

IN RE: ZOSTAVAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

CASE NO. 629

**CASE MANAGEMENT ORDER #11
OCTOBER 27, 2020
CASE MANAGEMENT CONFERENCE**

THIS MATTER, having come before the Court at a case management conference on October 27, 2020 and counsel for Plaintiffs and counsel for Defendants having been present, and for good cause having been shown;

IT IS on this 18th day of November 2020, **ORDERED** as follows:

1. DECEASED PLAINTIFFS

- As set forth in CMO #10, Plaintiffs' counsel shall not file complaints on behalf of a deceased Plaintiff unless filed through an estate representative.
- The following cases identified in Exhibit A are hereby dismissed with prejudice since the complaint was filed after the Plaintiff was deceased and therefore the deceased Plaintiff did not have standing to file the complaint.
- If Plaintiffs' counsel has proof that the Plaintiff was not deceased at the time the complaint was filed, they may file a motion for reconsideration of the dismissal on that basis only.
- Plaintiff's counsel may seek to file a new complaint through an estate representative.

2. COMPLAINTS ASSERTING A CLAIM FOR LOSS OF CONSORTIUM WITHOUT AN IDENTIFIED SPOUSE.

- Plaintiffs' counsel shall file corrected Amended Complaints by November 30, 2020 for those cases identified in Exhibit B.

- The corrected Amended Complaint shall identify a spouse if a Loss of Consortium claim is asserted and shall identify the spouse as a party in the caption of the Amended Complaint.
- The Amended Complaint shall be served upon Defendants as follows:
 - On Merck as follows:
 - For amended complaints in cases previously served on Merck: via email at ZostavaxMCL_Complaints@venable.com.
 - For amended complaint in cases where Merck was not previously served, such amended complaints shall be formally served on Merck.
 - On McKesson as follows:
 - For amended complaints in cases previously served on McKesson, on McKesson's defense counsel in Zip files via email at wfrisch@clarkhill.com and jsaruya@clarkhill.com.
 - For amended complaints in cases where McKesson was not previously served, such amended complaints shall be formally served on McKesson. This includes, but is not limited to, the cases identified in Exhibit A to the Court's August 27, 2020, Order Regarding Service of Amended Short Form Complaints for Previously Filed Single Plaintiff Complaints.

3. BELLWETHER CASE SELECTIONS

- Defense counsel shall have a meet and confer with representatives of Bern LLP and Sadaka law offices on December 11, 2020 regarding a future bellwether pool to include non-shingles cases.
- Plaintiffs shall identify their 15 bellwether case selections by November 12, 2020. Defendants shall select 7 bellwether case selections by November 12, 2020, and their remaining 8 by December 9, 2020. All other deadlines of the August 27, 2020 Amended Bellwether Order remain as scheduled.

4. DEPOSITION PROTOCOL

- Counsel shall meet and confer regarding a deposition protocol by November 30, 2020.

5. CERTIFICATIONS OF COUNSEL REGARDING PLAINTIFF CERTIFICATION ALTERATIONS.

- By November 20, 2020, Plaintiffs' counsel shall propose a certification to Defense Counsel which specifically identifies and delineates counsel's authority to change the date of a Plaintiff's certification of the Plaintiff Fact Sheet. The certification of counsel shall specifically confirm that Plaintiff has reviewed and certified the document contents and has authorized counsel to update or change the date of a previously submitted certification.

6. UPDATED CASE LIST

- By November 27, 2020, Marc J. Bern of Bern LLP shall submit his case list to the Court via email to Marisol Rodriguez at Marisol.Rodriguez@njcourts.gov, or he may be called upon by the Court on an Order to Show Cause why he should not be held in contempt for failure to comply with this Order.
- By November 27, 2020, the Law Offices of Mark Sadaka shall, to the extent applicable, submit a list of new cases filed after 9/18/2020 to the Court via email to Marisol Rodriguez at Marisol.Rodriguez@njcourts.gov

The next Case Management Conference is scheduled for December 17, 2020 at 11:00 AM, telephonically.

/s/ James F. Hyland

Hon. James F. Hyland, J.S.C.

FILED

NOVEMBER 18 , 2020

Hon. James F. Hyland, J.S.C.

EXHIBIT A

Beatrice Gauger v. Merck & Co., Inc., et. al., MID-L-6774-18

Odessa Crossen v. Merck & Co., Inc., et. al., MID-L-7528-18

Zostavax CMO #11 Exhibit B

Plaintiff	(Re-filed) Case Number	Original Case Name	Plaintiff's Counsel
Anderson, Carole	MID-L-5299-20	Felice, Romilda et al.	Bern
Barrow, Frances	MID-L-5303-20	Felice, Romilda et al.	Bern
Brandenburg, Deana	MID-L-5308-20	Felice, Romilda et al.	Bern
Caporossi, James	MID-L-4863-20	Bennett, Sherwood K. et al.	Bern
Kelly, Francis	MID-L-5075-20	Burt, Jerry D. et al.	Bern
Ladner, Mitzi	MID-L-4893-20	Barber, Anne B. et al.	Bern
Millan, Donna	MID-L-4918-20	Barber, Anne B. et al.	Bern
Miller, Thomas	MID-L-4287-20	Kilgore, Carol A. et al.	Bern
Raleigh, Marilyn	MID-L-4336-20	Edwards, James et al.	Bern
Whitey, Shirley	MID-L-4319-20	Kilgore, Carol A. et al.	Bern
Baltierra, Beatrice	MID-L-5272-19	Baltierra, Beatrice	Bern
Bamburg, Doris	MID-L-1305-19	Bamburg, Doris	Bern
Bane, Daniel	MID-L-4537-19	Bane, Daniel	Bern
Barberis, Joann	MID-L-7216-18	Barberis, Joann	Bern
Barboza-Clark, Frances	MID-L-7383-18	Barboza-Clark, Frances	Bern
Barnett, Gladys	MID-L-1799-19	Barnett, Gladys	Bern
Barrett, Larry	MID-L-0084-19	Barrett, Larry	Bern
Bass, James	MID-L-3463-19	Bass, James	Bern
Bates, Gail	MID-L-8280-18	Bates, Gail	Bern
Beachy, Dale	MID-L-3830-19	Beachy, Dale	Bern
Beard, Donald	MID-L-3898-19	Beard, Donald	Bern
Beaucannon, Linda	MID-L-2122-19	Beaucannon, Linda	Bern
Bebout, Candace L.	MID-L-0901-19	Bebout, Candace L.	Bern
Bell, Betty	MID-L-0557-20	Bell, Betty	Bern
Brown, Deborah	MID-L-0468-19	Brown, Deborah	Bern
Brown, Marcia	MID-L-0696-19	Brown, Marcia	Bern
Butler, William	MID-L-0698-19	Butler, William	Bern
Cole, Michael	MID-L-0655-19	Cole, Michael	Bern
Colthorp, Carlton Grant	MID-L-2633-19	Colthorp, Carlton Grant	Bern
Deonanan, Venus	MID-L-0664-19	Deonanan, Venus	Bern
Eutsey, Audrey	MID-L-4990-19	Eutsey, Audrey	Bern
Cases with LOC issue - Currently Dismissed			
Barnes, Benny	MID-L-5300-20	Felice, Romilda et al.	Bern
Brandenburg, Alan	MID-L-5307-20	Felice, Romilda et al.	Bern
Byrd, Sandy	MID-L-4984-20	Burt, Jerry D. et al.	Bern
Johnson, Mary	MID-L-4291-20	Kilgore, Carol A. et al.	Bern
Valdez, Sarah	MID-L-4964-20	Barber, Anne B. et al.	Bern

