

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ROCK-TENN COMPANY,
Plaintiff,

v.

GENERAL ELECTRIC RAILCAR
SERVICES CORPORATION, a Delaware
corporation, dba GE Capital Rail Services,
and FIRST COAST RAILROAD INC.,

Defendants.

Case Nos.: 13-CV-01313-LHK
14-CV-01280-LHK

PRETRIAL CONFERENCE ORDER

MARIANO VALLEJO and DOLORES
VALLEJO,

Plaintiffs,

v.

GENERAL ELECTRIC RAILCAR
SERVICES CORPORATION, a Delaware
corporation, dba GE Capital Rail Services,
and FIRST COAST RAILROAD INC.,

Defendants.

Plaintiff Rock-Tenn's Attorney: Minh N. Hoang

Plaintiffs Mariano and Dolores Vallejo's Attorneys: Federico C. Sayre, Fernando F. Chavez,
and David J. Churchill

Defendants' Attorney: William T. McLaughlin, II

A pre-trial conference was held on March 12, 2015. At the pretrial conference, the Court made the following rulings on the record:

TRIAL SCHEDULE: Trial will take place on the following days:

1. Monday, March 23, 2015
2. Tuesday, March 24, 2015
3. Friday, March 27, 2015
4. Monday, March 30, 2015
5. Tuesday, March 31, 2015
6. Friday, April 3, 2015
7. Monday, April 6, 2015

Trial will take place from 9:00 a.m. to 4:30 p.m., with a lunch break from noon to 1:00 p.m. There will be an approximately 15 minute break at about 10:30 a.m., and two approximately 10 minute breaks at about 2:15 p.m. and about 3:30 p.m. each day.

TIME LIMITS: The parties shall have 40 minutes per side for opening statements. The parties shall have 13 hours of evidence per side. The parties shall have 70 minutes per side for closing arguments.

JURORS: The Court will empanel nine jurors. Each side may exercise up to four peremptory challenges.

VOIR DIRE: The Court will conduct voir dire. The Court will allow 15 minutes of attorney voir dire per side. By March 16, 2015, the parties shall file a joint list of witnesses, law firms, attorneys, and support staff, along with the trial dates and times, to be distributed during jury selection. The parties shall also email that list to LHKCRD@cand.uscourts.gov. The parties shall bring 40 copies of the joint list to trial on March 23, 2015.

PRELIMINARY JURY INSTRUCTIONS: The Court has filed a proposed set of preliminary jury instructions with annotations. ECF No. 135. The parties shall file any objections by March 16, 2015. The Court will read the parties' stipulated facts prior to opening statements.

FINAL JURY INSTRUCTIONS: The parties have proposed final jury instructions and included any objections and competing instructions therein. The Court will file a proposed set of final jury instructions towards the end of March and will allow the parties to file objections thereto.

SUPPLEMENTAL FILINGS:

1. By the end of today, March 12, 2015, Mr. Sayre shall file a Notice of Appearance and register on ECF.
2. By March 13, 2015, Defendants shall file (1) documentation indicating the confidentiality obligations applicable to the parties during mediation, and (2) a proffer not to exceed two pages in length with relevant authority explaining why Defendants believed they were justified in disclosing contents from Plaintiffs' mediation briefs in three of Defendants' motions in limine. Plaintiffs may file a response not to exceed two pages in length by March 16, 2015.
3. By March 16, 2015, Plaintiffs shall file a proffer not to exceed four pages in length explaining why the OSHA regulations listed by Defendants on the joint exhibit list and cited in Defendants' motions in limine do not apply to Plaintiffs as a matter of law. By March 18, 2015, Defendants shall file an opposition not to exceed four pages in length. By March 19, 2015, Plaintiffs may file a reply not to exceed one page in length.

MOTIONS IN LIMINE: For the reasons stated on the record, after reviewing the parties' briefing, considering the parties' oral arguments and the record in this case, and balancing the considerations set forth in Federal Rule of Evidence 403, the Court made the following rulings on the motions in limine:

1. Plaintiffs' motion in limine no. 1 to exclude evidence of subsequent remedial actions, measures, procedures, or protocols taken by Rock-Tenn following Mariano Vallejo's accident on February 16, 2011 is GRANTED.
2. Plaintiffs' unopposed motion in limine no. 2 to exclude testimony of Dr. Paul Eason concerning the use and reasonableness of Rock-Tenn's safety protocols and procedures for opening and closing boxcar doors and for using roll clamps is GRANTED.
3. Plaintiffs' unopposed motion in limine no. 3 to exclude Dr. Robert Noriega from testifying as an expert witness is GRANTED.
4. Plaintiffs' motion in limine no. 4 to exclude evidence that the worker's compensation carrier's payments to Mariano Vallejo were excessive, unreasonable, or unrelated to the accident is DENIED.
5. Plaintiffs' motion in limine no. 5 to exclude evidence that Mariano Vallejo's use of the roll clamp caused or contributed to the accident is DENIED.
6. Plaintiffs' motion in limine no. 6 to exclude evidence of the auto accident involving Mariano Vallejo that took place on November 27, 2013, is DENIED.
7. Defendants' motion in limine no. 1 to exclude evidence of other Smurfit or Rock-Tenn employees working beyond age 67 is DENIED.
8. Defendants' motion in limine no. 2 to exclude all evidence of unrelated conditions of and post-accident repairs to the boxcar is DENIED.
9. Defendants' motion in limine no. 3 to exclude evidence of the historical use of roll clamps to open boxcar doors is DENIED.
10. Defendants' motion in limine no. 4 to exclude evidence and reference to the Federal Railroad Administration ("FRA") Act or any regulation promulgated thereunder is DENIED.
11. Defendants' motion in limine no. 5 to exclude any reference to spoliation of evidence is DENIED.
12. Defendants' motion in limine no. 6 to exclude evidence of any determinations, findings, or conclusions regarding the cause of Mariano Vallejo's injury offered by any worker's compensation proceedings is DENIED WITHOUT PREJUDICE. The Court will rule on objections with respect to this issue on an evidence-by-evidence basis.
13. Defendants' motion in limine no. 7 to exclude evidence of the terms contained in the lease agreement between Defendants GE Railcar and First Coast Railroad is DENIED.
14. Defendants' motion in limine no. 8 to preclude lay witnesses from testifying to Mariano Vallejo's past and future wage loss or to the reasonableness and relatedness of his past medical care and treatment is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to Irma Silveira. The motion is DENIED as to Robin Barrett and Linda

Lepson with respect to the topics disclosed in Plaintiffs' opposition to Defendants' motion, *see* ECF No. 100 at 2, but GRANTED otherwise as to Robin Barrett and Linda Lepson.

15. Defendants' motion in limine no. 9 to exclude Rosie Escobar as a witness at trial is GRANTED.

WITNESS LISTS: The Court excluded witness no. 19, Irma Silveira, and witness no. 22, Rosie Escobar. By March 16, 2015, the parties shall separately file revised witness lists consistent with the Court's rulings on the motions in limine. The Court will not entertain any additions to the witness lists.

EXHIBIT LISTS: By March 17, 2015, the parties shall separately file revised exhibit lists consistent with the Court's rulings on the motions in limine. The Court will not entertain any additions to the exhibit lists.

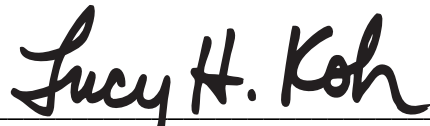
VERDICT FORM: The parties shall file a joint verdict form by March 17, 2015. The parties shall indicate any remaining objections in their filing.

DEPOSITION DESIGNATION: Plaintiffs shall file a document designating specific portions of Benjamin Jackson's deposition by today, March 12, 2015.

WITNESS DISCLOSURES: At 6:00 p.m. each day, the parties shall file their list of witnesses the parties intend to call the next day.

IT IS SO ORDERED.

Dated: March 12, 2015



LUCY H. KOH
United States District Judge