

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

EQUAL EMPLOYMENT OPPORTUNITY)	
COMMISSION,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 6:11-cv-03367-MDH
)	
NEW PRIME, INC. d/b/a PRIME, INC.,)	
)	
Defendant)	
)	

ORDER

Before the Court are Plaintiffs’ Motions¹ to Exclude Opinion Testimony from Tom B. Kretsinger, Jr. (Doc. No. 266) and Plaintiffs’ Motion to Exclude Opinion Testimony from Ellen Voie. (Doc. No. 268).

First, Plaintiff seeks to exclude testimony from Tom Kretsinger pursuant to Fed. R. Evid. 702. Specifically, Plaintiff seeks to exclude testimony from Kretsinger regarding the following subjects: 1) “an over-the-road truck driver or aspiring over-the-road truck driver can obtain employment with minimal effort if he or she meets the Federal Motor Carrier Safety Administration (“FMCA”) medical regulations, and has an acceptable work and driving/criminal record;” 2) “if a truck driver is unable to find a driving position, the driver has not made a reasonable effort to find a job or there is a problem with the driver’s medical condition or driving/criminal record that would preclude them from being a truck driver;” and 3) “the trucking industry has a high rate of turnover resulting in a driver shortage. Turnover among

¹ Plaintiff Intervenor Deanna Roberts Clouse is no longer a party in this matter.

drivers new to the industry is higher. Further, turnover in Truck Driving schools is often much higher, sometimes as much as 200%.”

The Court has reviewed Plaintiff’s Motion and Suggestions in Support, as well as Defendant’s Opposition. The Court holds that Kretsinger will be allowed to testify regarding the following subjects: 1) “an over-the-road truck driver or aspiring over-the-road truck driver can obtain employment with minimal effort if he or she meets the Federal Motor Carrier Safety Administration (“FMCA”) medical regulations, and has an acceptable work and driving/criminal record;” and 3) “the trucking industry has a high rate of turnover resulting in a driver shortage. Turnover among drivers new to the industry is higher. Further, turnover in Truck Driving schools is often much higher, sometimes as much as 200%.” The Court finds that Plaintiff’s arguments regarding Kretsinger’s testimony on these subjects may be adequately covered by Plaintiff during cross examination of the witness during trial. As such, the Court will allow this testimony.

However, the Court holds that Kretsinger will not be allowed to testify with regard to: 2) “if a truck driver is unable to find a driving position, the driver has not made a reasonable effort to find a job or there is a problem with the driver’s medical condition or driving/criminal record that would preclude them from being a truck driver.” The Court finds that this testimony is not admissible under Fed. R. Evidence 702 and will not be allowed.

Next, Plaintiff seeks to exclude testimony from Ellen Voie under Fed. R. Evid. 702. Specifically, Plaintiff seeks to exclude Voie’s testimony regarding two subjects: 1) “the trucking industry is facing a high demand for qualified drivers;” and 2) “... it was reasonable for Prime to implement a same gender based training policy for the safety and privacy of its trainees.” Again,

the Court has reviewed Plaintiff's Suggestions in Support of the Motion to Exclude Expert Testimony from Ellen Voie, as well as Defendant's Opposition.

The Court will allow Voie's testimony regarding "the trucking industry is facing a high demand for qualified drivers." The Court finds Plaintiff's arguments regarding this testimony may be covered during cross examination of this witness during trial. However, the Court holds that Voie will not be allowed to testify regarding "... it was reasonable for Prime to implement a same gender based training policy for the safety and privacy of its trainees." The Court has already issued an Order regarding the same gender based training policy implemented by Prime. Voie will not be allowed to testify regarding this subject and any such testimony shall be excluded under Fed. R. Evid. 702.

WHEREFORE, Plaintiff's Motions to Exclude Opinion Testimony from Tom B. Kretsinger, Jr. (Doc. No. 266) is **GRANTED** in part and **DENIED** in part, and Plaintiff's Motion to Exclude Opinion Testimony from Ellen Voie (Doc. No. 268) is **GRANTED** in part and **DENIED** in part.

IT IS SO ORDERED.

DATED: November 24, 2014

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE