

FILED

JAN 16 2014

JUDGE JESSICA R. MAYER

IN RE: ALLODERM® LITIGATION

**SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY**

CASE CODE: 295

CIVIL ACTION

CASE MANAGEMENT ORDER No. 4

THIS MATTER having come before the court during a case management conference on January 16, 2014, concerning the management of pending New Jersey state cases in the above litigation, and counsel having met and agreed upon a process for selecting potential bellwether trial cases, and good cause having been shown;

IT IS on this 16th day of January, 2014,

ORDERED as follows:

1. With the consent of counsel, discovery to prepare an initial pool of potential bellwether cases for trial shall commence. The court recognizes that additional discovery may be necessary and may be the subject of subsequent court orders. As such, this order shall not limit the discovery to take place in connection with the potential bellwether trial cases or define discovery in connection with subsequent bellwether trial cases.

2. Counsel for Plaintiffs and Defendant LifeCell Corporation (the "parties"), have agreed to an eligible pool of Plaintiffs for bellwether selection (the "Pool") consisting of one hundred and forty-four (144) cases. A list of the Plaintiffs the parties have agreed to include in the Pool is appended as Exhibit "A" ("The Pool List"). The Pool, as described more fully herein, was selected based on criteria and characteristics representative of the Plaintiff Pool as a whole and was restricted to those Plaintiffs with filed cases who submitted completed Facts Sheets to Defense Counsel no later than July 30, 2013. Additionally, all Plaintiffs in the Pool

had AlloDerm implanted to repair ventral/incisional hernias or for abdominal wall reconstruction surgery.¹ Five factors were applied to the remaining Plaintiffs (the “Factors”):

- (a) Age. This factor includes Plaintiffs born between 1940 and 1969.
- (b) Body Mass Index (“BMI”). This factor includes Plaintiffs considered obese by standards set by the Centers for Disease Control and Prevention (BMI over 30) at the time the AlloDerm was implanted.
- (c) Number of AlloDerm implants. This factor includes Plaintiffs who had AlloDerm implanted during only one hernia repair or abdominal reconstruction surgery. It excludes Plaintiffs who had AlloDerm implanted in multiple surgeries.
- (d) Total Number of Hernias. This factor includes Plaintiffs who had a total of three to four hernia recurrences.
- (e) Revision Surgery. This factor includes Plaintiffs who underwent a revision surgery after the AlloDerm was implanted.

3. Based on available information, the parties believe that all one hundred and forty-four (144) cases in the Pool meet at least four of the five Factors. Specifically, the parties have agreed that based on the information available to all parties at this time, fifty-one (51) cases meet all five factors (the “Five Factor Plaintiffs”) and ninety three (93) cases meet four of the five Factors (the “Four Factor Plaintiffs”). The parties agreed to base the bellwether selection process on the Pool.

4. On **December 18, 2013**, the parties exchanged twenty (20) cases from the Pool for bellwether trials consisting of each side choosing a total of ten (10) cases from the Pool. Out

¹ Plaintiffs were excluded from the Pool if their cases solely involved AlloDerm use in repair of inguinal, hiatal, parastomal, or other hernias or non-abdominal wall reconstruction.
AlloDerm CMO 4

of the ten (10) selections made by each side, six (6) of the ten (10) selected by each party were Five Factor Plaintiffs, and each side selected no more than four (4) Four Factor Plaintiffs from the Pool List. The parties are in the process of ordering such additional medical records as are needed for further review.

5. On or before **Wednesday, February 19, 2014**, the parties shall each choose four (4) cases from those cases identified by the parties pursuant to paragraph 4 of this Order, for a collective total of eight (8) cases. Of the four (4) cases chosen by each side, at least two (2) selections shall be Five Factor Plaintiffs, but no more than three (3) Five Factor Plaintiffs can be selected by either side.

6. Case specific discovery for the eight (8) potential bellwether trial cases shall commence immediately upon selection of the eight cases identified by the parties pursuant to paragraph 5 of this order. Case specific discovery may include document requests, interrogatories, requests for admissions and depositions. Fact depositions during this phase shall be limited to (1) the plaintiff (or plaintiff's personal representative), (2) up to two family members per side, (3) all surgeons and nurses who participated in any operations implanting AlloDerm in plaintiff, (4) up to two LifeCell Sales Representatives who had contact with the AlloDerm-implanting surgeons prior to any AlloDerm implantation into the plaintiff, (5) one pre-AlloDerm hernia repair surgeon per side, (6) one post-AlloDerm hernia repair surgeon per side, and (7) one non-surgeon treating physician per side. This fact discovery shall be completed no later than **Friday, October 3, 2014**.

7. No later than **Friday, October 3, 2014**, the parties shall meet and confer to determine whether there are any choice of law issues that need to be resolved by the court. Any motion relating to choice of law issues shall be filed no later than noon on **Friday, October 17,**

2014. Opposition papers shall be filed no later than noon on **Wednesday, November 5, 2014**. Reply papers, if any, shall be filed no later than noon on **Monday, November 10, 2014**. Oral argument, if any, shall be conducted on **Friday, November 14, 2014**.

8. On or before **Friday, October 17, 2014**, the parties shall each choose two (2) cases from those cases identified by the parties pursuant to paragraph 5 of this order, for a collective total of four (4) cases. Of the two (2) cases chosen by each side, at least one (1) shall be a Five Factor Plaintiff. The four (4) cases selected by the parties pursuant to this paragraph shall proceed with any and all additional discovery necessary to prepare each of the four cases for trial.

9. Plaintiffs' general causation expert reports and case specific expert reports as to liability and/or damages in the four selected trial cases shall be served on or before **Friday, November 28, 2014**.

10. Defendant's general causation expert reports and case specific expert reports as to liability and/or damages in the four selected trial cases shall be served on or before **Friday, January 9, 2015**.

11. In the event either side believes there is a need for leave to serve a supplemental expert report, the matter shall be brought to the court's attention as soon as possible.

12. Experts' depositions shall be completed on or before **Friday, February 13, 2015**.

13. Dispositive motions (including motions based upon the statute of limitations) and motions relating to the admissibility of expert testimony (Kemp/N.J.R.E. 702) in the selected trial cases shall be filed with the court no later than noon on the dates set forth below:

(a) Motions: no later than; **Friday, March 20, 2015**;

- (b) Oppositions: no later than **Wednesday, April 1, 2015**;
- (c) Replies: no later than **Monday, April 13, 2015**; and
- (d) Oral arguments and/or hearings: to be scheduled by the court if deemed necessary.

14. On or before **Friday, May 1, 2015**, the court shall render decisions on the motions filed pursuant to paragraph 13 of this order.

15. On or before **Friday, May 8, 2015**, the parties shall each select one (1) case for trial.

16. On or before **Friday, May 15, 2015**, the court shall choose a case for trial.

17. *In limine* motions in the selected trial case shall be filed with the court no later than noon on the dates set forth below:

- (a) Motions: no later than **Friday, May 29, 2015**;
- (b) Oppositions: no later than **Friday, June 12, 2015**;
- (c) Oral argument: to be scheduled by the court if deemed necessary.

18. The schedule for the exchange and submission of deposition designations between the parties in the selected trial case shall be as follows:

- (a) Counsel to exchange proposed deposition designations on or before **Friday, May 29, 2015**;
- (b) Counsel to exchange objections to deposition designations and counter designations on or before **Friday, June 12, 2015**;
- (c) Counsel to meet and confer regarding deposition designations during the week of **June 15, 2015**; and

- (d) Counsel to submit written objections to the court as to any unresolved deposition designations no later than **Friday, June 26, 2015**.

19. The schedule for the exchange and submission of proposed exhibit lists and witness lists for the selected trial case shall be as follows:

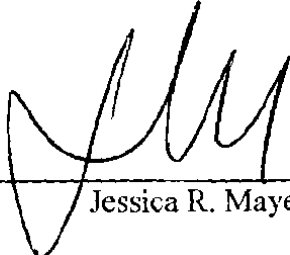
- (a) Counsel to exchange proposed exhibit lists and witness lists no later than **Friday, May 29, 2015**;
- (b) Counsel to serve objections to proposed exhibit lists and witness lists no later than **Friday, June 12, 2015**;
- (c) Counsel to submit final exhibit lists and witness lists to the court no later than **Friday, June 26, 2015**.

20. A one (1) page joint statement of the case for the jury pool, joint submissions of questions for the jury voir dire, proposed jury charges and proposed verdict sheet shall be submitted to the court no later than **Friday, June 19, 2015**.

21. The trial in the selected case will commence on **Monday, September 28, 2015**.

22. The next case management conference shall be conducted on **February 26, 2014** at 10:30 a.m. in courtroom 403. Any joint agenda items and submissions shall be submitted to the court by noon seven days prior to the conference.

23. The court shall post a copy of this order online within seven (7) days of the date of this order.



Jessica R. Mayer, J.S.C.