

1 UNITED STATES DISTRICT COURT  
2 WESTERN DISTRICT OF WASHINGTON  
3 AT TACOMA

4 DONNA McMANN, Individually and as  
5 Personal Representative of the heirs and  
6 estate of ALAN McMANN,

7 Plaintiff,

8 v.

9 CRANE CO., et al.,

10 Defendants.

CASE NO. C14-5429 BHS

ORDER

11 This matter comes before the Court on Defendant Goodyear Tire & Rubber  
12 Company's ("Goodyear") motion to compel disclosure of Plaintiff's settlements (Dkt.  
13 126), Defendant Crane Co.'s ("Crane") motion to preclude Plaintiff from using corporate  
14 representative deposition testimony in lieu of live testimony (Dkt. 148), and the parties'  
15 dispute whether maritime law should apply. The Court has considered the pleadings filed  
16 in support of and in opposition to the motions and the remainder of the file and hereby  
17 rules as follows:

18 **I. PROCEDURAL HISTORY**

19 On July 16, 2013, Plaintiffs Alan and Donna McMann ("McManns") filed a  
20 complaint alleging that Mr. McMann was exposed to asbestos while working for  
21 numerous defendants. Dkt. 59, Ex. 1. Specifically, the McManns

22 claim liability based upon the theories of product liability (RCW 7. 72 et  
seq.); negligence; conspiracy; strict product liability under Section 402A

1 and 402B of the Restatement of Torts; premises liability; breach of  
2 warranty; (RCW 62A); and any other applicable theory of liability. The  
3 liability-creating conduct of defendants consisted, inter alia, of negligent  
4 and unsafe design; failure to inspect, test, warn, instruct, monitor, and/or  
5 recall; failure to substitute safe products; marketing or installing  
unreasonably dangerous or extra-hazardous and/or defective products;  
marketing or installing products not reasonably safe as designed; marketing  
or installing products not reasonably safe for lack of adequate warning and  
marketing or installing products with misrepresentations of product safety.

6 *Id.* at 3.

7 On March 3, 2015, the Court granted SB Decking's renewed motion for summary  
8 judgment finding that maritime law applied to the McManns' claims against SB Decking.  
9 Dkt. 124.

10 On April 2, 2015, Goodyear filed a motion to compel disclosure of the McManns'  
11 settlements with other defendants. Dkt. 126. On April 13, 2015, the McManns  
12 responded. Dkt. 129. On April 16, 2015, Goodyear replied. Dkt. 132.

13 On April 24, 2015, the Court held a pretrial conference. Dkt. 147. During that  
14 conference, the issues were raised whether maritime law applied to all of the McManns'  
15 claims and whether the McManns' settlements with other defendants are relevant for  
16 trial. *Id.* The Court requested additional briefing on these issues. *Id.*

17 On May 1, 2015, Crane filed a motion to preclude the McManns from using  
18 30(b)(6) deposition testimony when the witness is available for trial. Dkt. 148. On May  
19 8, 2015, the McManns responded. Dkt. 151. On May 15, 2015, Crane replied. Dkt. 154.

20 On May 8, 2015, Crane filed a brief on the issue of maritime law (Dkt. 150) and  
21 Goodyear filed a brief on the issue of maritime law and the production of the settlements  
22

1 (Dkt. 152). On May 15, 2015, the McManns responded and conceded the issue of  
2 maritime law. Dkt. 155.

## 3 II. DISCUSSION

### 4 A. Settlements

5 Under Washington law, a judgment against a non-settling defendant is reduced by  
6 the amount of the settlements reached by the claimant and settling defendants. RCW  
7 4.22.060.

8 In this case, Goodyear moves the Court to compel the McManns to produce the  
9 settlement agreements reached with other defendants. While Goodyear is definitely  
10 entitled to the settlement amounts before final judgment is entered, Goodyear fails to  
11 show that this information is relevant to any issue that may be raised before or during  
12 trial. Therefore, the Court denies Goodyear's motion without prejudice.

### 13 B. Deposition Testimony

14 "An adverse party may use for any purpose the deposition of a party or anyone  
15 who, when deposed, was the party's officer, director, managing agent, or designee under  
16 Rule 30(b)(6) . . . ." Fed. R. Civ. P. 32(a)(3). The parties have failed to cite and the  
17 Court is unaware of any binding Ninth Circuit authority interpreting this rule. The Court,  
18 however, finds persuasive a discussion from the Tenth Circuit, which is as follows:

19 We agree with Ms. Coletti's argument that Rule 32 allows a party to  
20 introduce "as a part of his substantive proof, the deposition of his  
21 adversary, and it is quite immaterial that the adversary is available to testify  
22 at the trial or has testified there." *King & King Enters. v. Champlin  
Petroleum Co.*, 657 F.2d 1147, 1163-64 (10th Cir. 1981) (internal  
quotation marks and citation omitted), *cert. denied*, 454 U.S. 1164, 102  
S.Ct. 1038, 71 L.Ed.2d 320 (1982). However, the admission of deposition

1 testimony still remains subject to the sound discretion of trial court, *Reeg v.*  
2 *Shaughnessy*, 570 F.2d 309, 316 (10th Cir. 1978), and “[it] has a perfect  
3 right to limit the use of the material if [the deposition] is repetitious or  
4 immaterial.” *King & King*, 657 F.2d at 1164.

5 *Coletti v. Cudd Pressure Control*, 165 F.3d 767, 773 (10th Cir. 1999).

6 In this case, Crane opposes the McManns’ request to offer in its case in chief the  
7 deposition of Crane’s 30(b)(6) representative. The rule, however, explicitly states that  
8 the deposition may be used for any purpose, which includes using it as substantive  
9 evidence. Therefore, the Court denies Crane’s motion to preclude this evidence.

10 Although the Court will allow the McManns to use the deposition, Crane may still object  
11 on other grounds such as relevance or repetitive evidence under Federal Rules of  
12 Evidence, including, but not limited to, 402 and 403.

### 13 **III. ORDER**

14 Therefore, it is hereby **ORDERED** that Goodyear’s motion to compel disclosure  
15 of Plaintiff’s settlements (Dkt. 126) is **DENIED without prejudice**, Crane’s motion to  
16 preclude Plaintiff from using corporate representative deposition testimony in lieu of live  
17 testimony (Dkt. 148) is **DENIED**, and the Court **GRANTS** Defendants’ unopposed  
18 motion to apply maritime law to the McManns’ remaining claims.

19 Dated this 11th day of June, 2015.

20 

21 **BENJAMIN H. SETTLE**  
22 United States District Judge