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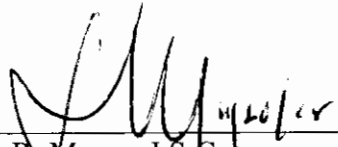
<p>IN RE: ALLODERM® LITIGATION</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>CASE CODE NO. 295</p> <p>CIVIL ACTION</p>
<p>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>LIFECCELL CORPORATION</p> <p style="text-align: 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 Plaintiff's Motion *in Limine* to Exclude Irrelevant and Prejudicial Evidence, Testimony and Argument Regarding Generalizations About The AlloDerm Line of Products And Its Purported Success or Characteristics When Used in Non-Hernia Repair Applications, and the Court having considered all papers submitted by the parties, and for good cause and the reasons ^{set forth in the attached memorandum & decision,} ~~stated on the record by the Court,~~

It is on this 20th day of November, 2015,

ORDERED that Plaintiffs' motion is hereby ~~GRANTED~~; DENIED

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.

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NOT FOR PUBLICATION WITHOUT THE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 regarding generalizations about AlloDerm®'s characteristics or performance that incorporate data from non-hernia repair applications of the product. Defendant opposes Plaintiffs' motion. For the reasons set forth in this memorandum of decision, Plaintiffs' motion is **DENIED**.

Plaintiffs claim that Defendant proposes to offer generalizations about AlloDerm®'s characteristics or performance that incorporate data from non-hernia repair applications of the product. Plaintiffs argue that such evidence is irrelevant and prejudicial, and thus barred by New

Jersey Rules of Evidence (“N.J.R.E.”) 401 and 403. Specifically, Plaintiffs contend that generalizations that rely on data derived from AlloDerm®’s non-hernia applications is irrelevant because the characteristics and performance of a biologic graft are wholly dependent upon the graft’s application. Plaintiffs further contend that such generalizations will mislead the jury into ascribing positive AlloDerm® characteristics when used in non-hernia applications to AlloDerm® used in hernia repair. Defendant counters that Plaintiffs’ motion is overly broad and would result in endless objections and sidebars over whether evidence is sufficiently specific to hernia repair. Defendant additionally argues that Plaintiffs can cure any perceived generalities via cross-examination. Finally, Defendant argues that barring testimony regarding AlloDerm®’s non-hernia applications would deprive the jury of important context and background.

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

by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation.”).

Generalizations about AlloDerm® are not inadmissible solely because they incorporate data derived from AlloDerm®’s non-hernia applications. The overbroad nature of Plaintiffs’ motion precludes the court from making specific determinations as to the relevance of unspecified generalizations.

There is expert testimony in the record that suggests data derived from AlloDerm®’s performance in non-hernia applications is applicable to AlloDerm® generally. If Plaintiffs believe information presented by Defendant is too generalized or is irrelevant to proving or disproving any fact of consequence to this action, they may raise the specific issue at the time of trial. The court is unable to rule without more specific information.

Defendant’s tissue expert, Dr. Stephen Badylak, testified that the characteristics of AlloDerm® vary in their degree of benefit to the patient depending upon their application.¹ Dr. Badylak also testified that “by the time the application for ventral hernia repair came about, there was somewhere between six and ten years of experience with the material, so there would be an understanding of the various characteristics of the material and a knowledge base”² Thus, according to Dr. Badylak, “various characteristics” of AlloDerm® used in non-hernia applications have some degree of applicability to AlloDerm® used in hernia repairs. Therefore, Plaintiffs’ statement that, “[b]ased on [Dr. Badylak’s testimony], it is clear that the performance and characteristics of AlloDerm in any other application other than hernia repair has not (sic) bearing

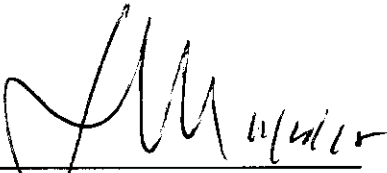
¹ Defendant’s Opposition Brief (“Def.’s Opp. Br.”) Ex. B at 15:18-23, 26:9-20.

² Def.’s Opp. Br. Ex. B 23:5-19.

on how AlloDerm performs in hernia repair . . .” is nothing more than an unsupported generalization.³

Finally, the probative value of Plaintiffs’ cited “generalizations” is not substantially outweighed by the risks of confusion or undue prejudice. In this case, the jury will be charged with making vartio assessments in deciding the outcome, and this additional burden does not appear too great. Additionally, any confusion, as noted above, can be allayed through cross-examination, expert testimony and argument.

Therefore, Plaintiffs’ motion is **DENIED**.



JESSICA R. MAYER, J.S.C.

³ Plaintiffs’ Brief 5.