

**FILED**

FEB 03 2012

JUDGE JESSICA R. MAYER

IN RE: ALLODERM® LITIGATION

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY

CIVIL ACTION

Case Code: 295

STIPULATED PROTECTIVE ORDER

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Upon the stipulation of the parties, and for good cause shown, the Court enters the following Protective Order:

**WHEREAS**, by Order dated July 12, 2011, the Supreme Court of New Jersey ordered all pending and future New Jersey state court actions seeking damages or other relief arising out of the use of AlloDerm Regenerative Tissue Matrix to be assigned for centralized case management purposes to Superior Court, Law Division, Middlesex County for handling by Superior Court Judge Jessica R. Mayer, J.S.C. (hereafter, the AlloDerm actions assigned for centralized management collectively referred to as the “Action”);

**WHEREAS**, certain documents and information may be sought, produced, or exhibited by and among the parties in the Action which relate to the parties’ confidential and proprietary information that may be subject to protection pursuant to R.4:10-3(g);

**WHEREAS**, the parties will provide a significant amount of discovery materials in this Action and the parties agree that a protective order will facilitate a timely and efficient discovery process;

**WHEREAS**, prior to the Supreme Court’s July 12, 2011, a Confidentiality Order was entered on April 13, 2011 by the Hon. Edward M. Coleman, Superior Court of New Jersey, Law Division, Somerset County, in Remington et al. v. LifeCell Corporation, Docket No. SOM-L-

1131-10 (“Previous Confidentiality Order”), and pursuant to such order, the parties have already produced documents to each other; and

**WHEREAS**, the parties intend and agree that all documents produced pursuant to the Previous Confidentiality Order shall, going forward, be subject to the terms of, and handled in accordance with, this Protective Order;

**IT IS HEREBY STIPULATED AND AGREED, AND FOR GOOD CAUSE SHOWN, ORDERED THAT:**

**Scope**

1. This Protective Order shall govern all documents, the information contained therein, and all other information produced or disclosed during this Action or pursuant to the Previous Confidentiality Order, whether revealed in a document, deposition, other testimony, discovery response or otherwise, by any party in this Action (the “Supplying Party”) to any other party or parties (the “Receiving Party”).

2. Third parties who have been subpoenaed to produce documents in this Action may elect to avail themselves of, and agree to be bound by, the terms and conditions of this Protective Order and thereby become a Supplying Party for purposes of this Protective Order.

3. The entry of this Protective Order does not prevent any party from seeking a further order of this Court pursuant to R. 4:10-3 or R. 1:38-11 (with respect to documents to filed with the Court).

4. Nothing herein shall be construed to affect in any manner the admissibility at trial or any other court proceeding of any document, testimony, or other evidence.

### **Confidential Information**

5. “Confidential Information,” as used herein, means information of any type, kind or character that the Supplying Party believes in good faith constitutes, reflects, discloses, or contains information subject to protection under R. 4:10-3 (g), including, without limitation, documents that contain any trade secrets or other proprietary and/or confidential research, development, manufacturing, regulatory, financial, marketing, commercial or other competitive information or confidential personal, medical, social and/or private information or analysis of the Supplying Party, whether it is a document, information contained in a document, information revealed during a deposition or other testimony, information revealed in an interrogatory response, or information otherwise revealed. Any portion of any transcript in which Confidential Information is discussed shall be treated as confidential pursuant to this Order.

6. Specific documents and discovery responses produced by a Supplying Party may be designated as containing Confidential Information by marking them with the words “Confidential Information – Subject to Protective Order” without obscuring any part of the text. Such a designation shall subject the document and its contents to this Order. In lieu of marking the original of a document, the designating party may mark the copies that are produced or exchanged. A party in this Action may designate as Confidential Information any document or information produced by or testimony given by any other person or entity that the party reasonably believes qualifies as Confidential Information pursuant to this Protective Order.

7. Any material produced or provided in this Action for inspection is to be treated by the Receiving Party as Confidential Information pending the copying and delivery of any copies of the same by the Supplying Party to the Receiving Party.

8. Information disclosed at any deposition taken in connection with this Action may be designated by any party as Confidential Information in accordance with the procedures set forth below. All testimony provided at deposition shall be considered Confidential Information for a set period of time as set forth below and the court reporter shall mark all pages of deposition testimony taken in this Action with the designation “Confidential Information – Subject to Further Confidentiality Review.” In order to maintain the Confidential Information status of such testimony, a party must notify all other parties and the court reporter in writing within forty-five (45) days of receipt of the final transcript that it should be treated as confidential. Only those portions of the transcript so designated by page and line numbers within that forty-five (45) day period shall be deemed Confidential Information. The Supplying Party of any Confidential Information shall have the right to exclude anyone other than Qualified Persons (as defined below) from the deposition during any period during which Confidential Information is disclosed or discussed.

**Permissible Disclosure of Confidential Information**

9. The Receiving Party may show and deliver Confidential Information only to a “Qualified Person”, which as used herein means the following:

- (a) Plaintiffs’ counsel of record, including attorneys, clerical, secretarial and other staff employed or retained by such counsel;
- (b) Outside counsel for LifeCell Corporation, including attorneys, clerical, secretarial and other staff employed or retained by such counsel;
- (c) In-house counsel for LifeCell Corporation and its parent corporation Kinetic Concepts, Inc., including the clerical, secretarial and other staff working directly for in-house counsel in the legal department;

- (d) With respect to any Confidential Information produced by any Plaintiff or third-party with respect to Plaintiff, any current or former employee of the Receiving Party to whom it is necessary to disclose such information for the purpose of assisting in, or consulting with respect to, the preparation of this Action;
- (e) Experts and consultants retained by any Party for purposes of assisting the parties and their attorneys of record in the preparation and presentation of the claims or defenses if the proposed recipient signs the certification described in paragraph 11 and attached as Exhibit A;
- (f) Court reporters or videographers present at depositions held in this matter, subject to the terms set forth below;
- (g) Subject to the provisions of paragraph 13, the Receiving Party may show Confidential Information during a deposition to a witness who is a current employee of the Supplying Party or the author or recipient of the document containing the Confidential Information that the Receiving Party wishes to show to the witness. Confidential Information shown to any witness during a deposition shall not lose its Confidential status through such use, and counsel shall exercise their best efforts and take all steps reasonably required to protect its confidentiality during such use. If, after a deposition is noticed, the Supplying Party objects to Confidential Information being shown to that witness, the Supplying Party shall attempt to confer with counsel to resolve the issue. If counsel are unable to resolve the issue themselves, counsel may seek an order from the Court

prohibiting or limiting such use or for other relief. Furthermore, any deponent, other than a current employee of the Supplying Party, shall be shown a copy of this Order and asked to sign the undertaking attached as Exhibit A before being shown or examined about Confidential Information. Regardless of whether a deponent signs the undertaking, this Order will apply to any deponent who is shown or examined about Confidential Information;

- (h) With respect to any Confidential Information produced by Plaintiff or third-party with respect to Plaintiff, any treating physician or health care provider of the Plaintiff to whom it is necessary to disclose such information for the purpose of assisting in or consulting with respect to, the preparing of this Action;
- (i) Employees of litigation support firms retained by a party to prepare document databases, trial exhibits and the like in this Action;
- (j) Outside document copying services, and/or document coding or computerized services employed by counsel of record who shall agree to be bound to maintain the confidentiality of documents provided to them for such purposes; and
- (k) Other persons who may be specifically designated by consent of the Supplying Party or pursuant to Court Order.

10. Confidential Information shall not be disclosed or made available to any persons other than Qualified Persons without the prior written consent of the Supplying Party. Without limiting the foregoing, no disclosure to the news or internet media is contemplated by this Order.

11. All Qualified Persons to whom Confidential Information is provided under this Order shall be furnished with a copy of this Protective Order and shall be bound by its terms, and counsel for each party shall maintain a log of all persons to whom they have provided a copy of this Order. Furthermore, prior to the disclosure of the Confidential Information to any person identified in Paragraph 9(e) or 9(g) hereof, such person shall be furnished with a copy of this Protective Order, shall agree to be bound by its terms, and shall also execute a copy of the certification which is attached as Exhibit "A". Counsel shall provide opposing counsel with copies of all certifications signed by persons receiving Confidential Information pursuant to Paragraph 9(g) promptly after receiving such certifications and prior to disclosing any Confidential Information to such persons. Subject to the provisions of Paragraph 13, certifications signed by persons being provided access to Confidential Information pursuant to Paragraph 9(e) shall be strictly confidential, and counsel for each party shall maintain such certifications without giving copies to the other side. The parties expressly agree, and it is hereby ordered that, except in the event of a suspected violation of this order (including, without limitation, violations of Paragraph 13), they will make no attempt to seek copies of certifications by Paragraph 9(e) Qualified Persons to determine the identities of such persons signing them. If the Court finds that any disclosure is necessary to investigate violation of this Order, the disclosure will be limited to outside and in-house counsel only and outside and in-house counsel shall not disclose any information to their clients that could tend to identify any certification signatory unless and until there is specific evidence that a particular signatory may have violated the Order, in which case limited disclosure may be made with respect to that signatory. Persons who came into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute certifications. Counsel

for the Party to whom the Confidential Information was produced shall obtain and maintain a copy of this executed certification.

12. With respect to a testifying expert designated by any Party, the certification shall be signed by the expert before any confidential documents are provided to him or her, and a copy of such certification shall be produced to the Supplying Party at the time the expert's initial report is served.

13. Before disclosing Confidential Information to any Qualified Person who is a current or former director, officer, employee, shareholder, agent, sales representative, or in-house or outside counsel for any company other than LifeCell that markets or has in development any type of biologic hernia repair product (a "Competitor"), or a current or former consultant who is currently consulting or has consulted with a Competitor with respect to any biologic hernia repair product, the party wishing to make such disclosure shall give at least ten (10) days' advance notice in writing to the counsel who designated such information as confidential, stating the names and addresses of the Qualified Person(s) to whom the disclosure will be made, the affiliation or status of such Qualified Person with respect to the Competitor, and the identity of the Competitor. If, within the ten day period, a motion is filed objecting to the proposed disclosure, the designated document or item shall not be disclosed unless and until ten days have elapsed after the appeal period from a Court order denying the motion. Because only the party seeking to make the disclosure may know who the proposed recipient is, it is the responsibility of the party seeking to make the disclosure to determine, prior to making any disclosure, whether the proposed recipient is a person described in this paragraph.



### **Use of Confidential Information**

14. Confidential Information produced or exchanged in the course of this Action shall be used solely for the purpose of preparation and trial of this Action and shall not be used in connection with any other matter or for any other purpose, except by written agreement of the parties and entry of an appropriate protective order in any such other matter. Confidential Information shall not be disclosed to any person except in accordance with the terms hereof.

15. Nothing herein shall be deemed to restrict in any manner any party's use of its own documents or materials.

16. Nothing herein shall affect the right of any Party to seek additional protection against the disclosure of any documents or materials, including protection regarding the use of any documents or materials at any hearing or trial in this Action pursuant to R. 1:38-11.

### **Protection of Confidential Information**

17. Counsel shall take all reasonable and necessary steps to assure the security of any Confidential Information and will limit access to Confidential Information to those persons authorized by this Order. In addition, any summary or copy of Confidential Information shall be subject to the terms of this Protective Order to the same extent as the information or document of which such summary or copy is made, and must be clearly labeled "Confidential Information – Subject to Protective Order."

18. If Confidential Information in the possession of a receiving party is subpoenaed by any court, administrative or legislative body, or any other person or organization purporting to have authority to subpoena such data or information, the party to whom the subpoena is directed shall not, to the extent permitted by applicable law, provide or otherwise disclose such documents or information without first waiting ten (10) business days after notifying counsel for

the Supplying Party in writing of (1) the information and documentation which is requested for production in the subpoena; (2) the date on which compliance with the subpoena is requested; (3) the location at which compliance with the subpoena is requested; (4) the identity of the party serving the subpoena; and (5) the case name, jurisdiction and index, docket, complaint, charge, civil action or other identification number or other designation identifying the litigation, administrative proceeding or other proceeding in which the subpoena has been issued.

19. If a Receiving Party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the Supplying Party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information and to recover the Confidential Information received by each unauthorized person.

20. In the event that a Supplying Party discovers after the production of any documents, materials, or information that it inadvertently produced or provided discovery of any Confidential Information without redacting, marking, or identifying it as Confidential Information, the Supplying Party may provide written notice to the Receiving Party that the document thing or other information, response, or testimony is Confidential Information and should be treated as such in accordance with the provisions of this Order. Upon receipt of such notice, the Receiving party must treat such documents, things, information, responses, and testimony as Confidential Information, and upon receipt of properly marked documents, shall return the unmarked documents and things and shall not retain, and shall take reasonable steps to ensure others have not retained, copies thereof.

21. The disclosure of information or documents to any person not qualified to receive such information or documents pursuant to the terms and conditions of the Protective Order, or

without following the terms and conditions of the Protective Order, may subject the person making such disclosure to a finding of contempt and the imposition of sanctions, costs, or other penalty, as ordered by the Court.

22. The inadvertent production by an Party, whether in this Action or in any other proceedings, of a document subject to a claim of privilege, work product, or other right of confidentiality shall not result in a waiver of any of the foregoing protections in this Action for the produced document or for any other privileged or immune documents containing the same or similar subject matter. Furthermore, irrespective of what may have already occurred or what may occur in the future in productions made during other proceedings, the fact of an inadvertent production by a party in this Action shall not be used as a basis for arguing that a claim of privilege, work product, or other right of confidentiality has been waived in such other proceedings. If any party should inadvertently produce a document, upon notice of such disclosure, all originals and copies thereof, as well as all notes or other work product reflecting the contents of such materials, shall be immediately returned to the Supplying Party, and such returned material shall be deleted from any litigation support or other database. If the Receiving party wants to challenge the claim of privilege, work product, or right of confidentiality, it must also promptly present the information in dispute to the court under seal for a determination of the claim. The producing party must preserve the information until the claim is resolved.

23. Nothing herein shall prevent disclosure beyond the terms of this Order if the Party designating the information as Confidential Information consents in writing to such disclosure or, if the Court, after notice to all affected parties and a hearing, orders such disclosure. Nor shall anything herein prevent any counsel of record from using Confidential Information in the examination or cross-examination of any person who is indicated on a document containing the

Confidential Information as being an author, source or recipient of the Confidential Information irrespective of which Party produced such information.

24. Any material produced or provided in this Action for inspection is to be treated by the Receiving Party as Confidential Information pending the copying and delivery of any copies of the same by the Supplying Party to the Receiving Party. The Parties have the right to have persons present in the inspection room at all times during the inspection of documents by another Party's representatives. Original documents shall remain in the custody and control of the Supplying Party at all times.

25. Within forty-five (45) days after conclusion of this Action, including any appeals related thereto, all Confidential Information produced pursuant to this Order, including all copies and notes taken from such information contained in summaries of such Confidential Information (other than attorney work product which shall be clearly labeled as containing Confidential Information, and shall be maintained as confidential under the terms of this order), shall be destroyed by the party in possession thereof and certified to have been destroyed by an affidavit provided to the Supplying Party. This includes all Confidential Information provided to outside persons. Counsel for the party who disseminated the Confidential Information shall bear the burden of retrieving any such documents from outside persons and destroying those documents in accordance with this paragraph. Counsel for the disseminating party shall notify counsel for the Supplying Party of the failure to retrieve any Confidential Information including the name of the person from whom Confidential Information was not retrieved and a description of the Confidential Information that was not retrieved.

### **Changes in Designation of Information**

26. Any party may object to the propriety of the designation (or redesignation) of specific material as Confidential Information by serving a written objection upon the Supplying Party's counsel. The Supplying Party or its counsel shall thereafter, within ten (10) calendar days, respond to such objection in writing by either: (i) agreeing to remove the designation, or (ii) stating the reasons for such designation. If the Objecting Party and the Supplying party are subsequently unable to agree upon the terms and conditions of disclosure for the material(s) in issue, the document(s) in issue shall continue to be treated as Confidential Information unless and until the Objecting Party files a motion to have the designation overturned, and the Court grants such motion. On such motion, the Supplying Party shall have the burden of proving that the material is Confidential Information.

27. Any Supplying Party may designate as Confidential Information or withdraw a Confidential Information designation from any material it has produced; provided, however, that, except with respect to documents subject to the provisions of Paragraph 20, such redesignation shall be effective only as of the date of such redesignation. Such redesignation shall be accomplished by notifying counsel for each party in writing of such redesignation and simultaneously producing a re-designated copy of such material.

### **Filing Papers in Court Records**

28. In the event that a party ("Submitting Party") desires to submit to the Court for filing on the public docket any papers consisting of, relating to, containing, incorporating, reflecting, describing, or attaching the Confidential Information of another party, the Submitting Party may file its papers in the normal course without any copies of the confidential documents or any discussions that reveal any Confidential Information, and shall provide separate notice to

the other Party of the Confidential Information the party would like to include in the Party's filing, identifying the Confidential Information by Bates number. The parties shall then meet and confer on whether the specific documents referenced are actually confidential. If the Parties agree to de-designate any of the Confidential Information, the Party desiring to include such document or Confidential Information as part of the Party's filing shall within ten (10) days of the original filing file an amended filing including the de-designated information and a discussion of same in the amended filing. For those documents that a party still considers to be confidential (including, without limitation, responses to interrogatories, other discovery requests or responses, affidavits/certifications/ declarations, briefs, other papers and tangible objects), the party seeking to maintain the confidentiality of such Confidential Information shall file a motion with the Court in accordance with R. 1:38-11 seeking an order to permit the filing of such documents and material under seal. The parties must take all reasonable steps to minimize the need for seeking sealing orders by refraining, to the extent reasonably possible, from including more than those pages of the deposition transcript, document, or other matter containing Confidential Information that are cited, referred to, or specifically relied on by the Submitting Party. Specifically, the Submitting Party shall not seek to file the entirety, or other portions, of any deposition transcript, document, or other matter containing Confidential Information that are unnecessary to the filing.

29. Confidential Information shall not be used at hearings, status conferences in open court, or at trial except upon prior agreement of the parties to de-designate the information as Confidential Information.

### **Miscellaneous Provisions**

30. Beginning January 15, 2012 and on a bi-monthly basis thereafter, the parties shall, if applicable, produce a log that identifies any documents whose confidentiality designation has been changed from confidential to non-confidential or from non-confidential to confidential. The log shall be produced in a searchable electronic format that can be used with commercially available database software (e.g., Microsoft Excel spreadsheet) identifying the following information for each document produced in this Action: The document's (a) beginning and ending Bates numbers; (b) date; (c) title; and (d) confidentiality status (e.g., "Confidential" or "Non-Confidential").

31. It is expressly understood by and between the Parties that in producing Confidential Information in this litigation, the parties shall be relying upon the terms and conditions of this Protective Order.

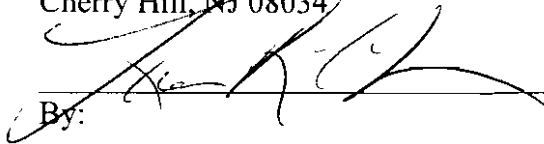
32. By written agreement of the parties, or upon motion and order of the Court, the terms of this Protective Order may be amended or modified. This Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive any final judgment or settlement in this Action.

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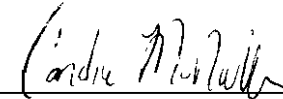
33. Notwithstanding any other provision in the order, nothing in this Order shall affect of modify LifeCell's ability to review Plaintiff's information and report information to regulatory agencies.

ATTORNEYS FOR PLAINTIFFS

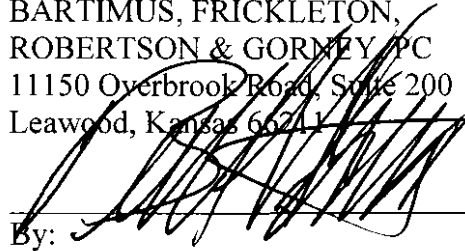
ANAPOL, SCHWARTZ, WEISS, COHAN,  
FELDMAN & SMALLEY, P.C.  
1040 Kings Highway N.  
Cherry Hill, NJ 08034

  
By: \_\_\_\_\_

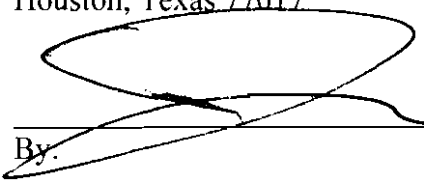
THE POTTS LAW FIRM, LLC  
908 Broadway, 3<sup>rd</sup> Floor  
Kansas City, Missouri 64105

  
By: \_\_\_\_\_

BARTIMUS, FRICKLETON,  
ROBERTSON & GORMEY, PC  
11150 Overbrook Road, Suite 200  
Leawood, Kansas 66211

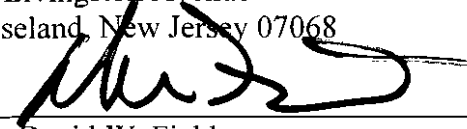
  
By: \_\_\_\_\_

WILLIAMS KHERKER  
8441 Gulf Freeway  
Houston, Texas 77017

  
By: \_\_\_\_\_

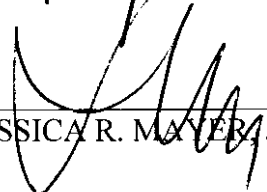
ATTORNEYS FOR DEFENDANTS

LOWENSTEIN SANDLER, PC  
65 Livingston Avenue  
Roseland, New Jersey 07068

  
By: David W. Field

**IT IS SO ORDERED.**

SIGNED AND ENTERED this 3<sup>rd</sup> day of February, 2012

  
JESSICA R. MAYER, J.S.C.



ATTORNEYS FOR PLAINTIFFS

EISENBERG, ROTHWEILER, WINKLER,  
EISENBERG & JECK, P.C.  
1634 Spruce Street  
Philadelphia, PA 19103

*W. Pauline Francis*

By: \_\_\_\_\_

**IN RE: ALLODERM® LITIGATION**

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

**CIVIL ACTION  
Case Code: 295**

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**CERTIFICATION CONCERNING MATERIAL  
COVERED BY PROTECTIVE ORDER**

I, \_\_\_\_\_, being duly sworn, state that:

1. My present address is \_\_\_\_\_. My present employer is \_\_\_\_\_ and the address of my present employer is \_\_\_\_\_. My present occupation is \_\_\_\_\_.

2. I have received a copy of the Protective Order in this action. I have carefully read and understand the provisions of the Protective Order.

3. I will comply with all the provisions of the Protective Order. I will hold in confidence, will not disclose to anyone not qualified under the Protective Order, and will use only for purposes of this action, any Confidential Information, including the substance and any copy, summary, abstract, excerpt, index or description of such material, that is disclosed to me. I will not use or disclose any Confidential Information for any other purpose, and shall not use or disclose any Confidential Information, directly or indirectly, in competition with the party that disclosed it, nor allow any other person working for or with me to do so.

4. I will return all Confidential Information that comes into my possession, and all documents and things that I have prepared relating thereto, to trial or outside counsel for the party by whom I am employed or retained or from whom I received such material when requested to do so.

5. I understand that if I violate the provisions of the Protective Order, I will be subject to sanctions by the Court and that the parties may assert other remedies against me. I hereby submit to the jurisdiction of this Court for the purpose of enforcement of the Protective Order in this action.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name