating for their increased application in certain oil and gas contamination cases. First, a historical discussion of *Lone Pine* orders is provided based on the seminal case of *Lore v. Lone Pine Corp.* and subsequent toxic tort and mass tort cases. Second, the limited use of *Lone Pine* orders in oil and gas contamination cases is analyzed, including summaries of the applicable decisions. The similarities between the seminal *Lone Pine* decision and oil and gas contamination cases are discussed to illustrate why *Lone Pine* orders should be utilized in certain oil and gas contamination cases. Third, trends from *Lone Pine* cases in state and federal courts throughout the United States are examined. Fourth, strategies and considerations prior to seeking the entry of a *Lone Pine* order in oil and gas contamination cases are discussed. The cumulative result of this chapter will be an increased awareness of a useful, yet underutilized, case management tool that defendants can attempt to use in certain oil and gas contamination cases to dismiss the case early before being forced to expend significant time and expense engaging in discovery and retaining experts.

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<sup>1</sup> *In re Digitek Prod. Liab. Litig.*, 264 F.R.D. 249, 254 (S.D. W. Va. 2010).

<sup>2</sup> *Id.* at 255.