

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

TIMM ADAMS, et al,)	
)	Civ. No. 03-0049-E-BLW
)	
Plaintiffs,)	
)	
v.)	MEMORANDUM DECISION
)	and ORDER REGARDING
)	MOTION TO EXCLUDE
UNITED STATES OF AMERICA,)	TESTIMONY OF
)	RICHARD P. KEIGWIN JR.
)	
Defendant.)	
_____)	

INTRODUCTION

The Court has before it a motion by DuPont to exclude portions of the testimony of BLM witness Richard Keigwin. For the reasons expressed below, the Court will grant the motion.

ANALYSIS

On February 13, 2009, the BLM notified DuPont that it would be calling Keigwin to rebut the testimony of DuPont witnesses Henry Jacoby and James Aidala. Specifically, the BLM planned to use Keigwin to rebut deposition testimony by Jacoby and Aidala that the 2008 re-registration of Oust was merely a

draft, and that the EPA may not have made a full assessment. The BLM has not alleged that Keigwin is intended to rebut the testimony of any witnesses other than Jacoby and Aidala.

In their initial briefs, the parties argued over whether Keigwin is a true rebuttal witness to Jacoby and Aidala, whether Keigwin's testimony is relevant, and whether the entire subject of the 2008 re-registration of Oust is a subsequent remedial measure under Rule of Evidence 407. However, these arguments were rendered moot when DuPont stated in its reply brief that Jacoby and Aidala would not be testifying in any manner about the 2008 re-registration. Given that, there is nothing for Keigwin to rebut, and his testimony must be excluded.

The issues regarding the admissibility of the 2008 Oust re-registration – to be discussed by witnesses other than Jacoby and Aidala – are addressed in a separate motion in limine and need not be resolved here. Because Keigwin was not named to rebut the testimony of any witnesses other than Jacoby and Aidala, the fact that other witnesses may address the 2008 re-registration is irrelevant to the present motion. Accordingly, the Court will grant DuPont's motion.

ORDER

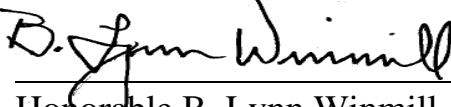
In accordance with the Memorandum Decision set forth above,

NOW THEREFORE IT IS HEREBY ORDERED, that DuPont's motion to

exclude Richard Keigwin (docket no. 793) is GRANTED.



DATED: **April 16, 2009**


Honorable B. Lynn Winmill
Chief U. S. District Judge