

not based on speculation but are derived from facts and data in evidence in accordance with R.I. R. Evid. 703.² Plaintiff avers that, in the alternative, this Court should hold a hearing to determine Moore’s qualifications as an expert.

In Rhode Island, a witness may not testify as an expert unless he or she is so qualified to testify. See R.I. R. Evid. 702 (mandating that a witness must be qualified by his or her “knowledge, skill, experience, training, or education” to testify as an expert witness); Neri v. Nationwide Mutual Fire Ins. Co., 719 A.2d 1150, 1153 (R.I. 1998). “The determination of ‘whether a given expert is qualified to testify on a particular subject’ rests within the sound discretion of the trial justice, and . . . [such determination] will not [be] disturb[ed] . . . absent an abuse of that discretion.” State v. Rodriguez, 798 A.2d 435, 438 (R.I. 2002) (quoting State v. Collins, 679 A.2d 862, 867 (R.I. 1996)); see Owens v. Silvia, 838 A.2d 881, 890 (R.I. 2003).

“When a party seeks to introduce, through expert testimony, novel scientific or complex technical evidence, it is proper for the trial justice to exercise a gatekeeping function” and hold a pre-trial hearing to determine the proffered expert’s qualifications. Silvia, 838 A.2d at 891 (citing DiPetrillo v. Dow Chemical Co., 729 A.2d 677, 685-86 (R.I. 1999)). Such a hearing is conducted pursuant to R.I. R. Evid. 104.³ DiPetrillo, 729 A.2d at 686. Accordingly, the trial

² Rule 703 provides that:

“An expert’s opinion may be based on a hypothetical question, facts or data perceived by the expert at or before the hearing, or facts or data in evidence. If of a type reasonably and customarily relied upon by experts in the particular field in forming opinions upon the subject, the underlying facts or data shall be admissible without testimony from the primary source.”

³ Rule 104 provides in pertinent part that:

“(a) Preliminary questions concerning the qualification of a person to be a witness . . . shall be determined by the court subject to the

justice should permit the witness to testify as an expert at trial only when it is shown that his or her testimony will contain “(1) scientific knowledge that (2) will assist the trier of fact.” Id. at 687. “Helpfulness to the trier of fact is the most critical consideration for the trial justice in determining whether to admit proposed expert testimony.” Silvia, 838 A.2d at 891 (citing State v. Wheeler, 496 A.2d 1382, 1388 (R.I. 1985)).

Here, Defendant seeks to exclude Moore’s testimony concerning military procurement and specifications relating to asbestos-containing products and warnings. Because such topics involve “complex technical evidence,” Moore may not testify about them unless he is qualified by his “knowledge, skill, experience, training, or education” to so testify. See R.I. R. Evid. 702; Neri, 719 A.2d at 1153. Thus, this Court must hold a pre-trial hearing to determine Moore’s qualifications to opine on the topics identified by Defendant. See Silvia, 838 A.2d at 891-92; DiPetrillo, 729 A.2d at 685-690. Decision regarding the instant Motion is stayed pending the outcome of said hearing.

Counsel shall submit the appropriate orders for entry.

provisions of subdivision (b). In making its determination it is not bound by the rules of evidence except those with respect to privileges.

(b) When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon the introduction of evidence sufficient to support a finding of the fulfillment of the condition.”



RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE: Sweredoski v. Alfa Laval, Inc., et al.

CASE NO: PC 2011-1544

COURT: Providence County Superior Court

DATE DECISION FILED: July 18, 2013

JUSTICE/MAGISTRATE: Presiding Justice Alice Bridget Gibney

ATTORNEYS:

For Plaintiff: Robert J. Sweeney, Esq.

For Defendant: David A. Goldman, Esq.; Kendra A. Christensen, Esq.