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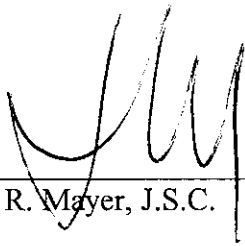
<p>IN RE: ALLODERM® LITIGATION</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>CASE CODE NO. 295</p> <p>CIVIL ACTION NOV 20 2015</p>
<p>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>LIFECELL CORPORATION</p> <p style="text-align: 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 Weight and/or Weight Loss History Prior to his AlloDerm Implant, 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**; *in part as to Mr. Simineri's weight loss attempts prior to his AlloDerm hernia repair surgery (with the exception of his gastric bypass surgery), and DENIED IN PART as to Mr. Simineri's condition of obesity prior to his AlloDerm hernia repair surgery and as to his gastric bypass surgery.*

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. | 11/22/14

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**NOT FOR PUBLICATION WITHOUT THE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 weight and weight loss prior to his AlloDerm® hernia repair. 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 weight and weight loss prior to his implantation with AlloDerm®. 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 there is no medical literature or

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JUDGE JESSICA R. MAYER

expert opinion establishing a relationship between weight or weight loss attempts prior to hernia repair and hernia recurrence.¹ Defendant counters that Mr. Simineri's weight and weight loss attempts are relevant because Mr. Simineri's weight was the reason he elected for gastric bypass surgery; that surgery led to a hernia, which, Defendant argues, demonstrates Mr. Simineri's poor wound healing. Defendant additionally argues that Mr. Simineri's history of obesity speaks to his overall medical condition at the time of surgery. Finally, Defendant argues that Mr. Simineri's pre-AlloDerm® obesity is relevant to Mr. Simineri's "loss of enjoyment of life" claim.

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

¹ Plaintiffs do not advance a separate argument as to why introduction of Mr. Simineri's weight and weight loss prior to the implant would be "highly prejudicial."

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 obesity prior to his AlloDerm® hernia repair lacks probative value sufficient to meet the threshold for relevance as to causation; however, such evidence is probative of Mr. Simineri’s claimed “loss of enjoyment of life” damages. No medical literature or expert opinion on the record establishes a relationship between obesity prior to graft implantation and hernia recurrence. Defendant’s expert, Dr. Langstein, did not opine to the contrary. Rather, Dr. Langstein observed that Mr. Simineri’s obesity at the time of surgery and thereafter increased his risk for hernia recurrence.²

Nonetheless, Mr. Simineri’s weight prior to his AlloDerm® hernia repair is relevant to establish Mr. Simineri’s claimed damages for “loss of enjoyment of life.” A claim for “loss of enjoyment of life” requires the jury to “ascertain[] how the injury has deprived the plaintiff of his customary activities as a whole person.” Eyoma v. Falco, 247 N.J. Super. 435, 452 (App. Div. 1991) (internal quotation omitted). There is evidence that Mr. Simineri’s quality of life prior to implantation with AlloDerm® was affected by his morbid obesity.³ Therefore, barring evidence of Mr. Simineri’s pre-AlloDerm® weight would obfuscate a significant aspect of Mr. Simineri’s life prior to surgery, limiting the jury’s ability to compare his pre- and post- AlloDerm® quality of life.

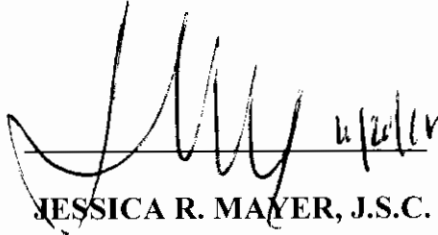
Regarding evidence of Mr. Simineri’s weight loss attempts, there is no evidence of a relationship between wiring a jaw shut to reduce food intake and the risk of hernia recurrence. However, Mr. Simineri’s attempt to lose weight via gastric bypass surgery is relevant to causation

² Defendant’s Opposition Brief (“Def.’s Opp. Br.”) Ex. A at 8.

³ Def.’s Opp. Br. Ex. K.

because the failed procedure resulted in an incisional hernia, which Dr. Langstein opined demonstrates Mr. Simineri's "inability to heal even routine fascial incisions."⁴ Thus, Mr. Simineri's gastric bypass is relevant to Defendant's position that Mr. Simineri had an elevated risk of hernia recurrence at the time of his implantation with AlloDerm®.

Therefore, Plaintiffs' motion is **GRANTED IN PART** as to Mr. Simineri's weight loss attempts prior to his AlloDerm® hernia repair surgery (with the exception of his gastric bypass surgery), and **DENIED IN PART** as to Mr. Simineri's condition of obesity prior to his AlloDerm® hernia repair surgery and as to his gastric bypass surgery.



JESSICA R. MAYER, J.S.C.

⁴ Id. Ex. A at 8.