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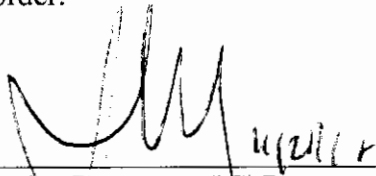
<p>IN RE: ALLODERM® LITIGATION</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>CASE CODE NO. 295</p> <p>CIVIL ACTION</p>
<p>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>LIFECCELL CORPORATION</p> <p style="text-align: right;">Defendant.</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>Docket No. MID-L-5972-11 CM</p> <p>ORDER</p>

The above matter having been opened to the Court by Anapol Weiss attorneys for Plaintiffs, on application for an Order granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony, and Argument Related to Plaintiff Michael Simineri's Previous Atopic Dermatitis And Related Disability Claim and the Court having considered all papers submitted by the parties, and for good cause and the reasons ~~stated on the record~~ *set forth in the attached memorandum of decision,* by the Court,

It is on this 20th day of November, 2015,

ORDERED that Plaintiffs' motion is hereby **GRANTED**, *IN PART* as to Mr. Simineri's atopic dermatitis and related disability claim, and **DENIED IN PART** as to Mr. Simineri's use of steroid cream.

IT IS FURTHER ORDERED that a copy of this Order be posted online and served on all counsel of record within seven (7) days of the date of this order.



Jessica R. Mayer, J.S.C.

OPPOSED

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JESSICA R. MAYER, J.S.C.
JUDGE



MIDDLESEX COUNTY COURTHOUSE
P.O. BOX 964
NEW BRUNSWICK, NEW JERSEY 08903-964

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS**

**Memorandum of Decision on Plaintiffs'
Motion *In Limine* to Exclude Evidence and Testimony**

In Re: AlloDerm® Litigation, Case Code 295

Michael Simineri and Karen Simineri v. LifeCell Corporation

Docket No. MID-L-5972-11 CM

Dated November 20, 2015

For Plaintiffs: Lawrence R. Cohan, Esq., Joseph J. Fantini, Esq., Paola Saneaux, Esq., Adrienne W. Webb, Esq., and Sol H. Weiss, Esq., Anapol Weiss.

For Defendant: David W. Field, Esq., Stephen R. Buckingham, Esq., Joseph A. Fischetti, Esq., Lowenstein Sandler LLP.

Plaintiffs Michael Simineri and Karen Simineri seek an order barring Defendant LifeCell Corporation ("LifeCell" or "Defendant") from offering evidence, testimony or argument related to Michael Simineri's atopic dermatitis and related disability claim. Defendant opposes Plaintiffs' motion. For the reasons set forth in this memorandum of decision, Plaintiffs' motion is **GRANTED IN PART** and **DENIED IN PART**.

Plaintiffs claim that Defendant proposes to offer testimony regarding Mr. Simineri's history of atopic dermatitis and his related disability claim. Plaintiffs argue that such testimony is irrelevant and prejudicial, and thus barred by New Jersey Rules of Evidence ("N.J.R.E.") 401 and 403. Specifically, Plaintiffs contend that no evidence has been submitted establishing a

relationship between atopic dermatitis and hernia recurrence, and even if such evidence existed, Mr. Simineri's atopic dermatitis was diagnosed in 1997, ten years prior to his AlloDerm® implantation. Plaintiffs additionally contend that the minimal or nonexistent probative value of the evidence is substantially outweighed by the risk of misleading the jury and causing Plaintiffs undue prejudice.¹ Defendant counters that while Mr. Simineri was diagnosed with atopic dermatitis ten years prior to his AlloDerm® implantation, he was prescribed a steroid cream for the skin condition through 2012; thus, Mr. Simineri's atopic dermatitis was an alleged risk factor at the time of his AlloDerm® implantation and is relevant to his overall medical condition. Additionally, Defendant argues that the evidence establishes that treatment with steroid cream can increase the risk of recurrence and impact wound healing. Finally, Defendant argues that Mr. Simineri's condition is necessary to allow the jury to properly assess Mr. Simineri's "loss of enjoyment of life" damages, which requires a holistic evaluation of Mr. Simineri's medical history and life limitations.

Evidence is relevant if the party seeking to proffer it demonstrates that it has a "tendency in reason to prove or disprove any fact of consequence to the determination of the action." N.J.R.E. 401. In determining whether evidence is relevant under Rule 401, the inquiry focuses upon "the logical connection between the proffered evidence and a fact in issue." Furst v. Einstein Moomjy, Inc., 182 N.J. 1, 15 (2004) (quoting State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990)). Put differently, "[t]o say that 'evidence is irrelevant in the sense that it lacks probative value' means that it 'does not justify any reasonable inference as to the fact in question.'" Verdicchio v. Ricca, 179 N.J. 1, 33-34 (2004) (quoting State v. Allison, 208 N.J. Super. 9, 17 (App. Div. 1985)).

¹ Plaintiffs do not advance a separate argument as to why introduction of Mr. Simineri's coughing episodes would be "highly prejudicial."

The admissibility of relevant evidence is governed by Rule 403, which provides that relevant evidence should be excluded “[i]f the probative value is substantially outweighed by the risk of (a) undue prejudice, confusion of issues, or misleading the jury, or (b) undue delay, waste of time, or needless presentation of cumulative evidence.” N.J.R.E. 403; see State v. Thompson, 59 N.J. 396, 421 (1971) (evidence is unduly prejudicial when its probative value is “so significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation.”).

Here, evidence of Mr. Simineri’s atopic dermatitis and related disability claim is not relevant to proving or disproving any fact of consequence in the determination of the action. However, evidence of Mr. Simineri’s steroid cream treatment is relevant to whether AlloDerm®’s alleged high rate of recurrence for hernias was the proximate cause of Mr. Simineri’s hernia recurrence. Further, the probative value of introducing evidence of Mr. Simineri’s treatment is not substantially outweighed by the risk of undue prejudice or misleading the jury.

There is no expert opinion or medical literature in the record establishing a connection between Mr. Simineri’s atopic dermatitis and his hernia recurrence. While Defendant asserts that atopic dermatitis is relevant because it was part of Mr. Simineri’s overall medical condition, the fact that poor wound healing associated with atopic dermatitis was a risk factor at the time of his surgery does not alone establish that it had a role in Mr. Simineri’s hernia recurrence. Considered in the context of damages, the relevance of Mr. Simineri’s condition does not merit a different result. While Mr. Simineri’s atopic dermatitis may have been severe in 1997, there is no evidence in the record that his atopic dermatitis had any substantial effect on his enjoyment of life since 1997. No deposition testimony was elicited from Mr. Simineri or his surgeon to the contrary.

Therefore, unless Plaintiffs attempt to enter evidence at the time of trial regarding the effect of the hernia recurrence on Mr. Simineri's skin health, the condition remains irrelevant.²

However, evidence of Mr. Simineri's use of steroid cream in the period between the AlloDerm® implantation and his hernia recurrence is admissible as it is relevant to his risk of recurrence. In deposition testimony, Mr. Simineri's surgeon, Dr. Garcia, indicated that the use of steroids at the time of surgery may impact wound healing.³ Additionally, Plaintiffs' expert, Dr. Gouge, testified that steroid use increases a patient's risk of hernia recurrence.⁴ The evidence in this case shows that Mr. Simineri was using Triamcinolone cream, a steroid cream for treatment of skin conditions, throughout the period relevant to this matter.⁵ Mr. Simineri's use of steroid cream was not casual, as the record indicates that he was prescribed one pound tubs on multiple occasions.⁶ Therefore, Mr. Simineri's use of steroid cream is probative of his ability to heal and his risk of hernia recurrence. In addition, the Court does not believe evidence of steroid cream is unduly prejudicial to Plaintiffs or confusing to the jury, arguments upon which Plaintiffs failed to elaborate.

² Additionally, because Mr. Simineri's skin condition is irrelevant, so too is his related disability claim. Thus, Defendant may not introduce evidence of Mr. Simineri's disability claim to prove the severity of his skin condition. Defendant's Opposition Brief ("Def.'s Opp. Br.") 4-5.


³ Def.'s Opp. Br. Ex. F at 101:12-102:15.

⁴ *Id.* Ex. G at 37:23-38:8.

⁵ *Id.* Ex. A (medical records indicate that Mr. Simineri was using Triamcinolone cream in 2006, 2008, 2009, 2011, 2012).

⁶ *Id.*

Therefore, Plaintiffs' motion is **GRANTED IN PART** as to Mr. Simineri's atopic dermatitis and related disability claim, and **DENIED IN PART** as to Mr. Simineri's use of steroid cream.



JESSICA R. MAYER, J.S.C.