

#0300
08-07-15

David W. Field (00378-1984)
LOWENSTEIN SANDLER LLP
65 Livingston Avenue
Roseland, New Jersey 07068
973.597.2500
Attorneys for Defendant
LifeCell Corporation

FILED
AUG 14 2015
JUDGE JESSICA R. MAYER

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

PATRICIA JULIEN,

Plaintiff,
v.
LIFECELL CORPORATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
Docket No. MID-L-507-12 CM

THOMAS DUTCHER,

Plaintiff,
v.
LIFECELL CORPORATION,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
Docket No. MID-L-1469-12 CM

DEBBIE FOSTER and DAVID FOSTER, w/h,
 Plaintiffs,
 v.
 LIFECCELL CORPORATION,
 Defendant.

SUPERIOR COURT OF NEW JERSEY
 LAW DIVISION: MIDDLESEX COUNTY
 Docket No. MID-L-6841-12 CM

Civil Actions

ORDER

FILED
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 JUDGE JESSICA R. MAYER

The above matter having been opened to the Court by Lowenstein Sandler LLP, attorneys for defendant LifeCell Corporation, on application for an Order barring all plaintiffs' experts from offering any opinions on LifeCell's corporate state of mind, and the Court having considered all papers submitted by the parties, and for good cause and the reasons ^{in the attached} ~~stated on the~~ ^{memorandum of decision,} ~~record by the Court,~~

It is on this the 14th day of August, 2015, *

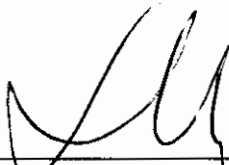
ORDERED that defendant's motion is hereby granted; and it is further

ORDERED that all of plaintiffs' medical and engineering experts are hereby precluded from offering any opinion on LifeCell's corporate state of mind; and it is further

ORDERED that a copy of this Order be ^{put into the} ~~serve~~ on all counsel of record within

7 days hereof.

* For the reasons set forth in the court's memorandum of decision dated August 14, 2015.



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

OPPOSED

PAPERS CONSIDERED

	<u>Yes</u>	<u>No</u>	<u>Date</u>
Notice of Motion	✓	_____	_____
Movant's Affidavits	✓	_____	_____
Movant's Brief	✓	_____	_____
Answering Affidavits	✓	_____	_____
Answering Brief	✓	_____	_____
Cross Motion	_____	_____	_____
Movant's Reply	✓	_____	_____
Other _____	_____	_____	_____

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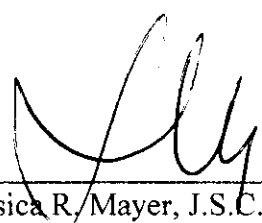
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Hon. Jessica R. Mayer, J.S.C.

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0303
08-27-15

DEBBIE FOSTER and DAVID FOSTER, w/h,

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
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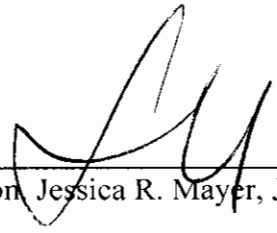
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IN RE: ALLODERM® LITIGATION

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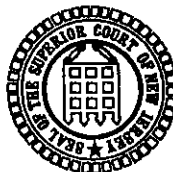
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY
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SUPERIOR COURT OF NEW JERSEY

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 to Bar Corporate State of Mind Testimony**

In Re: AlloDerm® Litigation, Case Code 295

Thomas Dutcher v. LifeCell Corporation

Docket No. MID-L-1469-12 CM

Debbie Foster and David Foster v. LifeCell Corporation

Docket No. MID-L-6841-12 CM

Patricia Julien v. LifeCell Corporation

Docket No. MID-L-507-12 CM

Michael Simineri and Karen Simineri v. LifeCell Corporation

Docket No. MID-L-5972-11 CM

Dated August 14, 2015

For Plaintiffs: Lawrence R. Cohan, Esq., Joseph J. Fantini, Esq., Paola Saneaux, Esq., Adrienne W. Webb, Esq., and Sol H. Weiss, Esq., Anapol Schwartz.

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

Defendant LifeCell Corporation ("LifeCell" or "Defendant") seeks an order barring Plaintiffs' experts from offering testimony on LifeCell's corporate state of mind in the above

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cases.¹ Plaintiffs oppose LifeCell's motion.

LifeCell claims that Plaintiffs' experts propose to testify regarding the state of mind, motives and intent underlying LifeCell's corporate actions. LifeCell argues that such testimony is inadmissible under N.J.R.E. 702. Specifically, LifeCell seeks to bar Plaintiffs' experts from offering testimony, in a narrative format, as to LifeCell's alleged bad faith and financially motivated corporate conduct. LifeCell contends that such testimony, if presented by Plaintiffs' experts, should be excluded because it is speculative, irrelevant, fails to aid the trier of fact and is unduly prejudicial. Moreover, LifeCell argues that such testimony usurps the function of the jury, which is charged with formulating conclusions as to LifeCell's state of mind or corporate motive based upon the testimony and evidence presented at trial. Plaintiffs counter that Plaintiffs' experts are not offering opinions on LifeCell's state of mind or corporate motive but are rather offering "why and wherefore" testimony in support of their conclusions.

While an expert must provide the "why and wherefore" of his or her opinion, an expert's opinion may not include inflammatory and speculative testimony that goes beyond the scope of an expert's role and encroaches upon the jury's role in these cases. Plaintiffs argue that corporate motive testimony was elicited by LifeCell's counsel during the depositions of Plaintiffs' experts. That LifeCell may have made inquiry during the depositions of Plaintiffs' experts related to corporate conduct is of no significance to the court's opinion. LifeCell's counsel would have been remiss had they not inquired as to the bases for each expert's conclusions based upon the

¹ The court notes that LifeCell's motion to bar corporate state of mind testimony is not a dispositive motion. The court deems a motion to bar portions of an expert's testimony to be an *in limine* motion. In accordance with Paragraph 13 of Case Management Order No. 6, only dispositive motions and motions related to the admissibility of expert testimony were to be filed and served at this time. Motions *in limine* limited to the trial selected case are due on October 16, 2015 in accordance with Paragraph 17 of Case Management Order No. 6. In the future, the court will not address motions that are filed contrary to the timeframes specified in the court's case management orders.

information contained in Plaintiffs' experts' reports. Moreover, failure to inquire as to the bases for Plaintiffs' experts' opinions on LifeCell's state of mind or corporate motive may have adversely impacted LifeCell's pending motion to bar such testimony.

The court, in its discretion, determines the admissibility of expert testimony at trial. See Townsend v. Pierre, 221 N.J. 36, 52 (2015). The admissibility of expert testimony is governed by N.J.R.E. 702, allowing a qualified expert to offer testimony if it will "assist the trier of fact to understand the evidence or to determine a fact in issue." Id. The expert testimony must be relevant with respect to the issues to be resolved by the jury. See State v. Buckley, 216 N.J. 249, 261 (2013). Further, the expert testimony must concern a matter beyond the ken of the average juror. See DeHanes v. Rothman, 158 N.J. 90 (1999).

In determining whether evidence is relevant under N.J.R.E. 401, the inquiry should focus upon the logical connection between the proffered evidence and a fact in issue, i.e. whether the evidence offered renders the desired inference more probable than it would be without the evidence. State v. Hutchins, 241 N.J. Super. 353, 358 (App. Div. 1990). Under N.J.R.E. 403, 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." State v. Thompson, 59 N.J. 396, 421 (1971).

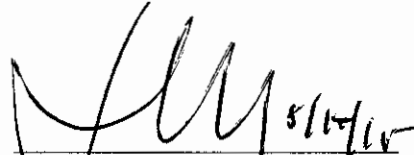
In this case, the probative value of Plaintiffs' experts' testimony on LifeCell's state of mind or corporate motive is not outweighed by the clear prejudice of such testimony. Indeed, Plaintiffs' experts use inflammatory language such as "driver of a billion dollar industry" and "not want[ing] to rock the boat" to describe LifeCell's manufacturing and selling of AlloDerm® to the surgical community. Such phrases uttered by experts who have not worked for LifeCell do not assist the trier of fact in these cases. The experts' negative words regarding LifeCell's manufacturing,

marketing and selling of AlloDerm® to the medical community are merely designed to unduly influence the jury and to divert the minds of the jurors from the evidence.

Evidence of LifeCell's purported bad corporate state of mind or financial motivation may be presented to the jury through documents, including LifeCell's internal corporate e-mails and promotional materials, and through the testimony of fact witness. Experts' opinions on corporate documents and fact witness testimony are irrelevant, speculative and unduly prejudicial. Opinions regarding LifeCell's corporate state of mind or motivation are not the proper subject of expert opinions. Rather, they are matters to be argued by counsel based on the evidence adduced at trial. Plaintiffs will have ample opportunity to present documentary evidence and fact witness testimony from which jurors will be able to draw their own conclusions in rendering a verdict in this case.

In accordance with New Jersey case law and evidence rules, the court concludes that Plaintiffs' experts may not use LifeCell's documents to provide a narrative history to support a claim that LifeCell engaged in bad faith corporate conduct in the promotion and sale of AlloDerm®. Nor may Plaintiffs' experts ascribe an evil or greedy motive on the part of LifeCell related to the company's financial gain. Such testimony is within the knowledge of the average juror and should be based upon the evidence gleaned from corporate documents and fact witnesses as may be adduced at trial and does not require testimony from an expert.

Nothing in this opinion shall preclude testimony as to facts that formulate the “why and wherefore” for Plaintiffs’ experts’ opinions. However, Plaintiffs’ experts may not opine as to financial motivation, corporate greed and other such corporate state of mind on the part of LifeCell. Therefore, LifeCell’s motion is **GRANTED**.



5/17/15
Jessica R. Mayer, J.S.C.