

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

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

Plaintiff,

No. 07-1339-HU

v.

OPINION AND ORDER

RADIATOR SPECIALTY COMPANY,
a North Carolina corporation,

Defendant.

HUBEL, Magistrate Judge:

Before the court is Radiator Specialty Company's (RSC's) Motion to Exclude Independent Medical Examinations, or in the Alternative, to Require Disclosure of Work Product Regarding Fire Event and its Causation (#307).

After the accident which was the basis for the underlying lawsuit in this case, Loran, Eyvette, and Benjamin Davidson underwent independent medical examinations (IMEs) by Deena Klein, M.D. and Randall Greene, Ph.D. During the examinations, the

OPINION AND ORDER Page 1

1 Davidson family members made statements pertaining to the events
2 leading up to the fire in the vehicle. RSC seeks to exclude any
3 IME information from introduction at trial.

4 This motion is denied. While it is unclear how, if at all,
5 the plaintiff's plan to use these reports at trial, the record does
6 not support a ruling excluding them categorically.

7 Defendant argues they were produced too late. However, the
8 record supports their disclosure was reasonably timely, and in any
9 event, no prejudice has been shown. In particular, the stated
10 action defendant wants to take is to review the alleged statements
11 of the Davidson family to the IME physicians with them. There is
12 no evidence of any inability to do that since the production of the
13 reports several months ago. To the extent defendant is able to
14 show a diligent effort to review these statements with the
15 Davidsons, and an inability to do so, the court will consider
16 opening discovery solely for the purpose of a deposition of the
17 Davidson family member in question on this point only.

18 Alternatively, the defendant seeks an order requiring the
19 plaintiffs to disclose all work product information from the
20 underlying lawsuit filed by the Davidsons. I deny that motion as
21 well, but order plaintiffs to produce to defendant all statements
22 made by any Davidson family member to an independent medical
23 examiner regarding the events or circumstances leading up to the
24 fire, occurring during the fire, or the circumstances after the
25 fire was out. Plaintiffs must also produce any information
26 provided to these independent medical examiners regarding other

1 statements on the same subject made by the Davidsons. This
2 information shall be produced to defendant not later than December
3 17, 2010.

4

5 IT IS SO ORDERED.

6 DATED this 13th day of December, 2010.

7

/s/ Dennis J. Hubel

8

Dennis James Hubel
United States Magistrate Judge

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28 OPINION AND ORDER Page 3