STATE OF NORTH CAROLINA WAYNE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 20CVS001430-950
MAXWELL FOODS, LLC, Plaintiff, v. SMITHFIELD FOODS, INC., Defendant.	**ORDER ON MOTIONS IN LIMINE**

1. Pending are ten motions in limine ("MILs" or "motions"): six by Plaintiff Maxwell Foods, LLC and four by Defendant Smithfield Foods, Inc. (*See* ECF Nos. 290, 292, 294, 296, 300, 302, 304, 306, 308, 310.) The motions are fully briefed, and the Court heard oral argument at a hearing on 14 May 2025.

2. **Background.** Earlier orders describe the allegations, claims, and procedural history in detail. *See, e.g.*, *Maxwell Foods, LLC v. Smithfield Foods, Inc.*, 2024 NCBC LEXIS 168 (N.C. Super. Ct. Dec. 30, 2024) ["*Maxwell Foods III*"]; *Maxwell Foods, LLC v. Smithfield Foods, Inc.*, 2023 NCBC LEXIS 20 (N.C. Super. Ct. Feb. 3, 2023); *Maxwell Foods, LLC v. Smithfield Foods, Inc.*, 2021 NCBC LEXIS 71 (N.C. Super. Ct. Aug. 26, 2021).

3. In short, this is a contract dispute. For more than two decades, Maxwell sold hogs to Smithfield under an output contract. A related letter agreement contains a most-favored-nation clause in which Smithfield promised to offer Maxwell benefits given to certain other major suppliers going forward. In this case, Maxwell has sued Smithfield for breach of their contract's output provision and the most-favored-nation

clause. Smithfield responded with counterclaims for breach of contract, as well as various affirmative defenses.

4. Years of litigation have winnowed the issues to be tried. At summary judgment, the Court narrowed Maxwell's claim for breach of the most-favored-nation clause to allegations that Smithfield failed to offer changes in pricing given to Prestage Farms. *See Maxwell Foods III*, 2024 NCBC LEXIS 168, at *16–18. In addition, the Court entered judgment against Smithfield as to liability on the claim for breach of the output provision, leaving the determination of damages for trial. *See id.* at *46. And the Court granted summary judgment in favor of Maxwell as to Smithfield's counterclaims and affirmative defenses of force majeure and anticipatory repudiation. *See id.* at *39, 45.

5. **Legal Standard.** "A motion in limine seeks pretrial determination of the admissibility of evidence to be introduced at trial." *State v. Britt*, 217 N.C. App. 309, 313 (2011). "The Court's ruling on motions *in limine* is interlocutory and 'subject to modification during the course of the trial.' " *InSight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 91, at *6 (N.C. Super. Ct. Oct. 3, 2017) (quoting *Hamilton v. Thomasville Med. Assocs.*, 187 N.C. App. 789, 792 (2007)).

6. **Maxwell's MIL to Exclude Leanness Evidence.** In 2007, Smithfield began paying Maxwell and Prestage a fixed premium in lieu of a variable premium calculated under what is known as a Grade and Yield Matrix. It is undisputed that Prestage's premium exceeded Maxwell's. In Maxwell's view, this pricing disparity

shows a breach of the most-favored-nation clause. Smithfield denies any breach, contending that Prestage received a higher premium because its hogs were leaner than Maxwell's. According to Smithfield, the most-favored-nation clause does not require it to pay Maxwell the same as Prestage for fatter, lower-quality hogs.

7. Maxwell seeks to exclude as irrelevant and unfairly prejudicial all testimony and evidence relating to leanness. It argues that the pricing formula in the parties' agreement takes leanness into consideration only when a Grade and Yield Matrix is in effect and that Smithfield did not calculate the purchase price for Maxwell's hogs based on leanness after jettisoning the Grade and Yield Matrix in 2007. This argument is unpersuasive. Evidence suggesting that the parties took leanness into account when establishing the fixed premium in 2007 is relevant. So too is evidence that Smithfield paid Prestage a higher premium for leaner hogs. This evidence goes directly to whether Smithfield's failure to offer Maxwell the same premium as Prestage is a breach of the most-favored-nation clause. Moreover, under the Uniform Commercial Code, the parties' course of performance may explain or supplement the agreement's pricing terms. *See* N.C.G.S. § 25-2-202. Any danger of unfair prejudice or jury confusion is remote.

8. Maxwell also asks the Court to bar Smithfield from referring to Maxwell's hogs as "fat" because the term is imprecise and likely to confuse the jury. But the mere use of the word "fat" is not prejudicial. And Maxwell will have the opportunity to explain the differences between backfat and intramuscular fat, as well as to cross-examine Smithfield's witnesses about these terms.

9. The Court denies this motion.

10. **Smithfield's MIL to Exclude Evidence of Foreign Ownership and Financial Condition.** In 2013, Smithfield became a subsidiary of a Chinese company. Smithfield contends that evidence of its foreign ownership is irrelevant and unduly prejudicial. The Court agrees. Smithfield's parent company is not a party in this case. Nor is Smithfield's ownership relevant to any issue to be tried. Maxwell's pitch is that evidence of the change of ownership is relevant context. True, courts will allow parties to put their evidence in context so long as doing so poses little or no prejudice. That isn't the case here. In Maxwell's words, it intends to argue that Smithfield's original American owner "stuck to his word" but that Smithfield is "now owned by a Chinese corporation with no connection to Eastern North Carolina," making a breach of contract more likely. (Pl.'s Opp'n MIL re: Foreign Ownership 2, 6–7, ECF No. 323.) Any argument along those lines would pose a danger of unfair prejudice and misleading the jury that far outweighs any minimal probative value the evidence might have. *See* N.C. R. Evid. 403.

11. Smithfield also seeks to exclude evidence concerning its financial condition and its Chinese parent's financial condition. Maxwell does not oppose this request. *See, e.g.*, *Lutz Indus., Inc. v. Dixie Home Stores*, 242 N.C. 332, 344 (1955) ("[N]either the wealth of one party or the poverty of the other should be permitted to affect the administration of the law."); *Shaw v. Gee*, 2018 NCBC LEXIS 256, at *4 (N.C. Super. Ct. Jan. 30, 2018) ("[C]ourts often find references to one party's wealth or financial status to be highly prejudicial." (citation and quotation marks omitted)).

12. The Court grants this motion. Maxwell may not elicit testimony, present evidence, or offer argument concerning Smithfield's foreign ownership or financial condition.

13. **Maxwell's MIL to Exclude Evidence About the Maxwell Family's Businesses.** Maxwell seeks to exclude as irrelevant and unduly prejudicial all evidence related to its business strategy, its affiliated businesses, and its owners' financial condition. This evidence may show, as Smithfield contends, that the Maxwell family paid less attention to hog operations than other businesses. But even if that is true, it has little, if any, relevance to Smithfield's compliance with the most-favored-nation clause. Evidence that the Maxwell family enjoyed financial security and mismanaged their hog business would not make it "more or less probable" that Smithfield offered pricing that complied with the most-favored-nation clause. N.C. R. Evid. 401. The risk of unfair prejudice and confusion of the issues "substantially outweigh[s]" the evidence's probative value. N.C. R. Evid. 403. Accordingly, the Court grants the motion to exclude evidence related to Maxwell's business strategy, its affiliated businesses, and its owners' financial condition.

14. **Smithfield's MIL to Exclude Evidence Related to Butterball.** Smithfield seeks to exclude evidence concerning its attempt to purchase Maxwell's interests in Butterball Turkey, LLC. Having prevailed on its motion to exclude evidence of its affiliated businesses, Maxwell does not oppose this motion. The Court therefore grants the motion.

15. **Smithfield's MIL to Exclude Evidence of Project Chuckwagon.** Smithfield seeks to exclude evidence of internal strategy discussions referred to as Project Chuckwagon. Maxwell believes that Project Chuckwagon is relevant to show that Smithfield's alleged breach of the most-favored-nation clause was part of a scheme to force it out of business. But motive and intent are not elements of a claim for breach of contract. *See Poor v. Hill*, 138 N.C. App. 19, 26 (2000) ("The elements of a claim for breach of contract are (1) existence of a valid contract and (2) breach of the terms of that contract."). Thus, the reasons that Smithfield may have been motivated to breach the contract are not relevant to Maxwell's claim, and any marginal relevance is substantially outweighed by the risk of unfair prejudice and issue confusion. *See* N.C. R. Evid. 402, 403. The Court grants the motion to exclude evidence related to Project Chuckwagon.

16. **Maxwell's MIL to Exclude Issues Decided by the Summary-Judgment Order.** Maxwell contends that the Court's summary-judgment order rendered irrelevant several categories of evidence.

17. The first category concerns alleged offers that Smithfield made to Maxwell between 2014 and 2018. Whether Smithfield made these offers is disputed. Regardless, Maxwell contends that the offers are irrelevant because they pre-date Prestage's 2020 contract and do not match the terms given to Prestage before or after 2020. Neither argument is compelling. As to the timing issue, Maxwell alleges that Smithfield breached the most-favored-nation clause in 2007 and 2017 (as well as 2020) when it gave Prestage new and better pricing without offering the same terms

to Maxwell. Indeed, Maxwell seeks damages from 2016 forward. Offers that Smithfield made to Maxwell from 2014 to 2018 may be relevant to those alleged breaches and to the calculation of damages. And whether Smithfield offered Maxwell terms comparable to or better than Prestage's is a disputed question of fact. The Court therefore denies the motion to exclude evidence of offers that Smithfield allegedly made to Maxwell.

18. The second category concerns offers that Smithfield made to third-party suppliers other than Prestage. This evidence is inadmissible. Smithfield's position is that its contracts with other suppliers tend to show that its offers to Maxwell were genuine. But evidence of communications and contracts with third parties has no bearing on the genuineness of offers made to Maxwell and would carry an acute risk of confusing the issues and misleading the jury. *See* N.C. R. Evid. 402, 403. The Court therefore grants the motion to exclude evidence of Smithfield's offers to and contracts with third-party suppliers other than Prestage.

19. The third category concerns the arbitration clause in the parties' output contract. There is no question that the clause itself will be admitted into evidence; it is, after all, part of the parties' contract. Whether testimony about the clause is admissible is a question the Court can decide only in the context of trial. The Court therefore defers ruling on the request to exclude testimony concerning the arbitration clause.

20. The fourth and fifth categories concern evidence related to Smithfield's counterclaims and affirmative defenses of force majeure and anticipatory

repudiation. It goes without saying that Smithfield may not relitigate these matters. In addition, evidence related to Maxwell's business strategy, its affiliated businesses, and its owners' financial condition has been excluded, as stated above. Apart from that, though, the Court cannot make an informed decision because Maxwell has not identified any specific exhibits and deposition designations that it believes to be inadmissible. It may be true that evidence relevant to the counterclaims and affirmative defenses is irrelevant to any issues the jury will decide. It may also be true that at least some of the evidence is relevant to more than one issue. There is no way to make that decision on this record. As a result, the Court denies Maxwell's request for a blanket order excluding evidence related to Smithfield's counterclaims and affirmative defenses of force majeure and anticipatory repudiation and will consider objections to specific exhibits in context at trial.

21. In a footnote, Maxwell also asks the Court to bar Smithfield from introducing this evidence, assuming it is not excluded, through cross-examination. The Court denies this request. By rule, "[a] witness may be cross-examined on any matter relevant to any issue in the case." N.C. R. Evid. 611(b).

22. **Maxwell's MIL to Exclude Lay Testimony about Leanness, Meat Quality, Hog Genetics, and Hog Markets.** Maxwell seeks an order barring Smithfield from offering expert testimony by lay witnesses. Maxwell contends that the analysis and evaluation of leanness, meat quality, hog genetics, and hog markets all require specialized knowledge that is properly the subject of expert testimony. Smithfield responds that its witnesses should be permitted to testify about their

personal knowledge and involvement in the events at issue, even if technical in nature.

23. The Court agrees with Smithfield. There is no doubt that these witnesses have specialized knowledge and training in the hog industry. But the disputed testimony goes to their personal knowledge and perception of facts concerning the quality and characteristics of Maxwell's hogs, as well as the performance of hog markets and the resulting effect on the prices Smithfield paid for hogs. The witnesses are fact witnesses, not expert witnesses. *See, e.g.*, *Levin v. Jacobson*, 2016 NCBC LEXIS 184, at *5 (N.C. Super. Ct. Aug. 26, 2016) (denying motion to exclude lay testimony based on the witness's personal experience and first-hand knowledge of "the Great Recession, the subprime mortgage crisis, and changes in the economy"); *A-1 Pavement Marking, LLC v. APMI Corp.*, 2009 NCBC LEXIS 16, at *16 (N.C. Super. Ct. June 26, 2009) ("Plaintiff's accountant is not an expert witness, but is instead a fact witness, albeit one with specialized knowledge in accounting."). And to the extent the witnesses have developed opinions based on personal perceptions, they are permissible lay opinions. *See* N.C. R. Evid. 701 (limiting lay opinion testimony to opinions "rationally based on the perception of the witness"). On this record, Maxwell's concern that some witnesses may testify as to sweeping opinions that are not grounded in their personal perceptions appears to be unfounded.

24. Accordingly, the Court concludes that lay witnesses may testify about leanness, meat quality, hog genetics, and hog markets so long as the testimony is

limited to the witness's personal experiences and first-hand knowledge. The Court denies this motion.

25. **Maxwell's MIL to Exclude Evidence Not Produced in Discovery.** Maxwell's request to exclude evidence and testimony about materials not produced in discovery is unclear. It has not identified any document on Smithfield's exhibit list that was not produced in discovery, and Smithfield denies any intent to offer materials outside that list. Accordingly, the Court denies this motion.

26. **Maxwell's MIL to Exclude Deposition Designations.** It appears to be undisputed that Smithfield designated more than 2400 pages of deposition testimony for use at trial—designations that would consume between forty and fifty hours of trial time if presented in full. This is plainly overkill, which unnecessarily complicates pretrial preparation for Maxwell and the Court. In its discretion, the Court directs Smithfield to disclose to Maxwell, no later than 27 May 2025, whether it intends to call each witness on its witness list by deposition or in person. The Court defers consideration of Maxwell's request to exclude any deposition testimony altogether.

27. **Smithfield's MIL to Exclude References to Its Breach of the Output Provision.** Smithfield has moved to bifurcate trial so that the jury considers the amount of damages related to the output breach in a second phase, separate from all other issues. (*See* Mot. Bifurcate, ECF No. 336.) In the interest of efficiency, the Court will defer a decision as to this motion in limine and consider it together with the motion to bifurcate.

28. **Conclusion.** For all these reasons, the Court **ORDERS** as follows:

a. Maxwell's motion to exclude evidence of leanness is **DENIED**.

b. Smithfield's motion to exclude evidence of foreign ownership and financial condition is **GRANTED**.

c. Maxwell's motion to exclude evidence of the Maxwell family's businesses is **GRANTED**.

d. Smithfield's motion to exclude evidence of its efforts to purchase Maxwell's interests in Butterball is **GRANTED**.

e. Smithfield's motion to exclude evidence of Project Chuckwagon is **GRANTED**.

f. Maxwell's motion to exclude evidence regarding issues decided by the summary-judgment order is **GRANTED** to the extent based on evidence of offers to and contracts with third-party suppliers other than Prestage and **DENIED** to the extent based on evidence of alleged offers to Maxwell. In all other respects, the Court **DEFERS** ruling on the motion until trial.

g. Maxwell's motion to prohibit lay witnesses from testifying to leanness, meat quality, hog genetics, or hog markets is **DENIED**.

h. Maxwell's motion to exclude evidence not produced in discovery is **DENIED**.

i. The Court **ORDERS** Smithfield to disclose to Maxwell whether it intends to call each witness on its witness list by deposition or in person

by 27 May 2025 but **DEFERS** ruling on the admissibility of any particular deposition testimony.

j. The Court **DEFERS** ruling on Smithfield's motion to exclude references to its breach of the output provision.

SO ORDERED, this the 20th day of May, 2025.

/s/ Adam M. Conrad
Adam M. Conrad
Special Superior Court Judge
for Complex Business Cases