

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

CLAUDETTE SCHRADER,	)	
	)	
PLAINTIFF,	)	
	)	CASE No. SX-05-CV-327
	)	
v.	)	
	)	ACTION FOR DAMAGES
	)	
GALLOWES BAY HARDWARE, SEARS, ROEBUCK	)	
& CO., AND ELECTROLUX INC.,	)	JURY TRIAL DEMANDED
	)	
DEFENDANTS.	)	

MEMORANDUM OPINION

THIS MATTER is before the Court on Defendants' "Motion In Limine To Exclude The Opinion Of Robert L. Miller And To Preclude Him From Testifying At Trial In This Matter," and Plaintiff's Response thereto. For the following reasons, Defendants' Motion will be denied.

I. Case History

This case arises out of an injury sustained by Plaintiff that allegedly occurred when the warming drawer of the gas oven Plaintiff purchased from Defendant Gallows Bay Hardware (GBH) caused an explosion of flames that burned and otherwise injured Plaintiff.

Plaintiff's husband initially purchased the gas oven, a Kenmore 30" gas range, from Defendant GBH in 2003, and it was delivered and installed by GBH in July of the same year. One year later, in July 2004, Plaintiff's husband called in a complaint to GBH, explaining that the range was not working. Later on in July, an employee of GBH went to Plaintiff's house to inspect and eventually repair the range. Upon using the range again for the first time since the repair, the warming drawer flew out followed by a ball of fire which injured Plaintiff's legs.

Over the course of this lawsuit, Plaintiff retained the services of Robert Miller, a mechanical engineer, to review the evidence and formulate an opinion as to what caused the alleged malfunction. On June 1, 2010, Defendants filed a Motion to exclude Miller's testimony, claiming that the testimony is unreliable, and therefore would not be allowed under *Daubert v. Merril-Dow Pharmaceuticals*, 509 US 579 (1993) and its progeny. Defendants further claim that this testimony should not be allowed under Federal Rules of Evidence 403, as its prejudicial effect outweighs its probative value.

II. Standard of Review

Admissibility of evidence falls under the Federal Rules of Evidence, specifically rules 401 and 702. Rule 401 provides that all relevant evidence is generally admissible, and defines relevant as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable that it would be without the evidence." FED. R. EVID. 401. "Rule 702 has three major requirements: (1) the proffered witness must be an expert; (2) the expert must testify about matters requiring scientific, technical or specialized knowledge; and (3) the expert's testimony must assist the trier of fact." *Kannankeril v. Terminix Int'l, Inc.*, 128 F.3d 802, 806 (3d Cir. 1997).

However, under Rule 403, relevant evidence may still be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." FED. R. EVID. 403.

III. Analysis

a. Mr. Miller is a Qualified Expert

The first prong of rule 702 requires that the witness must be an expert in regards to the proffered testimony. In this jurisdiction, courts have generally held that to be qualified as an expert, the individual must have “specialized knowledge regarding the area of testimony. The basis of this specialized knowledge can be practical experience as well as academic training and credentials.” *Better Box Comm. Ltd. V. BB. Tech., Inc.*, 300 F.3d 325, 327-328. Courts are required to “[interpret] the specialized knowledge requirement liberally. However, at a minimum, a proffered expert witness ... must possess skill or knowledge greater than the average layman.” *Id.* at 328 (internal citations omitted).

In response to Plaintiff’s Opposition to Defendant’s Motion in Limine, the Defendant challenges Miller’s qualifications to give an opinion in this case for the following reasons:

- At his deposition, Miller admitted he had never participated in trial or arbitration testimony dealing with ... a household appliance
- That he had “never dealt with a gas explosion”

Defendant’s dismissal of Miller’s qualifications is meritless. Miller’s academic training is outlined – he holds not just a Bachelor’s degree but also a Masters in Mechanical Engineering from the U.S. Naval Academy Postgraduate School. His naval career included assignments as an Engineering Officer on several vessels, which entailed maintenance of boiler and steam machinery, including galley appliances.

Mr. Miller’s credentials and curriculum vitae, submitted by Plaintiff, indicate that he has a wealth of experience in the field of Engineering, and demonstrate to this Court’s satisfaction that he is indeed an expert qualified to give his opinion in a case such as this. Thus, the first prong of rule 702 is satisfied.

b. The Testimony Requires Technical, Specialized Scientific Knowledge

It is undisputed that testimony regarding what allegedly occurred with the gas range will require an expert detailing, with highly specific technical knowledge, what part or parts of the range failed, and what caused the failure. Thus, it is clear to the Court that the second prong of rule 702 is satisfied.

c. The Expert's Testimony Will Assist the Trier of Fact

A court may permit expert testimony if it “will assist the trier of fact to understand the evidence or to determine a fact in issue.” FED. R. EVID. 702. Under *Daubert*, the trial court must evaluate such testimony to ensure that it “rests on a reliable foundation and is relevant to the task at hand.” 509 U.S. at 597. However, the evidentiary standard for reliability is not high, rather it “is lower than the merits standard of correctness.” *Pineda v. Ford Motor Co.*, 520 F.3d 237, 248 (3d Cir. 2008).

Defendant's main objection is to the methodology used by Mr. Miller, as Defendant contends that the opinion is unreliable. However, Plaintiff demonstrates that Mr. Miller relied upon a wealth of information in arriving at his conclusion. *See* P. Memo. Opp. M. Sum. J. Ex. 3-4. Further, Plaintiff is correct in that “[t]he grounds for the expert's opinion merely have to be good, they do not have to be perfect.” *In Re TMI Litig.*, 193 F.3d 613, 665 (3d. Cir. 1999). The expert testimony can be admitted, even if this Court believes “that there are better grounds for some alternative conclusion, and even if [this Court] thinks that a scientist's methodology has some flaws such that if they had been corrected, the scientist would have reached a different result.” *Id.* This Court will not delve into conjecture on any particular conclusion reached by any expert in this case, but rather will leave that determination to the jury. Any concerns Defendant

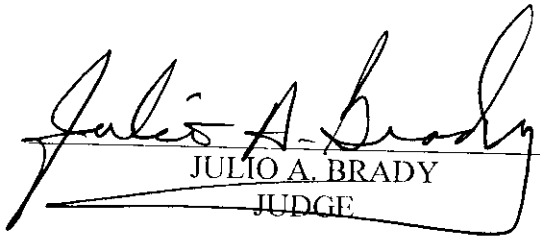
has with the methods employed by Mr. Miller are far better suited to cross-examination than they are for a Motion in Limine to exclude testimony.

The testimony of Mr. Miller speaks directly to his expert opinion, after his review of relevant inspection, picture, videos, standards, testimony, and evidence, and concludes with his opinion of what caused the alleged malfunction. It is clear to this Court that this testimony will assist the trier of fact in reaching a conclusion in this case. Thus, the third and final prong of FED. R. EVID. 702 has been met.

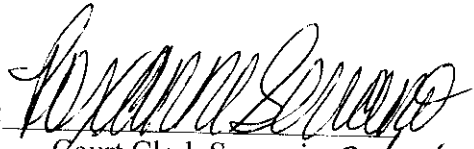
IV. Conclusion

Upon review of the record, it is clear to this Court that the proposed testimony meets the standards set out by FED. R. EVID. 702. It is clearly evidence relevant to the case, and speaks directly to an issue in contention. The testimony does not run afoul of FED. R. EVID. 403, and therefore it will not be excluded. An appropriate Order of even date will accompany this Memorandum Opinion.

Dated: September 1, 2011.


JULIO A. BRADY
JUDGE

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

By: 
Court Clerk Supervisor

9/1/11