

PLAINTIFF'S MOTION IN LIMINE

EXPERT TESTIMONY OF ERICH SPECKIN; INK ANALYSIS

27. This Court will now resolve Plaintiff's Motion in Limine. Pursuant to Federal Rules of Evidence 403, 608(a), and 702, Plaintiff seeks to exclude the expert testimony of Erich Speckin. Speckin is expected to testify as to the results of ink-dating and impression analyses that he performed on Robert Irish's "diary." Plaintiff argues that Speckin's expert opinion testimony is unreliable, irrelevant, likely to mislead and confuse the jury, not offered as to "character for truthfulness or untruthfulness," and that its probative value is outweighed by its prejudicial effect.

28. In light of this Court's decision to allow Defendant to impeach Robert Irish on his diary and after reviewing the expert reports and other materials submitted by Speckin, this Court will allow Speckin to testify as an expert. First, this Court finds that ink-dating analysis and an Electro Static Detection Apparatus ("ESDA") impression analysis are reliable methods under Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 113 S.Ct. 2786, 125 L.Ed.2d 469 (1993). Second, this Court finds that the results of such testing are competent evidence. See Calloway v. Richter, No. 97-CV-617, December 30, 1998 Decision and Order, p. 7 (Docket No. 35)(dating of documents by the use of experts analyzing the ink is competent evidence)(Scott, MJ)²; Janopoulos v. Harvey L. Walner & Assoc., Ltd., 866 F.Supp. 1086, 1095-96 (N.D. Ill. 1994)(same); Aptix Corp. v. Quickturn Design

²The actual filed copy of this decision uses "97CV067" in the caption. The correct case number is 97-CV-617.

Systems, Inc., NO. 98-00762, 2000 WL 852813, *8-9, 24 (N.D.Cal. Jun 14, 2000)(relying upon ESDA Impression analysis performed by Expert Speckin). Third, after reviewing his qualifications, this Court finds that Erich Speckin is competent to testify as an expert in these matters. Fourth, this Court finds this testimony highly relevant to the credibility of Robert Irish. However, although Speckin will be allowed to testify as to his conclusions contained in his expert reports, he will not be allowed to testify as to whether he believes Robert Irish to be credible. For example, Speckin can testify that missing or out-of-sequence impressions are inconsistent with copying over a consecutive chronological diary in the manner stated by Robert Irish, but he cannot say that Robert Irish was untruthful in his testimony. For the foregoing reasons, this Court will allow Erich Speckin to testify as an expert in this case.

PROPOSED JURY CHARGES

29. This Court has reviewed the parties' proposed jury charges and would like the parties to review the following additional charges from Bender's New York Forms of Jury Instruction:

Uniform Commercial Code Charges

Definitions

- §39.04 Seller
- §39.05 Buyer
- §39.08 Contract/Contract of Sale

Formation of Contracts

- §39.50 Formation of Contracts/Sale
- §39.51 Offer and Acceptance Generally
- §39.52 Offer Defined