

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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LAURO REZENDE,

Plaintiff,

-against-

CITIGROUP GLOBAL MARKETS, INC.,

Defendant.

09 Civ. 9392 (HB)

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CITIGROUP GLOBAL MARKETS, INC.,

Counterclaimant,

-against-

LAURO REZENDE, COMPANHIA  
SIDERURGICA NACIONAL and INTERNATIONAL  
INVESTMENT FUND LTD.,

Counterdefendants.

MEMORANDUM  
ORDER

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**Hon. Harold Baer, Jr., U.S.D.J.:**

In anticipation of trial, Compania Siderurgica Nacional (“CSN”) filed a motion to exclude the testimony of Erich Speckin (“Speckin”), an expert designated by Lauro Rezende (“Rezende”). On April 28, 2011, this Court held a *Daubert* hearing to assess the reliability of the methodology that led to the conclusions for which Speckin proposes to testify. For the following reasons, CSN’s motion is DENIED.

**I. Relevant Standards**

The proponent of expert testimony has the burden of establishing by a preponderance of the evidence that the admissibility requirements of Rule 702 are satisfied. *See Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 593 n. 10 (1993). The district court is the ultimate “gatekeeper” to ensure “that an expert’s testimony both rests on a reliable foundation and is relevant to the task at hand.” *See United States v. Cruz*, 363 F.3d 187, 192 (2d Cir. 2004) (quoting *Daubert*, 509 U.S. at 597). Whether a witness has been properly qualified to give

expert witness testimony is vested in the discretion of the trial court and is reviewed for abuse of discretion. *See United States v. Cruz*, 363 F.3d 187, 192 (2d Cir. 2004).

In assessing reliability, “the district court should consider the indicia of reliability identified in Rule 702, namely, (1) that the testimony is grounded on sufficient facts or data; (2) that the testimony is the product of reliable principles and methods; and (3) that the witness has applied the principles and methods reliably to the facts of the case.” *Amorgianos v. Nat’l R.R. Passenger Corp.*, 303 F.3d 256, 265 (2d Cir. 2002) (internal citation and quotation marks omitted). But these criteria are not exhaustive. *See Wills v. Amerada Hess Corp.*, 379 F.3d 32, 48 (2d Cir. 2004). *Daubert* enumerated a list of additional factors bearing on reliability that district courts may consider: (1) whether a theory or technique has been or can be tested; (2) “whether the theory or technique has been subjected to peer review and publication;” (3) the technique’s “known or potential rate of error” and “the existence and maintenance of standards controlling the technique’s operation”; and (4) whether a particular technique or theory has gained general acceptance in the relevant scientific community. *See Daubert*, 509 U.S. at 593-94.

## II. Analysis

Rezende offers Speckin as an expert in both forensic document examination and chemical ink analysis to testify about the authenticity of two documents that CSN produced in this litigation: (1) the IIF Subscriber’s Resignation Letter that is purportedly signed by Jose Paulo de Oliveira Alves; and (2) a February 27, 2002 letter that is purportedly signed by Rezende.

After holding the *Daubert* hearing, I conclude that Speckin’s possesses the requisite knowledge and experience to testify as an expert in this case pursuant to Rule 702 and *Daubert*. Speckin has many years of experience as a forensic chemist and forensic document analyst and has testified in numerous cases in the past. In this case, Speckin conducted a visual analysis and chemical analysis using a form of ink-dating.<sup>1</sup> While Speckin’s testimony provides grist for cross examination that is not the test at this juncture, his testimony, so far as I could tell, is grounded in sufficient data. Further, the methods that Speckin employed have been published in articles in various journals, some of which he has authored. CSN raises concerns over Speckin’s

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<sup>1</sup> Speckin’s ink dating method involves heating a portion of a document in question to fully dry the ink (“artificial aging”). Then Speckin takes the heated sample and non-heated sample of the same document, adds a chemical agent to the ink portions of each, and compares how the ink leaches off the pages of the two samples (“rate and percent extraction tests”). If the samples act similarly, Speckin concludes that the ink in the non-heated sample was fully dry, and therefore at least as old as however long it takes that type of ink to dry (e.g., 3 years). If the samples act differently, then Speckin concludes that the ink on the non-heated sample was not fully dry and the document is not as old as however long it takes that type of ink to dry.

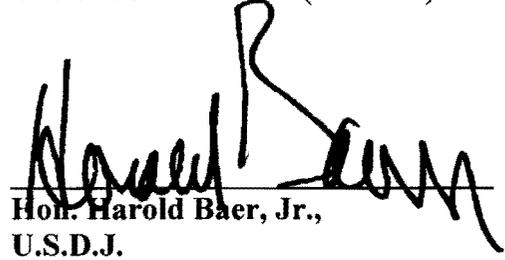
education and the reliability of his methods,<sup>2</sup> and again, none of these concerns are sufficient for me to conclude that his testimony is inadmissible. Interestingly, the attorneys for the movants here have retained Speckin in three cases of their own.

**III. Conclusion**

Accordingly, CSN's motion to exclude the testimony of Rezende's designated expert, Erich Speckin, is denied. The Clerk of the Court is instructed to close this motion (Dkt. 154) and remove it from my docket.

**SO ORDERED.**

April 29 2011



Hon. Harold Baer, Jr.,  
U.S.D.J.

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<sup>2</sup> CSN takes issue with Speckin's education and training. CSN also argues that Speckin's methods are unreliable because Speckin's "totality of the evidence" test used in the visual inspection is not supported by objective criteria accepted in the scientific community and Speckin did not account for other variables that may have caused the "ruminants" or "voids" on other parts of the page. CSN also argues that Speckin's ink dating methodology is unreliable because his results were not statistically significant to a significant degree and he did not account for other variables that would produce differences in the results, such as additional effects of the heating process.