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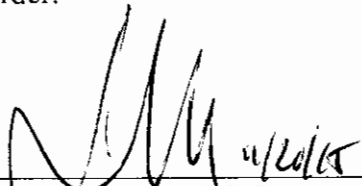
<p>IN RE: ALLODERM® LITIGATION</p>	<p>SUPERIOR COURT OF NEW JERSEY LAW DIVISION: MIDDLESEX COUNTY</p> <p>CASE CODE NO. 295</p> <p>CIVIL ACTION NOV 20 2015</p>
<p>MICHAEL SIMINERI and KAREN SIMINERI, h/w,</p> <p style="text-align: right;">Plaintiffs,</p> <p>v.</p> <p>LIFECELL CORPORATION</p> <p style="text-align: 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> <p style="text-align: right;">NOV 20 2015</p>

The above matter having been opened to the Court by Anapol Weiss attorneys for Plaintiffs on application for an Order granting Plaintiffs' Motion *in Limine* to Exclude Irrelevant and Prejudicial Evidence, Testimony and Argument Regarding Heavy Lifting, and the Court having considered all papers submitted by the parties, ^{said the arguments of counsel} and for good cause and the reasons ^{set forth} stated in the attached memorandum of decision 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 K. 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NOT FOR PUBLICATION WITHOUT THE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

FILED
NOV 20 2015
JESSICA R. MAYER

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 related to Mr. Simineri’s performance of “heavy” lifting. 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 testimony regarding “heavy” lifting performed by Mr. Simineri following his AlloDerm® hernia repair surgery. 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 evidence of lifting is irrelevant

because Mr. Simineri fully complied with his surgeon's eight-week restriction on lifting objects following his AlloDerm® hernia repair surgery. Plaintiffs further contend that no evidence exists that Mr. Simineri performed "heavy" lifting around the time of his hernia recurrence in April 2010. Finally, Plaintiffs argue that even if such evidence exists, it is irrelevant because there is no expert opinion or medical literature establishing a relationship between lifting and hernia recurrence.¹ Defendant counters that there is sufficient evidence that Mr. Simineri engaged in "heavy" lifting after his AlloDerm® hernia repair surgery. In addition, Defendant argues that there is expert opinion testimony and medical literature supporting a connection between heavy lifting and hernia recurrence.

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,

¹ Plaintiffs do not advance a separate argument as to why introduction of Mr. Simineri's "heavy" lifting would be "highly prejudicial."

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.”).

Here, evidence of lifting performed by Mr. Simineri subsequent to his AlloDerm® hernia repair surgery is relevant and admissible. Further, evidence exists that lifting was performed by Mr. Simineri around the time of his hernia recurrence; whether that lifting can be characterized as “heavy” is a question for the jury and a matter for cross-examination.

According to the testimony of Mr. Simineri’s surgeon, Dr. Garcia, lifting heavy weights following hernia repair surgery can result in exacerbating and reopening a patient’s wound even after the initial eight weeks of vulnerability have passed.² In addition, Plaintiffs’ expert, Dr. Dumanian, testified that “lifting excessive weight . . . can lead to suture pull-through and a recurrence”³ and Defendant’s expert, Dr. Langstein, testified that a patient’s abdomen, following hernia repair surgery, never “gets fully up to strength anyway even long-term because the tissues are very damaged. So the answer is weight-lifting can harm these patients.”⁴ Finally, Dr. Garcia’s medical records state that Mr. Simineri first observed signs of a hernia recurrence “after doing some lifting at work.”⁵ Thus, expert opinion testimony supports a relationship between lifting and hernia recurrence and evidence exists that Mr. Simineri engaged in lifting during the period between his AlloDerm® hernia repair surgery and his hernia recurrence. Taken together, the evidence is probative of whether AlloDerm®’s alleged defects were a cause of Mr. Simineri’s hernia recurrence.

² Defendant’s Opposition Brief (“Def.’s Opp. Br.”) Ex. B at 123:19-124:13.

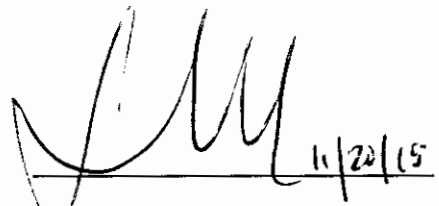
³ Def.’s Opp. Br. Ex. A at 208:10-17.

⁴ Plaintiffs’ Brief (“Pls.’ Br.”) Ex. C at 101:25-102:4.

⁵ Pls.’ Br. Ex. C at 78:7-9.

Lastly, Plaintiffs take exception to Dr. Langstein's characterization of the lifting performed by Mr. Simineri as "excessive."⁶ But, whether lifting performed by Mr. Simineri was "heavy" or "excessive" is a disputed fact that must be decided by the jury. At trial, Plaintiffs are free to challenge Dr. Langstein's inference on this issue during cross-examination.

Therefore, because evidence related to Mr. Simineri's lifting following his AlloDerm® hernia repair surgery is relevant and admissible, and the probative value of the evidence is not substantially outweighed by the risk of undue prejudice or confusion, Plaintiffs' motion is **DENIED.**



JESSICA R. MAYER, J.S.C.

⁶ Id. Ex. B at 4.