

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MILWAUKEE COUNTY, EMPLOYEE'S
RETIREMENT SYSTEM OF THE COUNTY
OF MILWAUKEE, and PENSION BOARD,
EMPLOYEE'S RETIREMENT SYSTEM OF
THE COUNTY OF MILWAUKEE,

Plaintiffs,

v.

Case No. 06-CV-0372

MERCER HUMAN RESOURCE
CONSULTING, INC. f/k/a WILLIAM M.
MERCER, INCORPORATED,

Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION TO COMPEL DISCOVERY OF EVIDENCE OF
STUART PILTCH'S ACTUARIAL TRAINING AT THE
CENTRAL INTELLIGENCE AGENCY**

This motion is based on what should be a self-evident premise – parties who put forward expert witnesses who claim training in a particular technical discipline must allow the opposing party to conduct discovery to ascertain whether the expert's claims regarding such training are truthful or fanciful.

Milwaukee County served an expert report in September 2007 for a purported "actuarial" expert named Stuart Piltch. Mr. Piltch was deposed in October 2007. During his deposition, Mr. Piltch admitted that he is a "noncertified actuary," that he holds no actuarial credentials such as being a "fellow" or "associate" of the Society of Actuaries, and that he is a member of none of the recognized North American actuarial organizations such as the American Academy of

Actuaries.¹ Such credentials or memberships, all of which could be confirmed from public sources, would be typical of expert witnesses put forward to provide testimony on actuarial issues, since the Federal Rules of Evidence require that a person offered to provide expert testimony on a technical or specialized area of knowledge must have the requisite “knowledge, skill, experience, training, or education to offer such an opinion.” Fed. R. Evid. 702.

When pressed further for the source of his actuarial “expertise,” Mr. Piltch explained somewhat astonishingly that he had taken “seven to nine” of the actuarial examinations that would ordinarily be required for designation as a “fellow” or “associate” of the Society of Actuaries in the early 1980s while a junior employee of the *Central Intelligence Agency*.² However, when asked how he could know that the examinations he took at the CIA were the same examinations “administered to actuarial students who are pursuing a designation,” Mr. Piltch could only state that “I was told that at the time.”³ More astonishingly, he suggested that he may even have taken these examinations under an assumed name.⁴ Finally, when asked whether there was any tangible evidence supporting his story of actuarial training at the CIA, Mr. Piltch stated that he could not provide any information regarding the circumstances of the testing or proof of the results, but that “someone in the federal government” could confirm his story.⁵ *Id.* at 100-01.

On November 5, 2007, Mercer thus submitted a Freedom of Information Act request to the CIA to obtain information regarding Mr. Piltch’s employment and actuarial testing while employed at the agency.⁶ On January 8, 2008, a representative of the CIA explained that the CIA would process the request upon receipt of a privacy waiver from Mr. Piltch, and faxed a

¹ See Deposition of Stuart Piltch, October 8, 2007 (“Piltch Dep.”), pp. 95, 99, attached hereto as Exhibit 1.

² Piltch Dep., pp. 91-92, 95.

³ *Id.*, p. 102.

⁴ *Id.*, pp. 99-100.

⁵ *Id.*, pp. 100-101.

⁶ Mercer’s FOIA request is attached hereto as Exhibit 2.

copy of the “Privacy Waiver and Certification of Identity” required by the agency to Mercer’s counsel.⁷ On January 16, 2008, Defendants sent a copy of this waiver to Mr. Piltch for his signature.⁸

However, Mr. Piltch, through Plaintiffs’ counsel, has informed Mercer that, even after stating that “someone in the federal government” could confirm his story, he *refuses* to sign the waiver, citing unexplained “national security” concerns. These “national security” concerns are not credible as a matter of common sense – the CIA, after all, is largely a non-clandestine information-gathering agency that publishes, among other things, a *World Fact-Book* containing detailed information about the politics and demographics of countries around the world.⁹ But they also make no sense in the context of Mercer’s narrow request here, given that Mercer is not seeking evidence of Mr. Piltch’s work at the CIA, whatever it may have been – notably, Mr. Piltch himself would not characterize his work as “classified or secret”¹⁰ – but simply evidence of whether he took actuarial examinations *twenty-five years ago*. In any event, Mr. Piltch as a private citizen would obviously not be the appropriate person to advance any such national security concerns, particularly given the CIA’s willingness to produce the requested material if Mr. Piltch simply signs a waiver.

The admissibility of expert testimony in federal courts is, of course, governed by *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). Under *Daubert*, district courts must serve as “gatekeepers” in determining whether a proposed expert’s testimony based on his specialized knowledge is reliable and will assist the trier of fact to understand or determine a fact in issue. *Id.* at 592; *see also, Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152, (1999). The Seventh Circuit has held that “[b]ecause an expert’s qualifications bear upon whether he can

⁷ A copy of this facsimile transmission is attached hereto as Exhibit 3.

⁸ *See* January 16, 2008 Letter, from Valerie P. Vidal to Stuart Piltch, attached hereto as Exhibit 4.

⁹ *See, e.g.,* <https://www.cia.gov/library/publications/the-world-factbook/>.

¹⁰ Piltch Dep., p. 94.

offer special knowledge to the jury, the *Daubert* framework permits – indeed, encourages – a district judge to consider the qualifications of a witness.” *United States v. Vitek Supply Corp.*, 144 F.3d 476, 486 (7th Cir. 1998). Courts should preclude the admission of testimony from an expert who does not have the requisite training or experience in the area for which he is proffered to testify. *United States v. Lee*, 502 F.3d 691, 698 (7th Cir. 2007). The Court should similarly preclude the testimony of a witness who claims to have the requisite training or experience but who insists that the basis for such claim must be kept secret from the Court.

In order for the Court to evaluate the admissibility of Mr. Piltch’s expert testimony appropriately and thereby fulfill its “gatekeeper” role under *Daubert*, and in order for Mercer to cross-examine Mr. Piltch adequately, Mercer must be allowed to ascertain whether his claimed training in actuarial science at the CIA has a basis in fact. If the CIA determines somehow that the information must be withheld as a matter of national security, so be it. If the CIA releases the information and it confirms Mr. Piltch’s story, so be it – indeed, it is surprising that the County itself is not pushing for the information for this purpose. If, however, the CIA reveals that Mr. Piltch’s stated credentials are different from what he has testified in this case, or non-existent, that is evidence Mercer is entitled to and evidence the Court must see before permitting him to testify as an “expert.”

The Court should compel discovery from Plaintiffs regarding Piltch’s employment and test taking with the CIA. In the alternative, this Court should preclude Piltch from testifying as an expert in this case, since, on the current record, he lacks the requisite, proven credentials to offer any such expert opinion.

Dated this 21st day of March, 2008.

s/ Eric J. Van Vugt

QUARLES & BRADY LLP

411 East Wisconsin Avenue, Suite 2040

Milwaukee, WI 53202-4497

(414) 277-5625

ejv@quarles.com

*Attorneys for Mercer Human Resource
Consulting, Inc.*