

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

PHILIP TUCKER and TONI HOTTEN,
husband and wife,

CV 09-1491-AC

Plaintiffs,

ORDER ON
OBJECTIONS TO EXHIBITS

v.

CASCADE GENERAL, INC., an Oregon
corporation, and UNITED STATES OF
AMERICA,

Defendants.

ACOSTA, Magistrate Judge

This order addresses the parties' exhibit lists, which appears in the court file as Docket No. 105 (Plaintiffs' exhibit list), Docket No. 91 (Cascade General's exhibit list), and Docket No. 90 (United States' exhibit list), and the objections made to those exhibits, which appear in the court file as Docket No. 132 (Plaintiffs' objections), Docket No. 126 (Cascade General's objections), and Docket No. 130 (United States' objections). This court has issued a separate order containing its rulings on the parties' motions in limine. To the extent that the parties made

objections to the proposed exhibits that fall within the scope of the motions in limine, the parties are directed to consult the court's rulings on those motions. In the event of a conflict between the court's rulings on the motions in limine and the court's ruling on an objection to a proposed exhibit, the court's ruling on the motions in limine controls.

PLAINTIFFS' PROPOSED EXHIBITS

The following of Plaintiffs' exhibits are admitted without objection: 308; 309; 310; 312; 315; 318A-D, F-I; 319A-2, B-2, C-2, D-2, E-2, F-2, H-2, I-2; 321, 323, and 324.

After review of the objections asserted by Cascade General and the United States to the Plaintiffs' remaining exhibits, and the Plaintiffs' responses to those objections, the court rules as follows:

Exhibit 301: **MOOT.** Plaintiffs have agreed to withdraw the email.

Exhibit 302: **GRANTED.** See ruling on United States' Motion in Limine #1.

Exhibit 303: **GRANTED IN PART, DENIED IN PART.** The log excerpts are admissible under the Federal Rule of Evidence ("Rule") 803(6) and Rule (8). Stanton's notes, which are not part of the log, are hearsay and not admissible.

Exhibit 304: **DENIED IN PART; MOOT.** The letter is admissible under Rule 803(6) and (8). Plaintiffs have agreed to redact the conclusion regarding blood-borne pathogens. Plaintiffs shall submit to the court a redacted version of this exhibit.

Exhibit 305: **GRANTED.** See ruling on United States' Motion in Limine #1.

Exhibit 306: **GRANTED.** See ruling on United States' Motion in Limine #1.

Exhibit 307: **DENIED IN PART; MOOT.** The letter is admissible under Rule 803(6) and (8). Plaintiffs shall redact the statements regarding blood-borne pathogens and submit to the court a redacted version of this exhibit.

Exhibit 311: **OVERRULED.** Admissible under Rule 407.

Exhibit 313: **OVERRULED.** The report is not part of a safety investigation but a factual report of the accident. It is admissible under Rule 803(6) and (8).

Exhibit 314: **SUSTAINED IN PART.** The photographs of Plaintiff Tucker's injuries are relevant, but the number of photographs contained in this exhibit is cumulative. Plaintiffs shall choose two (2) of the six photographs to present at trial.

Exhibit 316: **OVERRULED.** Admissible under Rule 407.

Exhibit 317: **DENIED IN PART; MOOT.** In response to objections, Plaintiffs have stipulated they will "select a few" of the photos from the exhibit to present as demonstrative exhibits only. Regarding subsequent remedial measures, the photos may be used under Rule 407.

Exhibit 318E: **OVERRULED.** The objections go to the weight of the evidence and to causation.

Exhibit 318J: **OVERRULED.** The objections go to the weight of the evidence and to causation.

Exhibit 319E-2: **OVERRULED.** The objections go to the weight of the evidence and to causation.

Exhibit 319J-2: **OVERRULED.** The objections go to the weight of the evidence and to causation.

Exhibit 320: **SUSTAINED.**

Exhibit 322: **SUSTAINED.** However, the document appears to be a business record and Plaintiffs may establish foundation at trial.

Exhibit 325: **SUSTAINED.** The document is hearsay. It does not appear to be a business record and it contains several hearsay statements of apparent witnesses.

Exhibit 326: **OVERRULED.** Plaintiffs represented at the pretrial conference that they will make the model available for viewing by defendants.

CASCADE GENERAL'S PROPOSED EXHIBITS

The following of Cascade General's exhibits are admitted without objection: 401-412; 414-417; 419, 420, 423-426; 434; 436-446; 454; and 456.

The following exhibits have been withdrawn by Cascade General: 422.

After review of the objections asserted by Plaintiffs and the United States to Cascade General's remaining exhibits, and Cascade General's responses to those objections, the court rules as follows:

Exhibit 413: **OVERRULED.** The date on the cover of the exhibit is September 15, 2008. The date of the accident is September 26, 2008.

Exhibit 418: **OVERRULED.** The photos may be used under Rule 407.

Exhibit 421: **OVERRULED.** The photos may be used under Rule 407.

Exhibit 427: **SUSTAINED.** *See* ruling on Plaintiffs' Motion in Limine #2.

Exhibit 428: **OVERRULED.**

Exhibit 429: **SUSTAINED.** *See* ruling on Plaintiffs' Motion in Limine #8.

Exhibit 430: **OVERRULED.**

Exhibit 431: **OVERRULED.** *See* ruling on Plaintiffs' Motion in Limine #4.

Exhibit 432: **OVERRULED.** *See* ruling on Plaintiffs' Motion in Limine #4.

Exhibit 433: **OVERRULED**, subject to proper foundation.

Exhibit 435: **OVERRULED.**

Exhibit 447: **OVERRULED**, subject to proper foundation.

Exhibit 448: **SUSTAINED IN PART, OVERRULED IN PART**, subject to proper foundation. Page 4 of the exhibit is Exhibit 422, which Cascade General withdrew. Cascade shall submit to the court a redacted version of this exhibit.

Exhibit 449: **OVERRULED.**

Exhibit 450: **OVERRULED.**

Exhibit 451: **OVERRULED.**

Exhibit 452: **OVERRULED.**

Exhibit 453: **OVERRULED.**

Exhibit 455: **OVERRULED.**

UNITED STATES' PROPOSED EXHIBITS

The following of the United States' exhibits are admitted without objection: 500-517; 519; 520; 535-539; and 544.

After review of the objections asserted by Plaintiffs and Cascade General to the United States' remaining exhibits, and the United States' responses to those objections, the court rules as follows:

Exhibit 518: **SUSTAINED.** The United States shall redact page 9 from this exhibit and resubmit the redacted version of the exhibit to the court.

Exhibit 521: **OVERRULED.** However, the United States shall redact from the exhibit references to "bloodborne pathogens," and resubmit the redacted version of the exhibit to the court.

Exhibit 522: **OVERRULED.**

Exhibit 523: **OVERRULED.**

Exhibit 524: **SUSTAINED,** unless the United States can establish admissibility under one or more of the subparts of Rule 801(d)(2).

Exhibit 525: **OVERRULED.**

Exhibit 526: **OVERRULED.**

Exhibit 527: **SUSTAINED.**

Exhibit 528: **SUSTAINED.**

Exhibit 529: **SUSTAINED.**

Exhibit 530: **SUSTAINED.**

Exhibit 531: **SUSTAINED.**

Exhibit 532: **SUSTAINED.**

Exhibit 533: **OVERRULED.**

Exhibit 534: **SUSTAINED.**

Exhibit 540: **OVERRULED.**

Exhibit 541: **SUSTAINED.**

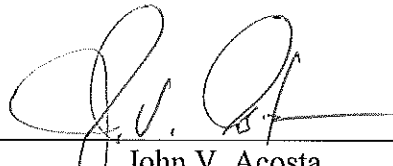
Exhibit 542: **OVERRULED.**

Exhibit 543: **SUSTAINED.**

Exhibit 545: **SUSTAINED.**

IT IS SO ORDERED.

DATED this 9th day of November, 2011.



John V. Acosta
U.S. Magistrate Judge