UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

JOHN GARAMENDI, Plaintiff, v. ALTUS FINANCE S.A., et al., Defendants. AND RELATED COUNTERCLAIMS	CASE NO. CV 99-2829 AHM (CWx) [Consolidated with Case No. CV 01-1339 AHM(CWX)] ORDER DENYING MAAF'S MOTION TO PRECLUDE THE FRENCH PHRASE "*QUEL JEU DOIT-ON JOUER VIS-A-VIS DES AUTORITES DE CALIFORNIE?*" AS USED IN MR. SIMONET'S NOTES FROM BEING TRANSLATED AS "WHAT GAME MUST WE PLAY WITH THE CALIFORNIA AUTHORITIES?" [Motion 12]

On December 23, 1992, seven years before the first of these lawsuits was filed, John Garamendi, the California Commissioner of Insurance, wrote a "thank you" letter to Jean-Francois Henin, the President and CEO of Altus Finance, a subsidiary of the giant French bank Credit Lyonnais. It seems that California lawyers and courts had erected obstacles to block the acquisition by Aurora National Life of the insurance assets of Executive Life Insurance Company. Mr. Garamendi expressed appreciation for the influential M. Henin's efforts in

communicating with the investor group that was trying to buy those assets.[1] He then went on to express commiseration for M. Henin's frustration, stating "I know that the United States judicial system may seem mystifying to you."[2]

Evidently, even though more than 12 years have elapsed since Mr. Garamendi's observation, some of the French litigants caught up in these complicated cases still are coping with the "mystifying" peculiarities of American courts. They appear to assume, for example, that no judge is capable of using common sense (and perhaps some pre-existing familiarity with French) to understand a straightforward French phrase. Or else, if they do not suffer from such a misapprehension, *ils jouent des jeux avec leur belle langue,* in an effort to sow confusion.

Just what prompts these musings? Before answering that question, the reader might benefit from the following all-too-simplified description of these cases.

> Executive Life Insurance Company ("ELIC") collapsed more than a decade ago. In its wake there emerged several complicated lawsuits, in state and federal court.
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> The proliferation of lawsuits and claims has created unusual complexity - - factually, legally and tactically. But there are a few basic and straightforward considerations that, although they have been obscured, are essential . . . .
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> First, the heart of this case is the Commissioner's fraud claim, which is that in 1991 and continuing thereafter, Altus, Credit Lyonnais, the shareholders of NCLH (Omnium Geneve and the MAAF parties) and several of the individual defendants (Messieurs Henin, Seys and Irigoin) lied about their various relationships

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[1] Years later - - just when is in hot dispute - - the good Commissioner discovered that, unbeknownst to him, Altus had previously acquired secret control over that syndicate of investors. *(Quel horreur!)*

[2] Ex. A to St. Denis Decl. In Opposition to a Motion in *Limine* brought by the Commissioner and Sierra.

> with each other, in order to induce the Commissioner to sell ELIC's junk bond portfolio and transfer its insurance business. More specifically, these defendants illegally concealed the fact that Altus and Credit Lyonnais would control the insurance business, with the MAAF parties acting as their "fronts."
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> Second, the fraud and the manner in which it was carried out, including the now much-publicized *"contrats de portage,"* were designed to enable the defendants to avoid two laws. One such law prohibited a foreign government (or its agency or subdivision) from directly or indirectly owning, operating or controlling an insurance company in California. California Insurance Code § 699.5. . ..

Harry Low v. Altus Finance S.A., 136 F.Supp.2d 1113, 1116 (C.D. Calif. 2001).

With that background in mind, I turn now to the pending motion, brought by the MAAF defendants. They seek an order "Precluding the French phrase "*Quel jeu doit-on jouer vis-à-vis des autorités de Californie*" from being translated as "What game must we play with the California authorities?" MAAF wants that piquant phrase translated as "What approach must we take with the California authorities?"

French is part of the language of the law in our nation. We summon citizens into our courts to serve on *petit* juries. We question them in a process known as *voir dire*. When appellate courts set out to resolve intra-circuit disputes, they sit *en banc*. And when in this case I am confronted with the near-daily avalanche of voluminous papers that the lawyers love to file, I am tempted to invoke the doctrine of *force majeure*, to evade the responsibility of reading and resolving them.

Yet, this motion in *limine*, the twentieth I have addressed in recent days, does present a delicious issue: should I extend the impact of the French language on our jurisprudence even further, so that American lawyers can accomplish what Talleyrand, the noted French statesman and diplomat, once characterized as the purpose of language: "Speech was given to man to disguise his thoughts."

Who uttered the phrase *Quel jeu doit-on jouer vis-à-vis des autorités de Californie*? None other than M. Pierre Simonet, the financial director of MAAF,

in a document intended for and later given to defendant Jean-Claude Seys, MAAF's general manager. *Id.* at 13.[3] In that document Simonet listed a series of questions and observations concerning MAAF's involvement in the consortium of French companies preparing to buy the Executive Life insurance assets.

MAAF bases its motion on the following: (1) A plea that M. Simonet's notes be understood in light of the "document's tenor, purpose and context, which is MAAF's financial director asking a series of questions of MAAF's general manager." (Memorandum, p.1.); (2) That Simonet in his deposition testimony took exception to the English-language translation that MAAF seeks to exclude; and (3) That Renée Zarelli, a certified translator, has opined that the definition of *"jeu"* in *Le Petit Larousse Illustré* (1966) that best conveys the meaning of "*jeu*" in M. Simonet's missive is *"manière d'agir,"* which Ms. Zarelli translates as "behavior."[4] MAAF also complains that the evidence is prejudicial. True. But under Fed. R. Evid. § 403, the probative value far outweighs the prejudice.

If M. Simonet was not speaking about a "game," surely Ms. Zarelli is playing one. The problems with her declaration are abundant. First, she relies only on a French-to-French dictionary. Wouldn't the fairest, most reliable way to ascertain the correct English meaning of *"jeu,"* as M. Simonet used it, be to consult a French to English dictionary? That's what the Commissioner's expert translator does: she points to *Harrap's Shorter Dictionnaire*. (Ex. B to Dariosecq Declaration.) And what does that more reliable source reveal? *Zut alors!* Of the many definitions and examples of how *"jouer"* and *"jeu"* are translated, almost all are perfectly consistent with how *"jeu"* was translated in the document that

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[3] Seys has pled guilty to related charges in a companion criminal case. M. Henin, with whom the Commissioner commiserated in 1992, is under indictment.

[4] Ms. Zarelli suggests that in the trial the "more idiomatic" term "approach" be used.

MAAF seeks to keep out: as a "game," and often with a connotation of "trickery." *Harrap's* even translates *"jouer le jeu*" as "to play the game." It translates other examples of the use of *jeu* into such familiar, straightforward English words and phrases as "all this fooling around;" "what's your game?;" "to play into one's hands . . .." Moreover, as the Commissioner's language expert points out, the definition that Ms. Zarelli happened to choose - - "*manière d` agir*" - - includes, if one bothers to take the complete entry into account, which Ms. Zarelli did not do - - "*manège*" and "*stratagème*." The connotations of those terms are hardly helpful to MAAF; they mean "ploy" or "trick." In short, both the literal meaning and the context in which M. Simonet asked his not-so-rhetorical question "*Quel jeu doit- on jouer vis-à-vis des autorités de Californie?"* is entirely consistent with "What game must we play with the California authorities?"

MAAF's motion is DENIED.[5]

DATE:

A. Howard Matz
United States District Judge

[5] Given the proclivity of the dozens of lawyers in these cases to file motion after motion, it should not be too surprising that MAAF sought to keep out important evidence. But it still must have taken considerable fortitude for its lawyer to file this motion. So it is only appropriate that the respected lawyer who did so bears the same last name as Marshal Michel Ney. Ney, the Duc d'Elchingen and Prince de la Moskova, commanded armies in the Revolutionary and Napoleonic wars. Napoleon called him the "bravest of the brave." Evidently, judging by his filing of this motion, MAAF's lawyer inherited Marshal Ney's swashbuckling genes. Alas, however, having joined Napoleon for that last battle at Waterloo, the first gutsy Ney was condemned for treason and executed by a firing squad. (*The Random House Encyclopedia*, p.2434.) No such similar fate will be meted out to his distinguished American namesake, who has been consistently exemplary in his advocacy.