IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMCO UKRSERVICE & PROMPRILADAMCO	:	CIVIL ACTION
v.	:	
AMERICAN METER COMPANY	:	NO. 00-2638

MEMORANDUM

Dalzell, J. June 29, 2005

Plaintiffs Amco Ukrservice and Prompriladamco are Ukrainian corporations seeking over $200 million in damages for the breach of two alleged joint venture agreements. They claim that these agreements obligated defendant American Meter Company ("AMCO") to provide them with all of the gas meters and related piping they could sell in republics of the former Soviet Union.[1] Trial is set to begin July 19, 2005, and before us are plaintiffs' motions to preclude two expert witnesses -- Rebecca Ranich and Philip Kozloff -- from testifying for AMCO. We shall partially grant the Ranich motion and deny the Kozloff motion.

A. Legal Overview

Federal Rule of Evidence 702 governs the admissibility of expert testimony:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an

[1] For a more comprehensive history of this far from quotidian contractual dispute, see Amco Ukrservice v. American Meter Co., 312 F. Supp. 2d 681, 683-85 (E.D. Pa. 2004).

> 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.

Id.[2] In Daubert v. Merrell Dow Pharms., Inc., 509 U.S. 579, 589 (1993), the Supreme Court observed that Rule 702 "clearly contemplates some degree of regulation of the subjects and theories about which an expert may testify." The Court held that "[p]roposed testimony must be supported by appropriate validation--*i.e.*, 'good grounds,' based on what is known. In short, the requirement that an expert's testimony pertain to 'scientific knowledge' establishes a standard of evidentiary reliability." Id. at 590. The Court further held that Rule 702 requires that expert testimony help the fact-finder understand the evidence or determine a fact in issue. Id. Based on these teachings, our Court of Appeals has held that Rule 702 embodies a "trilogy of restrictions on expert testimony: qualification, reliability and fit." Schneider v. Fried, 320 F.3d 396, 404 (3d Cir. 2003).[3]

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[2] As the proponent of expert testimony, AMCO must establish the admissibility of its experts' opinions by a preponderance of the evidence. In re Paoli Railroad Yard PCB Litig., 35 F.3d 717, 744 (3d Cir. 1994).

[3] Our Court of Appeals has emphasized that, in some cases, especially when ruling on a summary judgment motion, district courts should hold an in limine hearing to determine reliability. Padillas v. Stork-Gamco, Inc., 186 F.3d 412, 417 (3d Cir. 1999). The concern in holding such a hearing is that the court should have access to a detailed factual record at the evidentiary stage. Hines v. Consol. Rail Corp., 926 F.2d 262, 272 (3d Cir. 1991). Nonetheless, an in limine hearing is not

Rule 702 requires that expert testimony "fit" issues in the case. To "fit," the expert's testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue." Daubert, 509 U.S. at 591. In other words, the expert's opinion must help the fact-finder discover truth by tending to prove or disprove a consequential fact. See In re TMI Litig., 193 F.3d 613, 670 (3d Cir. 1999). Thus, there must be a "connection between the expert opinion offered and the particular disputed factual issues in the case." Id.; see also Yarchak v. Trek Bicycle Corp., 208 F. Supp. 2d 470, 496 (D.N.J. 2002); Magistrini v. One Hour Martinizing Dry Cleaning, 180 F. Supp. 2d 584, 595 (D.N.J. 2002).

To qualify as an expert under Rule 702, a witness must have sufficient knowledge, skills, and training. Specifically, the witness must have "specialized knowledge regarding the area of testimony" in the form of "practical experience [or] academic training and credentials." Waldorf v. Shuta, 142 F.3d 601, 625 (3d Cir. 1998) (quoting Am. Tech. Res. v. United States, 893 F.2d 651, 656 (3d Cir. 1990)). While we must interpret the specialized knowledge requirement "liberally," id., at a minimum,

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required, and whether to hold one is entrusted to the district court's sound discretion. Padillas, 186 F.3d at 418.

Here, we decline to hold such a hearing and make three observations. First, plaintiffs filed this motion in limine about a month before trial, over a year after summary judgment practice expired. Second, no party requested a hearing. Last, because the parties extensively briefed these issues and appended exhibits, we are satisfied that the factual record will enable us to make an informed decision.

"a proffered expert witness . . . must possess skill or knowledge greater than the average layman." Id. (quoting Aloe Coal Co. v. Clark Equip. Co., 816 F.2d 110, 114 (3d Cir. 1987)).

An expert's opinion is reliable if it is "based on the 'methods and procedures of science' rather than on 'subjective belief or unsupported speculation'; the expert must have 'good grounds' for his or her belief." In re Paoli Railroad Yard PCB Litig., 35 F.3d 717, 742 (3d Cir. 1994) (quoting Daubert, 509 U.S. at 590).[4] While often applied to scientific testimony, Daubert's reasoning applies with equal force to nonscientific testimony. See Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 141 (1999). Because it is usually impossible to subject nonscientific theories to experimentation, a district court should concentrate on the expert's experience, rather than

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[4] The Supreme Court and our Court of Appeals have enumerated factors we may consider in evaluating the reliability of scientific testimony:

> (1) whether a method consists of a testable hypothesis; (2) whether the method has been subject to peer review; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; (5) whether the method is generally accepted; (6) the relationship of the technique to methods which have been established to be reliable; (7) the qualifications of the expert witness testifying based on the methodology; and (8) the non-judicial uses to which the method has been put.

Paoli, 35 F.3d at 742 n.8. These factors are "non-exclusive," i.e., a court need not apply each or even most to every case. Elcock v. Kmart Corp., 233 F.3d 734, 746 (3d Cir. 2000). Instead, the court must tailor its inquiry to the facts before it. See Kumho Tire Co., Ltd. v. Carmichael, 526 U.S. 137, 152 (1999).

methodology. Id. at 152; see also Crowley v. Chait, 322 F. Supp. 2d 530, 539 (D.N.J. 2004); ProtoComm Corp. v. Novell Advanced Servs., Inc., 171 F. Supp. 2d 473, 477 (E.D. Pa. 2001); Voilas v. General Motors Corp., 73 F. Supp. 2d 452, 461 (D.N.J. 1999).

We now apply these principles.

1. Rebecca Ranich

AMCO offers Rebecca Ranich as an expert on Ukraine's business environment in the late 1990's. She has a Masters of Business Administration degree as well as an undergraduate degree in Russian and East European Studies.[5] During the 1990's, Ranich transacted and managed many business deals in the Commonwealth of Independent States (the "C.I.S."),[6] many of which related to oil and gas pipelines. During this period, for example, she negotiated and then oversaw an oil and gas pipeline joint venture between a Russian entity and her American employer, Michael Baker Corporation. On another occasion, Ranich directed a feasibility study and project design of Sakhalin II, an oil and gas

[5] Ranich is fluent in Russian and proficient in various Slavic languages.

[6] The C.I.S. is a confederation consisting of twelve of the fifteen former Soviet republics, the exceptions being the three Baltic states, Estonia, Latvia, and Lithuania. See Central Intelligence Agency, The World Factbook, App. B, at http://www.odci.gov/cia/publications/factbook/appendix/appendix-b.html (last visited June 23, 2005). While, from a historical point of view, one could view the C.I.S. as the Soviet Union's successor, it is more akin to the European Union because it is a coordinating body, not a sovereign state unto itself.

exploration project in the Sea of Okhostsk.[7] After Ranich left Michael Baker in 1999, she advised clients transacting business in the C.I.S.'s oil and gas industries. Most notably, she helped negotiate a $2.5 billion pipeline that supplied gas from eastern Turkmenistan to consumers in Turkey, Azerbaijan, and Georgia.

AMCO proposes that Ranich testify about eight topics:

> (1) What were the risks for American companies seeking to do business in the states of the former Soviet Union -- particularly Ukraine -- in 1997 and 1998?
>
> (2) Was American Meter acting reasonably and responsibly in treading cautiously and carefully before becoming involved in a major investment in the former Soviet Union, particularly in Ukraine?
>
> (3) What was the state of Western investment in Ukraine in 1997 and 1998 -- particularly in the energy industry?
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> (4) What topics or issues would I expect to see included or covered in an agreement for an American company to form a joint venture with a Ukrainian company to do future business in the former Soviet Union, including Ukraine?
>
> (5) Do the two alleged joint venture contracts at issue in this case contain the necessary provisions (both in form and in substance) that an American company would need and expect to include in a contract to form a joint venture with a Ukrainian company?
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> (6) Do I have an opinion on the bona fides or legitimacy of the six alleged contracts between Amco Ukrservice or Prompiladamco, on the one hand, and several Ukrainian customer entities, on the other hand?
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> (7) Based on my review of the documents and the

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[7] The Sea of Okhostsk is part of the western Pacific Ocean, lying off the southern coast of Siberia and between the Kamchatka Peninsula and the Russo-Japanese Kurile Islands. See The Sea of Okhotsk, Wikipedia, at http://en.wikipedia.org/wiki/Sea_of_Okhotsk (last visited June 23, 2005).

> deposition testimony, and based on my experience of the ways in which business is conducted in the former Soviet Union, how well did Simon Friedman serve the interests of American Meter in guiding American Meter to a potential business deal in Ukraine and the former Soviet Union?
>
> (8) Do I have any observations or comments on Brian Sullivan's December 1, 2004 expert report on the plaintiff's potential damages, particularly with regard to the report's assumptions about the state of the Ukrainian economy in the late 1990's, the level of western investment in Ukraine in the late 1990's and the ability of the plaintiffs to successfully exploit any potential market opportunities in Ukraine and the former Soviet Union?

Pl.s' Mot., Ex. A, at 1-2.

We conclude that these eight topics, two -- two and seven -- do not "fit" because Ranich's testimony would not help the jury. Further, Ranich is unqualified to testify about the eighth topic. We shall permit Ranich to opine on the remaining five subjects because her testimony will aid the jury, and she is qualified to testify reliably.

a. Fit

Here, no connection links the second and seventh proposed topics with any disputed issue. Fundamentally, the parties dispute (1) whether the two alleged joint venture agreements and six alleged sales agreements bound AMCO; (2) if so, whether AMCO breached any agreement; and (3) what damages plaintiffs incurred because of AMCO's alleged breaches. The second and seventh proposed topics have no bearing on any of these issues. The second topic, whether AMCO's cautious foray into the Ukrainian market was reasonable, simply does not tend to

prove or disprove that AMCO breached any valid contract or, if it did, what damages resulted. Similarly, the seventh topic, how well Simon Friedman served AMCO's interests, also touches no material fact. Regardless of how well he served AMCO, Friedman either contractually bound AMCO or he didn't: the quality of his performance was irrelevant.

As for the eighth topic (i.e. Ranich's impressions about Brian Sullivan's damage assessment) her impressions would aid the jury if she were qualified to give them. As we conclude below, however, she is unqualified, and her testimony would thus confuse or mislead -- rather than aid -- the jury.

In contrast to the second, seventh, and eighth topics, Ranich's proposed testimony about the other five would aid the jury. The first and third topics (i.e., the risks Western businesses faced in Ukraine in the late 1990's and the state of Western investment there at that time) will contextualize the evidence. Also, these topics will help the jury decide whether the alleged joint venture agreements were binding contractual obligations or non-binding statements of intent. The collective wisdom Western businesses had amassed about the Ukrainian market by the late 1990's might affect the likelihood that Prendergast et al. acted knowingly. This knowledge would, in turn, affect the likelihood that the parties' minds met.

The fourth and fifth topics -- the terms Ranich would expect to see in the joint venture agreements and whether they in fact had these terms -- would also aid the jury. Like

international joint venture agreements, Western-Ukrainian joint venture agreements tend to follow certain patterns and have certain characteristics far outside the jury's common experience. Thus, if the alleged joint venture agreements in this case resemble binding ones forged between Western and Ukrainian businesses during the late 1990's, the documents were more likely binding contracts. Conversely, the more they diverged from the norm, the jury could find it more likely that they simply predicted the parties' future intent.

The sixth topic, Ranich's opinion about the legitimacy of the six alleged sales contracts, could help the jury measure damages. If the jury concludes that AMCO breached its obligation, then it must measure lost profits. If the six sales contracts were invalid, however, then plaintiffs lost nothing because they had nothing to enforce.[8]

b. Qualifications and Reliability

Ranich's professional experiences[9] in the C.I.S. in the late 1990's qualify her to testify reliably about five of the eight topics. We begin with the first and third, i.e., the risks

[8] Of course, the mere fact that Ranich will opine on an ultimate issue in the case does not render her proposed testimony inadmissible. See Fed. R. Evid. 704(a).

[9] While we focus on Ranich's professional experiences, she also has strong academic credentials. She graduated from Northwestern University with a degree in Russian and East European Studies, and she has a Master's Degree in business administration.

Western companies faced and the state of Western investment in Ukraine during the late 1990's. In the 1990's, on behalf of Michael Baker Corporation, Ranich did many business deals in the C.I.S. The very risks that confronted her own company -- such as political instability and currency devaluation -- confronted other Western companies. Moreover, from directing projects in Ukraine and advising clients entering C.I.S. countries, Ranich naturally learned about the general state of Western investment.

Turning to the fourth, fifth, and sixth topics, Ranich is specialized to address these as well. These topics essentially require Ranich to opine on the legitimacy of the alleged agreements in this case by comparing them to the agreements that she saw between Western and Ukrainian businesses in the 1990's. From her experiences, Ranich has the firsthand knowledge that, say, an academic would lack about the terms Western parties generally incorporated into joint venture agreements with Ukrainian firms. In her expert report, for example, she noted that, "Because of the many difficulties of doing business in the region . . . [i]n every case of which I am aware, all legal agreements were prepared in both English and the local language (Russian, Kazakh, Ukrainian, Georgian, etc) and in each instance the governing language was declared as English." Pl.s' Mot., Ex. A, at 2. Moreover, Ranich having herself negotiated an oil and gas pipeline joint venture –- an obviously prodigious enterprise -- it is hard to imagine someone more qualified to discuss the key provisions that one should expect to

see.

As for the eighth topic (i.e., the assumptions underlying Brian Sullivan's damage assessment) AMCO has failed to demonstrate that Ranich is qualified to testify reliably. AMCO offers no evidence suggesting that Ranich has formal training in economics. Furthermore, AMCO points to no evidence suggesting that her experiences negotiating and managing micro transactions gave her hands-on knowledge sufficient to attack Sullivan's macroeconomic assumptions.[10]

While we shall permit Ranich to testify about five of the eight topics that AMCO proposes, we shall prohibit her merely from summarizing facts, documents, or others' depositions. Such testimony comes "dangerously close to usurping the jury's function" and "implicates Rule 403 as a 'needless presentation of cumulative evidence' and 'a waste of time.'" Crowley v. Chait, 322 F. Supp. 2d 530, 553 (D.N.J. 2004) (citing United States v. Dukagjini, 326 F.3d 45, 54 (2d Cir. 2003)).

Further, we shall not allow Ranich to speculate. Some of Ranich's expert report is pure speculation. For example, she suggests that, because Friedman did not present the six sales contracts to AMCO until July 30, 1999, over a year after their alleged execution, Friedman must have forged them. Pl.s' Mot., Ex. A, at 31. Similarly, she claims that, during his deposition,

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[10] In any event, in light of the fact that AMCO already plans to propound an expert, Dr. Samuel Kursh, to rebut Sullivan's views, Ranich's testimony -- to the extent it would be reliable -- would be cumulative. See Fed. R. Evid. 403.

Prendergast "seemed or pretended to be quite unaware of the rampant, everyday methods of manipulation and sometimes deceit that permeated the region." Id. at 28. The inferences Ranich draws to form these conclusions flow from either "'subjective belief or unsupported speculation.'" In re Paoli Railroad Yard PCB Litig., 35 F.3d 717, 742 (3d Cir. 1994) (quoting Daubert, 509 U.S. at 590). At trial, Ranich shall not speculate, and counsel must underlie all of her testimony with a solid foundation.[11]

2. Philip Kozloff

AMCO offers Philip Kozloff as an expert in international credit transactions. He has forty-five years of business experience and spent fifteen years as a member of Citibank's Credit Policy Committee. From 1986 to 1995, he oversaw Citibank's commercial lending to European firms, including ones in Ukraine.

AMCO proposes that Kozloff testify about whether (1) it was reasonable for AMCO to accept credit risk in its alleged deals with plaintiffs; (2) it was reasonable for AMCO to request

[11] Plaintiffs complain that Ranich's proposed testimony about corruption in Ukraine amounts to ethnic stereotyping that the Court of Appeals for the Ninth Circuit condemned in Jinro Am., Inc. v. Secure Invs., Inc., 266 F.3d 993 (9th Cir. 2001). Jinro is distinguishable because, while the expert in that case cited no "empirical evidence or studies to support his sweeping indictment of the Korean business community," id. at 1006, Ranich supports her proposed testimony with the findings of Transparency International ("T.I."), a non-governmental organization that monitors corruption throughout the world. Of 146 countries in T.I.'s 2004 rankings, 1 being the least-corrupt, Ukraine placed an impressive 122. Pl.s' Mot., Ex. A, at 13.

reasonable assurances that plaintiffs would pay for goods they received; and (3) the alleged joint venture agreements in this case are binding contractual obligations or non-binding statements of intent. We find that all three topics "fit" and that Kozloff is qualified to testify about each reliably.

a. Fit

Here, the first and third topics unquestionably "fit." The first -- whether it would have been reasonable for AMCO to accept credit risk in its alleged dealings with plaintiffs -- bears on whether the parties formed binding contracts or instead non-binding statements of intent. If it would have been ludicrous for a sophisticated company like AMCO to accept the credit terms it allegedly accepted, there is a higher likelihood that AMCO did not agree to those terms. Similarly, the third topic, whether the alleged joint venture agreements follow standard patterns, also would aid the jury. Because Kozloff would testify that the documents in question diverge from the norm, his testimony would support AMCO's claim that the documents were really just non-binding statements of intent.

The second topic -- whether it was reasonable for AMCO to request assurances that plaintiffs would pay -- is slightly trickier. Under Pennsylvania's Commercial Code, when a seller reasonably feels insecure about the buyer's ability to pay, the seller may in writing demand adequate assurance of payment. 13 Pa.C.S.A. § 2609(a). Until it receives such assurance, the

seller may suspend performance, id., and, if thirty days elapse and it still receives no assurance, the seller is excused from performing. Id. § 2609(d). AMCO claims that it repeatedly demanded assurance that plaintiffs could pay for the goods they would receive and backed out only when plaintiffs failed to assuage its doubts. See Def.'s Sur-Reply, at 5.

The parties squabble about whether AMCO can assert this defense at trial because, in its answer, AMCO never pleaded it as an affirmative defense. Before we address this dispute, we emphasize that, if AMCO can assert this defense, Kozloff's testimony clearly would aid the jury. Whether Section 2609(a) excused AMCO's performance hinges on whether AMCO reasonably sought assurance; therefore, Kozloff's expert opinion on the reasonableness of AMCO's grounds would "fit" the facts of this case.

Turning to the parties' dispute, plaintiffs argue that AMCO's failure to plead reasonable insecurity[12] as an affirmative defense precludes it from asserting the defense at trial.[13] Under Fed. R. Civ. P. 8(c), a party must plead all affirmative defenses in its answer. In diversity cases, if state courts treat a matter as an affirmative defense, federal courts defer. See Charpentier v. Godsil, 937 F.2d 859, 863 (3d Cir. 1991).

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[12] We shall call the Section 2609 defense "reasonable insecurity."

[13] Surprisingly, neither party chose to cite legal authority on this issue.

While Pennsylvania Rule of Civil Procedure 1030(a) provides a list of affirmative defenses, the list is non-exclusive and, in any event, excludes reasonable insecurity.

To determine whether reasonable insecurity is an unenumerated affirmative defense,[14] we look to Pennsylvania law, which distinguishes affirmative defenses[15] from other denials by the fact that "affirmative defense[s] will require the averment of facts extrinsic to the plaintiff's claim for relief."[16] Moore v. Kulicke & Soffa Indus., Inc., 318 F.3d 561, 567 (3d Cir. 2003) (citing 5 Standard Pennsylvania Practice 2d § 26.51 (2001)). In Falcione v. Cornell School District, 557 A.2d 425, 428 (Pa.Super. 1989), for example, the Superior Court of Pennsylvania held that rescission is an affirmative defense to breach of contract. 557 A.2d 425, 428 (Pa. Super. 1989). The court reasoned that, because rescission requires the defendant to plead facts outside those one would plead to claim breach of contract, the defense is "extrinsic to the plaintiff's claim for relief." Id.

Here, the amended complaint never discusses -- let

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[14] In our independent research, we found no case addressing whether, under Pennsylvania law, reasonable insecurity is an affirmative defense.

[15] Pennsylvania courts call affirmative defenses "new matter." See Pa. R. Civ. P. 1030(a).

[16] In other words, an affirmative defense is a matter which "taking all of the allegations in the complaint to be true, is nevertheless a defense to the action." Pisiechko v. Diaddorio, 326 A.2d 608, 610 (Pa.Super. 1975) (quoting 4 Standard Pennsylvania Practice § 110 (1955)).

alone even mentions -- that AMCO demanded assurance from plaintiffs. Thus, like rescission in Falcione, reasonable insecurity here requires AMCO to prove extrinsic facts. In his deposition, Harry Skilton, AMCO's President, described these extrinsic facts. He testified that, when in June or July of 1998 he learned that AMCO was about to send goods to plaintiffs, he inquired about their ability to pay. Def.'s Sur-Reply, Ex. D, at 122-25. When Skilton concluded that plaintiffs failed to assure him adequately, he terminated the parties' relationship. Id. These facts fall completely outside those that plaintiffs pleaded in their complaint; consequently, AMCO's defense is an affirmative one.

While we could conclude that AMCO waived this defense, under Fed. R. Civ. P. 15(a), a court may allow a party to amend a responsive pleading to include an affirmative defense, and "leave shall be freely given when justice so requires." Our Court of Appeals has demonstrated a willingness to grant defendants leave to add affirmative defenses to their answer, and unless the opposing party will be prejudiced, leave to amend should generally be allowed. See Charpentier v. Godsil, 937 F.2d 859, 863-84 (3d Cir. 1991); Heyl & Patterson Int'l Inc. v. F.D. Rich Hous., 663 F.2d 419, 425-27 (3d Cir. 1981). Here, plaintiffs point to no prejudice that will flow from AMCO amending its answer to include reasonable insecurity as an affirmative

defense.[17] Furthermore, their motion to preclude Kozloff from testifying demonstrates that they read his report, which expounds on whether AMCO reasonably demanded assurance, as notifying them long ago that AMCO might assert this defense. Consequently, we shall grant AMCO leave to amend its answer and conditionally conclude that Kozloff's testimony will aid the jury.

b. Qualifications and Reliability

Kozloff is qualified to testify, and we are confident that he will do so reliably. Kozloff worked in business for forty-five years, sat on Citibank's Commercial Credit Policy Committee for fifteen years, and directed Citibank's commercial lending in Europe for nine years. From these experiences, he gained much knowledge about international commercial lending practices. For example, in his expert report, Kozloff emphasized that, generally, a manufacturer will rely on a network of wholesalers to buy bulk quantities and then hold the product in inventory until it ships it to the end-consumer. Pl.s' Mot., Ex. B, at 3. This kind of specialized knowledge qualifies Kozloff to analyze whether it was reasonable for AMCO to accept credit risk in its alleged deals with plaintiffs.

Kozloff's knowledge also enables him to comment intelligently on whether it was reasonable for Skilton to request

[17] Plaintiffs also point to none of the other Foman v. Davis factors, such as bad faith, undue delay, or futility. 371 U.S. 178, 182 (1962).

plaintiffs to assure him that they would perform their part of the bargain. When Kozloff had to decide whether it was safe for Citibank to extend credit to a foreign business, he would have had to analyze many of the same factors Skilton had to analyze to decide whether to demand assurance from plaintiffs. Further, having directed Citibank's commercial lending in Europe for nine years, Kozloff would have learned the unique risks posed by extending credit to a foreign entity, such as currency devaluation, legal uncertainty, and political instability.

Last, because Kozloff oversaw Citibank's lending practices in Europe -- and, more to the point, in Ukraine -- from 1986 to 1995, he learned the "patterns" that international joint-venture agreements typically follow. Id. at 10. He notes, for example, that international joint venture agreements are usually written in English, rather than an "obscure" language such as Ukrainian. Id. In another part of his report, Kozloff underscores that international joint venture agreements generally specify the type of currency the buyer must pay the seller. Id. at 14. This kind of specialized knowledge demonstrates that Kozloff will reliably address whether the alleged agreements were contracts or statements of intent.

B. Conclusion

For the reasons articulated above, we shall grant in part plaintiffs' motion to preclude Rebecca Ranich's testimony and deny their motion to preclude Philip Kozloff's testimony.

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

AMCO UKRSERVICE et al.	:	CIVIL ACTION
	:	
v.	:	
	:	
AMERICAN METER CO. et al.	:	NO. 00-2638

ORDER

AND NOW, this 29th day of June, 2005, upon consideration of plaintiffs' motions to preclude the testimony of Rebecca Ranich and Philip Kozloff (docket entry # 99), defendant's response (docket entry # 110), plaintiffs' motion to file a reply and attached reply (docket entry # 115), and defendant's motion to file a sur-reply and attached sur-reply (docket entry # 119), and for the reasons enunciated in our Memorandum, it is hereby ORDERED that:

1. Plaintiffs' motion to preclude the testimony of Rebecca Ranich is GRANTED IN PART and DENIED IN PART;

2. Ranich is PRECLUDED from testifying about the second, seventh, and eighth topics identified on pages one and two of her expert report;[18]

[18]Ranich may, however testify about the other five topics.

3. Plaintiffs' motion to preclude the testimony of Philip Kozloff is DENIED;

4. By July 8, 2005, defendants shall FILE an amended answer to the amended complaint that asserts reasonable insecurity as an affirmative defense;

5. Plaintiffs' motion to file a reply is GRANTED;

6. The Clerk shall DOCKET the reply attached to plaintiffs' motion to file a reply;

7. Defendant's motion to file a sur-reply is GRANTED; and

8. The Clerk shall DOCKET the sur-reply attached to defendant's motion to file a sur-reply.

BY THE COURT:

S/Stewart Dalzell

Stewart Dalzell, J.