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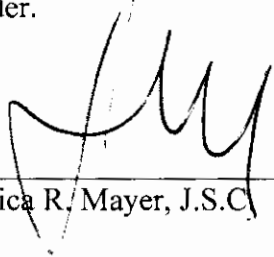
<p><b>IN RE: ALLODERM® LITIGATION</b></p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</b></p> <p><b>CASE CODE NO. 295</b></p> <p><b>CIVIL ACTION</b>      NOV 20 2015</p>
<p><b>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</b></p> <p style="text-align: right;"><b>Plaintiffs,</b></p> <p><b>v.</b></p> <p><b>LIFECELL CORPORATION</b></p> <p style="text-align: right;"><b>Defendant.</b></p>	<p><b>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</b></p> <p><b>Docket No. MID-L-5972-11 CM</b></p> <p><b>ORDER</b></p>

The above matter having been opened to the Court by Anapol Weiss attorneys for Plaintiffs, on application for an Order granting Plaintiffs' Motion to Exclude Evidence, Testimony, and Argument Related to Plaintiff Michael Simineri's Employment History And Job Duties Prior To His AlloDerm Implant, and the Court having considered all papers submitted by the parties, and for good cause and the reasons ~~stated on the record by the Court,~~ <sup>set forth in the attached memorandum of decision,</sup>

It is on this 20<sup>th</sup> day of November, 2015,

**ORDERED** that Plaintiffs' motion is hereby ~~GRANTED;~~ **DENIED**

**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.

  
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Jessica R. Mayer, J.S.C. 11/20/15

**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NOT FOR PUBLICATION WITHOUT THE  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 Mr. Simineri's employment and job duties prior to his AlloDerm® implant. Defendant opposes Plaintiffs' motion. For the reasons set forth in this memorandum of decision, Plaintiffs' motion is **DENIED.**

Plaintiffs claim that Defendant proposes to offer testimony regarding Mr. Simineri's employment and job duties at a Rita's Water Ice store prior to his AlloDerm® hernia repair surgery. Plaintiffs argue that such evidence is irrelevant and prejudicial, and thus barred by New

Jersey Rules of Evidence (“N.J.R.E.”) 401 and 403. Specifically, Plaintiffs contend that evidence Mr. Simineri carried forty-pound ice buckets prior to his AlloDerm® hernia repair surgery is irrelevant to this action because there is no evidence he carried the ice buckets after his surgery.<sup>1 2</sup> Plaintiffs additionally contend that evidence of Mr. Simineri being a franchisee for Rita’s Water Ice is irrelevant because Plaintiffs are not pursuing a wage loss claim. Finally, Plaintiffs argue that evidence regarding Mr. Simineri’s operation of a Rita’s Water Ice store would confuse the jury because he is “an admittedly morbidly obese man.”<sup>3</sup> Defendant counters that evidence of routine lifting of ice buckets prior to the AlloDerm® hernia repair surgery is relevant to whether Mr. Simineri continued to perform that same routine after his AlloDerm® hernia repair surgery.

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 ‘docs 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)). 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

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<sup>1</sup> The admissibility of evidence that Mr. Simineri performed lifting subsequent to his surgery is the subject of a separate motion *in limine* before the court.

<sup>2</sup> Plaintiffs do not advance a separate argument as to why introduction of Mr. Simineri’s job duties would be “highly prejudicial.”

<sup>3</sup> Plaintiffs’ Brief (“Pls.’ Br.”) 4.

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 job duties, specifically carrying ice buckets, prior to his AlloDerm® hernia repair surgery is relevant and admissible. Whether the lifting is characterized as “heavy” and whether it continued after Mr. Simineri’s AlloDerm® hernia repair surgery are questions for the jury and matters for cross-examination.

Plaintiffs’ expert, Dr. Dumanian, testified that “lifting excessive weight . . . can lead to suture pull-through and a recurrence[,]”<sup>4</sup> and Defendant’s expert, Dr. Langstein, opined that “Mr. Simineri’s hernia recurrence following his repair with AlloDerm was caused by his excessive lifting of heavy objects at work . . . .”<sup>5</sup> Thus, expert opinion supports a relationship between “heavy” lifting and hernia recurrence, and evidence Mr. Simineri performed any such lifting following his AlloDerm® hernia repair surgery is relevant to causation.

Mr. Simineri denies performing any “heavy” lifting after his AlloDerm® hernia repair surgery. However, Dr. Garcia’s medical records state that Mr. Simineri first noticed signs of a hernia recurrence “after doing some lifting at work.”<sup>6</sup> Defendant argues that Mr. Simineri was referring to lifting forty-pound ice buckets and seeks to introduce evidence that, according to Mr. Simineri’s deposition, Mr. Simineri lifted ice buckets “all the time” as a Rita’s Water Ice franchisee.<sup>7</sup> While Mr. Simineri denies he was referring to lifting ice buckets when he spoke with

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<sup>4</sup> Defendant’s Opposition Brief Ex. A at 208:10-17.

<sup>5</sup> Pls.’ Br. Ex. B at 4.

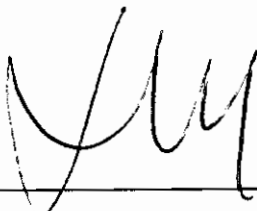
<sup>6</sup> Id. Ex. C at 78:7-9.

<sup>7</sup> Id. Ex. A at 27:8-12.

Dr. Garcia, Mr. Simineri testified that by 2010 he had “got[ten] back into” working at the [Rita’s Water Ice] store.”<sup>8</sup> In resolving this question of fact, evidence of lifting performed by Mr. Simineri at Rita’s Water Ice prior to his AlloDerm® hernia repair surgery would be helpful for the jury in determining whether Mr. Simineri was lifting ice buckets in 2010, when he had resumed working at the store.<sup>9</sup> Therefore, evidence of Mr. Simineri’s duties as a Rita’s Water Ice franchisee is relevant to this action.

Additionally, evidence that Mr. Simineri was a Rita’s Water Ice store franchisee is relevant background, despite the lack of a wage loss claim, and the court cannot discern any cogent argument from Plaintiffs’ Brief why the probative value of Mr. Simineri’s ownership of a Rita’s Water Ice store is substantially outweighed by a risk of confusion simply because Mr. Simineri is “admittedly morbidly obese.”<sup>10</sup>

Therefore, because evidence related to Mr. Simineri’s ownership of and duties performed at his Rita’s Water Ice store is relevant and admissible, and the probative value of the evidence is not substantially outweighed by the risk of undue prejudice or confusion, Plaintiffs’ motion is **DENIED**.

  
5/20/15  
**JESSICA R. MAYER, J.S.C.**

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<sup>8</sup> Id. Ex. A at 53:4-8.

<sup>9</sup> See also N.J.R.E. 406 (evidence of a person’s habit or routine may be used to prove that on a particular later occasion that person acted in accordance with the habit or routine).

<sup>10</sup> Pls.’ Br. 4.