UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 1:16-CV-21199-CMA/O'Sullivan

ANDREA ROSSI and LEONARDO CORPORATION,

Plaintiffs,

v.

THOMAS DARDEN; JOHN T. VAUGHN; INDUSTRIAL HEAT, LLC; IPH INTERNATIONAL B.V.; and CHEROKEE INVESTMENT PARTNERS, LLC,

Defendants.

INDUSTRIAL HEAT, LLC and IPH INTERNATIONAL B.V.,

Counter-Plaintiffs,

v.

ANDREA ROSSI and LEONARDO CORPORATION,

Counter-Defendants,
And

J.M. PRODUCTS, INC.; HENRY JOHNSON; FABIO PENON; UNITED STATES QUANTUM LEAP, LLC; FULVIO FABIANI; and JAMES A. BASS,

Third-Party Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO EXCLUDE THE OPINIONS AND TESTIMONY OF DR. K. WONG

Plaintiffs, Andrea Rossi and Leonardo Corporation, by and through their undersigned counsel, hereby respond to Defendants, Thomas Darden's, John T. Vaughn's, Industrial Heat, LLC's, IPH International, B.V.'s, and Cherokee Investment Partners, LLC's (collectively, "Defendants"), Motion to Exclude the Opinions and Testimony of Dr. K Wong.

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INTRODUCTION

The Defendants propose to offer Joseph A. Murray and Rick A. Smith, P.E. as experts in the above-styled matter. As indicated in the Expert Disclosure of Joseph A. Murray ("Murray Disclosure") and the Expert Report of Rick A. Smith, P.E. ("Smith Report"), both proposed experts intend to offer opinions pertaining to: (1) the Coefficient of Performance ("COP") measurements of Plaintiffs' E-Cat technology, and (2) the heat dissipated at the Plaintiffs' E-Cat plant located in Doral, Florida ("Doral Facility"). To rebut the opinions of Murray and Smith, Plaintiffs retained Professor Dr. Kau-Fui Vincent Wong. The Defendants move to exclude the opinions and testimony of Dr. Wong pursuant to the standard set forth in *Daubert v. Merrell Dow Pharm.,* 509 U.S. 579 (1993) pertaining to expert witnesses. Defendants' arguments are based upon incorrect premises which misinterpret and/or misrepresent Dr. Wong's opinions. Defendants' Motion [ECF No. 197] should be denied.

STATEMENT OF FACTS

I. Defendants' Experts, Joseph A. Murray and Rick A. Smith, P.E.

1. On January 30, 2017, Defendants served the Murry Disclosure and the Smith Report. True and correct copies of each are attached hereto as Exhibits "A" and "B", respectively.

2. The Murray Disclosure concluded, in relevant part, that:

   a. "[T]he power absorbed during the testing of the E-cat plant… is at odds with the amount of power used at [the] Doral location as demonstrated by Florida Power & Light Company ("FPL") records" (Murray Disclosure at 1);

   b. "[T]here is no logical reason why the COP should be changing inversely to the amount of power imputed [sic] given that the same E-cat plant was used throughout the 'guaranteed performance test'" (*id.* at 2); and

   c. That given the conditions at the Doral Facility, the supply of 500 kw to 800 kw of heat would have rendered the Doral Facility "unsuited for a human working environment" (*id.*at 2).

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3. The Smith Report concludes, *inter alia* that:[1]

a. "The Penon reports, standing alone, are not valid to tabulate and compute the performance of the E-Cat. The data are suspect and the methodology is not explained," based upon Penon's use of COP to calculate the performance of the E-Cat (Smith Report at 12-13 and 21); and

b. "The E-Cat never produced the energy which was claimed for it. This energy had to be rejected somewhere, and this analysis has shown, by the process of elimination, that the claimed energy never existed" (*id.* at 21).

4. As set forth in Plaintiffs' *Daubert* Motion to Strike and Exclude Defendants' Experts [ECF No. 215], Mr. Smith reached his conclusions without having seen the E-Cat and/or the Doral Facility, and Mr. Murray failed to provide Plaintiffs with his qualifications and/or supporting data.

II. Plaintiffs' Rebuttal Expert, Professor Dr. Kaufui V. Wong

5. On February 13, 2017, Plaintiffs timely served the rebuttal Expert Disclosure of Professor Dr. Kaufui V. Wong ("Wong Report"), a true and correct copy of which is attached hereto as Exhibit "C".

6. The Wong Report is intended only to rebut the conclusions of the Murray Disclosure and the Smith Report. Specifically, the limited purpose of the Wong Report is:

a. "To evaluate existing conditions, photographs, documentation, and authorities on thermodynamics to determine the feasibility of dissipation of 1MW of heat energy at the facility located at 7861 N.W. 46th Street, Doral, Florida" (Wong Report at 2);

b. "To evaluate the propriety and accuracy of the opinions rendered by Mr. Joseph A. Murray as contained" in the Murray Disclosure (*id.*); and

c. "To evaluate the propriety and accuracy of opinions rendered by Mr. Rick A. Smith, P.E. as contained" in the Smith Report (*id.*).

[1] On March 20, 2017, at 8:47 p.m., the day before the original dispositive motion deadline in this matter, Defendants served the Supplemental Expert Report of Rick A. Smith, P.E. which includes six additional conclusions. Plaintiffs have moved to strike the same due to its untimeliness, but re-state that Plaintiffs have not had the opportunity to investigate such matters and/or obtain a rebuttal expert.

7. Prior to reaching any conclusions, Dr. Wong considered the Murray Disclosure and the Smith Report. (*Id.* at 3.) Dr. Wong also inspected the Doral Facility in order to "take measurements of the Doral Facility, interview Dr. Rossi with respect to the heat exchanger utilized during the operation of the E-Cat plant, view the sources for ventilation of heat from the Doral Facility, and determine whether the heat exchanger described by Dr. Rossi would have been sufficient to disburse 1MW of heat from the Doral Facility." (*Id.* at 3.)

8. Based upon the foregoing, Dr. Wong opined as to:

a. "The Coefficient of Performance is a criterion that is suitable to determine the way the E-Cat plant functions" (*id.* at 4);

b. "There are clear and logical explanations for an inverse relationship between the amount of power input into a device and the COP of that device" (*id.*);

c. Under the conditions described at the Doral Facility, it was more than possible to expel 1MW of heat energy without rendering the Doral Facility "unsuited for a human working environment" (*id.*); and

d. "Under the conditions observed and described at the Doral Facility, it was more than possible to expel 1MW heat energy from the Doral Facility consistent with the amount of energy reported in Dr. Penon's report" (*id.*).

9. Moreover, the Wong Report expressly states that ***Dr. Wong "has not been asked to opine, nor will he opine, as to the nature of the reaction underlying the E-Cat technology or whether such reaction is in fact occurring***." (*Id.* at 2.) (Emphasis supplied).

10. On March 21, 2017, the Defendants filed their Motion to Exclude the Opinions and Testimony of Dr. K. Wong ("Daubert Motion").

ARGUMENT

I. Legal Standard

"Rule 702 [of the Federal Rules of Evidence], as explained by *Daubert* and its progeny, governs the admissibility of expert testimony." *Nature's Prods. v. Natrol, Inc.*, No. 11-62409-CIV, 2013 U.S. Dist. LEXIS 185676 (S.D. Fla. Oct. 7, 2013); *see also In re Denture Cream Prods. Liab. Litig.*, 795 F. Supp. 2d 1345 (S.D. Fla. 2011). The district courts must act as "gatekeepers" and admit expert testimony if it is both reliable and relevant. *Nature's Prods. v. Natrol, Inc.*, No. 11-

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62409-CIV, 2013 U.S. Dist. LEXIS 185676 (S.D. Fla. Oct. 7, 2013). Such expert evidence is reliable and relevant if: "(1) the expert is qualified to testify competently regarding the matters he intends to address; (2) the methodology by which the expert reaches her conclusions is sufficiently reliable as determined by the sort of inquiry mandated in *Daubert*; and (3) the testimony assists the trier of fact, through the application of scientific, technical, or specialized expertise, to understand the evidence or to determine a fact in issue." *Id.*

Under the first prong, the "qualification standard for expert testimony is 'not stringent,' and 'so long as the expert is minimally qualified, objections to the level of the expert's expertise [go] to credibility and weight, not admissibility.'" *Id.* (quoting *Kilpatrick v. Breg, Inc.*, No. 08-10052-CIV, 2009 U.S. Dist. LEXIS 76128 (S.D. Fla. Jun. 25, 2009)).

As to the second prong, a "trial judge has 'considerable leeway' in deciding how to determine when a particular expert's testimony is reliable and how to establish reliability." *Id.* (quoting *Coconut Key Homeowners Ass'n, Inc. v. Lexington Ins. Co.*, 649 F. Supp. 2d 1363, 1371 (S.D. Fla. 2009)). *Expert opinions may be reliably derived from literature review, witness interviews and data analysis*. *Id.* (Emphasis supplied). The district courts may also consider "(1) whether the expert's theory can be and has been tested; (2) whether the theory has been subject to peer review and publication; (3) the known or potential rate of error of the particular scientific technique; and (4) whether the technique is generally accepted in the scientific community." *United Food Mart, Inc. v. Motiva Enters., LLC*, 404 F. Supp. 2d 1344 (S.D. Fla. 2005).

Under the third prong, "expert testimony is admissible if it concerns matters that are beyond the understanding of the average lay person." *Nature's Prods. v. Natrol, Inc.*, No. 11-62409-CIV, 2013 U.S. Dist. LEXIS 185676 (S.D. Fla. Oct. 7, 2013) (quoting *U.S. v. Frazier*, 387 F.3d 1244, 1262 (11th Cir. 2004)). Additionally, *"[a] rebuttal expert can testify as to the flaws that [he] believed are inherent in another expert's report that implicitly assumes or ignores certain facts*." *Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011) (emphasis supplied). "Thus, a rebuttal expert may 'testify that, while [the expert's] report implicitly assumes (or erroneously fails to consider) facts X, Y, and Z, [the expert's] analysis is seriously flawed if the jury does not accept X, Y, and Z as true." *Id.*; *see also Coquina Invs. v. Rothstein*, No. 10-60786-CIV, 2011 U.S. Dist. LEXIS 120267 (S.D. Fla. Oct. 18, 2011); *Aviva Sports, Inc. v. Fingerhut Direct Mktg.*, 929 F. Supp. 2d 802, 834 (D. Minn. 2011)

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("The function of rebuttal testimony is to explain, repel, counteract or disprove evidence of the adverse party.")

II. Dr. Wong's Testimony is Offered for Rebuttal Purposes Only

Plaintiffs offer Dr. Wong's testimony solely to rebut the opinions of Murray and Smith. As set forth in Plaintiffs' *Daubert* Motion to Strike and Exclude Defendants' Experts [ECF No. 215], Defendants' experts should be stricken and/or excluded for their failure to comply with Rule 26, Fed. R. Civ. P., and to meet the *Daubert* standard. In the event the Court grants Plaintiffs' motion and excludes Defendants' experts, Plaintiffs would no longer require the testimony of Dr. Wong, and Defendants' Motion to Exclude [ECF No. 197] would be rendered moot. Should the Court deny Plaintiffs' motion, either in whole or in part, Dr. Wong's testimony more than satisfies the *Daubert* standard as it is reliable, relevant, and necessary to rebut any and all conclusions of Murray and Smith deemed admissible.

III. Dr. Wong's Testimony Satisfies The *Daubert* Standard

Dr. Wong is well-versed in the area of thermodynamics, and his experience allows him to testify competently as to the limited scope of his opinions. Specifically, Dr. Wong holds a Bachelor of Science degree, with honors, from University of Malaya, a Master of Science degree from Case Western Reserve University, and a Ph.D. from Case Western Reserve University. (Wong Report at Ex. B.) Dr. Wong has also been a registered Professional Engineer in the State of Florida since 1983; has been a professor at the University of Miami since 1979, teaching in areas such as thermodynamics; has held various positions relating to power plants and heat transfer studies; and has published and/or assisted in publishing numerous books, monographs, journal articles and other publications relevant to the matters upon which Dr. Wong opines. (*Id.*)

With respect to the foregoing qualifications, Dr. Wong offers four (4) primary opinions: (1) "The Coefficient of Performance is a criterion that is suitable to determine the way the E-Cat plant functions"; (2) "There are clear and logical explanations for an inverse relationship between the amount of power input into a device and the COP of that device"; (3) Under the conditions described at the Doral Facility, it was more than possible to expel 1MW of heat energy without rendering the Doral Facility "unsuited for a human working environment"; and (4) "Under the conditions observed and described at the Doral Facility, it was more than possible to expel 1MW

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heat energy from the Doral Facility consistent with the amount of energy reported in Dr. Penon's report." (Wong Report at 4.)

A. First Opinion: Suitability of COP to Evaluate the E-Cat

Dr. Wong's first opinion states that the "Coefficient of Performance is a criterion that is suitable to determine the way the E-Cat plant functions." (Wong Report at 4.) The opinion is offered for the sole purpose of rebutting Smith's opinion that the "Penon reports, standing alone, are not valid to tabulate and compute the performance of the E-Cat" based upon Penon's use of COP to calculate the performance of the E-Cat. (Smith Report at 12-13 and 21.)

The Defendants argue that Dr. Wong's first opinion "would not be helpful to the jury because it is speculative, unreliable, and based on insufficient facts and incorrect assumptions." (ECF No. 197 at 7.) Specifically, the Defendants argue that: (1) Dr. Wong cannot testify competently regarding "the way the E-Cat Plant functions" or "the way the E-Cat Plant was operated" (*id.*); (2) Dr. Wong's opinion is not based on science, but only what he was told was agreed to (*id.* at 8); and that (3) Dr. Wong's testimony will not assist the trier of fact (*id.* at 13). The Defendants' argument misstates and/or misrepresents Dr. Wong's opinion. As expressly noted in the Wong Report, Dr. Wong is not opining "as to the nature of the reaction underlying the E-Cat technology or whether such reaction is in fact occurring." (Wong Report at 2.). Such an opinion is left solely and definitively to the Expert Responsible for Validation agreed-upon by the parties. Rather, Dr. Wong's first opinion is directed only toward rebutting the Defendants' experts' conclusion that "COP" is an improper measurement, and the opinion is admissible pursuant to *Daubert*.

First, Dr. Wong is sufficiently qualified to opine that the COP measurement is justified for the E-Cat. Defendants notably do not attack Dr. Wong's overall qualifications; rather, Defendants attack Dr. Wong's qualifications only as they apply to the E-Cat technology. That is not relevant, however, based upon the limited matter upon which Dr. Wong intends to testify. In fact, if this Court were to accept Defendants' qualification argument as true, Mr. Smith's and Mr. Murray's testimony should similarly be excluded as Smith also lacks any knowledge and/or experience with respect to the E-Cat and LENR technology, and Murray's knowledge is limited at best. (*See* ECF No. 215; Smith Tr. ("Exhibit D.") 27: 20-21; Smith Tr. 37: 4-6; Smith Tr. 45:18-19; Smith Tr. 128:23-24; Smith Tr. 130:9-20; Murray Tr. ("Exhibit E") 293:9-15.) Notwithstanding Defendants'

argument, Dr. Wong maintains considerable experience with respect to thermodynamics, as well as experience with power plants. (Wong Report at Ex. 4.) Dr. Wong's qualifications are sufficient for the purpose of rebutting Defendants' experts' opinion on whether COP is a proper measurement of efficiency.

Second, Dr. Wong's testimony is reliable pursuant to *Daubert*. Dr. Wong's conclusion is derived from reviewing the Murray Disclosure, the Smith Report and the Penon Report; from interviewing Dr. Rossi regarding the systems utilized; and from inspecting and taking measurements of the Doral Facility. (Wong Report at 3.) Such an in depth review is sufficient to establish reliability. *Nature's Prods. v. Natrol, Inc.*, No. 11-62409-CIV, 2013 U.S. Dist. LEXIS 185676 (S.D. Fla. Oct. 7, 2013). This is particularly so given that Dr. Wong's only purpose is to point out the flaws inherent in the opinions of Murray and Smith. *See, e.g.*, *Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011). Moreover, Defendants' own expert Mr. Smith relied solely upon the information provided by Defendants and did no independent investigation and/or observation of the Doral Facility prior to rendering his report. (Smith Tr. 65:9-14; 129-131; 282-283). Accordingly, should the court find that the information relied upon by Dr. Wong was insufficient, such finding would be fatal to the reliability of Mr. Smith's testimony as well.

Lastly, Dr. Wong's testimony will assist the trier of fact. Rebuttal testimony that points out the flaws of another expert's report "would be helpful for the jury." *See Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011) (citing *1st Source Bank v. First Resource Fed. Credit Union*, 167 F.R.D. 61, 65 (N.D. Ind. 1996)).

B. Second Opinion: Relationship Between Electrical Input and COP

Dr. Wong's second opinion states that "[t]here are clear and logical explanations for an inverse relationship between the amount of power input into a device and the COP of that device. In fact, not only are such explanations logical, they should be expected from the way the E-Cat plant was operated." (Wong Report at 4.) This opinion is intended to rebut Murray's opinion that "there is no logical reason why the COP should be changing inversely to the amount of power imputed [sic] given that the same E-cat plant was used throughout the 'guaranteed performance test.'" (Murray Disclosure at 2.)

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The Defendants argue that Dr. Wong's second opinion is "speculative, unreliable, and based on insufficient facts and incorrect assumptions" for the same reasons set forth as to the first opinion (ECF No. 197 at 7), and because the second opinion is "nothing more than the application of simple math to a process he does not understand" (*id.* at 11). Once again, the Defendants are confusing the issues and attempting to distract from the relevant matters upon which Dr. Wong is opining.

As stated above, Dr. Wong does not make any conclusions or opinions regarding the underlying E-Cat technology. Such an evaluation was solely the job of the Expert Responsible for Validation agreed-upon by the parties. Rather, Dr. Wong's second opinion is intended to correct a flaw in the Murray Disclosure—including Murray's misapplication of the COP equation as it relates to the FPL data. In correcting Murray's flaw, Dr. Wong does more than apply "simple math." Dr. Wong applied the information derived from the Smith Report, the Wong Report, and the Penon Report, in addition to information derived from his interviews with Dr. Rossi. Should this Court determine that Murray's opinion that "there is no logical explanation" for the data recorded by Dr. Penon based solely upon the *ipse dixit* of Murray (it should not), then certainly Dr. Wong's evaluation of the COP equation and explanation of the relationship between the data input into such equation carries the same, if not greater, reliability. As such, Dr. Wong's second opinion is reliable, will assist the trier of fact as detailed in Section III-A above, and is necessary to demonstrate facts not considered in Murray's Disclosure. *See Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011).

C. Third Opinion: Suitability of Work Conditions Due to Heat Energy Generated

Dr. Wong's third opinion states that "[u]nder the conditions described at the Doral Facility, it was more than possible to expel 1MW of heat energy without rendering the Doral Facility 'unsuited for a human working environment.'" (Wong Report at 4.) This opinion is intended to rebut Murray's opinion that given the conditions at the Doral Facility, the supply of 500 kw to 800 kw of heat would have rendered the Doral Facility "unsuited for a human working environment" (Murray Disclosure at 2) and Smith's opinion that the "E-Cat never produced the energy which was claimed for it" because "by the process of elimination" the claimed energy never existed" (Smith Report at 21).

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The Defendants argue that Dr. Wong's third opinion is "speculative, unreliable, and based on insufficient facts and incorrect assumptions" because Dr. Wong considered Dr. Rossi's statements pertaining to the existence of a heat exchanger at the Doral Facility. (ECF No. at 13-20.) Again, the Defendants confuse the difference between a fact witness and an expert witness. The Defendants hinge their argument on the fact that Dr. Wong did not see the heat exchanger and, therefore, does not know whether or not it existed. (*Id.*) Notably, Dr. Wong is not opining to the heat exchanger's existence. Non-expert witnesses, including Dr. Rossi and Mr. James Bass have already testified as to that fact. Dr. Wong, on the other hand, is opining that *if* the heat exchanger existed as described (and as testified to), it *could have* dissipated enough heat to make the working conditions at the Doral Facility suitable. Ironically, applying the Defendants' argument to the testimony of both Murray and Smith, neither person's testimony would be admissible due to the fact that they had no personal knowledge as to whether the heat exchanger existed or not. Since Defendant's arguments cut both ways, if this Court were to find Dr. Wong's personal knowledge of the heat exchanger renders his testimony unreliable, Murray and Smith's testimony on the matter would be similarly inadmissible rendering Dr. Wong's rebuttal unnecessary. Moreover, Dr. Wong is more than qualified to opine on the dissipation of heat at the Doral Facility based upon his experience in thermodynamics set forth above, and the books and articles he published thereon. (Wong Report at Ex. B.)

With respect to reliability, Dr. Wong's methodology in reaching his conclusion is more than sufficient pursuant to *Daubert*. Specifically, Dr. Wong inspected the Doral Facility (unlike Mr. Smith); observed the ventilation—including large loading bay doors, two large ventilation fans, and the second floor heat exchanger area with three bays of windows accessible for ventilation; took measurements; and considered the testimony and information provided by Dr. Rossi. (Wong Report at 3-4.) The information provided to and considered by Dr. Wong included the exact specifications of the heat exchanger, including the composition, length, interior diameter, total surface area, encasement and air flow. (*Id.*) Pursuant to such investigation, Dr. Wong applied various well established equations to determine that "the described heat exchanger would have been more than sufficient to expel in excess of 1MW of heat energy from the Doral Facility." (*Id.* at 7.) Such methodology is sufficient. *Nature's Prods. v. Natrol, Inc.*, No. 11-62409-CIV, 2013 U.S. Dist. LEXIS 185676 (S.D. Fla. Oct. 7, 2013).

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Lastly, Dr. Wong's third opinion will assist the trier of fact. Notably, both Murray and Smith fail to consider the existence of a heat exchanger. In fact, Smith expressly declined to consider that a heat exchanger was even a possibility, notwithstanding sworn testimony as to its existence. Smith testified:

Q: Your – your report was predicated upon the assumption that there was no heat exchanger, correct?

A: Correct.

Q: Okay. So if there was a heat exchanger, there would be different variables that you had not accounted for in this report, correct?

A: I – I can't answer that. Know nothing about it and – and a heat exchanger, even if it's installed, may not work. There may have been a heat exchanger there; it may not have functioned.

Q: But you don't know one way or another. If there was a functioning heat exchanger there, sir, would that change the findings in your report?

A: It may, it may not. It probably will not.

Q: Why is that?

A: Because, again, I don't believe it was there, based on my understandings of thermodynamics and what I have – what pictures I have seen of the facility, I have no reason to believe that it was there.

Q: Well, I'm asking you to assume, sir, that it was.

A: I'm not taking that assumption. Sorry.

(Smith Trans. at 184-185.)

Smith indicates that he reached his conclusion by "process of elimination." (Smith Report at 21.) Dr. Wong's testimony will assist the jury by showing the inherent flaws of the Defendants' expert reports, including, but not limited to, the failure to eliminate all possibilities for the dissipation of heat. *See Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011).

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D. Fourth Opinion: Consistency with Energy Reported in the Penon Report

Dr. Wong's fourth opinion is similar to his third, and states that "[u]nder the conditions observed and described at the Doral Facility, it was more than possible to expel 1MW heat energy from the Doral Facility consistent with the amount of energy reported in Dr. Penon's report." (Wong Report at 4.) The fourth opinion is also intended to rebut Murray's opinion that given the conditions at the Doral Facility, the supply of 500 kw to 800 kw of heat would have rendered the Doral Facility "unsuited for a human working environment" (Murray Disclosure at 2) and Smith's opinion that the "E-Cat never produced the energy which was claimed for it" because "by the process of elimination" the claimed energy never existed" (Smith Report at 21).

Defendants' arguments with respect to Dr. Wong's fourth opinion are exactly the same as the arguments set forth with respect to the third opinion, relating to Dr. Wong's purported lack of knowledge as to the existence of a heat exchanger. (ECF No. 197 at 13-20.) Accordingly, for the same reasons set forth above, Dr. Wong's fourth opinion is admissible pursuant to *Daubert*. Simply, Dr. Wong's opinion is based upon an inspection of the Doral Facility, observations made at the Doral Facility, and interviews with Dr. Rossi pertaining to the heat exchanger in question. (Wong Report at 3-4.) This opinion will assist the trier of fact in understanding facts that Murray and Smith failed and/or refused to consider in reaching their respective conclusions. *See Pandora Jewelers 1995, Inc. v. Pandora Jewelry, LLC*, No. 09-61490-CIV, 2011 U.S. Dist. LEXIS 62969 (S.D. Fla. Jun. 7, 2011).

Dated: March 30, 2017.

Respectfully submitted,

/s/John W. Annesser, Esq.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by in the manner specified below on March 30, 2017 all counsel or parties of record on the attached Service List.

/s/John W. Annesser, Esq.
John W. Annesser, Esquire

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