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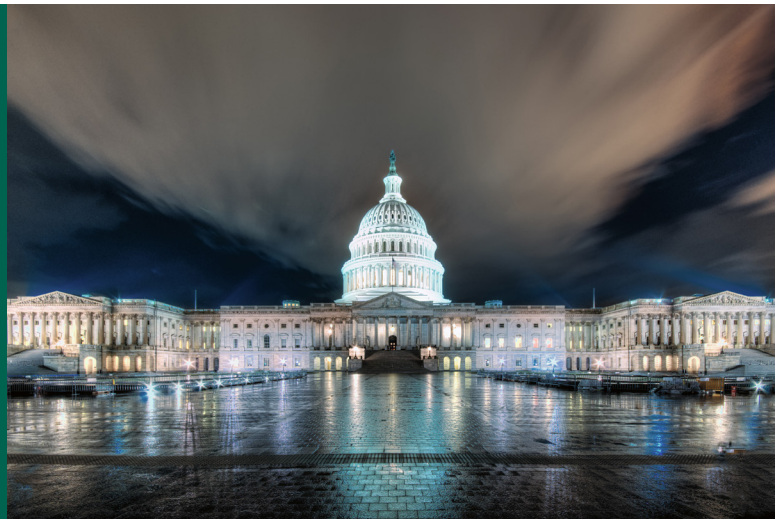

WAS THE JURY REASONABLY CERTAIN IN *HUNTSMAN*?

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The case of *Huntsman International v. Praxair* suggests a limitation on the power of juries to draw their own conclusions from the evidence presented in trial. As a result, valuation professionals face a dilemma when calculating compensatory damages. At what point does reasonable certainty in an opinion become unreasonable?

Introduction

The foundation for a compensatory damages opinion is built on the difference between what should have happened and what really happened.

In the case of *Huntsman International, L.L.C. v. Praxair, Inc.*, a jury found that what really happened was that by breaching its supply contracts with Huntsman International, L.L.C. ("Huntsman"), Praxair, Inc. ("Praxair") caused Huntsman to earn $93 million less than it should have earned. A higher court, however, disagreed, replacing the jury's conclusion with the opinion of an expert witness.

Background

Praxair was a supplier of industrial gas, and its Geismar, Louisiana, plant was connected to the adjacent Huntsman chemical manufacturing plant via a pipeline. The parties entered into four contracts between 1970 and 1998 that required Praxair to supply and Huntsman to purchase specific amounts of carbon monoxide gas and hydrogen gas every day.

Huntsman used the hydrogen gas to produce aniline, a chemical used in the manufacture of a variety of products, including the dye that makes blue jeans blue, over-the-counter headache medicine, and herbicide. Huntsman used the carbon monoxide, along with the aniline, to make methylene diphenyl diisocyanate ("MDI"), an ingredient in the production of many types of polyurethane foam.

Huntsman also had contracts with its customers to supply aniline and MDI, and these customers represented about two-thirds of the volume of its Geismar plant. Sales to these contract customers were at contractually determined prices, and Huntsman's margin on these sales was easily calculable.

The remaining production of the plant was sold on the spot market, and spot prices could be volatile.

The Dispute

Huntsman filed its complaint against Praxair in 2014, alleging that from 2004 to 2013, Praxair repeatedly failed to supply the contractual amounts of carbon monoxide

and hydrogen gas, resulting in lost sales and lost profits to Huntsman. Huntsman presented an expert witness who testified that the Huntsman plant had historically sold all its production and that but for the interruptions in the supply of gas, Huntsman would have produced and sold another 98 million pounds of MDI and another 32.1 million pounds of aniline. My reading of the appellate decisions gives me the impression that this lost production was not a focus of disagreement.

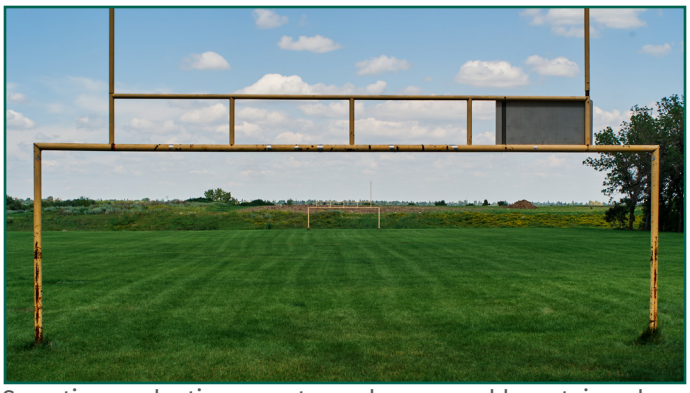
Huntsman's expert then turned to the question of how much additional profit Huntsman would have earned had it produced and sold these additional pounds of product, and that is where things got difficult.

The inadequate supply of gas caused a reduction in the Huntsman plant output but not a reduction so large that Huntsman failed to satisfy its obligations to its contract customers. The sales that were lost were sales to walk-up customers, who would have paid a spot price that was independent of and presumably higher than the price paid by contract customers. However, the prices at which spot sales were made were variable, and the price at which spot sales that did not take place would have taken place was impossible to determine.

Further complicating matters, the Huntsman sales records did not allow for specific identification of spot sales and contract sales. Because spot sales were typically at a higher price and, therefore, a higher margin than contract sales, the Huntsman expert's opinion was that there was a reasonably certain floor for the damages based on the margin on the sales made. That is, if the sales made had a margin of X percent, we could be reasonably certain that the sales that were lost would have had a margin greater than X percent.

Because there was no reliable way to tell exactly how much more profitable the lost incremental spot sales might have been, Huntsman's expert based the margin on the lost sales on the average margin across all sales and clarified that this represented a lower boundary on the actual amount of the damages. The result of this procedure was a conclusion of damages of $37 million.

Counsel for Huntsman, in the closing argument, reminded the jury of the lost profits calculation but suggested that the margin on the lost production was understated in the Huntsman expert's calculation. Counsel asked the jury to adopt the lost production number but to apply a higher margin per pound based on the top one-third of the margins per pound earned over the period. The idea was that if two-thirds of sales are lower-margin contract sales and one-third of sales are higher-margin spot sales, then the relevant margin is the margin on that top one-third. The jury agreed, applying the margin suggested by counsel to arrive at a damages award of $93 million.



Sometimes valuation experts can be reasonably certain only about a range of value, with the upper and lower points acting as "goalposts."

Verdict Appealed

Praxair appealed the decision on several grounds, one of which was related to the amount of damages. Praxair argued that Huntsman did not keep adequate records of the sales it failed to realize, and without "definite proof of lost sales, no lost sales can be attributed to [the] breach of the supply contracts; therefore there can be no award for lost profits."[1]

The Court of Appeals for the Fourth Circuit of Louisiana (wisely, in my opinion) disagreed: "We find it wholly unreasonable and overly burdensome to expect that Huntsman would maintain some sort of list or log for sales not made."[2] The appeals court found "there was a reasonable factual basis for the jury's conclusion and that their damages award was not clearly wrong" and affirmed the decision.[3]

Undaunted, Praxair appealed to the Supreme Court of Louisiana, and in this venue, it found a more friendly audience for its arguments, with a 4-3 majority finding that "counsel's proposed method for determining a profit margin for lost sales is not reasonably supported by the evidence or justifiable inferences drawn therefrom … Without evidence of demand for those products at those margins at the time of each breach, this approach fails to prove lost profits with reasonable certainty and rests on speculation and conjecture."[4]

The dissenting minority found, "The record shows there was sufficient reasonable evidence for the jury to have accepted [the] lost profits formula, but to have rejected elements of the components thereto."[5] The dissent found the inclusion of contract sales in the calculation of the appropriate damages per pound of production lost "downwardly skewed the calculation"[6] and that expert testimony "cannot usurp the role of the factfinder when their conclusions are based on a reasonable certainty."[7]

Conclusion

As experts, sometimes we can be reasonably certain in our specific opinions. Other times, however, we can only be reasonably certain of goalposts—the damages are not more than this, and they are not less than that. We call these "Goldilocks" calculations because one set of inputs to the calculation gives damages that are too low, and another set of inputs to the calculation gives damages that are too high, while we are reasonably certain the answer is somewhere in between.

But in *Huntsman*, the expert was faced with data that allowed the calculation of only one goalpost—the lower one. The jury was put in a position to decide the damages award based on that goalpost, other evidence presented, and, apparently, the argument of counsel that a higher dollar value should be assigned to each pound of lost sales. It did so, and the Supreme Court of Louisiana said that is not OK.

I worry this decision will put finders of fact in an awkward position. In this case, the Supreme Court of Louisiana implied that if there is only a lower goalpost, the award of damages ought to be consistent with that lower goalpost. Does that mean in a situation where there is only a higher goalpost the award ought to be consistent with that higher goalpost? If we have both goalposts and, therefore, a range of damages, what is the finder of fact to do?

I was not there for the testimony that resulted in the original decision, and I did not hear the arguments that led to the decisions upon appeal, but the published opinion of the Supreme Court of Louisiana concerns me. As experts, valuation professionals are there to testify only about opinions of which we are reasonably certain, and we are advocates only for those opinions, not for any particular position. In this case, it seems Huntsman's expert was in a position of knowing only that damages were at least some amount, and the expert left it to the trier of fact—in this case, a jury—to determine the actual amount.

It is entirely possible the Supreme Court of Louisiana had information not mentioned in the published opinion that led a majority of justices to believe that damages were $37 million, but as the decision is written, I worry it unintentionally pushes valuation professionals to feign a level of certainty in conclusions that sometimes does not exist.

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References:

1 Huntsman International, L.L.C. v. Praxair, Inc., 22-0777, 13 (La. App. 4 Cir. 4/19/24).

2 Ibid., 19.

3 Ibid., 27.

4 Huntsman International, L.L.C. v. Praxair, Inc., 24-0627, 14 (La. 2/6/25).

5 Ibid., 25.

6 Ibid.

7 Ibid.