

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

RESCO PRODUCTS, INC.,

Plaintiff,

v.

BOSAI MINERALS GROUP CO., LTD., and
CMP TIANJIN CO., LTD.,

Defendants.

Civil Action No.: 2:06-cv-235-JFC

Honorable Joy Flowers Conti

**PLAINTIFF’S MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS’
MOTION TO EXCLUDE TESTIMONY AND REPORTS OF DR. RUSSELL LAMB**

Plaintiff Resco Products, Inc. (“Resco”) submits this memorandum of law in opposition to Bosai Minerals Group Co., Ltd. (“Bosai”) and CMP Tianjin Co., Ltd.’s (“CMP”) (collectively, “Defendants”) motion to exclude testimony and reports of Dr. Russell Lamb.

This is a disagreement between the two sides over which explanatory variables should be included in a multiple regression analysis of economic damages and class-wide injury. Defendants do not dispute that Dr. Lamb is a qualified expert and that his analysis is relevant to the case. Defendants’ expert agrees that Dr. Lamb’s regression modeling technique was appropriate; he claims only that he would have built the model differently. Defendants have filed, as a *Daubert* brief, what should be an outline of the testimony of their economic expert at trial. Their motion should be denied and their arguments reserved until then.

LEGAL STANDARD

Rule 702 of the Federal Rules of Evidence ensures that “an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 597 (1993); *see also Kumho Tire Co., Ltd. v. Carmichael*,

526 U.S. 137, 147 (1999) (*Daubert* applies to all expert testimony, not just testimony based on science). Rule 702 has “a liberal policy of admissibility,” *Pineda v. Ford Motor Co.*, 520 F.3d 237, 243 (3d Cir. 2008), under which the “rejection of expert testimony is the exception and not the rule.” *In re Actiq Sales and Mktg Practices Litig.*, No. 07-4492, 2014 WL 3572932, at *2 (E.D. Pa. July 21, 2014) (quoting Fed. R. Evid. 702 Advisory Committee Notes); *Toscano v. Case*, No. 11-4121(FSH), 2013 WL 5333206, at *8 (D.N.J. Sept. 20, 2013).

Expert testimony is admissible when it meets three requirements: (1) the witness must be qualified to testify as an expert; (2) the expert’s testimony must be “based on reliable methodology and must reliably flow from that methodology and the facts at issue,” although “it need not be so persuasive as to meet a party’s burden of proof or even necessarily its burden of production” (*Heller v. Shaw Indus., Inc.*, 167 F.3d 146, 152 (3d Cir. 1999)); (3) the expert’s testimony must be relevant so as to assist the trier of fact in the case. *See Calhoun v. Yamaha Motor Corp., USA*, 350 F.3d 316, 321 (3d Cir. 2003); *Pineda*, 520 F.3d at 244; *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 741-43 (3d Cir. 1994).

Courts do not determine the correctness of a proposed witness’ opinion as a condition of admissibility. *Paoli*, 35 F.3d at 744 (“The grounds for the expert’s opinion merely have to be good, they do not have to be perfect.”). As the Third Circuit has noted:

A judge frequently should find an expert’s methodology helpful even when the judge thinks that the expert’s technique has flaws sufficient to render the conclusions inaccurate. He or she will often still believe that hearing the expert’s testimony and assessing its flaws was an important part of assessing what conclusion was correct and may certainly still believe that a jury attempting to reach an accurate result should consider the evidence.

Id. at 744-45. “As long as an expert’s scientific testimony rests upon good grounds, based on what is known, it should be tested by the adversary process—competing expert testimony and active cross-examination—rather than excluded from jurors’ scrutiny for fear that they will not

grasp its complexities or satisfactorily weigh its inadequacies.” *United States v. Mitchell*, 365 F.3d 215, 244 (3d Cir. 2004) (internal quotation marks omitted).

ARGUMENT

I. Defendants Move to “Exclude” Dr. Lamb’s Testimony for a Purpose for Which It Is Not Even Offered.

Dr. Lamb made clear in his initial Expert Report Concerning Damages (“Lamb Report”) and at his deposition that his expert report and expected testimony assume that a bauxite price-fixing conspiracy started in 2003 and investigate only the issues of (1) class-wide injury resulting from the conspiracy and (2) the amount of damages, both to Resco and class-wide. (Lamb Report, Declaration of August T. Horvath, dated March 31, 2015 (“Horvath Decl.”), Ex. A, at ¶ 4; Lamb Dep., Horvath Decl., Ex. C, at 5:17-7:2.) Defendants’ motion focuses on excluding Dr. Lamb’s testimony as evidence of liability (i.e., whether a conspiracy existed), as to which it is not even proffered. (Mov. Br. at 4-5, n.6.) Their motion is founded entirely on the rebuttal opinion of Dr. Frederick Warren-Boulton, the expert retained by Defendants, who made equally clear that he analyzed Dr. Lamb’s reports only as they related to whether a conspiracy exists and not as to injury or damages. (*See* Warren-Boulton Report, Horvath Decl., Ex. D, at 1-3, 6-7; Warren-Boulton Dep., Horvath Decl., Ex. E, at 6:2-14, 7:2-8:19.) Defendants’ motion is not supported by any expert criticism of Dr. Lamb’s report as it pertains to class-wide injury and damages.

Defendants’ decision to have their expert talk past Dr. Lamb leaves their motion with no relevant foundation. Denial is warranted for this reason alone. Any argument Defendants may make in their reply brief that Dr. Warren-Boulton’s opinion also somehow relates to the applicability of Dr. Lamb’s analysis to class-wide injury and damages should be

disregarded because Dr. Warren-Boulton stated that his opinions are not offered for that purpose.

(*Id.*)

II. Dr. Lamb’s Basic Methodology Is Unchallenged, and Alleged Errors in Specifying Variables Do Not Go to Admissibility.

In performing his analysis of the overcharge Defendants’ conspiracy caused Resco and putative class plaintiffs to pay for bauxite, Dr. Lamb used a multiple regression analysis. (Horvath Decl., Ex. A, at ¶ 7.) Courts in the Third Circuit have found this methodology to be reliable, and have also found it to be an appropriate tool in antitrust cases. “There is no dispute that when used properly multiple regression analysis is one of the mainstream tools in economic study and it is an accepted method of determining damages in antitrust litigation. Indeed, regression and statistical analysis have been admitted in antitrust cases to prove injury and to determine damages.” *In re Flat Glass Antitrust Litig.*, 191 F.R.D. 472, 486 (W.D. Pa. 1999); *see also Petruzzi’s IGA Supermarkets, Inc. v. Darling-Delaware Co., Inc.*, 998 F.2d 1224, 1238 (3d Cir. 1993). In *In re OSB Antitrust Litigation*, No. 06-826, 2007 WL 2253418 (E.D. Pa. Aug. 3, 2007), direct purchasers brought a class action Sherman Act case against nine manufacturers for a horizontal price-fixing conspiracy. In evaluating the proof of injury common to the class, the court found that plaintiffs’ expert’s “proposed methods of proving impact on a classwide basis—multiple regression analysis and analysis of the OSB market and Defendants’ transactions—are widely accepted in direct purchaser antitrust suits.” 2007 WL 2253418, at *7.

Defendants’ expert, Dr. Warren-Boulton, agreed that the use of multiple regression analysis was appropriate. (Horvath Decl., Ex. E, at 76:19-77:6.) Dr. Warren-Boulton’s only criticism was that, in his opinion, Dr. Lamb’s regression model included the wrong independent variables for assessing whether a price-fixing conspiracy occurred. (Horvath

Decl., Ex. D, at 14-19.) As noted above, Warren-Boulton did not opine on whether Dr. Lamb's model included the correct variables for its intended purpose of assessing class-wide injury and the amounts of damages. (*Id.*, at 6-7.) In any event, "a party cannot successfully challenge the admissibility of a regression analysis by simply pointing to a laundry list of possible independent variables that were not included in the study. Rather, the party must introduce evidence to support its contention that the failure to include those variables would change the outcome of the analysis" *In re Indus. Silicon Antitrust Litig.*, No. 95-1131, WL 1031507, at *3 (W.D. Pa. Oct. 13, 1998).

"[An] expert's testimony is admissible so long as the process or technique the expert used in formulating the opinion is reliable." *Pineda*, 520 F.3d at 244 (quoting *Paoli*, 35 F.3d at 742). Here, Defendants concede that the technique of multiple regression is reliable. Alleged errors in including or omitting variables generally go to the probative weight, not the admissibility, of a regression analysis. "While the omission of variables from a regression analysis may render the analysis less probative than it otherwise might be, it can hardly be said, absent some other infirmity, that an analysis which accounts for the major factors must be considered unacceptable Normally, failure to include variables will affect the analysis' probativeness, not its admissibility." *Bazemore v. Friday*, 478 U.S. 385, 400 (1986) (internal citations and quotation marks omitted); *see also Hartle v. FirstEnergy Generation Corp.*, No. 08-1019, 2014 WL 1317702, at *9 (W.D. Pa. Mar. 31, 2014) ("a regression analysis need not contain all relevant variables to be admissible") (citing *Bazemore*, 478 U.S. at 400). "In the context of price-fixing cases, . . . [m]erely pointing to economic conditions that may affect the dependent variable is not enough to call into question the reliability of an econometric model It is only the rare case where the regressions are so incomplete as to be irrelevant and the

expert's decisions regarding control variables are the basis to exclude the analysis." *In re Linerboard Antitrust Litig.*, 497 F. Supp. 2d 666, 678 (E.D. Pa. 2007).

III. Defendants' Criticisms of Dr. Lamb's Regression Model Are Without Merit.

Although it is improper for Defendants to "simply [point] to a laundry list of possible independent variables that were not included" in Dr. Lamb's study, *In re Indus. Silicon Antitrust Litig.*, 1998 WL 1031507, at *3, Resco will discuss briefly why each possible variable on Resco's laundry list either is inappropriate to include or was accounted for by other variables in Dr. Lamb's analysis. First, however, Resco will point out that, unlike any of the alternative models proposed by Defendants, Dr. Lamb's analysis satisfies accepted criteria for overall goodness-of-fit in an econometric model.

A. Overall Diagnostics Indicate Dr. Lamb's Model Is Well-Specified.

An important diagnostic in any regression model is the adjusted R^2 statistic, which measures the proportion of variation in the dependent variable (in this case, the prices of Defendants' U.S. export bauxite contracts) that is explained, or jointly correlated, with the set of independent variables chosen by the researcher. (Horvath Decl., Ex. A, at ¶ 41 (citing Peter Kennedy, *A Guide to Econometrics* 26-28 (The MIT Press, 3d ed. 1994)).) A high adjusted R^2 indicates that the model "accounts for the major factors" affecting the dependent variable as described in *Bazemore*, 478 U.S. at 400. The adjusted R^2 of Dr. Lamb's model, presented in his Initial Report, is 0.757, indicating that the model explains 75.7% of the variation in Defendants' U.S. export prices. (Horvath Decl., Ex. A, at 20.) This is considered good explanatory power for a model of this kind, and Dr. Warren-Boulton did not opine to the contrary; in fact, he avoided addressing this and other standard overall diagnostics of Dr. Lamb's regression model entirely.

Dr. Lamb also considered the overall *F*-statistic of his model, noting that “the *F*-statistic is highly statistically significant, meaning the regressors are collectively useful in explaining the dependent variable.” (*Id.*, at ¶ 41.) He further evaluated the individual *t*-statistics associated with each independent value used in his analysis, finding these to be consistent with a well-specified model. (*Id.*, at ¶ 42.)

Dr. Warren-Boulton, in his expert report, presented an alternative regression model that has very poor explanatory power. (Horvath Decl., Ex. D, at 24-28.) It had an adjusted R^2 of 0.215, indicating that the set of predictors Dr. Warren-Boulton chose explained only 21.5% of the variation in Defendants’ U.S. export prices. (Lamb Supp. Report, Horvath Decl., Ex. B, at ¶ 27.) This low explanatory power indicates a poorly specified model. (*Id.*)

B. Dr. Lamb’s Omission of an Export Quota Variable was Appropriate.

1. Export Quota Levels Did Not Vary Materially During the Analysis Period and Had No Explanatory Value.

It is undisputed that the Chinese export quota was in effect for the entire time period covered by Dr. Lamb’s analysis, both before and after the start of Defendants’ price-fixing conspiracy. It therefore would be inappropriate to include an “on/off” indicator variable for the quota in the analysis, as was done for the price-fixing conspiracy, because the quota was always “on.”

Dr. Lamb reviewed the amount of the Chinese bauxite export quota from January 2005 to June 2009. He found that there was hardly any change in the quota during this time period, as shown in Figure 4 of his Supplemental Report. (Horvath Decl., Ex. B, at 18, ¶ 40.) Dr. Warren-Boulton reached a different conclusion by concluding that the quota declined in the second half of 2009. (Horvath Decl., Ex. D, at 9; Horvath Decl., Ex. E, at 96:20-98:4.) This was improper because the last transaction in the class period took place in March 2009, before

this decline. (Horvath Decl., Ex. E, at 98:5-21.) Dr. Warren-Boulton's contention that this quota exhibited substantial variation was thus based on a misunderstanding of these data that led him to include data from outside the time period examined by Dr. Lamb. The levels of the Chinese bauxite export quota over the nine semi-annual periods between January 2005 and June 2009 relied on by Dr. Lamb and within the class period showed a steady trend with less than a 10% difference between the highest and lowest levels over the period. (Horvath Decl., Ex. B, at ¶ 40, Figure 4.) In effect, the level of Chinese bauxite export quotas during the period considered by Dr. Lamb in his analysis are hardly a variable at all, but almost a constant. (*Id.*) With so little variation from year to year, these quota levels could not have much impact as either an explanatory variable or a control. Dr. Warren-Boulton ignored this fact. (Horvath Decl., Ex. E, at 98:22-99:17.)

When Dr. Lamb experimentally introduced a variable for the Chinese bauxite export quota levels into his model to address Dr. Warren-Boulton's criticism, he found that the quota variable had no significant effect on Defendants' bauxite export prices. (Lamb Dep., Horvath Decl., Ex. C, at 106: 4-107:11.) The indicator variable for the effect of the price-fixing conspiracy remained positive and significant. (*Id.*; *see also id.*, at 65:4-12, 96:15-97:11, 118:13-119:10.) Because adding the quota level variable was not theoretically justified and empirically did not improve the explanatory power of the model, Dr. Lamb appropriately concluded that it should not be added. (Horvath Decl., Ex. B, at ¶¶ 39-40.)

Dr. Warren-Boulton did not add an export quota variable to his regression. Instead, he substituted an export quota variable for the conspiracy variable. (Horvath Decl., Ex. E, at 100:2-9.) By doing this, Dr. Warren-Boulton played a game of sleight-of-hand: he ignored

the conspiracy and pretended the export quota was an explanatory variable. After much questioning, Dr. Warren-Boulton finally admitted this. (Horvath Decl., Ex. E, at 102:18-104:3.)

2. Evidence in the Record Indicates that the Export Quota Was Part of the Conspiracy.

Defendants allege that Dr. Lamb's omission of a quota variable was "contrary to the Court's instruction," referencing the Court's instruction to Resco during the January 9, 2012 hearing on Resco's motion to dismiss that Resco should "provide a more definite statement with respect to what effects of the cartel are separate and distinguishable from any Government mandated *ex parte* restriction." (Mov. Br. at 6.) Resco duly complied with this instruction by pleading its case with sufficient particularity to establish liability, and the case proceeded. Although Resco doubts that the Court intended to specify the control variables to be used in its econometric expert damages analysis, Resco and Dr. Lamb understand the need to control for any compulsory *ex parte* government restriction and have, as described above, considered the extent to which such restrictions had any economic effect.

At the time of the Court's instruction in 2012, the Court – and Resco – may have been under the impression that the setting of bauxite export quota levels was a "Government mandated *ex parte* restriction." Since that time, discovery has shown this not to be the case. Documents produced by Defendants [REDACTED] show that during the period of the conspiracy, Defendants, along with other members of the Bauxite Branch of CCCMC, regularly voted by a show of hands to approve increases or decreases in export quotas. According to these documents [REDACTED], CCCMC solicited and received input from Defendants and other bauxite producers on what the level of export quotas should be. ([REDACTED] *see also* Horvath Decl., Exs. G, H, I, J, K, [REDACTED]) Mr. Liu testified:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

■ ■ ■ ■

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Similarly, on April 18, 2014, Laura Liang, the Deputy Manager of the Brown Fused Alumina department for Bosai, testified as follows:

Q. Okay. So to make sure that I understand, I think what you said is that the CCCMC staff would ask the companies attending whether they agreed that the quota should increase or that the quota should decrease or that the quota should stop -- that there should stop being a quota and then they would ask people to raise their hands if they agree and then they would count the number of hands raised; is that correct?

A. Yes.

Q. Okay. Was the increase or decrease in the quota proposed by the member companies?

A. Yes.

(Liang Dep., Horvath Decl., Ex. G, at 35:8-20.)

Consistent with the testimony of [REDACTED] Ms. Liang, the Bauxite Branch's Rules of Procedure provide that "[t]he main contents of members' participation in branch meetings include the deliberation of problems specific to the bauxite trade and the work of the branch, and submission or relevant proposals." (Horvath Decl., Ex. H, at 1.) The Rules of Procedure further provide that members have the right to vote on these proposals, and that "[r]esolutions shall be passed [] with the approving votes of more than two-thirds of the members present." (*Id.*, at 2.) The minutes from branch meetings held in 2004, 2006, and 2007 indicate that members voted on proposals concerning a bauxite export quota. (Horvath Decl., Ex. I, at 1 ("representatives of attendee members presented proposals concerning the 2005 bauxite export quota bidding, deliberated and voted on these proposals"); Horvath Decl., Ex. J, at 1-3; Horvath Decl., Ex. K, at 1-7.) Moreover, Mr. Liu stated, in an email dated October 27, 2005, [REDACTED]

The membership of the Bauxite Branch – which includes Bosai and CMP – thus controlled the quota of bauxite to be exported abroad by their coordinated vote in consultation with the government. The record indicates that the setting of bauxite export quota levels was not a "Government mandated *ex parte* restriction," and that if a variable representing these levels were included in Dr. Lamb's analysis, its impact could legitimately be counted as part of the results of the conspiracy among Defendants and other Chinese bauxite producers.

C. Dr. Lamb Properly Accounted for Domestic Bauxite Prices.

Next on their laundry list, Defendants argue that Dr. Lamb should have used the domestic price of bauxite in China as an independent variable. As Dr. Lamb explained during his deposition, this was "inappropriate as a matter of econometrics and economics for a variety of reasons:"

[T]he first is that. . . [i]f there's a cartel amongst suppliers which is fixing the price in the export market, one would certainly suspect that it's fixing the price in the domestic market especially because [] during [] most of the . . . damages period, it wasn't illegal to fix price And then, secondly, because why would you not try to control supply to the domestic market and raise price in domestic market if you're doing it for the export market. But further the problem with the relation between domestic price and export price that Dr. Warren-Boulton hypothesizes is that he ignores the fact [that] if all of the export bauxite were shifted to the domestic market that would push the price in domestic market down. And he's failed to account for that in his analysis.

(Horvath Decl., Ex. C, at 127:3-22; *see also id.*, at 132:5-133:11, 138:10-139:11, 140:22-141:7.)

As Dr. Lamb explains, the reasons for any correlation between domestic and export bauxite price would be ambiguous. Domestic price might influence export price, but export price would just as likely influence domestic price. Still more likely, both could be influenced by common market factors, including the existence of a price-fixing conspiracy, and their apparent correlation would be spurious.

Instead, Dr. Lamb's multiple regression analysis took the more prudent and reliable approach by considering relevant demand factors, including the Chinese domestic steel production, the U.S. steel production, and two exchange rate variables (i.e., Yuan/USD and Yuan/a world currency basket), that would affect both domestic and export bauxite pricing. (Horvath Decl., Ex. A, at ¶¶ 33-34.) Because refractory-grade bauxite is predominantly consumed in the manufacture of steel, the Chinese domestic steel production variable in Dr. Lamb's regression accounts for Chinese domestic demand. (*Id.*, at ¶¶ 29, 31-34.)

Dr. Lamb's approach has the additional advantage of being able to use adequate available data. The only domestic Chinese bauxite price data available were for a single defendant, Bosai. A single seller's data cannot be assumed, as Dr. Warren-Boulton does, to represent the pricing of all other entities in the market, and introduces measurement error into the

regression model. (Horvath Decl., Ex. B, at ¶¶ 8-10.) By assuming all domestic prices are the same from all competitors, Dr. Warren-Boulton has assumed the prices are collusive. The Chinese domestic steel production variable in Dr. Lamb's regression is a better and more reliable measure.

D. Dr. Lamb Accounted for Kiln and Mine Closures.

Although Dr. Lamb considered the effect the Chinese government's closure of old technology kilns had on bauxite export prices, the regression analysis presented in Dr. Lamb's Supplemental Report shows that whether the products were from round, shaft, and rotary kilns had no statistically significant impact on the export prices and the conspiracy's effect remained virtually unchanged. (Horvath Decl., Ex. B, at ¶ 38.) Thus, omission of this factor does not render Dr. Lamb's methodology unreliable.

Moreover, Defendants' argument that the closing of old technology kilns (as well as mine closures) might have reduced the supply of bauxite in China makes unwarranted assumptions about the impact of technological change, a mistake that Dr. Lamb avoided. When asked at his deposition whether, "if a sufficient number of refractory grade bauxite kilns were closed, that would increase the price of calcined refractory grade bauxite within China," Dr. Lamb responded, "Not necessarily. It depends on . . . what other kilns would have sprung up to have met that demand. Possibly you close one kind and another kind springs up and supplies it, it doesn't make any difference at all of the price." (Horvath Decl., Ex. C, at 159:13-22.) Dr. Lamb did not limit himself in such a way. Instead, considering that it is normal for developing countries like China that go through rapid technology changes to enhance their production efficiency through the improvement of total factor productivity (TFP), Dr. Lamb used the TFP in his analysis. (Horvath Decl., Ex. B, at ¶¶ 17-19.)

Dr. Warren-Boulton did not attempt to introduce a variable for the kiln effect into the regression separate from the conspiracy variable. (Horvath Decl., Ex. E, at 156:17-157:5.) This failure is fatal to the *Daubert* challenge. See *Bazemore*, 478 U.S. at 403 n.14 (a party challenging a regression model must move beyond abstract criticisms and demonstrate that a proposed alternative approach would yield different results); *Berger v. Iron Workers Reinforced Rodmen Local 201*, 843 F.2d 1395, 1416 (D.C. Cir. 1988) (same); *EEOC v. Gen. Tel. Co. of Nw, Inc.*, 885 F.2d 575, 583 (9th Cir. 1989) (same).

IV. Dr. Lamb's Model Does Not Assume a Conspiracy With Impact.

Dr. Lamb's task was to determine the impact of Defendants' price-fixing conspiracy on export bauxite prices and whether that impact was class-wide. He was not asked to opine on the existence of the conspiracy, which has been established by fact witness testimony and by documents. But although Dr. Lamb assumed the existence of the conspiracy for interpretation purposes, this assumption is not built into his model. On the contrary, the indicator variable that represented the existence of the conspiracy in Dr. Lamb's model was free to take a zero or statistically non-significant value if either there was no conspiracy or if there was a conspiracy but it was ineffective. Dr. Lamb studied the industry, identified the relevant demand and supply factors, conducted a multiple regression analysis controlling for those factors and Defendants' price differential, and assessed the impact of the conspiracy on the export price. The analysis concluded that the conspiracy was effective and estimated the size of its effect.

V. Dr. Lamb's Opinion Will Assist the Trier of Fact.

Dr. Lamb's opinion is also admissible because it will assist the trier of fact. This prong of *Daubert* requires that the expert testimony "must be relevant for the purposes of the case and must assist the trier of fact." *Schneider v. Fried*, 320 F.3d 396, 404 (3d Cir. 2003). This means that it must be "sufficiently tied to the facts of the case that it will aid the jury in

resolving a factual dispute.” *United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985).

Here, Dr. Lamb has analyzed relevant factors affecting the supply and price of bauxite exported from China in order to determine the effect of the price-fixing conspiracy that is the subject of Resco’s complaint. Dr. Lamb’s analysis is, therefore, both relevant and helpful to the trier of fact and should not be excluded on that basis.

CONCLUSION

For the foregoing reasons, Resco respectfully requests that this Court deny Defendants’ motion to exclude testimony and reports of Dr. Russell Lamb.

Dated: March 31, 2015

Respectfully submitted,

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