

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 06-7497 CW

UNITED STATES OF AMERICA ex rel.
RICHARD WILSON and CHRIS MARANTO,

ORDER ON MOTIONS IN
LIMINE

Plaintiffs,

v.

MAXXAM, INC., et al.,

Defendants.

_____ /

As stated at the final pre-trial conference, the Court rules on the parties' motions in limine as follows:

Plaintiffs' Motions in Limine

No. 1: Permit introduction of the bankruptcy court's findings of fact	Denied
No. 2: Exclude Dr. Reimer's expert testimony	Denied
No. 3: Exclude Dr. Iles' expert testimony	Denied
No. 4: Preclude Defendants' experts from providing opinions that were not offered at their depositions	Granted, except to the extent the testimony relates to allegations raised by Plaintiffs subsequent to the depositions

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No. 5: Impose sanctions for spoliation of evidence	Denied
No. 6: Preclude Mr. Hurwitz from introducing any documentary evidence at trial	Denied, provided the documents were produced during discovery
No. 7: Preclude Defendants from introducing exhibits that they produced after the close of discovery	Denied
No. 8: Exclude evidence that contradicts admitted facts	Granted generally with respect to admissions by Mr. Hurwitz and Maxxam; specific evidence will be dealt with on a case-by-case basis
No. 9: Exclude evidence of appraisals of the Headwaters Forest conducted before the Headwaters Agreement was consummated	Denied
No. 10: Exclude Dr. Tedder's 1993 timber appraisal	Denied
No. 11: Preclude Defendants from arguing that, with respect to calculation of damages, they are entitled to an offset for any value received by the United States as a result of the Headwaters deal	Denied

Defendants' Motions in Limine

No. 1: Exclude allegations of Defendants' prior bad acts	Granted, except that Plaintiffs may introduce relevant testimony about the financing of Maxxam's acquisition of Pacific Lumber; information on previous forestry rule violations may be admissible if a government decision-maker testifies that the violations influenced the requirement that Pacific Lumber obtain approval of an SYP
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<p>No. 2: Exclude evidence of Pacific Lumber's pre-takeover harvest practices or financial condition</p>	<p>Granted with respect to subjective characterizations of Pacific Lumber's commitment to conservation; denied with respect to Pacific Lumber's financial condition</p>
<p>No. 3: Preclude Plaintiffs from using inflammatory language to describe Defendants' timber harvesting practices</p>	<p>Granted in part; Plaintiffs may not use words such as "rape," "plunder" or "savage," but may use words such as "decimate"</p>
<p>No. 4: Exclude evidence or argument regarding alternative methods by which the government could have acquired Headwaters</p>	<p>Granted</p>
<p>No. 5: Exclude evidence of bankruptcy proceedings</p>	<p>Granted in part; testimony on the basic fact that Debtor Defendants declared bankruptcy and were re-organized will be permitted, but extensive testimony on the course of the bankruptcy proceedings will not</p>
<p>No. 6: Exclude evidence of or references to other corporate scandals</p>	<p>Granted, except that Plaintiffs may argue generally about the importance of corporate responsibility and may introduce testimony that Solomon Brothers financed Maxxam's purchase of Pacific Lumber</p>
<p>No. 7: Exclude evidence of Mr. Hurwitz's net worth</p>	<p>Granted, but the financial relationship between Mr. Hurwitz and Maxxam can be introduced in support of alter ego liability</p>
<p>No. 8: Exclude evidence of Plaintiffs' new fraud claims</p>	<p>See separate orders</p>

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No. 9: Exclude evidence supporting Plaintiffs' withdrawn claims	Granted generally, but objections to specific evidence will be resolved on a case-by-case basis
No. 10: Exclude Plaintiffs' experts' supplemental reports	Denied without prejudice; the Court cannot rule on this motion without further briefing on the content of the reports
No. 11: Exclude evidence pertaining to the report, "Comments on the Pacific Lumber Economic White Paper"	Denied to the extent the report forms the basis of Plaintiffs' experts' opinions
No. 12: Preclude Michael Gjerde from testifying	Granted
No. 13: Exclude testimony on legal issues	Granted, but testimony on industry practice and definitions of technical terms used in regulations will be permitted
No. 14: Exclude evidence of Defendants' financial gain from the Headwaters sale	Granted
No. 15: Exclude evidence contradicting the government's record of decision from the Headwaters Purchase	Denied without prejudice; admissibility will be determined on a case-by-case basis
No. 16: Preclude Plaintiffs from referring to Mr. Hurwitz and Maxxam together with the Debtor Defendants using the label "Defendants"	Granted; Plaintiffs will refer to Mr. Hurwitz and Maxxam as "Defendants" and will refer to Pacific Lumber, Scotia Pacific and Salmon Creek by name
No. 17: Preclude Plaintiffs from referring to themselves as the United States and counsel from stating that they represent the United States	Granted; the Court will explain to the jury the relationship between Plaintiffs, their counsel and the United States; counsel will refrain from stating that they represent the United States
No. 18: Preclude Plaintiffs from referring to themselves as whistleblowers	Granted

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No. 19: Exclude evidence of discovery disputes	Granted
No. 20: Exclude allegations about Defendants' alleged destruction of evidence	Granted, but Plaintiffs' experts may state that certain evidence relevant to the computer modeling could not be located and may explain the significance of that evidence

IT IS SO ORDERED.

Dated: 4/14/09



CLAUDIA WILKEN
United States District Judge