

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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GUINING LI and LEYUAN SHI,

Plaintiffs

OPINION AND ORDER  
00-C-475-C

v.

CITIBANK USA,

Defendant.  
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This is a civil action for monetary relief in which pro se plaintiffs Guining Li and Leyuan Shi bring claims of negligence and fraud against defendant Citibank USA. Subject matter jurisdiction is present. See 28 U.S.C. § 1332. Plaintiffs have named four individuals to testify as experts in this case: plaintiff Leyuan Shi, plaintiff Guining Li, Yafei Li and Helen Wu. Defendant has moved to exclude plaintiffs' expert testimony, arguing that the witnesses do not meet the criteria for experts set forth in Fed. R. Evid. 702 and Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579 (1993), and that the witnesses' testimony is inadmissible because plaintiffs failed to comply with the disclosure requirements of Fed. R. Civ. P. 26(a)(2). Defendant's motion to exclude plaintiffs' experts will be granted because the four named experts have failed to describe the methodology or supporting data they used

to reach their conclusions.

Defendant has also moved for partial summary judgment, arguing that plaintiff Guining Li lacks standing to bring this suit, and for summary judgment on the merits of plaintiffs' negligence and fraud claims, arguing that plaintiffs did not follow the proper procedure for resolution of billing disputes and that their claims fail on the merits. Defendant's motion for partial summary judgment will be denied and defendant's motion for summary judgment will be granted because plaintiff Shi has failed to adduce sufficient evidence in support of her claims of negligence and fraud to survive summary judgment.

For purposes of summary judgment, I find the following facts submitted by the parties and from the record to be material and undisputed.

## UNDISPUTED FACTS

### A. Parties

Plaintiffs Guining Li and Leyuan Shi are citizens of Wisconsin. Defendant Citibank USA (formerly known as The Travelers Bank USA) is domiciled in the state of Delaware with its principal place of business located in Delaware.

### B. Expert Reports

Plaintiffs have not consulted with or retained any experts in the banking or credit card

industry who can testify about defendant's computer programs.

Yafei Li received her Ph.D. in linguistics from Massachusetts Institute of Technology and currently is an associate professor in the Department of Linguistics at the University of Wisconsin-Madison. Yafei Li's report contains the following information:

1. Issue: Based on the Revolving Loan Agreement and Disclosure Statement, as shown by Appendix 1, the monthly statement, as shown by Appendix 2, and the letter from the president of Citibank USA, as shown by Appendix 3, please provide the name(s) that the "you," "your," and "yours" refer to in the Revolving Loan Agreement and Disclosure Statement, the monthly statement and the letter from the president of Citibank USA in accordance with the knowledge and study in linguistics.
2. Expert Opinion: The following opinion assumes that Appendixes 1, 2 and 3 are all about the same Travelers Bank USA Visa Account. Based on Appendix 1, the words "you," "your," and "yours" in the monthly statement (Appendix 2) refer to the applicant and co-applicant. The same logic applies to Appendix 3. Furthermore, Appendix 1 defines "Account" as "the Account for which you were issued one or more Cards" (the underline is mine), namely the account for which the applicant and co-applicant were issued the card(s). Since Appendix 3 is addressed to Leyuan Shi and Guining Li and refers to "your Citibank USA Visa account", common language dictates that this is the account of the two persons named in the letter. Hence, Leyuan Shi and Guining Li's account is the applicant and co-applicant' account, which in turn means that Leyuan Shi and Guining Li are the applicant and co-applicant.

Helen Wu (also known as Huixia Wu) received her Master of Science in engineering from Massachusetts Institute of Technology and currently is a database administrator at a private company. She has experience with database development and administration. Wu has not reviewed defendant's computer programs, its bills to plaintiffs or any other information in this case. Helen Wu's expert report contains the following information:

1. Issue: For a computer database of a large number of customer accounts, does an improper calculation formula or an improper calculation process affect all customer accounts?
2. Expert Opinion: For a computer database of a large number of customer account, an improper calculation formula or an improper calculation process does affect all customer accounts.

Plaintiff Leyuan Shi received her Ph.D in applied mathematics from Harvard University and currently is a professor in the Department of Industrial Engineering at the University of Wisconsin-Madison. Plaintiff Shi has no background in the area of credit card billings; she does not know the credit card bank business or the appropriate standard of care for billing errors of credit card companies. Plaintiff Shi's report contains the following information:

1. Issue: When using computer, is the kind of payment data input error control a simple or a difficult process in accordance with your teaching experience, knowledge and study.
2. Expert Opinion: Error control is in the study of industrial engineering. When using computer, payment data input error control is among the simplest tasks of error control in industrial engineering. The task of payment data input error control when using a computer is within the ability of college students who take starting level courses in industrial engineering and computer science. Very few lines of computer code can solve the problem. Error control, which is a part of quality control, is among the most commonly conducted practices in all kinds of industries.
3. Issue: Is the calculation of average daily purchase and finance charge, which are defined by the Revolving Loan Agreement and Disclosure Statement of Citibank USA, a simple or a difficult problem in applied mathematics?
4. Exp[er]t Opinion: The calculation of the average daily purchase and the finance

charge is among the simplest problems of mathematics in college level.

Plaintiff Guining Li has a Masters of Science in finance from the University of Wisconsin-Madison and a Masters of Science in Physics from Tsinghua University. Plaintiff Li has experience calculating interest and finance charges and with mathematical analysis.

Plaintiff Li's expert report contains the following information:

1. Issue: In mathematics, can the four finance charges on plaintiff's account in eighteen months by Citibank USA be proven correctly and consistently derived from the method defined by the Revolving Loan Agreement & Disclosure Statement of Citibank USA?
2. Expert Opinion: No. In mathematics, the four calculation results of finance charge by Citibank USA cannot be proven correctly and consistently derived from the method defined by the Revolving Loan Agreement & Disclosure Statement of Citibank USA. Miscalculation and inconsistency are obvious.

### C. Plaintiffs' Credit Card

On or about December 23, 1998, plaintiff Shi called Travelers Bank and Trust and asked to open an account. In January 1999, plaintiff Shi's application for an account was approved and defendant issued her the account number 4432 8220 4710 7147.

The Revolving Loan Agreement and Disclosure Statement states,

In this combined Revolving Loan Agreement and Disclosure Statement, and any monthly billing statement mailed to you hereunder, the words "you," "your," and "yours" refer to all persons named as applicant or co-applicant on the application. "Authorized User" means any person whom you have given permission to use your Account.

. . .

You promise to pay us . . . in accordance with the terms of this Agreement. . . . If your Account is a joint Account (that is—there was at least one co-applicant who signed the application for the Account), you and any joint Account holder(s) each promise to pay all amounts due on the joint Account. . . .

Plaintiff Shi is the sole account owner; plaintiff Li is an “authorized user” of the account.

A joint account would reflect the social security number of each joint applicant but defendant’s records reflect plaintiff Shi’s social security number only. Defendant conducted a credit check on plaintiff Shi at the time she opened an account but did not conduct a credit check on plaintiff Li. Defendant does not file claims in the probate cases or bankruptcy cases of authorized users or pursue collection litigation against authorized users. An authorized user may not close the account, enroll in or cancel frequent flyer miles or ask for cards, an account change, a change in the billing cycle, a reversal of a finance charge, a personal identification number, a copy of a statement, a credit line increase or a reinstatement of the account.

Account statements and other communications concerning the account have been addressed to both plaintiffs. It is defendant’s standard practice to mail monthly account statements and other communications concerning the account to the account owner and any authorized user who resides at the account owner’s address, unless the account owner instructs defendant to do otherwise.

In March 1999, the account statement showed the amount of payment as \$118.97 instead of \$618.97; defendant did not include a finance charge on the statement. The account statement of July 20, 1999 reflected a new balance of \$2,061.47. Plaintiff Shi made a payment in that amount in August 1999. Through an inadvertent data inputting error, defendant's system read plaintiff Shi's payment as \$2,061.41. Under the terms of the Revolving Loan Agreement and Disclosure Statement governing the account, a finance charge is imposed on the entire outstanding bill if payment is not made in full by the due date. The August 1999 account statement included a finance charge in the amount of \$26.01. On or about August 25, 1999, plaintiff Shi telephoned Travelers Bank USA to complain about the \$26.01 finance charge, contending that the charge was in error and should not have been assessed. On or about August 26, 1999, a Travelers Bank USA supervisor waived the \$26.01 finance charge and applied a credit in that amount to the account.

The account statement of September 20, 1999 showed a credit in the amount of \$26.01 and contained a \$1.00 minimum finance charge, which was removed from the account on September 26, 1999 after plaintiff Shi called to complain.

In November 1999, plaintiff Shi reported that her card was lost or stolen. As a result, her account was closed and its balance transferred to card #4432 8220 4790 2744.

In April 2000, the account statement reflected a \$20.90 finance charge, which

plaintiffs paid. The account was assessed a \$6.94 finance charge in May 2000 because the account balance had not been paid during the March 21 to April 19, 2000 billing cycle. A payment in the amount of \$1,920.39 was posted to the account on May 2, 2000. Even though the payment was received by the due date of May 2, 2000, the account was assessed a finance charge because of a balance that was carried over from the March 21 to April 19 billing cycle.

Section 27 of the agreement provides:

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notify us in Case of Errors or Questions About Your Bill**

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet of paper at the address listed on your bill. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error.

...

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.



There is no evidence that either plaintiff Shi or plaintiff Li wrote defendant a letter of complaint in accordance with the Revolving Credit Agreement and Disclosure Statement within 60 days of any of the alleged billing errors.

## OPINION

### I. MOTION TO EXCLUDE EXPERTS

#### A. Rule 702

Fed. R. Evid. provides,

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 opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) that 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.

In Daubert v. Merrell Dow Pharmaceuticals, Inc., 509 U.S. 579, 583 (1993), the Supreme Court held that Fed. R. Evid. 702 imposes a special obligation upon a trial judge to “ensure that any and all scientific testimony . . . is not only relevant, but reliable.” In Kumho Tire Co., Ltd. v. Carmichael, 119 S. Ct. 1167, 1171 (1999), the Supreme Court extended Daubert, holding that the trial judge's gatekeeping obligation “applies not only to testimony based on ‘scientific’ knowledge, but also to testimony based on ‘technical’ and ‘other specialized’ knowledge.” Courts in the Seventh Circuit employ a two-step inquiry for

evaluating the admissibility of expert testimony under Fed. R. Evid. 702. See Ancho v. Pentek, 157 F.3d 512, 515 (7th Cir. 1998) (citing Wintz v. Northrop Corp., 110 F.3d 508, 512 (7th Cir. 1997)). First, they examine the expert's testimony to determine whether it is scientifically reliable; if it is, they determine whether the testimony would assist the trier of fact (that is, whether the evidence is relevant). See Kirstein v. Parks Corp., 159 F.3d 1065, 1067 (7th Cir. 1998) (citing Cummins v. Lyle Industries, 93 F.3d 362 (7th Cir. 1996)). In determining scientific reliability and validity, the critical question is whether the alleged expert employed scientifically reliable and valid methods. See Ancho, 157 F.3d at 515. At its essence, science *is* methods. As with scientific inquiry itself, the court's focus is on the process rather than on the results; as long as the methods are sound, the scientist and the court do not pass judgment on the results. See People Who Care v. Rockford Bd. of Educ., 111 F.3d 528, 537 (7th Cir. 1997). Courts “must rule out subjective belief or unsupported speculation.” Ancho, 157 F.3d at 515.

Plaintiffs’ four expert disclosure reports fail to specify the process by which each of the experts arrived at their conclusions. All four experts list their name, address, education, title of current position and the fact that they are receiving no payment to testify as experts in this case. Each expert report then sets forth one to two questions and answers to the questions. Without citing any supporting case law, plaintiffs respond to defendant’s motion by stating, “Each of the plaintiffs’ experts is assigned very specific issues for expert opinion

that are within their responsibility of professional careers. All of the plaintiffs' experts received top quality education in the United States and currently take highly responsible positions in the concerned fields in the United States." Pltfs.' Br. Opp., dkt. #37, at 1.

Although plaintiffs Shi and Li, Yafei Li and Wu have advanced educational backgrounds, they have failed to describe the methodology or supporting data they used to reach their answers to the questions set forth in the expert reports. The experts have offered "only a bare conclusion. . . . 'An expert who supplies nothing but a bottom line supplies nothing of value to the judicial process.'" McMahon v. Bunn-O-Matic Corp., 150 F. 3d 651, 658 (7th Cir. 1998) (quoting Mid-State Fertilizer Co. v. Exchange Nat'l Bank, 877 F.2d 1333, 1339 (7th Cir. 1989)). Accordingly, defendant's motion to exclude plaintiffs Shi and Li and Yafei Li and Helen Wu from testifying as experts will be granted.

#### B. Rule 26(a)(2)(B)

Defendant contends that plaintiffs' experts should be excluded under Rule 37(c)(1) because plaintiffs' disclosure report does not include all information that is necessary under Rule 26(a)(2)(B). I need not address this argument because defendant's motion will be granted for the reasons set forth above.

## II. DEFENDANT’S MOTION FOR PARTIAL SUMMARY JUDGMENT

### A. Summary Judgment Standard

To succeed on a motion for summary judgment, the moving party must show that there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c); Celotex v. Catrett, 477 U.S. 317, 324 (1986). All evidence and inferences must be viewed in the light most favorable to the non-moving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986).

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### B. Plaintiff Li’s Standing

Defendant contends that plaintiff Li lacks standing to bring this action because he is not a “cardholder” but only an “authorized user,” arguing that an authorized user is not liable for repayment of the account. Plaintiff Li contends that he is a joint owner of the account because defendant names both plaintiffs in correspondence and because of the wording of the Revolving Loan Agreement and Disclosure Statement. The parties agree that the agreement defines “you,” “your” and “yours” to include both the applicant and co-applicant on the application; however, the parties disagree whether plaintiff Li is a co-applicant on the account. Plaintiff Li has failed to adduce sufficient evidence from which a reasonable factfinder could conclude that he is a co-applicant on the account rather than an authorized user. Plaintiff Shi did not complete a written application in which she listed

her husband as co-applicant; defendant has a record of plaintiff Shi's social security number only; and defendant conducted a credit check of plaintiff Shi only. That defendant addressed correspondence, including bills, to both plaintiffs does not establish that plaintiff Li is a cardholder because it is defendant's practice to do so if the authorized user lives at the account owner's address.

Article III, § 2 of the Constitution limits the jurisdiction of the federal courts to cases and controversies. See *Arizonans for Official English v. Arizona*, 520 U.S. 43, 64 (1997). In accordance with this constitutional limitation, the Supreme Court has developed a series of "justiciability" doctrines that confine the arena of potential claims that federal courts may entertain. Federal courts cannot hear cases that are not yet ripe for decision or cases that no longer present an ongoing dispute. Moreover, a party bringing a suit must have standing, that is, a personal stake in the outcome of the case. To satisfy this requirement, it must appear from the allegations of fact that the plaintiff has suffered an injury in fact, meaning an injury that is concrete and particularized and actual or imminent, not conjectural or hypothetical. Also, a plaintiff's factual allegations must be sufficient to suggest that there is a causal connection between plaintiff's injury and the conduct complained of and that the injury will likely be redressed by a favorable decision. See *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Although defendant's cardholder agreement may not hold plaintiff Li financially

responsible for the account as an authorized user, Li may be responsible for his wife's debt under state law. Wis. Stat. § 766.55 states that "An obligation incurred by a spouse during marriage, including one attributable to an act or omission during marriage, is presumed to be incurred in the interest of the marriage or the family. . . . An obligation incurred by a spouse in the interest of the marriage or the family may be satisfied only from all marital property and all other property of the incurring spouse." See also Wis. Stat. § 766.56 (credit transactions with married persons). Although plaintiff Li failed to point to state law governing marital property as support for his argument that he has standing to challenge defendant's billing practices, I will assume his financial obligations under Wisconsin law are sufficient to give him standing.

### III. DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

#### A. Contract Precondition

Defendant contends that plaintiffs cannot bring this suit because they failed to comply with the requirement in section 27 of the Revolving Loan Agreement and Disclosure Statement that they file written notice regarding alleged billing errors. I am not persuaded that section 27 establishes a precondition to filing suit in federal court. Section 27 sets forth the cardholder's rights and defendant's responsibilities under the Fair Credit Billing Act and specifies the procedures to be followed when there is a dispute about a transaction on a bill.

Although plaintiffs did not provide written notice of their complaints about their bill, this does not preclude them from bringing this suit.

### B. Negligence

Plaintiffs contend that defendant was negligent in using an improper computer program which resulted in unnecessary and miscalculated finance charges. According to defendant, plaintiffs' lack of expert testimony as to the standard of care makes it impossible for them to prove that its handling of plaintiff Shi's account fell below the applicable standard of care. In Wisconsin, the elements of a negligence claim are: "(1) A duty of care on the part of the defendant; (2) a breach of that duty; (3) a causal connection between the conduct and the injury; and (4) an actual loss or damage as a result of the injury." Antwaun A. v. Heritage Mutual Insurance Co., 228 Wis. 2d 44, 596 N.W.2d 456 (1999).

The well known rule is that "expert testimony should be adduced concerning matters involving special knowledge or skill or experience on subjects which are not within the realm of the ordinary experience of mankind, and which require special learning, study, or experience." Cramer v. Theda Clark Memorial Hospital, 45 Wis. 2d 147, 149, 172 N.W.2d 427, 428 (1968). "The lack of expert testimony in cases which are so complex or technical that a jury would be speculating without the assistance of expert testimony constitutes an insufficiency of proof." Weiss v. United Fire & Casualty Co., 197 Wis. 2d 365, 381, 541

N.W.2d 753, 758 (1995). Plaintiffs have failed to present admissible expert testimony as to the appropriate standard of care for operating a computer program for credit card billing. Plaintiffs' negligence claim is not one in which the common knowledge of laypersons affords a basis for finding negligence; in general, laypersons do not understand how computer programs function. Therefore, expert testimony would be required to assist the jury in determining whether defendant's computer billing practices were negligent. In addition, plaintiffs cannot establish that they suffered damages as a result of the finance charges that appeared on their bill in error because defendant credited them for those charges. To the extent that plaintiffs are contending that defendant miscalculated the amount of their finance charge, they have failed to adduce any evidence to explain how it was miscalculated or how it should have been calculated. Defendant's motion for summary judgment on plaintiffs' negligence claim will be granted.

### C. Fraud

In order to prove fraud, plaintiffs must show that (1) defendant made a false representation of fact with the intent to defraud them; (2) they relied justifiably on that representation; and (3) they were injured as a consequence of the fraud. See Insurance Company of North America v. Universal Mortgage Corp. of Wis., 82 Wis. 2d 170, 175, 262 N.W.2d 92, 94 (1978). The only evidence plaintiffs point to in support of their fraud claim



is their credit card statements. On summary judgment, a plaintiff has an obligation to show the existence of facts sufficient to raise a question for the jury on all of the essential elements of his claims. See Celotex, 477 U.S. at 322. Summary judgment is appropriate if the court concludes that "if the record at trial were identical to the record compiled in the summary judgment proceedings, the movant would be entitled to a directed verdict because no reasonable jury would bring in a verdict for the opposing party." Russell v. Acme-Evans Co., 51 F.3d 64, 69 (7th Cir. 1995). On the basis of this record, a reasonable trier of fact could not conclude that defendant made a false representation of fact with the intent to defraud plaintiffs. Defendant's motion for summary judgment on plaintiffs' fraud claim will be granted.

#### D. Punitive Damages

Defendant contends that plaintiffs are not entitled to punitive damages under Wis. Stat. § 895.85(3). Because defendant's motion for summary judgment will be granted on the merits of plaintiffs' claims, I need not reach this issue.

#### ORDER

IT IS ORDERED that

1. Defendant Citibank USA's motion to exclude plaintiffs' expert witness testimony

is GRANTED;

2. Defendant's motion for partial summary judgment is DENIED; and

3. Defendant's motion for summary judgment is GRANTED;

The clerk of court is directed to enter judgment for defendant and close this case.

Entered this 4th day of June, 2001.

BY THE COURT:

BARBARA B. CRABB  
District Judge