

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CLOVIS BRAXTON COLLINS * NO: 22-1204
*
VERSUS * SECTION: L
* JUDGE ELDON E. FALLON
MARQUETTE TRANSPORTATION * MAGISTRATE: 3
COMPANY, LLC AND AMERICAN * JUDGE DANA M. DOUGLAS
RIVER TRANSPORTATION CO, LLC *

ORDER AND REASONS

The Court has before it Defendant ARTCO’s Motion in Limine to exclude Plaintiff’s proffered expert testimony from Robert Borison, R. Doc. 45. ARTCO has responded in opposition, R. Doc. 56. Having considered the briefing, exhibits, and the applicable law, the Court rules as follows.

I. BACKGROUND

This case arises out of alleged negligence claims by Plaintiff Clovis Braxton Collins, an employee of Marquette Transportation Company, LLC (“Marquette”), who sustained injuries while aboard a vessel owned by Marquette moving barges maintained by American River Transportation Company, LLC (“ARTCO”). R. Doc. 14 at 1-2. Plaintiff slipped on cargo previously transported on the barge, which allegedly was not adequately removed or cleared off the deck. R. Doc. 14 at 2. Plaintiff sustained serious injuries to his back, neck, and other body parts from the fall on ARTCO’s barge. As a result of the accident, Plaintiff was and remains unfit and incapable of returning to his job as a seaman. R. Doc. 1 at 4.

Plaintiff asserts the following claims: (1) breach of duty of reasonable care, (2) failure to provide a reasonably safe place to work, (3) failure of ARTCO to ensure barges were adequately

cleaned after cargo had been removed, (4) creation and maintenance of an unseaworthy vessel and barge, (5) failure to properly train and supervise plaintiff, and (6) failure to provide minimum safety requirements, adequate equipment, or adequate personnel. R. Doc. 14 at 3.

In their answer, Defendant Marquette generally denies liability and asserts affirmative defenses, including (1) improper venue due to a valid and enforceable forum selection agreement, (2) failure to state a claim, (3) Plaintiff sustained no accident, (4) Marquette is not liable for Plaintiff's failure to exercise reasonable or ordinary care for his own safety, (5) Marquette is not liable, (6) Plaintiff's failure to mitigate damages or follow doctor's orders, (7) Plaintiff's medical, physical, and mental conditions pre-existed the alleged accident, (8) awarding punitive damages would be a violation of U.S. Constitution, (9) limited liability under Shipowners' Limitation of Liability Act, 46 U.S.C § 30501, (10) any injuries sustained were the fault of a third party, and (11) Plaintiff's claims are barred by prescription, preemption, statute of limitations and/or laches. R. Doc. 15 at 1-7.

For their part, Defendant ARTCO likewise generally denies liability and asserts affirmative defenses, including (1) Plaintiff's claims are barred by laches and/or statute of limitations, (2) Plaintiff is not a seaman rather a longshoreman or shoreside worker, (3) Plaintiff's injuries are his own fault and caused by an open and obvious condition, (4) ARTCO was not negligent, (5) potential unseaworthiness of the vessel did not proximately cause Plaintiff's injuries, (6) Plaintiff's injuries predated the alleged accident, (7) Plaintiff is not entitled to prejudgment interest on future damages nor punitive damages, (8) any injuries sustained were the fault of a third party, (9) Plaintiff failed to mitigate damages, and (10) limited liability under Shipowners' Limitation of Liability Act, 46 U.S.C. § 30501. R. Doc. 20 at 16-17.

Plaintiff seeks damages including, but not limited to: (1) compensatory, special, and punitive damages; (2) attorney's and expert fees; and (3) any other relief appropriate. R. Doc. 1 at 4; R. Doc. 16 at 1-4.

II. PRESENT MOTION

ARTCO now moves the court to exclude from trial the testimony of Plaintiff's proffered expert, Robert Borison. ARTCO argues that Borison's testimony fails to meet the requirements of Federal Rule of Evidence 702 governing expert testimony, asserting that Borison's testimony neither will help the trier of fact understand the evidence or determine a fact at issue, as required by Rule 702(a), nor is his testimony based on sufficient facts or data, as required by Rule 702(b).

In opposition, Plaintiff argues that Borison's opinions will help the jury understand maritime industry standards and regulations applicable to the various decks and surfaces workers like Collins need to traverse to perform their work. Accordingly, he argues that Borison's opinions will show that those industry standards dictated the need for adequately cleaned walkways and the need for nonskid coating on deck surfaces, and therefore that his opinions will show that better cleaning procedures and inspections could have prevented Plaintiff's injuries in this case.

III. APPLICABLE LAW

Federal Rule of Evidence 702 governs the admissibility of expert witness testimony. The Rule provides:

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 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.

Trial courts are gatekeepers of expert testimony and must determine whether proffered expert testimony is reliable and relevant before admitting it into evidence. *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 596-97 (1993). An expert’s proposed testimony must be relevant “not simply in the way all testimony must be relevant [pursuant to Federal Rule of Evidence 402], but also in the sense that the expert’s proposed opinion would assist the trier of fact to understand or determine a fact in issue.” *Bocanegra v. Vicmar Servs., Inc.*, 320 F.3d 581, 584 (5th Cir. 2003).

The Fifth Circuit has stated that:

“[t]here is no more certain test for determining when experts may be used than the common sense inquiry whether the untrained layman would be qualified to determine intelligently and to the best degree the particular issue without enlightenment from those having a specialized understanding of the subject involved in the dispute.”

Vogler v. Blackmore, 352 F.3d 150, 156 n.5 (5th Cir. 2003) (quoting 1972 Advisory Committee Notes to Rule 702). However, expert testimony should only be excluded on this basis if a court finds that “the jury could adeptly assess [the] situation using only their common experience and knowledge.” *Peters v. Five Star Marine Serv.*, 898 F.2d 448 (5th Cir. 1990).

IV. DISCUSSION

ARTCO argues that Borison’s expert testimony would not be helpful to the jury because his opinions do not “enlighten” an “untrained layman” with a “specialized understanding” of key issues in this matter. *See Vogler*, 352 F.3d 1at 156 n.5. It asserts that Borison provides only common-sense testimony that ARTCO “failed to clean the deck of the . . . barge[,]” based on Borison’s review of the depositions of Plaintiff, his captain, and a crewmember who witnessed Plaintiff’s accident.

But, while his report is inartfully drafted, Borison's opinion provides more than just an analysis that ARTCO's alleged failure to wash the barge resulted in Plaintiff's injuries. Borison also explains that, based on the evidence he reviewed, the barge on which Plaintiff fell did not have adequate non-skid coating, and that, on the day of Plaintiff's accident, the crew did not hold their regular morning safety meeting, or review the barge's safety inspection reports. As Plaintiff argues, Borison's opinions thus may well assist the jury in understanding industry requirements and standards, including the need for adequately cleaned walkways, nonskid coating on deck surfaces, and adequate cleaning and safety protocols. Borison can provide his opinion to the jury about how ARTCO failed to adequately comply with those industry standards, leading to Plaintiff's accident, and how compliance with industry standards could have prevented Plaintiff's injuries in this case. Accordingly, the Court holds that Borison's testimony complies with Rule 702's requirement that proffered expert testimony must aid the trier of fact in understanding the evidence or determining a fact at issue.

ARTCO also argues that Borison's testimony must be excluded because it is not based on sufficient facts or data, as required by Rule 702(b). ARTCO asserts that Borison's testimony is based on "unresolved facts," such as whether the barge had been recently cleaned or was even eligible for cleaning, and on which barge Plaintiff fell. But Borison based his expert testimony on the depositions of Plaintiff and other members of his crew on the day of the accident, as well as several other record documents. The fact that Defendant does not agree with the facts relied upon by Borison or his interpretation of those facts does not render Borison's opinions irrelevant or unreliable; if this matter proceeds to trial, Defendant may cross-examine Borison regarding all the facts in this matter and whether his expert report fits those facts, and the jury may thence weigh Borison's expert opinion based on that examination. It is "the role of the adversarial system, not

the court, to highlight weak evidence”—challenges related to the basis of Borison’s opinions are thus best suited for cross-examination, not exclusion under Rule 702. *Delta Towing, LLC v. Justrabo*, 2009 WL 3763868 (E.D.La. 2009) (citing *Primrose Operating Co. v. Nat’l Am. Ins. Co.*, 382 F.3d 546, 563 (5th Cir. 2004)). Accordingly, the Court holds that Borison’s testimony complies with Rule 702’s requirement that proffered expert testimony must be based on sufficient facts or data.

V. CONCLUSION

For the foregoing reasons, ARTCO’s Motion in Limine to exclude Plaintiff’s proffered expert testimony from Robert Borison, R. Doc. 45, is hereby **DENIED**, but without prejudice to ARTCO’s right to reurge their motion following its deposition of Mr. Borison, if applicable.

New Orleans, Louisiana, this 4th day of May, 2023.

A handwritten signature in black ink, reading "Eldon C. Fallon". The signature is written in a cursive style with a horizontal line underneath it.

United States District Judge