**The Court Abused its Discretion by excluding Manning Warren**

The court violated this Court’s liberal view of what knowledge, skill, experience, training, or education is sufficient for an expert to testify. Bradley v. Ameristep, Inc., 800 F.3d  205, 209 (6th Cir. 2015). The court made an incorrect assumption: “While Warren’s scholarship shows his current knowledge and expertise on the issue of securities law, there is no indication that he maintains a current expertise in the subject of pyramid schemes.” (R.454,#3538-39.) This was simply inaccurate. As part of every one of the securities courses he had taught during his distinguished career, “Professor Warren has addressed illegal pyramid schemes…in every securities law class he teaches.” (R.433; R.390,#3013.) Warren’s disclosure revealed his securities expertise encompasses illegal pyramid schemes and multilevel marketing companies. (Id.) He also had practical experience training regulators in these principles. The Court’s conclusion that Warren had current knowledge and expertise on securities but not on pyramid schemes was based on the incorrect assumption that pyramid scheme concepts are not encompassed by securities law and were also simply wrong. Warren has spent his career teaching law students about pyramid schemes as applied to multilevel marketing companies. Warren’s disclosures show he had the knowledge, education, and experience to testify regarding illegal pyramid schemes. Warren’s forty years of publishing and instructing law students on securities law, which included instruction on pyramid schemes, qualified him to testify on pyramid schemes. (R.390,#3013.) The Sixth Circuit has recognized the distinction between a business litigator with thirty years of experience and a typical attorney, and any deficiencies in his professional background or credentials could be probed on cross-examination.

U.S. v. Cunningham, 679 F.3d 355, 379 (6th Cir. 2012); U.S. v. Nixon, 694 F.3d 623, 630 (6th Cir. 2012) (“Any weaknesses in his qualifications would thus go to the weight rather than the admissibility of his opinion testimony.”). General experience is sufficient, and lack of expertise in a “very specialized area” does not justify exclusion. Surles v. Greyhound Lines, Inc., 474 F.3d 288, 294 (6th Cir. 2007); Dilts v. United Grp. Servs., LLC, 500 F. App’x 440, 446 (6th Cir. 2012)(“An expert’s lack of experience in a particular subject matter does not render him unqualified so long as his general knowledge in the field can assist the trier of fact.”). The facts proffered by Barnes show Warren was qualified to testify regarding the field of securities, which includes a more specialized area of illegal pyramid schemes, and the court abused its in discretion in excluding Warren on the day before trial without even holding a hearing on the issue of qualifications.

This abuse of discretion was especially egregious in light of the double standard applied to the evaluation of Keep. For Keep, the court held that any gap in qualifications or knowledge goes to weight, not admissibility: Barnes argues that Dr. Keep is unqualified to offer certain opinions. Specifically, Barnes argues that Dr. Keep’s criticism of the “market value” of I2G’s products is inappropriate because he has no expertise in analyzing the operation or valuation of tech products. To the extent that there is any gap in Dr. Keep’s qualifications or

knowledge, that issue goes to the weight, not the admissibility of his opinions….

Furthermore, Barnes's issue with Dr. Keep’s background can be effectively

flushed out through cross-examination. Daubert, 509 U.S. at 596.

(R.238,#1652)(emphasis added). Applying two different standards to the expert witnesses was an abuse of discretion. It also constituted plain error and was severely prejudicial – the defense was deprived of the ability to rebut Keep.

The exclusion of Warren on the day before trial left Keep’s testimony basically uncontroverted. The prejudice is clear. Whether products were incidental to the MLM was a critical issue, and the court’s decision not to exclude Keep was based on the fact that defendants could rebut those opinions with Warren. (R.238,#1653 “To be sure, Barnes is free to address whether I2G’s products are merely incidental to the MLM through the use of its own expert testimony...”). The prejudice was compounded because Keep’s testimony included incorrect statements of law and assumptions inconsistent with the law's state on pyramid schemes. Keep’s opinion assumed that sales of packages count only for recruiting, but that assumption is incorrect and misstates the law. Warren would have rebutted it. (R.381- 1,#2928-30.)

Further, defendants were entitled to a meaningful opportunity to present a complete defense. 2 Crane v. Kentucky, 476 U.S. 683, 690 (1986); Taylor v. Illinois, 484 U.S. 400, 408 (1988)(right to present witnesses in defense is fundamental). The exclusion of an expert can deny a defendant a meaningful opportunity to present a complete defense. U.S. v. Green, 698 F. App’x 879, 880 (9th Cir. 2017). Here, two primary defenses were (1) the sale of Emperor packages was not a pyramid scheme because there was no risk of market saturation, and (2) the defendants did not know it was a pyramid scheme and lacked the necessary mens rea. Warren’s opinion regarding anti-saturation and why I2G’s plan and practice prevented saturation was a critical narrative for the defendants. (R.381-1,#2929.) The erroneous partial exclusion of Warren and the refusal to provide a jury instruction on anti-saturation deprived Hosseinipour and Barnes of a complete defense. Warren’s opinion that MLM companies are legitimate and effective at marketing innovative products is tied directly to the defendants’ defense: they lacked knowledge that the sale of Emperor packages was a pyramid scheme and the requisite scienter. (R.381-1,#2926.)

 2 See Barnes Br.43. Deprivation of a meaningful opportunity to present a complete defense is a constitutional violation and is reviewed de novo instead of an abuse of discretion. United States v. Reichert, 747 F.3d 445, 453 (6th Cir. 2014). pyramid scheme and the requisite scienter.

 Warren’s opinion regarding the uncertainty of what makes an MLM structure illegal and the unclear line between MLMs and illegal pyramid schemes would further have supported the defendants’ defense. (Id. at #2926-27.)