

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

CIVIL ACTION NO: 4:15-CV-00077-JHM

CHARLES MORRIS, et al.

PLAINTIFFS

V.

TYSON CHICKEN, INC., et al.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court on Defendants’ Motion to Exclude the Testimony of Kyle Stiegert. [DN 175]. Fully briefed, this matter is ripe for decision.

I. BACKGROUND

Plaintiffs have poultry growing arrangements with Defendant Tyson Chicken, Inc. [DN 18 ¶¶ 2–20]. Plaintiffs allege that “Tyson, and its named employees, acted illegally and unconscionably in a manner that prevented [] Plaintiffs from growing chickens in a fair and profitable manner.” [*Id.* ¶ at 32]. Plaintiffs sued Defendants alleging violations of the Packers and Stockyards Act of 1921 (PSA), breach of contract, breach of the implied covenant of good faith and fair dealing, and fraud. [*Id.* at ¶¶ 165–97].¹ Defendants retained Stiegert to provide expert testimony to support their claims in this case. Defendants seek to exclude Stiegert’s testimony. [DN 175].

II. STANDARD OF REVIEW

Federal Rule of Evidence 702 provides that “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts

¹ The Court dismissed some of the claims in Plaintiffs’ Amended Complaint. [DN 35]. The claims mentioned here are the claims that remain.

or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.” Under Rule 702, the trial judge acts as a gatekeeper to ensure that expert evidence is both reliable and relevant. *Mike’s Train House, Inc. v. Lionel, LLC*, 472 F.3d 398, 407 (6th Cir. 2006) (citing *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137 (1999)).

Parsing the language of the Rule, it is evident that a proposed expert’s opinion is admissible, at the discretion of the trial court, if the opinion satisfies three requirements. First, the witness must be qualified by “knowledge, skill, experience, training, or education.” FED. R. EVID. 702. Second, the testimony must be relevant, meaning that it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” *Id.* Third, the testimony must be reliable. *Id.*

In re Scrap Metal Antitrust Litig., 527 F.3d 517, 528–29 (6th Cir. 2008). “Rule 702 guides the trial court by providing general standards to assess reliability.” *Id.*

In determining whether testimony is reliable, the Court’s focus “must be solely on principles and methodology, not on the conclusions that they generate.” *Daubert v. Merrell Dow Pharm. Inc.*, 509 U.S. 579, 595 (1993). The Supreme Court identified a non-exhaustive list of factors that may help the Court in assessing the reliability of a proposed expert’s opinion. These factors include: (1) whether a theory or technique can be or has been tested; (2) whether the theory has been subjected to peer review and publication; (3) whether the technique has a known or potential rate of error; and (4) whether the theory or technique enjoys “general acceptance” within a “relevant scientific community.” *Id.* at 592–94. This gatekeeping role is not limited to expert testimony based on scientific knowledge, but instead extends to “all ‘scientific,’ ‘technical,’ or ‘other specialized’ matters” within the scope of Rule 702. *Kumho Tire*, 526 U.S. at 147. Whether the Court applies these factors to assess the reliability of an expert’s testimony “depend[s] on the nature of the issue, the expert’s particular expertise, and the subject of his testimony.” *Id.* at 150 (quotation omitted). Any weakness in the underlying factual basis bears on the weight, as opposed to admissibility, of the evidence. *In re Scrap Metal Antitrust Litig.*, 527 F.3d at 530 (citation omitted). *See also Brooks v.*

Caterpillar Glob. Mining Am., LLC, No. 14CV-00022, 2017 WL 5633216, at *1–2 (W.D. Ky. Nov. 22, 2017).

III. DISCUSSION

Plaintiffs retained Stiegert to determine whether Tyson’s actions adversely affected competition and to assess their damages. [DN 180 ¶ 11]. Stiegert opines that Tyson exercised monopsony power over Plaintiffs and that they suffered damages as a result. [*Id.* at ¶¶ 18–19]. He defines a monopsony as “a market structure where there is only one buyer (known as a monopsonist) for a particular good or service, such as chicken growing services.” [*Id.* at ¶ 63]. Defendants ask that the Court exclude Stiegert’s testimony because (1) he is unqualified to give poultry-related opinions, (2) his opinion on Tyson’s monopsony status is unreliable, and (3) his damage calculations are unreliable. [DN 175 at 12, 16, 33]. The Court addresses each issue in turn.

A. Qualifications

Defendants argue that since Stiegert has no knowledge, skill, experience, training, or education in the poultry industry and he makes statements outside of his area of expertise, Stiegert’s poultry-related opinions are inadmissible. [*Id.* at 33]. Plaintiffs respond that Stiegert is “entitled to opine on what data regarding the chicken industry and chickens provides necessary background . . . even though he has not grown chickens himself.” [DN 193 at 10].

“To be qualified as an expert witness under Rule 702, an expert need not be a blue-ribbon practitioner with optimal qualifications or have an intimate level of familiarity with every component of a product as a prerequisite to offering expert testimony.” *Jackson v. E-Z-GO Div. of Textron, Inc.*, 326 F. Supp. 3d 375, 387–88 (W.D. Ky 2018) (cleaned up). “In other words, experts need not even have direct experience with the precise subject matter or product at issue.” *Id.* at 388 (cleaned up). Furthermore, “an expert is permitted wide latitude to offer opinions, including those that are not based

on firsthand knowledge or observation” as long as “the expert’s opinion will have a reliable basis in the knowledge and experience of his discipline.” *Daubert*, 509 U.S. at 592.

While Stiegert’s experience with the broiler growing industry may be lacking, Stiegert does have significant experience in economics. Stiegert is a professor in the Department of Agricultural and Applied Economics at the University of Wisconsin-Madison. [DN 180 at ¶ 1]. Before Stiegert’s almost two decades as a professor at the University of Wisconsin-Madison, he spent eight years as a research-teaching faculty member at Kansas State University. [*Id.* at ¶ 2]. While he was pursuing his doctorate in agricultural economics, he spent four years as a United States Department of Agriculture (USDA) research fellow at Purdue University. [*Id.*]. Stiegert was also a research assistant for two years at the University of Nebraska-Lincoln, while working on his master’s degree in agricultural economics. [*Id.*]. His primary research areas are agricultural and food markets, both international and domestic. [*Id.* at ¶ 3]. Stiegert has over two decades of experience in economic analysis, research, and teaching. [*Id.* at 80]. He has taught courses such as Agricultural Finance, Econometric Analysis, Applied Microeconomics, Quantitative Methods, and Agribusiness Management. [*Id.*]. Additionally, Stiegert has consulted on antitrust issues. [*Id.* at 82]. The Court is satisfied that Stiegert has the qualifications to determine whether Tyson’s action adversely affected competition and to assess Plaintiffs’ damages. Defendants concerns about Stiegert’s experience are best suited for cross-examination. *See Brooks*, 2016 WL 276126, at *3 (finding that an engineering expert’s “lack of practical experience designing safety features on roof bolters is an issue of weight best suited for cross-examination”) (citation omitted).

Next, Defendants argue that some of Stiegert’s opinions fall outside the scope of his expertise. [DN 175 at 33]. The opinions that Defendants take issue with relate to the facts and data that Stiegert relies on to reach his economic opinions, which are well within his expertise. *See Maiz v. Virani*, 253 F.3d 641, 665 (11th Cir. 2001) (affirming the district court’s decision to allow an economics expert

to testify on damages related to real estate fraud, even though the expert had no specific real estate experience). To the extent there are weaknesses in Stiegert's qualifications to testify about a topic related to monopsony power and damages, cross-examination is the appropriate time to address those weaknesses. Stiegert, however, will not be able to testify to poultry-related opinions that have no relation to his ultimate conclusions.

B. Reliability

Defendants argue that Stiegert's opinion about Tyson's monopsony status and his damages calculations are unreliable. [DN 175 at 12, 16]. Plaintiffs respond that Stiegert's opinion about Tyson's monopsony power is based on extensive analysis and that Defendants issues with Stiegert's damages calculations should be left for trial. [DN 193 at 13, 22].

1. Monopsony

Defendants argue that Stiegert's opinion about Tyson's monopsony status does not meet Rule 702's standard because he did not use reliable principles or methods, he did not reliably apply his principles or methods, and it is not based on sufficient facts or data. [DN 175 at 12].

Defendants specifically take issue with who Stiegert includes in the relevant market to determine if Tyson is a monopsony. [DN 175 at 13]. Stiegert relied on information about general practices in the broiler growing services market and the location of the growers who contract with Tyson at Robards to determine the boundaries of the geographic market for Robards. [DN 180 ¶ 71]. After determining that Perdue Farms was the only integrator within the geographic boundaries of Robards, Stiegert determined Perdue was not in the relevant market based on testimony from Plaintiffs and the location of the farms of two Plaintiffs in relations to Perdue's facility. [*Id.* at ¶¶ 72–76]. Stiegert testified that Tyson being a single integrator and little switching between Perdue and Tyson are the elements that form the basis of his monopsony opinion. [DN 177 Stiegert Dep. 238:22–

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