

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY

**IN RE: HUMAN TISSUE PRODUCTS  
LIABILITY LITIGATION**

**This Document Relates to:  
All Cases**

Civ. No. 06-135  
MDL No. 1763

**ORDER**

**HON. WILLIAM J. MARTINI**

**THIS MATTER** arises from Defendants' Motion for Summary Judgment with respect to certain issues of general causation before the Court and Defendants' Motion to Exclude Proposed Testimony of Drs. Parisian, Kowalski, Klein and Manzarbeitia as well as Plaintiffs' Cross-Motion for Summary Judgment with respect to certain issues of general causation before the Court and Plaintiffs' Motion to Exclude Proposed Testimony of Drs. Richman, Koziel, Kainer, Rutala, Jarvis, and Kuritzkes; and the Court having considered the submissions of all parties and the presentations of the parties' oral arguments on September 4, 2008; and for the reasons set forth in the accompanying Opinion and for good cause shown,

**IT IS** on this 22nd day of October, 2008, hereby,

**ORDERED** that Defendants' Motion to Exclude the Proposed Testimony of Drs. Parisian, Kowalski, Klein, and Manzarbeitia pursuant to Fed. R. Evid. 702 is **GRANTED IN PART** and the proposed testimony **EXCLUDED** to the extent

that:

- (1) Drs. Parisian, Kowalski, Klein, and Manzarbeitia seek to opine on the transmission of HIV, HBV, HCV, cancer, and syphilis through unprocessed bone tissue or bone paste stored at room temperature for thirty (30) days or more;
- (2) Drs. Parisian, Kowalski, Klein, and Manzarbeitia seek to opine on the transmission of prion disease through unprocessed bone tissue or bone paste; and
- (3) Drs. Klein and Manzarbeitia seek to opine that the incubation period for HBV, HCV, and HIV extends beyond six (6) months; and it is

**FURTHER ORDERED** that Defendants' Motion to Exclude the Proposed Testimony of Drs. Parisian, Kowalski, Klein, and Manzarbeitia pursuant to Fed. R. Evid. 702 is **DENIED** in all other respects; and it is

**FURTHER ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED IN PART** consistent with this Court's accompanying Opinion, and the Court **FINDS** and **DECLARES** the following:

- (1) Unprocessed bone tissue and bone paste stored at room temperature for thirty (30) days or more is not capable of transmitting HBV, HCV, HIV, syphilis, or cancer;

- (2) Unprocessed bone tissue and bone paste is not capable of transmitting prion disease;
- (3) Federal plaintiffs who have tested negative for HBV, HCV, HIV, and syphilis more than six (6) months after their bone tissue or bone paste transplant surgery cannot establish general causation with respect to HBV, HCV, HIV, and syphilis; and it is

**FURTHER ORDERED** that Defendants' Motion for Summary Judgment is **RESERVED** in all other respects; and the Court

**FURTHER FINDS** that Plaintiffs who received bone tissue or bone paste stored at room temperature for thirty (30) days or more have failed to establish general causation on any claims involving the transmission of HIV, HBV, HCV, syphilis, and cancer from such bone tissue or bone paste; and the Court

**FURTHER FINDS** that Plaintiffs who received bone tissue or bone paste have failed to establish general causation on any claims involving the transmission of prion disease from such bone tissue or bone paste; and the Court

**FURTHER FINDS** that Plaintiffs who received bone tissue or bone paste transplants and tested negative for HIV, HBV, HCV, and syphilis more than six (6) months after their transplantation surgery have failed to establish general causation on any claims involving the transmission of HIV, HBV, HCV, and

syphilis from bone tissue or bone paste; and it is

**FURTHER ADVISED** that the Court **RESERVES** on Plaintiffs' Cross-Motion for Summary Judgment and Plaintiffs' Motion to Exclude Proposed Testimony of Drs. Richman, Koziel, Kainer, Rutala, Jarvis, and Kuritzkes.

s/William J. Martini  
**William J. Martini, U.S.D.J.**