

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

KENNETH MARTIN,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
YELLOW TRANSPORTATION, INC.	:	No. 05-2958
and KINEDYNE CORPORATION,	:	
Defendants.	:	

MEMORANDUM AND ORDER

Schiller, J.

February 28, 2006

Plaintiff Kenneth Martin commenced this action against Defendants Kinedyne Corporation (“Kinedyne”) and Yellow Transportation, Inc. (“Yellow Transportation”). Plaintiff alleges that he suffered injuries while helping to tailgate a shipment of heavy metal brackets manufactured by Kinedyne from the back of a truck owned by Yellow Transportation. Presently before the Court are Defendants’ motions to preclude the testimony of Plaintiff’s expert, Roland B. Brown. For the reasons below, the Court grants Defendants’ motions and precludes Brown from testifying at trial in this case.

I. BACKGROUND

Plaintiff Martin, a citizen of Pennsylvania, alleges that he was seriously injured on August 19, 2003, while working at the Great Dane Trailers (“Great Dane”) warehouse in Lancaster, Pennsylvania. (Amend. Comp. ¶¶ 2, 5-6.) According to Plaintiff, he was helping the Yellow Transportation driver tailgate a shipment to the back of a truck when a bundle of heavy metal bracing

brackets (“E beams”) tipped over and fell on Plaintiff’s foot.¹ (*Id.* ¶¶ 8-10.) The Complaint alleges that the impact caused him to partially fall from the rear of the truck and left him dangling with his left leg pinned under the bundle and his body thrown against the truck. (*Id.*) Plaintiff avers that he suffered multiple serious injuries as a result and required numerous surgeries. (*Id.* ¶¶ 10-12.) Kinedyne, a New Jersey corporation, manufactured and prepared the E beams for shipment. (*Id.* ¶¶ 4-6.) Yellow Transportation, an Indiana corporation, owned and operated the truck that delivered the E beams. (*Id.* ¶¶ 3, 5-6.)

Plaintiff asserts that Yellow Transportation was negligent in: (1) failing to provide adequate personnel and a safe means for tailgating its cargo; (2) failing to exercise reasonable and ordinary care for Plaintiff’s safety; (3) failing to make the shipment safe for delivery to a warehouse which it knew had no loading dock; (4) failing to train its personnel in industry standards for unloading cargo; and (5) failing to protect Plaintiff from or warn Plaintiff of the hazard created by the unstable bundles of E beams. (*Id.* ¶ 16.) Plaintiff alleges that Kinedyne was negligent in: (1) failing to prepare the shipment of load locks in a safe and reasonable manner for delivery at the Great Dane warehouse; and (2) failing to adhere to proper packaging methods and shipping procedures. (*Id.* ¶ 15.)

Defendants deny Plaintiff’s allegations, asserting contributory negligence and assumption of the risk as affirmative defenses. (*See* Def. Kinedyne’s Answer to Amend. Compl.; Def. Yellow Transp.’s Answer with Separate Affirmative Defenses and Cross-cl. to Pl.’s Amend. Compl.) In addition, both Defendants have filed cross-claims for contribution and/or indemnification. After the

¹ “Tailgating” refers to the movement of freight to the rear of the trailer inside a truck. (*See* R. at 7 (February 14, 2006).)

close of expert discovery, Defendants filed separate Daubert motions challenging the admissibility of Plaintiff's proffered trucking safety expert, Roland B. Brown. (*See* Def. Yellow Transp.'s Mot. to Preclude Expert Report & Any Expert Test. of Roland B. Brown; Def. Kinedyne's Mot. to Preclude Test. of Pl.'s Expert, Roland B. Brown, and for Summ. J.) On February 14, 2006, this Court conducted a Daubert hearing to assess the admissibility of Brown's proffered expert testimony.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Evidence 702, the admissibility of expert testimony depends on three distinct requirements: (1) whether the witness is qualified, (2) whether the methodology underlying the testimony is reliable, and (3) whether the opinion will be helpful to the factfinder.² *See* FED. R. EVID. 702; *Daubert v. Merrell Dow Pharms.*, 509 U.S. 579, 589-92 (1993). Under the Supreme Court's landmark holding in *Daubert*, the judge acts as a gatekeeper, reviewing at the outset a witness' qualifications, the reliability of the proposed testimony and its "fit" or relevance. *See Daubert*, 509 U.S. at 592-93, 597 (relying on FED. R. EVID 104(a)); *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) (extending *Daubert* review to all expert testimony); *Oddi v. Ford Motor Co.*, 234 F.3d 136, 145 (3d Cir. 2000). The judge's inquiry is a flexible one, with the

² Federal Rule of Evidence 702 states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training or education, may testify thereto in the form of an opinion or otherwise if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

FED. R. EVID. 702.

burden falling on the expert's proponent to establish the reliability and admissibility of the expert's testimony by a preponderance of the evidence. *See Oddi*, 234 F.3d at 144-45 (*citing Daubert*, 509 U.S. at 593 n.10, 594-95).

III. DISCUSSION

A witness may be qualified as an expert based on knowledge, skill, experience, training or education. FED. R. EVID. 702; *see also Oddi*, 234 F.3d at 145 (expert's qualifications are interpreted liberally) (*citing In re: Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 741 (3d Cir. 1994) [hereinafter "*Paoli II*"]. To be reliable, an expert's opinions must be based on sufficient factual information, must utilize reliable methodology, and must reliably apply the expert's methods to the facts. *See* FED. R. EVID. 702. To properly assess the reliability of a witness' methodology and proposed testimony, the court must consider the following factors:

(1) whether a method consists of a testable hypothesis; (2) whether the method has been subjected to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.

Paoli II, 35 F.3d at 742 n.8. Expert testimony that meets the qualification and reliability requirements is admissible "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue" FED. R. EVID. 702. In other words, a witness' testimony meets the "fit" prerequisite if his opinions present relevant evidence that helps the factfinder. *See Oddi*, 234 F.3d at 145 (*citing Daubert*, 509 U.S. at 591-92; *Paoli II*, 35 F.3d at 743).

In their written submissions and at the Daubert hearing, both Defendants focused primarily on the reliability of Roland B. Brown's methodology and opinions. The Court finds, however, that Brown's proffered testimony fails to satisfy the "fit" requirement. Furthermore, the Court finds that Brown fails to satisfy the qualification requirement with respect to his proffered testimony about Kinedyne's packaging of the shipment of E beams.

A. Brown's Proffered Testimony Will Not Assist Jury

Brown's testimony, while related to disputed matters of liability, will not assist the jury in understanding the evidence or determining facts in issue. Plaintiff concedes there are no local, state or federal statutes or regulations on the responsibilities of tailgating that might necessitate an expert's explanation or interpretation. (*See* Pl.'s Mem. of Law in Resp. to Yellow Transp.'s & Kinedyne's Mots. to Preclude Expert Test. at 4, 12-13; Pl.'s Second Mem. of Law at 4-5.) Indeed, Brown admitted that no industry-wide trucking standards exist; rather, the competitive practices of trucking carriers dictate responsibilities for tailgating shipments. (R. at 7-8, 13-14 (Feb. 14, 2006).) The numerous Great Dane and Yellow Transportation employees available to testify about their standard tailgating practices and procedures will provide the jury with the factual information needed to assess the tailgating responsibilities of the parties. (*See* Supplemental Mem. on Behalf of Def. Yellow Transp. to Preclude Expert Report & Any Expert Test. of Roland B. Brown on Behalf of the Pl. Exs. B [Depos. of Great Dane employee Andrew Fries], C [Depos. of Great Dane employee William Wissler], D [Depos. of Great Dane employee Kenneth Risser], & E [Depos. of Yellow Transp. supervisor Mike Krushinsky].)

The Court concludes the jury will be able to understand the evidence, determine the factual issues, and assess the liability of the parties without Brown's testimony. As Brown does not possess

specialized knowledge that will assist the jury in deciding the issues regarding the tailgating process in this case, the Court precludes his testimony. *See* FED. R. EVID. 702.

B. Brown Lacks Qualifications to Testify Regarding Packaging and Load Stability

With regard to Brown's opinions on packaging and load stability, Brown fails to meet the qualification requirement and the Court therefore precludes such testimony. Brown has worked in the trucking industry for over thirty-five years at all levels of management. (Def. Yellow Transp.'s Mot. to Preclude Expert Report & Any Expert Test. of Roland B. Brown Ex. B [hereinafter "Expert Report & CV of Roland B. Brown"] Expert Report at 1.) He has a B.S. in Business Administration and has received training and certification from various trucking associations. (*Id.* Curriculum Vitae at 1.) Brown is certified as a Director of Safety, Accident Investigator, and Driver Trainer by the North American Transportation Management Institute of the American Trucking Association (formerly known as the National Committee for Motor Fleet Safety). (*Id.* Expert Report at 2.) He has taught seminars in safety and has worked as a safety supervisor at numerous trucking companies. (*Id.* Curriculum Vitae at 2-4.) Brown states that much of his experience has involved the supervision of local deliveries of freight to customers and unloading facilities, including locations without loading docks. (*Id.* Expert Report at 1.)

Currently, Brown is the President and owner of National Trucking Safety Consultants, a position he has held since 1985. (*Id.*) His primary duties include: (1) consulting with trucking fleet operations regarding hiring, training, and supervising truck drivers and compliance with DOT, OSHA and other regulations; and (2) consulting with attorneys regarding accident investigation, driver qualifications, safety programs, and industry standards of the trucking industry. (*Id.* Curriculum Vitae at 1.) Brown has served as an expert witness in over eighty cases, both in state and

federal courts. (*Id.* Expert Report at 2.)

Brown's qualifications and Curriculum Vitae do not indicate any education, training, experience, or skill in engineering or design safety of packaging for heavy loads. *See* FED. R. CIV. P. 702. Brown does not proffer any consulting experience that involves advising manufacturers on safe packaging methods. Nor does Brown assert that his trucking industry work experience involved designing packaging or testing the safety of heavy loads for shipment. Brown's education, training, experience and knowledge relate primarily to trucking and loading safety practices, not to assessing manufacturer's packaging and shipping safety.

Liberal interpreting his qualifications as required by *Oddi* and *Paoli II*, the Court finds Brown is not qualified to offer expert opinions regarding the safety of the packaging method or the stability of the E beam bundles. *See Oddi*, 234 F.3d at 145; *Paoli II*, 35 F.3d at 741. Such expert opinions require either an engineering background or experience with designing or assessing safe methods for packaging and stabilizing heavy loads. Brown possesses neither. (*See* R. at 88; Expert Report & Curriculum Vitae of Roland B. Brown.) Furthermore, Brown acknowledged that no governmental regulations or written standards exist that define how products must be packaged. (R. at 101-102.) The lack of universal practices upon which to rely underscore the need for an expert in this area to have an independent basis of knowledge, skill or training. Accordingly, Court precludes Brown's testimony regarding packaging and load stability as well.

IV. CONCLUSION

For the reasons discussed above, Defendants' motions to preclude the testimony of Plaintiff's expert, Roland B. Brown, are granted.³ An appropriate Order follows.

³ Defendant Kinedyne also moved for summary judgment in its motion. Kinedyne's motion for summary judgment is denied, because genuine issues of material fact preclude judgment as a matter of law. *See* FED. R. CIV. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In reviewing the record on a motion for summary judgment, "a court must view the facts in the light most favorable to the nonmoving party and draw all inferences in that party's favor." *Armbruster v. Unisys Corp.*, 32 F.3d 768, 777 (3d Cir. 1994). Furthermore, a court may not make credibility determinations or weigh the evidence in making its determination. *See Reeves v. Sanderson Plumbing Prods.*, 530 U.S. 133, 150 (2000); *see also Goodman v. Pa. Tpk. Comm'n*, 293 F.3d 655, 665 (3d Cir. 2002). Here, genuine disputes exist regarding certain material facts in this case. (*See* Pl.'s Mem. of Law in Resp. to Defs.' Mots. at 19.) For example, whether Defendant Kinedyne breached its duty to safely package and prepare the load for shipment is an issue that must be resolved by a jury weighing the evidence presented at trial. Thus, summary judgment is denied.

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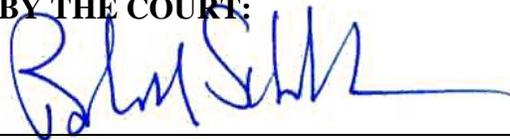
KENNETH MARTIN,	:	
Plaintiff,	:	CIVIL ACTION
	:	
v.	:	
	:	
YELLOW TRANSPORTATION, INC.	:	No. 05-2958
and KINEDYNE CORPORATION,	:	
Defendants.	:	

ORDER

AND NOW, this 28th day of **February, 2006**, upon consideration of Defendant Yellow Transportation, Inc.'s Motion to Preclude the Expert Report and Any Expert Testimony of Roland B. Brown on Behalf of the Plaintiff, Defendant Kinedyne Corporation's Motion to Preclude the Testimony of Plaintiff's Expert, Roland B. Brown, and for Summary Judgement, Plaintiff's response thereto, and for the reasons outlined above, it is hereby **ORDERED** that:

1. Defendant Yellow Transportation's motion (Document No. 15) is **GRANTED**.
2. Defendant Kinedyne Corporation's motion (Document No. 13) is **GRANTED in part** and **DENIED in part**, as follows:
 - a. The motion to preclude the expert testimony of Plaintiff's expert is **GRANTED**;
 - b. The motion for summary judgement is **DENIED**.

BY THE COURT:



Berle M. Schiller, J.