

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge William J. Martínez**

Civil Action No. 20-cv-2352-WJM-TPO

BOX ELDER KIDS, LLC,
C C OPEN A, LLC, and
GUEST FAMILY TRUST, by its Trustee CONSTANCE F. GUEST

Plaintiffs,

v.

ANADARKO E & P ONSHORE, LLC,
ANADARKO LAND CORPORATION, and
KERR-MCGEE OIL AND GAS ONSHORE, LP,

Defendants.

ORDER ON DEFENDANTS' EMERGENCY MOTIONS

Before the Court are Defendants Anadarko E & P Onshore, LLC, Anadarko Land Corporation, and Kerr-McGee Oil and Gas Onshore, LP's (collectively, "Defendants") Emergency Motion for Leave to File Emergency Motion to Exclude Undisclosed Expert Opinions ("Motion for Leave") and Emergency Motion to Exclude Undisclosed Expert Opinions ("Motion to Exclude"). (ECF Nos. 283, 284.) Plaintiffs Box Elder Kids, LLC, C C Guest A, LLC, and the Guest Family Trust, by its Trustee Constance F. Guest (collectively, "Plaintiffs"), filed a response. (ECF No. 288.) The Motion for Leave is granted and the Motion to Exclude is accepted as filed. For the reasons set forth below, however, the Motion to Exclude is denied.

The Court denies the Motion to Exclude because the opinions and calculations in Dr. Donald Phend's Supplemental Expert Report are not actually new, and are therefore

only minimally prejudicial to Defendants. The Supplemental Report merely updates the specific damage amounts to which Plaintiffs claim they are entitled. (See ECF No. 284-1 at 12 (“By using the data on ANADARKO-00024196, I was able to replace my extrapolations for the production months of January 2023 through October 2024 with the actual payment data.”).) Those amounts are based on information and data Defendants have had (the closest) access to at every stage of this case. Thus, Dr. Phend’s opinions, which largely simply substitute his earlier estimated damage figures with more accurate and updated figures, are not new to Defendants, and do not offend Rule 26(a)(2). See *Christou v. Beatport, LLC*, 2013 WL 2422916, at *2 (D. Colo. June 4, 2013) (“On the other hand, if there is no change in methodology, . . . and the supplement does nothing substantively beyond updating the calculation to including data for the years 2011 and 2012 that literally did not exist and therefore could not have been included by [Plaintiff’s expert] in his initial report, then it is not a matter of providing an untimely opinion.”).

Moreover, Plaintiffs stand to suffer far greater prejudice by the Court excluding the opinions and calculations set forth in the Supplemental Expert Report than Defendants stand to suffer by the Court admitting them. The exact damage amounts Plaintiffs have allegedly sustained up to this point in the litigation are highly probative to an essential element of their breach of contract claim. See F.R.C.P. 401. In addition, how those damage amounts are allocated between the individual plaintiffs relates to the disputed verdict forms tendered by Defendants. (See ECF Nos. 249, 250 (directing the jury to specify the exact damage amounts C C Open A, LLC and Box Elder Kids, LLC may individually be owed).)

In these circumstances, therefore, the Court will not deprive Plaintiffs of the opportunity to present evidence on this disputed issue, especially if the Court later adopts Defendants' proffered verdict form. And, of course, Defendants will be permitted to fully cross-examine Dr. Phend about all of these matters, and to attempt at trial to rebut his opinions with their own expert testimony, if they choose to do so.

For these reasons, the Motion to Exclude (ECF No. 284) is DENIED.

Dated this 6th day of March, 2025.

BY THE COURT:



William J. Martinez
Senior United States District Judge