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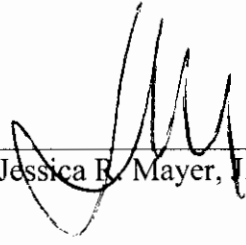
<p>IN RE: ALLODERM® LITIGATION</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>CASE CODE NO. 295</p> <p>CIVIL ACTION</p> <p>NOV 20 2015</p>
<p>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>LIFECELL CORPORATION</p> <p 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 Thyroid Issue and Surgery Performed by Gerardo Garcia, M.D., and the Court having considered all papers submitted by the parties, and for good cause and the reasons ^{set forth in the attached memorandum of decision} ~~stated on the record~~ by the Court,

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

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

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.

 4/20/15

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NOT FOR PUBLICATION WITHOUT THE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 Mr. Simineri's hypothyroidism and thyroidectomy. Defendant opposes Plaintiffs' motion. For the reasons set forth in this memorandum of decision, Plaintiffs' motion is **GRANTED**.

Plaintiffs claim that Defendant proposes to offer testimony regarding Mr. Simineri's history of hypothyroidism and thyroidectomy. 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 Defendant failed to present any expert opinions or medical

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literature establishing a relationship between thyroid issues and hernia recurrence.¹ Defendant counters that Mr. Simineri's hypothyroidism is relevant because his "overall medical history and condition has been placed in issue" and because the condition may have been a cause of Mr. Simineri's obesity, a demonstrated risk factor for hernia recurrence.

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)). 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.").

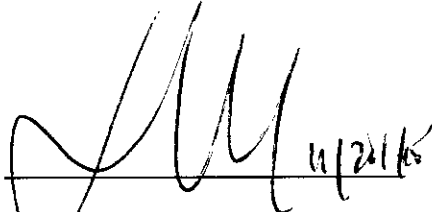
Here, evidence of Mr. Simineri's hypothyroidism and thyroidectomy lacks probative value sufficient to meet or exceed the relevance threshold. No evidence on the record establishes a

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

relationship between thyroid issues and hernia recurrence. Perhaps recognizing such a lack of causal connection, Defendant asserts that hypothyroidism is relevant because it was part of Plaintiff's overall medical condition at the time of his AlloDerm® implantation and hernia recurrence. However, the fact that hypothyroidism was a co-morbidity does not, without more, establish that it played a role in Mr. Simineri's hernia recurrence.

Defendant also asserts that hypothyroidism is relevant because it was a cause of Mr. Simineri's obesity, a demonstrated risk factor for hernia recurrence. While obesity is a risk factor for hernia recurrence, there is no evidence that the underlying reason for the obesity is a risk factor. Therefore, Defendant can convey to the jury the risks inherent to an obese patient implanted with an AlloDerm® graft without referring to Mr. Simineri's hypothyroidism. It therefore remains irrelevant. Finally, Defendant argues that Mr. Simineri's thyroid condition is relevant to his "loss of enjoyment of life" claim. However, there is no evidence that Mr. Simineri's hypothyroidism impacted his quality of life, other than that hypothyroidism may lead to obesity, which, as discussed, can be established by Defendant without mention of hypothyroidism.

Therefore, evidence related to Mr. Simineri's hypothyroidism and thyroidectomy is irrelevant to Plaintiff's cause of action and inadmissible. Thus, Plaintiffs' motion is **GRANTED**.



JESSICA R. MAYER, J.S.C.