STATE OF RHODE ISLAND

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: July 26, 2022]

PAUL TREVINO and	:	
EARLYNN TREVINO,	:	
Plaintiffs,	:	
	:	
VS.	:	**C.A. No. PC-2018-8437**
	:	
DAVOL INC. and	:	
C.R. BARD INC.,	:	
***Defendants*.**	:	

DECISION

LICHT, J. Plaintiff Paul Trevino (Plaintiff) has moved for partial summary judgment asking this Court to strike the affirmative defense of intervening and superseding cause pleaded by Defendants Davol Inc. and C.R. Bard Inc. (collectively Bard). In support of his Motion, Plaintiff argues that Bard advances no record evidence or genuine issue of material fact to suggest the existence of a superseding intervening cause of Plaintiff's alleged injuries as defined pursuant to Rhode Island law. Bard objects to Plaintiff's Motion. For the reasons stated herein, the Court denies Plaintiff's Motion for Partial Summary Judgment as to Defendants' Affirmative Defense of Intervening and Superseding Cause.

I

Facts & Travel

Plaintiff's case is the fourth bellwether case selected for trial from thousands of cases in this master docket litigation[1] involving injuries alleged to have been caused by hernia mesh products manufactured by Bard.

Plaintiff has a lengthy medical history. In the early 1990s, following a significant abdominal injury, Plaintiff had an exploratory laparotomy (i.e., a large open incision in his abdomen) from his mid-chest to his belt line. During the procedure, his pancreas was found cut in half and his spleen lacerated. Years after the open laparotomy, Plaintiff developed an incarcerated hernia along the midline incision site from the prior surgery. In 2007, Plaintiff underwent a primary repair of that hernia without mesh. By 2008, that primary repair failed.

On December 24, 2008, Plaintiff Trevino underwent a ventral hernia repair at Kona Community Hospital located in Kealakekua, Hawaii. The repair was performed by Dr. Andrew Fedder, M.D., a general surgeon. Dr. Fedder implanted into Mr. Trevino a medium-sized, Ventralex Hernia Patch manufactured and distributed by Bard. The Ventralex was first cleared by the U.S. Food and Drug Administration (FDA) in 2002 and had been used extensively over the past seventeen years. At the time, Dr. Fedder regarded the repair as "successful" and, for a period of roughly seven and a half years following the Ventralex surgery,[2] Plaintiff did not complain of any symptoms related to the December 2008 hernia repair.

In October of 2017, Mr. Trevino presented to Kona Community Hospital in extreme pain. Dr. Fedder subsequently performed a laparoscopic hernia repair surgery on an unrelated hernia on October

[1] The first case was continued and the other two settled prior to trial.
[2] From December 2008 until at least June 2016.

26, 2017. However, while lysing some adhesions he discovered in Plaintiff's abdomen, Dr. Fedder inadvertently nicked the small bowel, creating an enterotomy and causing some spillage of bowel contents into the abdominal cavity. Dr. Fedder then (1) converted the laparoscopy into an open procedure; (2) explanted the Ventralex; and (3) performed a small bowel resection with anastomosis and primary repair of the New Hernia. While Plaintiff did well in the days immediately following the explant surgery, he soon developed a wound infection followed by an enterocutaneous fistula (ECF) in November 2017. This resulted in a hospital stay and multiple wound revisions in December 2017 and January 2018,[3] as well as ECF closure and bowel resection in January 2018.

Plaintiff alleges that, during the October 2017 surgery, the mesh of the Ventralex patch was found to have migrated to—and eroded in—his bowel, causing adhesions, small bowel obstruction, bowel perforation, recurrent hernias, and chronic and severe pain. This compromised, eroded mesh ultimately required a bowel resection. Further, because of the allegedly defective Ventralex, Mr. Trevino developed his ECF which, in turn, led to the need for multiple rounds of wound debridement.

Plaintiff asserts that the Ventralex is a defective product and that Bard failed to warn about the potential harms it could cause. He claims the Ventralex buckled and, caused among other injuries, adhesions to his bowel. For their part, Bard's experts contend Plaintiff's small bowel obstructions and other alleged injuries were caused by Plaintiff's adhesions and adhesive disease resulting from the severe injury Plaintiff experienced in the early 1990s and open surgical repair for the same. In the years that followed, Defendants assert that Plaintiff's adhesive disease was exacerbated by his many co-morbidities.

[3] Totaling some forty (40) days in the hospital and an additional eight (8) surgeries under general anesthesia.

Plaintiff's instant Motion seeks partial summary judgment on the limited issue of Defendants' ability to avail themselves of a superseding intervening cause affirmative defense. Plaintiff maintains that there is no evidence in the record attesting to *any* independent, unforeseeable, intervening- or superseding act of negligence—either by members of Mr. Trevino's treatment team or otherwise—after the 2008 implantation of his Ventralex device. As such, Defendants should be barred from advancing this affirmative defense at trial and instead rely on their primary, expert-attested defense of *alternative* causation. *See* Pl.'s Mot. at 1.

Defendants naturally oppose Plaintiff's instant motion, characterizing it as procedurally improper as well as an obvious attempt to win a Court-issued smokescreen for all facts suggesting: (1) alternative causes of Plaintiff's alleged injuries (*inclusive of* any intervening and superseding causes), (2) the existence of his adhesive disease, (3) his unrelated June 2016 small bowel perforation and bowel resection surgery (Ab Surgery No. 4), and (4) his October 2017 surgery (Ab. Surgery No. 5), wherein Dr. Fedder created an enterotomy that resulted in the need for intensive post-surgical wound treatment. *See* Defs.' Opp'n at 5. Furthermore, as the evidence supporting Defendants' intervening and superseding cause defense *necessarily overlaps with* evidence in support of Bard's alternative cause theory/defense, Defendants assert Plaintiff's Motion for Partial Summary Judgment should be denied in full. *Id.*

On July 11, 2022, the Court heard lively argument from the parties on this motion.

II

Standard of Review

"Summary judgment is a drastic remedy, and a motion for summary judgment should be dealt with cautiously." *Employers Mutual Casualty Co. v. Arbella Protection Insurance Co.,* 24 A.3d 544, 553 (R.I. 2011) (internal quotations omitted). "[S]ummary judgment is appropriate

when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the Court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." *Quest Diagnostics, LLC v. Pinnacle Consortium of Higher Education*, 93 A.3d 949, 951 (R.I. 2014) (internal quotations omitted).

The moving party bears the initial burden of establishing that no such issues exist. *Heflin v. Koszela*, 774 A.2d 25, 29 (R.I. 2001). If the moving party can sustain its burden, then the "litigant opposing a motion for summary judgment has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions." *American Express Bank, FSB v. Johnson*, 945 A.2d 297, 299 (R.I. 2008) (internal quotations omitted).

"The motion justice must refrain from weighing the evidence or passing upon issues of credibility [as] . . . [u]ltimately, the purpose of the summary judgment procedure is issue finding, not issue determination." *DeMaio v. Ciccone*, 59 A.3d 125, 130 (R.I. 2013) (internal quotations omitted). Further, "[i]t is clear from our precedent that '[o]rdinarily the determination of proximate cause . . . is a question of fact that should not be decided by summary judgment.'" *Belmore v. Petterutti*, 253 A.3d 864, 868 (R.I. 2021) (quoting *Splendorio v. Bilray Demolition Co., Inc.*, 682 A.2d 461, 467 (R.I. 1996)).

III

Analysis

A

Précis of Plaintiff's Motion for Partial Summary Judgment & Bard's Opposition

Plaintiff argues that "[w]ithout evidence of [an] independent and unforeseeable [act of] negligence, no intervening and superseding cause exists to relieve Defendants of liability in this

case." Pl.'s Mot. at 9. Yet even assuming this Court were to understand the testimony of Bard's sole medical causation expert, Dr. Sinha, as establishing negligence after Plaintiff's 2008 Ventralex implant,[4] his testimony, along with that of Bard's other expert witnesses, merely "establish[es] a foreseeable natural chain of events" that does not absolve the original tortfeasor of their allegedly tortious conduct.[5] Simply put, there is no break in the chain of causation to render the Defendants' original tortious conduct completely inoperable. *See Almeida v. Town of North Providence*, 468 A.2d 915, 917 (R.I. 1983) (if the intervening cause was foreseeable to the original wrongdoer, then the "causal chain remains unbroken" and liability remains with the original wrongdoer).

Plaintiff notes that an *intervening* act/cause exists when an independent/unforeseen secondary act of negligence: (1) occurs, (2) after the alleged tortfeasor's negligence, and (3) becomes the sole proximate cause of the plaintiff's injuries. *See Pantalone v. Advanced Energy Delivery Systems, Inc.*, 694 A.2d 1213, 1215 (R.I. 1997). Dr. Sinha's general approval of Dr. Fedder's decisions, surgical technique, and postoperative care, as well as the "absence of any competent expert opinion stating that Dr. Fedder deviated from the standard of care, render[s] Defendants' burden to establish the occurrence of intervening negligence highly improbable, if not impossible." Pl.'s Mot. at 11. Additionally, Defendants' own documents (along with Dr. Sinha's testimony) establish that bowel injury and concomitant infections are a widely recognized, inherent, and foreseeable risk of abdominal surgery for hernia repair and/or adhesion removal.[6] *Id.* at 12.

[4] Plaintiff strenuously contends that Dr. Sinha's testimony does nothing of the such.
[5] I.e., selling the allegedly defective Ventralex that was implanted into Mr. Trevino's abdomen.
[6] *See* Sinha Dep. at 97:10-20:

As a preliminary matter, Bard fundamentally disagrees with Plaintiff's purported legal standard for superseding intervening cause. Specifically, Plaintiff's contention that a superseding cause eligible for the affirmative defense *must* derive from a "***negligent actor.***" Defs.' Opp'n at 19 (*See also* Pl.'s Mot. at 9).[7] Rather, citing to the Restatement (Second) *Torts*, Bard argues that a superseding intervening cause could be the result of ***any force*** that operates independently of the defendant's alleged negligence and is not a "normal consequence of a situation created by the [defendant's alleged] negligent conduct," including intentional actions, negligent actions, and forces of nature. Restatement (Second) *Torts* §§ 441(c), 443; *see also* Restatement Third *Torts* § 34.[8] This view, Bard notes, is corroborated by the Rhode Island Model Civil Jury Instructions, which likewise do not require that the intervening force be tortious, or even committed by an actor *per se*: "An intervening force is a force that occurs after a defendant's negligence takes place and actively operates to produce the harm caused to a plaintiff." (2002), No. 1002.1.

Turning to the meat of their opposition, Bard argues that Plaintiff's Motion should be dismissed because the record contains ample evidence of disputed issues of material fact that Plaintiff's alleged injuries were caused by (1) the intervening and superseding 2016 small bowel perforation[9] or, in the alternative, (2) Ab Surgery No. 5 for treatment of the New Hernia (wherein

> "[W]e know that doing laparoscopic surgery, or even open surgery, to remove adhesions in order to do any other abdominal surgery, whether it's a hernia repair or some other intended repair, you have an inherent risk to adhesion—removal of adhesions, injury to the bowel. And that is the one single-most important risk for removal—of surgery in an abdomen that has adhesions."

[7] (Bard cannot contest causation "without evidence of independent and unforeseeable" negligence of another actor).

[8] "A 'superseding cause' is an intervening force or act that is deemed sufficient to prevent liability for an actor whose tortious conduct was a factual cause of harm. The 'act' may be tortious or entirely innocent."

[9] I.e., Ab Surgery No. 4.

Dr. Fedder created the enterotomy that led to the excision of the Ventralex and later infection and ECF). Defs.' Opp'n at 20-21. Bard has identified several case-specific experts who will offer testimony that these two "unforeseeable" acts/conditions caused—or substantially contributed to—Plaintiff's alleged injuries, breaking any purported causal chain between the alleged Ventralex defect and Plaintiff's alleged injuries.

Specifically, Dr. Fox testified that the 2016 small bowel perforation was the "inciting event" that caused widespread and significant inflammation in Plaintiff's abdomen and exacerbated his prior adhesions. *See* Defs.' Ex. 2, at 118:22-119:14. Dr. Babkowski concurred in this assessment.[10] Taken together, Bard contends that they should be allowed to argue that the 2016 event, in tandem with the 2017 surgery to repair the New Hernia (resulting in a small bowel enterotomy and related complications), constitute a superseding intervening cause of Mr. Trevino's injuries and Plaintiff's Motion for Partial Summary Judgment should be denied in its entirety.

B

Propriety of the Instant Motion

Bard questions the procedural fitness of motioning for summary judgement on an affirmative defense. (*See* Bard's Opp'n n.6) ("It is worth noting that Plaintiff cites no legal authority for the proposition that Bard's defense can be limited at the summary judgement stage."). In so doing, Bard distinguishes the lone case cited by Plaintiff, *West Davisville Realty*, from the

[10] "The consequence of that [June 2016] procedure . . . is that [Plaintiff] is going to develop additional adhesions because of it. So, the ultimate consequence is that it is yet another assault on his visceral peritoneum. It's another assault on parietal peritoneum. And, once again, we're setting this individual up for future complications secondary to adhesions." Defs.' Ex. 3, at 57:17-58:8. Further, Dr. Sinha agreed: "[W]e know that Mr. Trevino has a number of adhesions throughout his abdomen, including new adhesions incited by the 2016 surgery and the new adhesions caused by movement in and out of his new epigastric hernia." Defs.' Ex. 1, at 96:13-19.

instant matter: "However, the Court granted the plaintiff's [summary judgment] motion [with respect to a fraud-in-the-inducement defense] because the defendant failed to properly ***plead*** the . . . [affirmative] defense, as required under Super. R. Civ. P. 8(c), which amounted to a **waiver** of the defense, not because there remained no genuine issue of material fact to be addressed by the jury." (*Id.*) (emphasis in original) (citing *West Davisville Realty Co., LLC v. Alpha Nutrition, Inc.*, 182 A.3d 46, 51 (R.I. 2018)). By contrast, Bard has properly pled its affirmative defense of superseding and intervening cause in the instant matter.

Not surprisingly, the lion's share of Rhode Island case law addressing affirmative defenses at the summary judgment stage deal with whether such defenses were properly pled in the non-movant's *answer*, not whether they may be dispatched on a Rule 56 motion. *See, e.g., Air-Lite Products, Inc. v. Gilbane Building Co.,* 115 R.I. 410, 347 A.2d 623 (1975); *Hanley v. State*, 837 A.2d 707 (R.I. 2003) (State did not waive immunity as a defense for purposes of summary judgment motion in camper's slip-and-fall action for injuries suffered in fall in a state park, even though state did not cite to the recreational use statute in its answer to complaint). Bard is correct in its observation that the Supreme Court in *West Davisville Realty* affirmed the granting of plaintiff's motion to dismiss on Rule 8(c) waiver grounds. (*See* Bard's Opp'n n.6).

Having considered arguments from the parties on this discrete issue, the Court finds Plaintiff's attempt to limit Bard's superseding intervening cause affirmative defense to be procedurally improper at the summary judgment stage. In deciding, the Court relies on the plain language of section (a) of Rule 56 of the Superior Court Rules of Civil Procedure which stipulates that: "A party seeking to recover ***upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may*** . . . move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof." Super. R. Civ. P. 56(a) (emphasis added). Put

differently, Superior Court Rules of Civil Procedure 56 does not expressly provide for a partial summary judgment motion on an affirmative "defense"—either in whole or in part. As such, the relevant Rhode Island rule is more limited than its Federal counterpart, which expressly provides that "[a] party may move for summary judgment, ***identifying each claim or defense—or the part of each claim or defense***—on which summary judgment is sought." Fed. R. Civ. P. 56 (emphasis added).

The plain language of the federal rule clearly envisions a more permissive summary judgement regime than our own Super. R. Civ. P. 56. As such, the two sets of rules lack substantial similarity and the Court has no need to "look to federal court decisions interpreting that version of Fed. R. Civ. P. [56] for guidance." *Crowe Countryside Realty Associates, Co., LLC v. Novare Engineers, Inc.*, 891 A.2d 838, 841 (R.I. 2006).

Taken together, our rules of civil procedure do not allow for claimant to move for pre-trial targeted (i.e., "partial") summary judgment on one or more of a defending party's affirmative defenses.

C

Independent Intervention of another "Act"

While the Court's determination in section III(B) *supra* provides sufficient grounds for denial of Plaintiff's instant Motion, the Court believes it is prudent to also decide whether Rhode Island law requires a negligent "act" or "omission" (i.e., by a human actor/agent) in order to properly invoke a superseding intervening cause jury instruction. As it stands, there is a high probability that this issue will come up again near the close of trial and the parties deserve to know where the Court stands on the contours of an intervening cause defense.

Plaintiff takes the position that, in "every case that the Rhode Island Supreme Court has addressed intervening cause, it has never held that anything less than an unforeseeable, ***negligent act*** was required[.]" Pl.'s Reply at 3 (emphasis added) (*See also Contois v. Town of West Warwick,* 865 A.2d 1019, 1027 (R.I. 2004) ("Intervening cause exists when an independent and unforeseeable intervening or secondary ***act of negligence*** occurs, after the alleged tortfeasor's negligence, and that secondary ***act*** becomes the sole proximate cause of the plaintiff's injuries.") (emphasis added). Indeed, Plaintiff argues that *Contois* (a case in which a desperate parent intervened when defendant EMTs delayed in administering emergency care) stands for the proposition that evidence of a negligent intervening act is required to prove intervening cause:

> "The plaintiffs allege that a sixty-second delay occurred before Zachary was properly suctioned, and that that constituted gross negligence on the part of the EMTs. Mrs. Contois admits that once the device was activated, she took it from the EMT and attempted to suction Zachary herself before handing it back to the EMT's, who then continued the process. However, this evidence ***is insufficient to support an instruction on intervening cause because the record does not include evidence of any intervening negligent act*** that may have superceded the alleged initial negligence to become the proximate cause of the resulting injury." *Id.* (emphasis added).

According to Plaintiff, this definition of "intervening cause"—and requirement of a "negligent intervening act" in order to 'activate' the affirmative defense—was affirmed in *Seide v. State,*[11] and then reaffirmed less than 10 years ago in *Oden v. Schwartz,* 71 A.3d 438, 451 (R.I. 2013). Additionally, this same definition was likewise adopted by this Court in the jury instructions it provided in *Traficante v. Rhode Island Airport Corp.*, C.A. No. KC-2017-0411. *See* Pl.'s Reply Ex. A.

For their part, Defendants do not define "intervening cause" quite so narrowly. Instead, rather, Defendants highlight the Second Restatement *Torts* for the proposition that an "intervening

[11] 875 A.2d 1259 (R.I. 2005).

and superseding cause could be the result of ***any force*** that operated independently . . . of the defendant's alleged negligence and is not a 'normal consequence of a situation created by the [defendant's alleged] negligent conduct, ***'including intentional actions, negligent actions, and forces of nature***.'" Defs.' Opp'n at 19 (citing Restatement (Second) *Torts* §§ 441(c), 443)) (emphasis added).[12] Defendants also cite to the Rhode Island Model Civil Jury Instructions as similarly silent on whether the "intervening act" need be tortious:

> "An intervening force ***is a force*** that occurs after a defendant's negligence takes place and actively operates to produce the harm caused to a plaintiff. Forces that intervene independently so as to be considered the legal cause of the harm are called superseding causes. ***A superseding cause is some conduct or force*** that independently intervenes to become the legal cause of the accident/event/injury thus relieving a defendant from liability for his or her negligence." Rhode Island Model Civil Jury Instructions (2002), No. 1002.1 (emphasis added).

As such, whether the intervening "force" is due to a third person's wrongful conduct is merely one consideration in a complex, fact-dependent analysis. *See id*.

Based on the weight and uniformity of Rhode Island case law on this matter, the Court must side with Plaintiff that competent evidence of a subsequent, negligent intervening act or omission—different and distinct from an inanimate "force" —is required to invoke a superseding intervening cause defense. *See Contois*, 865 A.2d at 1027, *Seide*, 875 A.2d at 1270, *Oden*, 71 A.3d at 451. Put differently, under Rhode Island law, a superseding intervening cause jury instruction must be predicated on the negligent acts or omissions of an "actor," such as a doctor or corporate entity, *not* on "forces of nature," such as the development of a subsequent terminal illness or a

[12] *See also* Restatement (Third) *Torts* § 34 ("A 'superseding cause' is an intervening force or act that is deemed sufficient to prevent liability for an actor whose tortious conduct was a factual cause of harm. The 'act' may be tortious or entirely innocent.").

freak lighting strike. Rather, inanimate forces are more appropriate for an *alternative cause* defense, not a superseding intervening cause defense.[13]

At hearing, Bard raised the cases cited by the drafters of the Rhode Island Model Civil Jury Instructions (2002) as supportive of their position that a superseding cause need not derive from a third-party actor. Since then, the Court has had time to give those five (5) cases appropriate attention and cannot come to the same conclusion. Rather, *Pantalone*, 694 A.2d 1213 (R.I. 1997), *Walsh v. Israel Couture Post, No. 2274 V.F.W. of the U.S.*, 542 A.2d 1094 (R.I. 1988), *Testa v. Winquist*, 45 F. Supp. 388 (D.R.I. 1978), and *Drazen v. Otis Elevator Co.*, 96 R.I. 114, 115, 189 A.2d 693 (1963) ***all*** involve third-party actors or corporate entities in their respective superseding cause analyses—i.e., negligent corporate employees, the local chapter of the Veterans of Foreign Wars, police officers negligently entering data into a computer, and department store management, respectively. By contrast, *James J. O'Rourke, Inc. v. Industrial National Bank of Rhode Island*, though cited in the "supportive authority" section of the Model Jury Instructions for superseding intervening causes, had nothing to do with superseding intervening causes. 478 A.2d 195 (R.I. 1984).

Returning to the instant matter, Bard currently lacks any evidence to support its argument that (1) the 2016 small bowel perforation or, alternatively, (2) the October 2017 surgery (which

[13] Defendants are candid that their defense strategy "has no need to rely on some intervening cause to break the non-existent causal chain" between the Ventralex and Plaintiff's alleged injuries because Plaintiff will be unable to proffer *any* competent evidence of proximate causation. Defs.' Opp'n at 17 (*See also id.* at 5) ("[A]ll of Plaintiff's claims fail because he is unable to prove the essential element of causation to the requisite degree of medical certainty."). However, despite putting most of their energy into their *alternative cause* defense, Defendants strenuously reserve the right to "fallback" to a *superseding intervening cause* defense should the need arise during trial: "It is also clear that Bard is permitted under Rhode Island law to offer evidence about the actions of a third-party that would cut off the consequences of its own actionable conduct—even though Bard denies there has been any or that Plaintiff has established causation at all." *Id.* at 17-18.

led to the explant of the Ventralex) were intervening or superseding causes of Plaintiff's injuries *rather than* simply alternative causes. Bard offers no testimony from Drs. Sinha or Babkowski that the 2016 small bowel perforation was unforeseeable given Mr. Trevino's prior abdominal surgical history, and Dr. Fox opines that adhesions resulting from three abdominal surgeries ***prior to the implant of the Ventralex*** caused his small bowel perforation. *See* Pl.'s Ex. A, at 20. Moreover, as Bard's only qualified expert on hernia surgeries, Dr. Sinha testified that the risk of adhesions and injury to the bowel are a known (i.e. *foreseeable*) risk with prior laparoscopic surgery on the abdomen.[14] *See* Defs.' Ex. 1, Sinha Dep. at 97:10-20.[15] So, even assuming either the 2016 or 2017 surgery (or some combination thereof) was the proximate cause of all of Plaintiff's injuries, the need for these surgeries, according to Dr. Sinha, was completely foreseeable. Accordingly, they could not be an unforeseeable intervening 'event' or 'force.' *See* Pl.'s Reply at 5.

Notwithstanding the above, in a "battle of the experts" medical device trial such as this—that is expected to last no less than three (3) weeks—there remain numerous potential exhibits the Court has yet to see and much testimony yet to be heard. Considering the universe of facts yet to be developed, the Court will defer ruling on Bard's entitlement to a jury instruction on intervening and superseding causes of Plaintiff's alleged injuries until the appropriate point at trial.[16]

[14] Of which Plaintiff already underwent several such procedures.

[15] "[W]e know that doing laparoscopic surgery, or even open surgery, to remove adhesions in order to do any other abdominal surgery, whether it's a hernia repair or some other intended repair, ***you have an inherent risk to adhesion – removal of adhesions, injury to the bowel***. And that is the one single-most important risk of removal, of surgery in an abdomen that has adhesions." (emphasis added).

[16] Likely after all the evidence has been entered.

IV

Conclusion

Based on the foregoing, the Court **denies** Plaintiff's Motion for Partial Summary Judgment as to Defendants' Affirmative Defense of Intervening and Superseding Cause. Counsel will confer and present the appropriate order.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	**Paul Trevino and Earlynn Trevino v. Davol Inc. and C.R. Bard Inc.**
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DATE DECISION FILED:	**July 26, 2022**
JUSTICE/MAGISTRATE:	**Licht, J.**

ATTORNEYS:

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