

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

T G PLASTICS TRADING CO. INC., d/b/a)	
NATIONAL PLASTICS TRADING CO.,)	
Plaintiff,)	
)	
v.)	C.A. No. 09-336-M
)	
TORAY PLASTICS (AMERICA), INC.,)	
Defendant.)	
)	

ORDER

Defendant Toray Plastics (America), Inc. (“Toray”) filed a Motion in Limine (ECF No. 202) seeking to exclude Plaintiff T G Plastics Trading Co. Inc.’s, d/b/a National Plastics Trading Co. (“National Plastics”) expert, Wasyl Mikolenko, pursuant to Rule 702 of the Federal Rules of Evidence and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993). National Plastics objected to the motion (ECF No. 208) and Toray filed a reply. (ECF No. 210.) After reviewing all of the papers submitted, including Mr. Mikolenko’s report, resume, and two volumes of his deposition transcript, this Court DENIES Toray’s motion because the proposed testimony “both rests on a reliable foundation and is relevant to the task at hand.” *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 141 (1999) (quoting *Daubert*, 509 U.S. at 597).

This Court is mindful of the First Circuit’s admonition that “Rule 702 has been interpreted liberally in favor of the admission of expert testimony.” *Levin v. Dalva Bros., Inc.*, 459 F.3d 68, 78 (1st Cir. 2006) (citing *Daubert*, 509 U.S. at 588). The many and varied attacks that Toray launches against Mr. Mikolenko’s testimony are best left for cross-examination; they do not create a barrier prohibiting his testimony.

An expert “should have achieved a meaningful threshold of expertise” in the given area. *Prado Alvarez v. R.J. Reynolds Tobacco Co., Inc.*, 405 F.3d 36, 40 (1st Cir. 2005). This Court finds that Mr. Mikolenko meets this requirement. Specifically, Mr. Mikolenko qualifies as an expert in the plastics industry by his “knowledge, skill, experience, training, [and] education,” Fed.R.Evid. 702, including: (1) his ten years at Mobil (from 1986 to 1996), including developing a secondary market into which Mobil could sell plastics materials; (2) his study and teaching to sales team members and customers about the qualities and applications of plastics films; (3) his consulting work for Polo Films introducing its plastics films into the U.S. market; and (4) his continued involvement in the plastics industry through trade shows, association memberships, and relationships with industry members.

Moreover, his testimony concerning the meaning in the industry of “Agreed Materials” is relevant and could assist the trier of fact with its duty to determine the meaning and application of the ambiguous terms of the settlement agreement at issue in this lawsuit. Furthermore, he has established a sufficiently reliable foundation to support his expected testimony concerning the identification of “Agreed Materials” in Toray’s sales records. *See, e.g., Samaan v. St. Joseph Hosp.*, 670 F.3d 21, 31-32 (1st Cir. 2012).

Toray’s Motion in Limine (ECF No. 202) seeking to exclude National Plastics’ expert, Wasyl Mikolenko, is DENIED.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "John J. McConnell, Jr.", written in a cursive style. The signature is positioned above a horizontal line.

John J. McConnell, Jr.
United States District Judge

August 14, 2013