

#0014  
11/20/15

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LifeCell Corporation

NOV 20 2015

IN RE: ALLODERM® LITIGATION  
CASE CODE 295

MICHAEL SIMINERI and KAREN  
SIMINERI, h/w,  
Plaintiffs,  
v.  
LIFECELL CORPORATION,  
Defendant.

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY  
Docket No. MID-L-5972-11 CM

Civil Action

**ORDER**

The above matter having been opened to the Court by Lowenstein Sandler LLP, attorneys for defendant LifeCell Corporation, on application for an Order barring plaintiff from introducing certain evidence on pain, suffering and other damages at the time of trial, and the Court having considered all papers submitted by the parties, and for good cause and the reasons <sup>set forth in the attached memorandum of decision</sup> ~~stated on the record by the Court,~~

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

ORDERED that defendant's motion is hereby ~~granted~~ <sup>denied</sup>; and it is further

~~ORDERED that plaintiffs are barred from introducing (1) evidence of pain, suffering and other damages occurring after plaintiff's January 3, 2011 surgery involving the use of synthetic mesh, (2) evidence or argument of increased risk of future recurrence and (3) evidence or argument that AlloDerm adversely impacted plaintiff's ability to operate, or otherwise adversely affected, plaintiff's business at the time of trial; and it is further~~

*And it is further*

ORDERED that a copy of this Order be served <sup>posted in file &</sup> on all counsel of record within

1 days hereof.

*[Handwritten Signature]*  
4/24/18

Hon. Jessica R. Mayer, J.S.C.

**OPPOSED**

**PAPERS CONSIDERED**

	<u>Yes</u>	<u>No</u>	<u>Date</u>
Notice of Motion	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Movant's Affidavits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Movant's Brief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Answering Affidavits	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Answering Brief	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
Cross Motion	<input type="checkbox"/>	<input type="checkbox"/>	
Movant's Reply	<input type="checkbox"/>	<input type="checkbox"/>	
Other _____	<input type="checkbox"/>	<input type="checkbox"/>	

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NOT FOR PUBLICATION WITHOUT THE  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 Defendant's  
Motion *In Limine* to Bar Plaintiffs from Presenting Certain Evidence of Pain, Suffering,  
and Other Damages at Trial

In Re: AlloDerm® Litigation, Case Code 295

Michael Simineri and Karen Simineri v. LifeCell Corporation

Docket No. MID-L-5972-11 CM

For Plaintiffs: Lawrence R. Cohan, Esq., Joseph J. Fantini, Esq., and Sol H. Weiss, Esq., Anapol Weiss.

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

Dated November 20, 2015

FILED  
NOV 20 2015  
MIDDLESEX COUNTY CLERK

Defendant LifeCell Corporation (“LifeCell” or “Defendant”) moves to preclude Plaintiffs from presenting certain evidence of pain, suffering, and other damages at trial.<sup>1</sup> Counsel agreed to waive oral argument on this motion and consented to the court’s disposition of the matter on the papers submitted. Upon considering the legal memoranda, exhibits and relevant case law,<sup>2</sup> the

<sup>1</sup> Defendant also moved to preclude evidence of other damages, including risk of future recurrence and lost wages. The parties, by stipulation filed on October 22, 2015, agreed not to present evidence or testimony on these alleged damages. As such, the court need not address the now-moot aspects of this motion.

<sup>2</sup> The parties signed a consent order stipulating that New Jersey law governs all issues in the AlloDerm® cases. See consent order dated January 15, 2015.

court determines that LifeCell's motion to preclude Plaintiffs from presenting certain evidence of pain, suffering, and other damages at trial is **DENIED**.

Plaintiff Michael Simineri underwent ventral hernia repair surgery with AlloDerm® on October 24, 2007. In April of 2010, Dr. Gerardo Garcia diagnosed Mr. Simineri with a recurrent incisional hernia at the same location as the hernia previously repaired with AlloDerm®. On January 3, 2011, Dr. Garcia repaired Mr. Simineri's hernia using a synthetic mesh product. Mr. Simineri's alleged injuries in this case include the painful bulging of the AlloDerm® leading to his 2010 recurrence diagnosis, the recurrence itself, and various pain and suffering attendant to and resulting from the subsequent hernia repair surgery in 2011.

Defendant moves to preclude any evidence of pain, suffering, or other damages occurring after Mr. Simineri's January 3, 2011 hernia repair surgery. According to Defendant, once the AlloDerm® hernia recurrence was repaired in 2011, any subsequent damages suffered by Mr. Simineri could not have been proximately caused by AlloDerm®. Plaintiffs oppose Defendant's motion and argue that all damages subsequent to Mr. Simineri's implantation with AlloDerm® are relevant to the instant case. Plaintiffs further note that Plaintiffs' expert, Dr. Roger Huckfeldt, will offer an expert opinion on Mr. Simineri's ongoing pain and suffering related to his hernia repair surgery with AlloDerm®.

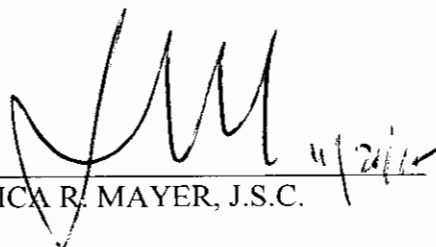
Defendant argues that the 2011 surgery was an independent intervening cause of any subsequent injury, breaking the casual chain and limiting LifeCell's liability to damages prior to January 3, 2011. Such an argument is not properly the subject of an *in limine* motion. "The existence of proximate causes and intervening causes are factual issues which must be resolved by the jury." Davis v. Brooks, 280 N.J. Super. 406, 410, (App. Div. 1993).

There is no question that there may be any number of causes intervening between a negligent act and a final injurious occurrence. If they are reasonably foreseeable, each intermediate cause may be deemed a proximate result of the first wrongful act. The original negligence is deemed to continue and operate contemporaneously with all intervening acts of negligence that might reasonably be foreseeable, so that the original negligence is regarded as a concurrent cause of the final resulting injury. The causal connection may be broken by a superseding intervening cause. Such a cause must be one that so entirely supersedes the operation of the first tortfeasor's negligence that it alone caused the injury, without the first tortfeasor's negligence contributing thereto in any material way. But where the original tortfeasor's negligence is an essential link in the chain of causation, such a causal connection is not broken if the intervening cause is one which might, in the natural and ordinary course of things, be anticipated as not entirely improbable.

[Davis v. Brooks, 280 N.J. Super. 406, 412 (App. Div. 1993).]

Here, the alleged superseding intervening cause is the 2011 hernia repair surgery. A reasonable jury could find that a hernia repair surgery is the natural consequence of a failed hernia repair product. As such, the issue is properly one for the jury to determine.

For the foregoing reasons, Defendant's motion to preclude Plaintiffs from presenting certain evidence of pain, suffering, and other damages at trial is **DENIED**.

  
JESSICA R. MAYER, J.S.C. 4/24/12