

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

WALNUT CREEK MANOR, LLC,
Plaintiff,

v.

MAYHEW CENTER, LLC; and DEAN DUNIVAN,
Defendants.

MAYHEW CENTER, LLC; and DEAN DUNIVAN,
Cross-Claimants,

v.

WALNUT CREEK MANOR, LLC,
Cross-Defendant.

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No. C 07-05664 CW
ORDER ON MOTIONS IN
LIMINE

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

Walnut Creek Manor's Motions in Limine

No. 1: Exclude superior court's decision of WCM's writ petition	Granted
No. 2: Exclude MC's groundwater migration theory	Denied
No. 3: Exclude soil vapor results as evidence of contamination source	Denied
No. 4: Exclude MC's post-lawsuit photographs of the WCM property	Denied
No. 5: Exclude evidence of diesel underground storage tank formerly on WCM property	Granted

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No. 6: Exclude evidence of potential use by WCM residents of household cleaning products that may have contained PCE	Denied
No. 7: Exclude evidence of vehicle repair at WCM as a potential source of PCE release	Denied
No. 8: Exclude evidence regarding the existence of total petroleum hydrocarbons (TPH) in the WCM soil.	Denied
No. 9: Exclude testimony that the amount of PCE "spilled" in this case does not exceed two gallons	Granted as moot because MC's experts will not testify to this fact; however, Schultze may testify as to the estimated quantity of the spill
No. 10: Exclude evidence of "data gaps" on WCM property	Denied
No. 11: Exclude soil data derived from unlicensed sampling collected by Dean Dunivan	Denied
No. 12: Exclude expert testimony of William Wick	Granted
No. 13: Exclude expert testimony of Walter Ricci regarding diminution of MC's property value	Denied
No. 14: Exclude testimony of undisclosed expert witnesses	Granted, but Scott Seyfried and John Mateo may testify as fact witnesses.
No. 15: Exclude Jan Schutze's testimony on chemicals used by Etch-Tek	Denied, however Schutze cannot testify that Etch-Tek did not use PCE
No. 16: Exclude Christopher Vais' testimony regarding source of PCE release or PCE migration patterns	Granted as moot because Vais' testimony will not be offered for this purpose
No. 17: Exclude Vais' opinion that PCE on the MC property is inconsistent with a release from an industrial user	Denied
No. 18: Exclude evidence of MC's estimated remediation costs as tort damages	Denied

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Mayhew Center's Motions in Limine

No. 1: Exclude Robert Kuykendall's expert opinion	Denied if offered as a proper rebuttal witness
No. 2: Exclude Michael Williams' expert opinion	Denied, however Williams cannot testify as to the credibility of the Beards' testimony
No. 3: Exclude Joseph Odenchantz	Denied if offered as a proper rebuttal witness
No. 4: Admit WCM's declaration that it hired Joseph Odenchantz for purposes of litigation	Denied
No. 5: Exclude Scott Warner from testifying about issues not previously disclosed to MC	Granted, only to the extent that Warner will testify on issues not previously disclosed
No. 6: Exclude reference to the fact that MC's counsel previously retained Scott Warner	Denied; Walnut Creek Manor may raise this on redirect
No. 7: Exclude evidence of the Concord site contamination	Denied
No. 8: Exclude evidence that Etch-Tek was "known to have used PCE"	Granted
No. 9: Exclude fire department safety notices and related letters issued to Etch-Tek	Granted
No. 10: Exclude the Etch-Tek floor plan	Denied
No. 11: Exclude reference to MC's failure to develop a health and safety plan	Denied
No. 12: Prohibit WCM from introducing evidence of diminution of its property value	Denied

IT IS SO ORDERED.

Dated: 5/6/09



CLAUDIA WILKEN
United States District Judge