

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

NOLEN SCOTT ELY, et al.,	:	Civil No. 3:09-CV-2284
	:	
Plaintiffs	:	(Magistrate Judge Carlson)
	:	
v.	:	
	:	
CABOT OIL & GAS CORP.,	:	
	:	
Defendant	:	
	:	
	:	

MEMORANDUM ORDER

In this litigation we now address a request by the Plaintiffs (Doc. 688.) to exclude some findings and test results reported by a defense expert witness, Dr. Tarek Saba in a supplemental report submitted by the Defendant to the Plaintiffs some seven months ago, in June 2015. This supplemental report was prepared at a time when we had extended expert witness discovery deadlines, and incorporated findings by the witness analyzing data collected between the expiration of the original 2013 fact discovery deadline in the lawsuit, and the extended expert witness discovery deadline authorized by the Court the request of the parties in the summer of 2015.

We find that there was absolutely nothing inappropriate about the data analysis undertaken by Dr. Saba. In fact, we note that when we extended the

expert witness discovery deadlines, all parties plainly understood that they could collect and analyze data obtained after the original 2013 fact discovery deadline had passed. In fact, the Plaintiffs attempted to take advantage of this discovery extension to collect additional data within this extended 2015 expert witness discovery deadline, but were frustrated in those efforts by flawed sample collections procedures. But for those sample collection flaws, the Plaintiffs would have themselves been able to present data obtained during this extended expert discovery deadline in the same way as Dr. Saba's analysis.

Yet, while we find that there was nothing inappropriate about this conduct by Dr. Saba, which provided updated expert analyses in accordance with a Court-ordered schedule months prior to trial, we also note that the Defendant has voluntarily agreed to forego presentation of this information. (Doc. 708, pp2-3.) Given this concession, the Plaintiffs' request to exclude this evidence is DISMISSED as moot.

So ordered this 29th day of February, 2016.

S/Martin C. Carlson

Martin C. Carlson

United States Magistrate Judge