COURT OF CHANCERY
OF THE
STATE OF DELAWARE

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 13, 2007
Decided: December 13, 2007

Collins J. Seitz, Jr.
Matthew F. Boyer
Christos T. Adamopoulos
Connolly Bove Lodge & Hutz LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899

Gregory P. Williams
Raymond J. DiCamillo
Richard P. Rollo
John D. Hendershot
Richards, Layton & Finger, P.A.
One Rodney Square
Wilmington, DE 19899

Re: *United Rentals, Inc. v. RAM Holdings, Inc., et al.*
Civil Action No. 3360-CC

Dear Counsel:

Defendants RAM Holdings, Inc. and RAM Acquisition Corp. proffer to this Court the expert report and testimony of Professor John C. Coates. In this report, Professor Coates describes and discusses two topics: (1) "customary deal structures for buyouts of public companies by private buyout funds and changes in those deal customs over time" and (2) "customary practices for lawyers negotiating agreements for M&A such as buyouts."[1] After thoroughly reviewing Professor Coates's report and both parties' briefs, I find that the portion of the report that describes buyout deal structures is admissible as factual testimony and that the remainder of the report that purports to explain drafting practices is inadmissible as impermissible legal opinion.

With respect to the solely factual testimony about deal structure contained in Professor Coates's report, this Court will admit and give such testimony weight—however little or much—as the Court determines it merits. Rule 702 directs that expert testimony "assist the trier of fact to understand the evidence or to determine

[1] Expert Report of Professor John C. Coates IV ("Report") ¶ 4.

a fact in issue."[2] In addition to this relevance requirement, the Rule requires that the proffered testimony is reliable.[3] That I will find any factual discussion in the report helpful to determine a fact in issue in this case is—at best—a dubious proposition. To the extent, however, that any observations regarding deal structure are ultimately helpful, I conclude that only these observations are sufficiently reliable to warrant their consideration.

The rest of the testimony in the report—the "customs and practices of drafting in M&A negotiations" section[4]—is inadmissible. This description of "customs and practices" is testimony that, in reality, opines on contract interpretation. Defendants do nothing to dissuade this Court from the conclusion that the testimony is bare legal opinion. In fact, defendants' arguments confirm that the proffered testimony is legal opinion. For example, defendants argue that "Professor Coates explains that phrases such as 'subject to' and 'notwithstanding' allow the parties 'to avoid the need to attempt to synthesize every provision of every related agreement . . . .'"[5] It is therefore obvious that defendants' expert intends to instruct this Court on how such "succinct but legal terms of art"[6] should be interpreted.[7] This Court, however, has made it unmistakably clear that it is improper for witnesses to opine on legal issues governed by Delaware law.[8] It is within the exclusive province of this Court to determine such issues of domestic law.[9] I, in interpreting the disputed contractual provisions at issue in this case,

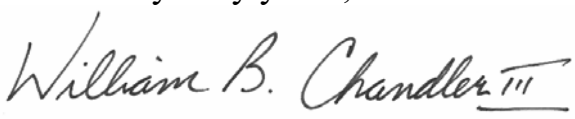
---

[2] DEL. R. EVID. 702.
[3] *Id.*
[4] Report ¶¶ 26—29.
[5] Defs.' Br. in Opp'n to Pl.'s Mot. to Exclude the Expert Report and Testimony of John C. Coates IV at 4 (citing Report ¶ 26).
[6] Report ¶ 26.
[7] Remarkably, in his report, Professor Coates appears to excuse practices that can only be described as inartful drafting as "one of the ways that the parties [to buyout negotiations] commonly economize on time and costs." *Id.* Professor Coates states that the parties, in contravention of basic principles of contract interpretation and drafting, use certain phrases (*e.g.*, "subject to" or "notwithstanding") so as to "avoid the need to attempt to synthesize every provision of every related agreement that is or may be partly or wholly in conflict with the provision in question." *Id.* Not surprisingly, disputes often arise precisely because of provisions that are "partly or wholly in conflict" with each other.
[8] *See, e.g.*, *In re Walt Disney Co. Derivative Litig.*, No. 15452-NC, 2004 WL 550750, at *1 (Del. Ch. Mar. 9, 2004) ("In this Court, witnesses do not opine on Delaware corporate law.").
[9] *See, e.g.*, *id.* (citing *Itek Corp. v. Chicago Aerial Indus., Inc.*, 274 A.2d 141, 143 (Del. 1971); *N. Am. Philips Corp. v. Aetna Cas. and Sur. Co.*, No. 88C-JA-155, 1995 WL 628447, at *3 (Del.

need not—indeed, *may not*—look beyond the well-established precedent of the Delaware courts, with which I am intimately familiar. The report, by opining on Delaware law and the application thereof under the guise of informing the Court of drafting "customs and trends," impermissibly encroaches on the province of this Court.[10] Therefore, any and all of the proffered testimony in Professor Coates's report that opines on the interpretation of an agreement under Delaware contract law is inadmissible.

IT IS SO ORDERED.

Very truly yours,



William B. Chandler III

WBCIII:mpd

Super. Apr. 22, 1995); *State v. Hodges*, Nos. CR 95-12-0405, CR 95-12-0406, 1996 WL 33655975, at *2 (Del. Super. Sept. 10, 1996)).

[10] The report attempts to instruct this Court on interpretation of the agreement, which is the ultimate issue of law in this case. As this Court has concluded previously, the "proposed testimony [is] inadmissible not *merely* because it embraces an ultimate issue, but also because it embraces domestic law." *In re Walt Disney Co. Derivative Litig.*, 2004 WL 550750, at *1 (relying on Rule 704 and *Itek*, 274 A.2d 141) (emphasis in original).