

2004 WL 5495670

Only the Westlaw citation is currently available.
United States District Court, W.D. Washington,
at Seattle.

Mary BECK, et al., Plaintiffs,
v.
The BOEING COMPANY, Defendant.

No. COO-0301P. | May 14, 2004.

Named Expert: Eugene Borgida, Ph.D.

Attorneys and Law Firms

Ann Marie Schwartz, Barbara H. Schuknecht, Jerry R. McNaul, Michael David Helgren, McNaul, Ebel, Nawrot, Helgren & Vance, Seattle, WA, Christine E. Webber, Jenny R. Yang, Joseph Marc Sellers, Steven J. Toll, Cohen Milstein Hausfeld & Toll, Washington, DC, for Plaintiffs.

Barbara Berish Brown, Jon A. Geier, Paul, Hastings, Janofsky & Walker, Washington, DC, C. Geoffrey Weirich, Maureen E. O'Neill, Paul, Hastings, Janofsky & Walker, Atlanta, GA, Dennis C. Donnelly, Veronica Gioia, Bryan Cave, St. Louis, MO, Jeffrey Alan Hollingsworth, Nancy Williams, James Sanders, Perkins Coie, Seattle, WA, Lawrence B. Hannah, Donald W. Heyrich, Paul E. Smith, Perkins Coie, Bellevue, WA, for Defendant.

Opinion

ORDER DENYING DEFENDANT'S MOTION TO EXCLUDE EXPERT REPORT, OPINIONS, AND TESTIMONY OF PLAINTIFFS' EXPERT EUGENE BORGIDA, PH.D. (Defense Motion No. 41)

MARSHA J. PECHMAN, District Judge.

*1 This matter comes before the Court on Defendant's Motion to Exclude Expert Report, Opinions, and Testimony of Plaintiffs' Expert Eugene Borgida, Ph.D. After considering the motion and all other relevant materials, Defendant's motion is hereby DENIED.

If expert testimony will be helpful to the jury, a witness who is qualified as an expert, may "testify in the form of 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. *See also Daubert v. Merrell Dow Pharms. Inc.*, 509 U.S. 579, 593-594, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993) (listing nonexclusive factors courts may consider to determine reliability). Defendants do not contest Dr. Borgida's qualifications.

First, Dr. Borgida's testimony is based on sufficient facts or data. He reviewed many documents relating to this case, and he drew on numerous scholarly works in formulating his opinions. (*See Hagin Decl. Ex. A, 21-29 and App. A*).

Second, his testimony is the product of reliable principles and methods. Several courts have accepted expert testimony on the same or similar theories. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 250-51, 109 S.Ct. 1775, 104 L.Ed.2d 268 (1989); *Butler v. Home Depot, Inc.*, 984 F.Supp. 1257, 1262-63 (N.D.Cal.1997); *Robinson v. Jacksonville Shipyards, Inc.*, 760 F.Supp. 1486, 1505 (M.D.Fla.1991). Also, the sources upon which he relied for his report, indicate that his theories are widely accepted, have been published in reputable scientific journals, and have been subject to peer review. (*See Hagin Decl. Ex. A, 21-29*).

Third, Dr. Borgida applied the principles reliably to the facts of this case. Defendants argue that Dr. Borgida did not apply the principles reliably because he did not determine the extent to which women employees at Boeing work in groups where they are the minority, how much information Boeing decisionmakers have when making decisions, or whether a significant number of women employees at Boeing work in a sexualized environment. However, these determinations only related to some of a non-exclusive list of conditions under which, according to Dr. Borgida's report, "gender stereotypes are more likely to be mentally activated and to affect perceptions, evaluations, and/or behavior." (*Id.* at 7). Dr. Borgida did, however, find that some of the other conditions were present at Boeing, including "the content of gender stereotypes, the consequences of not meeting prescriptive expectations, and the problematic role of subjectivity in making employment decisions." (*Id.* at 14). Boeing's contention that Dr. Borgida did not employ enough of the factors to apply the principles reliably to the facts of this case go to the weight of his testimony and may be the subject of cross-examination.

Defendants also argue that Dr. Borgida's testimony should not be admissible because it only satisfies general causation, but not on an individual basis. Defendant's argument is unpersuasive because Plaintiffs' burden includes showing that discrimination was the regular practice at Boeing.

*2 Lastly, the evidence is helpful to the jury. The jury will have to decide if discrimination is the general practice at

Beck v. Boeing Co., Not Reported in F.Supp.2d (2004)

Boeing, and the Plaintiffs may use evidence of stereotyping to support their case. Thus, an expert who will explain stereotyping and what conditions make it more or less likely to occur will be helpful.

Dr. Borgida's testimony is admissible as expert testimony

under Fed.R.Evid. 702. Defendants motion is hereby DENIED.