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

1. In advance of trial, Plaintiff Maxwell Foods, LLC and Defendant Smithfield Foods, Inc. have each moved to exclude an expert witness designated by the other. (*See* ECF Nos. 279, 282.) For the following reasons, the Court **GRANTS in part** and **DENIES in part** both motions.

2. **Background.** This action arises from a contract dispute. Smithfield is a pork processor—the world's largest, in fact. For decades, Maxwell sold hogs to Smithfield under an output contract. In that contract, Smithfield promised to buy all hogs produced by Maxwell each month up to a certain amount. The contract defines the purchase price for each delivery as a formula that starts with a base price, adds a fixed amount called an overage, and then adds or subtracts various premiums, discounts, and credits. Maxwell and Smithfield chose the average daily price quoted for hogs sold on the Iowa-Southern Minnesota spot market as the base price for their contract. (*See generally* Production Sales Agreement, ECF No. 154.12.)

3. The parties' bargain also includes a most-favored-nation clause. Smithfield represented that it had given Maxwell "the same economic incentives . . . as given all of Smithfield Foods' other major swine suppliers" and promised to offer Maxwell "the

benefit of future changes in economic benefits given said major swine suppliers." One of these major suppliers is named Prestage Farms, Inc. (or Prestage, for short). (Letter Agrmt. ¶ 1, ECF No. 162.3.)

4. In August 2020, Maxwell sued Smithfield for breach of their contract. Broadly speaking, two matters remain for trial.[1]

5. The first is Maxwell's claim that Smithfield breached the most-favored-nation clause by giving Prestage more beneficial pricing terms without offering it the same terms. The disputed events go back to 2007, when Smithfield began paying Maxwell and Prestage a fixed premium for each delivery instead of calculating the premium to be added to (or discount to be deducted from) the purchase price on a delivery-by-delivery basis. Maxwell contends that it should have been offered the same premium as Prestage but in fact received a smaller one. Much later, in May 2020, Smithfield and Prestage negotiated a new contract with a combination of index and cutout pricing rather than pricing based on the Iowa-Southern Minnesota market. Again, Maxwell contends that Smithfield was required to offer it the same pricing that Prestage received in its May 2020 contract.

6. The second matter for trial is Maxwell's claim that Smithfield breached their contract's output provision by buying less than its entire output from April 2020 until June 2021. For this claim, liability is no longer at issue. At summary judgment, the

[1] It has been a long road to get to this point. 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).

Court determined as a matter of law that Smithfield breached the output provision, leaving only the amount of damages for the jury to decide.

7. To prove its damages for each claimed breach, Maxwell intends to offer Scott Shaffer as an expert witness. Aware of the four-year statute of limitations that applies to its claims, Maxwell seeks to recover damages only for deliveries made between August 2016 and June 2021. Shaffer, a certified public accountant, was tasked with calculating the incremental profit that Maxwell would have earned absent a breach during that period. He will testify that Maxwell suffered over $20 million in damages related to the most-favored-nation clause and about $13 million more related to the output provision.

8. Smithfield intends to offer Nicholas Piggott, a professor at North Carolina State University's Department of Agricultural and Resource Economics, as a rebuttal expert. Piggott will testify that Shaffer's damages opinions are flawed for various reasons, including that they rest on incorrect assumptions. He will also testify about general principles of commodity pricing. And he will rebut opinions offered by Maxwell's other experts, Kent Bang and Ronald Plain.

9. With trial approaching, Smithfield has moved to exclude Shaffer's testimony, and Maxwell has moved to exclude Piggott's. Both motions are fully briefed, and counsel presented oral argument at the pretrial hearing on 27 May 2025.

10. **Legal Standard.** North Carolina follows the federal "*Daubert* standard for admitting expert testimony." *Insight Health Corp. v. Marquis Diagnostic Imaging of N.C., LLC*, 2017 NCBC LEXIS 14, at *39 (N.C. Super. Ct. Feb. 24, 2017) (citation and

quotation marks omitted). This means that the "testimony must meet the minimum standard for logical relevance" under Rule 401. *State v. McGrady*, 368 N.C. 880, 889 (2016). And it must satisfy the three-part test set out in Rule 702(a): (1) "expert testimony must be based on specialized knowledge that will assist the trier of fact"; (2) "the expert must be qualified"; and (3) "the testimony must be reliable." *Insight Health*, 2017 NCBC LEXIS 14, at *39.

11. **Smithfield's Motion.** Smithfield targets Shaffer's opinion concerning Prestage's May 2020 contract. That contract includes a pricing formula based on index and cutout pricing. It also requires Prestage to supply a minimum number of hogs per month or risk a monetary penalty. According to Smithfield, Shaffer considered the favorable terms (the pricing formula) but ignored the unfavorable terms (the volume commitment), thus producing an inflated and unreliable damages calculation. This error, in Smithfield's view, infects Shaffer's entire opinion as to damages resulting from any breach of the most-favored-nation clause, as well as part of his opinion as to damages resulting from the breach of the output provision.

12. Maxwell responds that Prestage's volume commitment is immaterial to the claimed breach. Its position is that pricing terms are "economic benefits" as used in the most-favored-nation clause but that volume commitments are not. Thus, Maxwell contends, the clause entitled it to be offered Prestage's pricing without Prestage's volume commitment, and Shaffer had no need to account for the volume commitment's effect. Separately, Maxwell contends that Shaffer's calculation would not have changed even if he had accounted for it.

13. After careful review, the Court concludes that Shaffer's failure to take Prestage's volume commitment into consideration renders his opinion unreliable. "A party injured by a breach of contract is entitled to be placed in the same position he would have occupied *if the contract had been performed*." *Hassett v. Dixie Furniture Co.*, 333 N.C. 307, 312 (1993) (emphasis added). By setting aside the volume commitment, Shaffer takes an approach that would improperly place Maxwell in a better position than it would have occupied if Smithfield had performed.

14. The text and purpose of the most-favored-nation clause make this clear. What Smithfield promised to offer Maxwell was "the benefit of future changes in economic benefits given" to Prestage. (Letter Agrmt. ¶ 1.) The undeniable intent was to ensure that Smithfield treated Maxwell the same as Prestage, not better. *See, e.g.*, *State ex rel. Utils. Comm'n v. Eddleman*, 320 N.C. 344, 376 (1987) (observing that the "clear intent" of a most-favored-nation clause was "to equalize the net monetary benefits" for the contracting party and another similarly situated party). Indeed, Maxwell misreads the clause when it says that economic benefits include pricing terms and only pricing terms. At summary judgment, the Court construed that phrase broadly to mean those terms that "work together to aid or promote the profitable exploitation of the contractual relationship." *Maxwell Foods III*, 2024 NCBC LEXIS 168, at *20.

15. In the May 2020 contract, Prestage received a new pricing formula conditioned on its promise to supply a certain number of hogs per month or face a penalty. These terms are interdependent. Under the plain meaning of the

most-favored-nation clause, Maxwell was entitled to receive the whole package of interdependent "changes in economic benefits" that Prestage received. It was not entitled to pick out the good parts of the package and discard the rest. *See Tulalip Tribes of Wash. v. Wash.*, 783 F.3d 1151, 1159 (9th Cir. 2015) (holding that most-favored-nation clause did "not allow a 'pick and choose' arrangement" among "interdependent conditions and consequences").[2]

16. Yet picking and choosing is exactly what Shaffer does. He calculates all the upside that Maxwell would have reaped from Prestage's new pricing but neglects any downside associated with a volume commitment. As a result, his opinion is premised on an offer that Maxwell was not entitled to receive. That is an error of law, and his opinion is therefore inadmissible. *See, e.g.*, *Stearns Airport Equip. Co. v. FMC Corp.*, 170 F.3d 518, 531 n.12 (5th Cir. 1999) (observing that a trial court may exclude "an ill-reasoned expert opinion" that "rests on an error of fact or law"); *Heiman v. UPS*, 12 Fed. Appx. 656, 664 (10th Cir. 2001) (same).

17. In its opposition brief, Maxwell insists that Prestage's pricing "bakes in" the volume commitment. (Maxwell's Br. in Opp. 12, ECF No. 299.) That cuts against Maxwell because it suggests that Smithfield paid Prestage higher pricing to offset the risk, costs, and potential penalties associated with a volume commitment. Had Smithfield complied with the most-favored-nation clause, Maxwell would have faced

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[2] By arguing that Smithfield was required to offer Prestage's pricing formula divorced from its volume commitment, Maxwell implies that Smithfield would have breached the most-favored-nation clause had it offered the exact same contract that Prestage received, with both the pricing formula and the volume commitment. It would be wholly unreasonable to construe the clause in that fashion.

a similar trade off. As a result of the claimed breach, Maxwell didn't receive Prestage's pricing, but neither did it incur Prestage's economic risk. Any damages calculation must account for the risk, costs, and potential penalties that Maxwell avoided due to Smithfield's breach. Shaffer makes no attempt to do so. *See Hassett*, 333 N.C. at 313 (holding that any "costs avoided must be deducted from revenue which would have been received if the contract had not been breached").

18. Maxwell goes on to contend that Shaffer's calculation would not have changed had he accounted for the volume commitment. As an example, it cites evidence to show that Smithfield rarely, if ever, enforced penalties against suppliers for failing to hit the monthly minimum. According to Maxwell, Smithfield must test the facts underlying Shaffer's opinion through cross-examination, not through a challenge to admissibility.

19. This argument is unpersuasive. Shaffer offers no opinion at all concerning the effect of the volume commitment, meaning there are no underlying factual assumptions to test. He does not determine whether Maxwell would or would not have met a volume commitment. He does not state that he is assuming as a fact that Smithfield would not have enforced a penalty against Maxwell. Nor does he identify the types of costs that Maxwell would have incurred in trying to comply with a volume commitment, attempt to quantify those costs, or conclude (either through his own analysis or as an assumed fact) that Maxwell would not have incurred any costs at

all. To say that Shaffer would have offered the same opinion had he performed this analysis is therefore entirely speculative.[3]

20. In short, Shaffer's opinion as to damages for breach of the most-favored-nation clause based on Prestage's May 2020 contract is unreliable and inadmissible. *See, e.g.*, *Kerry Bodenhamer Farms, LLC v. Nature's Pearl Corp.*, 2018 NCBC LEXIS 239, at *19–20 (N.C. Super. Ct. Dec. 27, 2018) (excluding damages opinion that accounted for profits but not costs); *JMJ Enters. v. Via Veneto Italian Ice*, 1998 U.S. Dist. LEXIS 5098, at *25 (E.D. Pa. Apr. 15, 1998) (excluding damages opinion "report[ing] certain expenses" and "omit[ting] other, like expenses").

21. Smithfield contends that this error infects Shaffer's other opinions. The Court agrees that Shaffer's calculation of output damages based on Prestage's May 2020 pricing is inadmissible for the reasons stated above. (Smithfield does not seek to exclude Shaffer's calculation of output damages based on the pricing formula in Maxwell's own contract with Smithfield.) But the Court declines to bar Shaffer from testifying as to the damages that Maxwell incurred due to a breach of the most-favored-nation clause before May 2020. The two time periods are distinct, and Shaffer's report adequately details his calculations for both periods. The Court is confident that Shaffer will be able to isolate damages occurring before May 2020 in his testimony and that Smithfield will be able to test this on cross-examination.

[3] Even if Shaffer had assumed that suppliers do not incur costs in complying with a volume commitment, that would have been an unreasonable assumption. A rational economic actor would surely take steps to ensure its own contractual performance and guard against supply shortages.

22. **Maxwell's Motion.** Maxwell challenges Piggott's testimony in its entirety, citing several grounds. It contends, first, that he is not qualified to testify about leanness, quality, or hog genetics and that his testimony on these subjects merely parrots Smithfield's view of the facts without applying any expertise. Next, Maxwell makes similar arguments concerning the topic of hog contracts, again questioning Piggott's qualifications and asserting that he parrots Smithfield's views. More broadly, Maxwell contends that Piggott is unqualified because he admits having no expertise in damages. Finally, Maxwell contends that the Court's summary-judgment decisions render many of Piggott's opinions irrelevant.

23. The Court will address these issues one at a time, starting with leanness, quality, and hog genetics.

24. From 2007 to 2020, Smithfield paid Prestage a fixed premium that exceeded Maxwell's by $0.84 per hundredweight. Piggott attributes the disparity to a difference in hog quality—that is, Prestage received a higher premium because its hogs were leaner than Maxwell's. In the words of his report, "Leanness Matters: Not All Hogs Are the Same," and "Maxwell's Hogs Were Fatter (Less lean) Than The Hogs of the Selected Suppliers Considered by Mr. Shaffer." (Piggott Rep. 79, 83, ECF No. 165.39.) On that basis, Piggott concludes that Shaffer overestimated Maxwell's damages because he failed to account for the difference in leanness.

25. This testimony, if admitted, would not aid the jury. But it could unfairly influence the jury's determination of disputed facts. Whether Smithfield paid Prestage more than Maxwell based on a difference in the quality of their hogs is

heavily disputed. Likewise, whether Maxwell's hogs were or weren't as lean as Prestage's is disputed. Piggott is not, and does not claim to be, qualified to assess leanness or other measures of hog quality. All that he does is recapitulate the testimony of others on those disputed issues in an area in which he admittedly has no expertise.

26. That is not permissible. "It is up to the trial court to ensure that expert testimony serves its legitimate purpose—to aid the jury with specialized knowledge—without compromising the jury's ability to independently evaluate all the evidence." *Potts v. KEL, LLC*, 2019 NCBC LEXIS 61, at *4 (N.C. Super. Ct. Sept. 27, 2019); *see also United States v. Jones*, 107 F.3d 1147, 1161 (6th Cir. 1997) (noting "the mystique attached to experts" (citation and quotation marks omitted)). To be sure, an expert "may rely on data and other information supplied by third parties even if the data were prepared for litigation by an interested party." *Pope v. Bridge Broom, Inc.*, 240 N.C. App. 365, 374 (2015) (cleaned up). But the expert may not merely parrot or rubber stamp another witness's testimony. *See Reynolds Am. Inc. v. Third Motion Equities Master Fund Ltd.*, 2020 NCBC LEXIS 56, at *223 (N.C. Super. Ct. Apr. 27, 2020) (collecting cases); *see also Murphy-Brown LLC v. Ace Am. Ins. Co.*, 2025 NCBC LEXIS 34, at *14–15 (N.C. Super. Ct. Mar. 26, 2025).

27. Smithfield tries to gild Piggott's opinion by arguing that he recites facts related to leanness only to lay the foundation for his expert calculations. Nowhere in this part of his report, though, does Piggott apply economic principles. He simply sums up Smithfield's evidence about leanness, assumes that leanness accounts for

the entire $0.84 premium disparity (as Smithfield contends), and faults Shaffer for assuming otherwise. Smithfield may not "provide under the banner of expert opinion what is, in fact, an extra summation of the evidence that fails to meet Rule 702's standards of reliability and helpfulness." *SEC v. Lipson*, 46 F. Supp. 2d 758, 765 (N.D. Ill. 1998); *see also Hines v. Wyeth*, 2011 U.S. Dist. LEXIS 74011, at *17 (S.D. W. Va. July 8, 2011) (excluding testimony that "improperly touches on issues well beyond the experts' qualifications" and "merely regurgitates factual information that is better presented directly to the jury rather than through the testimony of an expert witness"); *BorgWarner, Inc. v. Honeywell Int'l, Inc.*, 750 F. Supp. 2d 596, 609 (W.D.N.C. 2010) ("Beyond parroting the opinions expressed by these witnesses, however, Reed fails to demonstrate any specialized knowledge or experience to support his opinions.").

28. Accordingly, the Court excludes Piggott's opinions concerning leanness, quality, and hog genetics.

29. The Court turns to the topic of hog contracts next. Maxwell seeks to exclude Piggott's opinions concerning hog contracts on the ground that he has no experience with them and is therefore not qualified to serve as an expert. As Smithfield points out, however, Piggott has advanced degrees in agricultural economics and has taught courses in the field at North Carolina State University for almost thirty years. In Piggott's words, he has broad "experience as an agricultural economist looking at markets, looking at risks, looking at grades and standards, [and] understanding contracts because [he has] worked on grain contracts as well." (Piggott Dep. 62:19–

23, ECF No. 329.2.) Any dispute about Piggott's "qualifications relate[s] more to the weight to be given [his] testimony, than to its admissibility." *Holbrook v. Lykes Bros. S.S. Co.*, 80 F.3d 777, 782 (3d Cir. 1996); *see also Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009) ("Differences in expertise bear chiefly on the weight to be assigned to the testimony by the trier of fact, not its admissibility.").

30. Although Maxwell also asserts that Piggott merely parrots Smithfield's views about hog contracts, it cites few examples to make its case.[4] (*See* Maxwell's Br. in Supp. 20, ECF No. 283 (referring only to paragraphs 64 and 65 of Piggott's report).) The examples lack convincing force. Piggott grounds his opinions about hog contracts, unlike his opinions about leanness, in his training and experience in agricultural economics, commodity markets, and risk allocation. That he formed those opinions by applying his expertise to facts and information provided by Smithfield is normal, not disqualifying. *See Brakebush Bros., Inc. v. Certain Underwriters at Lloyd's of London*, 2024 NCBC LEXIS 137, at *11 (N.C. Super. Ct. Oct. 16, 2024) (denying motion to exclude expert who "formulated his opinions only after reviewing hundreds of documents" and "performed an independent valuation . . . based on his experience in the industry").

[4] For the first time in its reply brief, Maxwell introduces several new examples of what it contends are unreliable opinions about hog contracts. These include, among other things, Piggott's opinions about freight costs and volume commitments, as well as his opinions rebutting Ronald Plain and Kent Bang. Again, though, Maxwell does not do enough to develop its arguments, resting on conclusory assertions of inadmissibility rather than meaningful analysis. Without more, the Court sees no reason to exclude testimony that, on its face, appears to be rooted in Piggott's expertise in economics, commodity markets, and risk allocation. It also bears noting that Piggott may "base [his] criticism of [Plain's and Bang's] methodologies on [his] own experience," without providing his "own, alternative opinions." *Insight Health*, 2017 NCBC LEXIS 14, at *45–46 (collecting cases).

31. Next, Maxwell argues that Piggott is not qualified to rebut its experts' damages opinions because he admitted in his deposition that he is not a damages expert. In addition, Maxwell argues that Piggott improperly relied on assistance from a data analytics company called Analysis Group.

32. Neither point has merit. Piggott's statement that he is not a damages expert is not an admission that he is unqualified to rebut the opinions of Maxwell's experts. Indeed, Piggott testified at length about the aspects of his experience as an agricultural economist that make him well suited to the task. Economists often testify about damages or rebut damages-related testimony of others, and the Court is satisfied that Piggott brings expertise to bear that will aid the jury. At best, this is a matter for cross-examination. *See Murphy-Brown*, 2025 NCBC LEXIS 34, at *13 ("Any concerns Plaintiffs may have as to Pierce's lack of experience in the specific area of hog farm litigation or his unfamiliarity with North Carolina litigation goes to the weight that the jury should give his opinions—which Plaintiffs can explore on cross-examination—rather than on whether such opinions are admissible."); *Kerry Bodenhamer Farms*, 2018 NCBC LEXIS 239, at *11 (concluding that witness's testimony that he was "not an expert in that area" was taken out of context).

33. Similarly, the fact that Piggott received assistance from Analysis Group is not disqualifying. Experts may rely on the work of assistants so long as the assistants are "merely gofers or data gatherers" who refrain from "exercis[ing] professional judgment that is beyond the expert's ken." *Murphy-Brown*, 2025 NCBC LEXIS 34, at *20 (citation omitted). Here, Piggott testified that Analysis Group worked under

his supervision. Again, Maxwell may cross-examine Piggott on this point, but it is not a basis to exclude his testimony. *See id.* at *21 ("Cross-examination will reveal whether there was adequate supervision and whether relying on such assistance was standard practice in the field." (citation and quotation marks omitted)).

34. Finally, the Court partly agrees with Maxwell that some of Piggott's opinions are no longer relevant following summary judgment. His report includes opinions about the meaning of certain terms in the parties' output contract, (*see* Piggott Rep. ¶¶ 157–59), the terms of Smithfield's contracts with third-party suppliers other than Prestage, (*see, e.g.*, Piggott Rep. ¶¶ 140, 145), and facts related to Smithfield's affirmative defense of force majeure, (*see* Piggott Rep. ¶¶ 189–92). All are irrelevant and inadmissible. *See Harris v. Ten Oaks Mgmt., LLC*, 2023 NCBC LEXIS 146, at *5 (N.C. Super. Ct. Nov. 21, 2023) ("[E]xpert testimony offered to confirm or contradict the Court's construction is irrelevant."); *Vitaform, Inc v. Aeroflow, Inc.*, 2023 NCBC LEXIS 38, at *18 (N.C. Super. Ct. Mar. 10, 2023) ("[O]pinions predicated upon claims this Court has already dismissed . . . are inherently irrelevant under the *Daubert* standard."). The Court therefore excludes Piggott's testimony on these points.

35. But the rulings made at summary judgment do not render irrelevant Piggott's opinions concerning offers that Smithfield purportedly made to Maxwell. (*See* Piggott Rep. ¶¶ 160–78.) The Court has already denied Maxwell's motion in limine on that point. *See Maxwell Foods, LLC v. Smithfield Foods, Inc.*, 2025 NCBC LEXIS 58, at *7–8 (N.C. Super. Ct. May 20, 2025). So too for Piggott's opinions about

commodity market prices. (*See* Piggott Rep. ¶¶ 91–121.) These opinions continue to be relevant, given the different market pricing mechanisms in the parties' output contract and Prestage's May 2020 contract.

36. **Conclusion.** For all these reasons, the Court **GRANTS in part** and **DENIES in part** Smithfield's motion to exclude Shaffer. The Court also **GRANTS in part** and **DENIES in part** Maxwell's motion to exclude Piggott.

SO ORDERED, this the 5th day of June, 2025.

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