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United States District Court,
N.D. Illinois.

DANIELS, et al.
v.
FEDERAL RESERVE BANK OF CHICAGO.

No. 98 C 1186. | April 15, 2005.

Named Expert: Dr. Gary R. Skoog, Ph.D.

Attorneys and Law Firms

Edward Ted Stein, Law Offices of Edward T. Stein, Juron H. Jako, Illinois Legal Research Institute, Kamran A. Memon, Law Offices of Kamran Memon, Susan Bogart, Susan Lee Walker, Law Offices of Susan Bogart, Turnley Lee Boyd, Jr., The Boyd Law Firm, Joseph Younes, Law Offices of Joseph Younes, Denise M. Mercherson, Ernest N. Powell, Jr., Attorney at Law, Chicago, IL, Olayimika Awe, O. Awe, Esq., Homewood, IL, Paul Leslie Shelton, Shelton Law Group, LLC, Hinsdale, IL, for Plaintiffs.

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Opinion

STATEMENT

WILLIAM J. HIBBLER, J.

***1** Defendant, Federal Reserve Bank of Chicago ("Bank"), seeks to exclude the testimony of Gary R, Skoog, Ph.D., the purported expert of two remaining plaintiffs in this case, Frances Smith and Eleanor Baylie. On July 2, 2001, the now decertified plaintiffs' class submitted a report by Skoog which claims to analyze Bank-wide promotion rate data ("Skoog I"). At a hearing on August 14, 2001, the plaintiffs requested leave to file a supplemental expert report to correct errors in the programming coding that Skoog used in making his first report. The Court granted the plaintiffs leave to file a supplemental report, but specified that it must comply with Federal Rule of Civil Procedure 26(e)(1), which states that a party has a duty to supplement its disclosures if it learns "in some material respect the information disclosed is incomplete or incorrect" in the expert report and as provided through the expert's deposition.

On September 4, 2001, the plaintiffs filed a supplemental report ("Skoog II"), and on September 14, 2001, the Bank moved to exclude the report. The Court did not rule on the motion because on May 2, 2002, the Court decertified the class and dismissed the motion to exclude as moot. In July 2003, Baylie and Smith, among other individual plaintiffs, made known their desire to use Skoog's reports to establish their individual claims. On March 19, 2004, the Court ruled that the parties could proceed with the necessary discovery to facilitate a ruling on whether Skoog's reports and testimony are admissible. Upon completion of the discovery, the Bank filed the present motion to exclude Skoog's reports and testimony.

The admissibility of expert testimony is governed by Federal Rule of Evidence 702, which states that "[i]f scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or determine the 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." Expert testimony must thus be both relevant and reliable. *Daubert v. Merrell Dow Pharm., Inc.,* 509 U.S. 579, 592, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). The testimony is relevant if it "assists the trier of fact in understanding the evidence or determining a fact in issue," and the testimony is reliable if the "reasoning or methodology

underlying the testimony is scientifically valid." *Daubert,* 509 U.S. at 590-91; *United States v. Hall,* 165 F.3d 1095, 1101 (7th Cir.1999). The Bank claims that Skoog's analyses are neither relevant nor reliable.

When a plaintiff files an individual claim rather than a class action, the plaintiff's "evidence of a pattern and practice can only be collateral to evidence of specific discrimination against the actual plaintiff." *Gilty v. Village of Oak Park,* 919 F.2d 1247, 1252 (7th Cir.1990). In an individual discrimination case, "[i]n order to be considered, the statistics must look at the same part of the company where the plaintiff worked; include only other employees who were similarly situated with respect to performance, qualifications, and conduct; the plaintiff and the other similarly situated employees must have shared a common supervisor; and treatment of the other employees must have occurred during the same [time frame] as when the plaintiff was discharged." *Balderston v. Fairbanks Morse Engine Div. of Coltec Indus.,* 328 F.3d 309, 320 (7th Cir.2003).

***2** Skoog's analyses, however, consist solely of Bank-wide promotion patterns. They do not break down any characteristics of the employees other than race, sex, and age, and thus there is no evidence that the employees included in Skoog's studies were similarly situated to Baylie and Smith or were even in the same department. "A statistical study is not inadmissible merely because it is unable to exclude all possible causal factors other than the one of interest. But a statistical study that fails to correct for salient explanatory variables, or even to make the most elementary comparisons, has no value as causal explanation and is therefore inadmissible in a federal court," *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205,* 111 F.3d 528, 537-538 (7th Cir.1997). Contrary to Baylie and Smith's allegations, the Court is not ruling on the probativeness or weight to be accorded to Skoog's analyses. Rather, because Skoog's analyses of Bank employees fail to make even the most elementary comparisons with Baylie and Smith, his analyses are inadmissible in this Court. Evidence of a pattern and practice can only be collateral to evidence of specific discrimination against the plaintiff. Skoog's reports, which do not contain any evidence of specific discrimination against Baylie and Smith, will not assist the trier of fact in understanding the evidence and thus are not relevant.

Therefore, the Court GRANTS the Bank's motion to exclude the testimony of Gary R. Skoog. Because Skoog's analyses are excluded on relevance grounds, the Court need not consider the affidavits and testimony of Finis Welch and Welch Consulting, George Neumann and Margaret Koenig, which only go to Skoog's reliability. As such, Smith's and Baylie's motion to strike from Defendant's motion to exclude all references to affidavits and testimony of Finis Welch and Welch Consulting, George Neumann and Margaret Koenig is DENIED as moot.