

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 10-cv-00780-WJM-MJW

VON J. PHATHONG, and
JENNIFER D. PHATHONG,

Plaintiffs,

v.

TESCO CORPORATION (US),

Defendant.

ORDER ON MOTION TO ALLOW TESTIMONY BY VIDEO CONFERENCE

This matter is before the Court on Plaintiffs' Motion to Allow Testimony by Video Conference Pursuant to Fed. R. Civ. P. 43(a) and Practice Standard II.F (the "Motion"). (ECF No. 130.) Defendant has filed a Response to the Motion (ECF No. 136), and Plaintiffs have filed a Reply (ECF No. 141).

Federal Rule of Civil Procedure 43(a) provides, "For good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location." After careful consideration, the Court has determined that Plaintiffs have shown good cause and compelling circumstances for Dr. Austin Gleason and Dr. Eubulus Kerr to testify by video conference during the trial of this action. However, in the Response Defendant raises a legitimate concern that appropriate safeguards be made for this testimony by video conference, namely, that Dr. Gleason and Dr. Kerr have all relevant documentary evidence in front of them during their testimony so that counsel for Defendant can

attempt to impeach Dr. Gleason and Dr. Kerr as to certain pieces of documentary evidence.

In accordance with the foregoing, the Court ORDERS as follows:

- (1) Plaintiffs' Motion to Allow Testimony by Video Conference (ECF No. 130) is GRANTED;
- (2) Dr. Austin Gleason and Dr. Eubulus Kerr will be permitted to testify by video conference during the trial of this action;
- (3) Plaintiffs' counsel shall ensure that Dr. Gleason and Dr. Kerr have all relevant documentary evidence in front of them during their testimony, including the documentary evidence identified by Defendant in its Response. (See ECF No. 136, at 3 ¶ 7.) Plaintiffs' counsel shall ensure that Dr. Gleason and Dr. Kerr have that documentary evidence ready in a manner that will make any particular piece of documentary evidence quickly and readily accessible;
- (4) On or before May 30, 2012, Defendant's counsel shall provide Plaintiffs' counsel with a list of the exhibits that Defendant's counsel expects to use in his cross-examination of Dr. Gleason and Dr. Kerr;
- (5) Plaintiffs' counsel shall ensure that Dr. Gleason and Dr. Kerr have those particular exhibits, properly labeled, in front of them during their testimony; and
- (6) On or before May 29, 2012, Plaintiffs' counsel shall contact chambers at (303) 335-2892 in order to inform the Court of the date(s) on which Dr. Gleason and Dr. Kerr will be called to testify, and in order to begin the process of ensuring that the necessary video conferencing equipment is properly set up in the courtroom and at the location in which Dr. Gleason and Dr. Kerr will testify.

Dated this 25th day of May, 2012.

BY THE COURT:

A handwritten signature in blue ink, appearing to read "William J. Martínez", written over a horizontal line.

William J. Martínez
United States District Judge