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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON

ARCH CHEMICALS, INC.,  
a Virginia corporation, and  
LEXINGTON INSURANCE COMPANY,

Plaintiff,

v.

RADIATOR SPECIALTY COMPANY,  
a North Carolina corporation,

Defendant.

No. 07-1339-HU

OPINION AND ORDER

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HUBEL, Magistrate Judge:

Before the court is the motion of Radiator Specialty Company to strike the expert disclosure of Dr. Loftus and to exclude her testimony at trial as proffered by Lexington (#272).

In light of Lexington being added as a party to the case as a plaintiff, and the denial of the motion to keep the information that Lexington is a plaintiff from the jury, Lexington will be allowed to use its disclosed expert, Dr. Elizabeth Loftus. However, there will be limitations to Dr. Loftus' testimony.

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1 First, Dr. Loftus will be allowed to testify in general terms  
2 regarding what the science in her field of expertise shows can  
3 affect a person's recollection of events over time, without any  
4 reference to anyone in particular in the case. She is not to use  
5 examples which make it clear what witnesses she is referring to  
6 that are expected to testify in the trial or whose prior statements  
7 may form the bases of expert testimony at trial.

8 She wouldn't be allowed to reveal to the jury what materials  
9 or statements of potential witnesses in the trial that she had  
10 reviewed with respect to her testimony in this case particularly.  
11 This includes the Independent Medical Examination reports that are  
12 the focus of another motion by the defendant to exclude evidence  
13 from the trial (#307). She is not to mention any particular  
14 witness or party by name or description, and she may not give  
15 opinion testimony that any specific psychological factor actually  
16 influenced anyone's recollection in this case. Nor would she be  
17 allowed to amplify her opinions offered in her preliminary report.  
18 Put simply, if it is not in her report, it will not be in her trial  
19 testimony.

20 If there are problems with the witness statement offered as  
21 part of the pretrial documents with respect to Dr. Loftus'  
22 testimony possibly violating the terms of this order, they can be  
23 raised by specific objections filed as a part of the pretrial  
24 process.

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IT IS SO ORDERED.

DATED this 10th day of December, 2010.

/s/ Dennis J. Hubel

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Dennis James Hubel  
United States Magistrate Judge