

FILED

MARCH 22 , 2021

HON. BRUCE J. KAPLAN, J.S.C.

IN RE: ZOSTAVAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

CASE NO. 629

**CASE MANAGEMENT ORDER #14
MARCH 2, 2021
CASE MANAGEMENT CONFERENCE**

THIS MATTER, having come before the Court at a case management conference on March 2, 2021 and counsel for Plaintiffs and counsel for Defendants having been present, and for good cause having been shown;

IT IS on this 22nd day of March, **ORDERED** as follows:

1. MOTIONS TO CORRECT METADATA

By March 29, 2021, Marc J. Bern & Partners LLP shall submit to the court a list of metadata motions that were filed and are currently pending, including case names and docket numbers.

By March 29, 2021, Marc J. Bern & Partners LLP shall submit to the court a list of metadata motions that Marc J. Bern & Partners LLP intends to file, including case names and docket numbers. This list shall be updated should any additional metadata issues arise or become subsequently known.

2. MOTIONS FOR PRO HAC ADMISSION

Motions for Pro Hac Vice Admission shall no longer be submitted under the five-day rule when there are emergent time constraints. Emergent motions must still comply with all requirements of R. 1:21-2 and state "SHORT NOTICE" on the first page of the Notice of Motion. Motions for Pro Hac Vice Admission for which there are not emergent time constraints should be filed as a regular motion with an assigned return date.

3. MOTIONS TO AMEND THE COMPLAINT TO ADD A LOSS OF CONSORTIUM CLAIM.

Defense and Plaintiffs' Liaison counsel have agreed to a consent order to permit amendment of the complaint to include a loss of consortium claim. This Consent Order does not bar Defendants from asserting Statute of Limitations affirmative defenses specifically pertaining to the newly asserted loss of consortium claims alleged by plaintiff's spouse in the amended complaint. All pending motions to amend the complaint to add a loss of consortium claim shall be withdrawn and the consent order shall be submitted to the Court.

4. MOTIONS TO SUBSTITUTE THE ESTATE FOR A DECEASED PLAINTIFF.

By May 3, 2021, Plaintiffs shall file motions to substitute the estate for all deceased plaintiffs, if the plaintiff was deceased as of March 2, 2021. For any plaintiff that dies after March 2, 2021, the motion to substitute the estate shall be filed 60 days after the attorney is advised of the plaintiff's death.

5. COURTESY COPIES OF E-COURT FILED MOTIONS

Counsel shall email courtesy copies of all e-court filed submissions to Matthew Wells at matthew.wells@njcourts.gov

6. OUTSTANDING PLAINTIFF FACT SHEETS

On February 9, 2021, Counsel for Merck provided notice to Marc J. Bern & Partners LLP ("Bern"), pursuant to the Case Management Order: Plaintiff Fact Sheets entered on June 12, 2019 ("PFS CMO"), that 178 Plaintiff Fact Sheets (PFS) were overdue. Counsel for both parties have agreed to provide an extension until March 31, 2021 for plaintiffs identified on Merck's February 9, 2021 notice to Bern to serve a materially complete and certified PFS, and those not submitted by that date shall be dismissed with prejudice.

Plaintiff Mildred Fields shall provide an amended PFS by April 1, 2021 to amend and/or supplement the responses related to the loss of consortium claim, or the Loss of Consortium Claim asserted in her complaint may be dismissed.

7. SERVICE OF OUTSTANDING COMPLAINTS UPON MERCK

Plaintiffs' counsel shall serve Merck with the outstanding single plaintiff and bifurcated complaints set forth in Exhibit A by April 1, 2021.

8. SERVICE OF OUTSTANDING COMPLAINTS UPON MCKESSON

Plaintiffs' counsel shall serve all filed but unserved Complaints upon McKesson by April 7, 2021 and provide proof of service affidavits to counsel for McKesson immediately thereafter.

Counsel for McKesson and Plaintiffs shall meet and confer to determine a schedule for McKesson to answer these Complaints.

Plaintiffs agreed to dismiss McKesson Corporation as a Defendant in the following bellwether cases in which McKesson had not yet been served:

- Gorman Swinney v. Merck & Co. Inc, et al. (MID-L-07918-18);
- Mercedes Deville v. Merck & Co. Inc, et al. (MID-L-06398-18);
- Janis Cook v. Merck & Co. Inc, et al. (MID-L-0656-19);
- Sharon Gollakner v. Merck & Co. Inc, et al. (MID-L-00561-19);
- Rosanne Jewett-Modde v. Merck & Co. Inc, et al. (MID-L-006294-18);
- Eugene L. Sheppard, Jr. v. Merck & Co. Inc, et al. (MID-L-06629-18);
- Barbara Williams v. Merck & Co. Inc, et al. (MID-L-08637-18).

Plaintiffs shall execute dismissals as to McKesson in the above cases.

9. DECEASED PLAINTIFFS

As set forth in CMOs 10, 11, 12 and 13 Plaintiffs' counsel shall not file Complaints on behalf of a deceased Plaintiff unless filed through an estate representative.

The following cases 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.

- Giannelli, Eileen B. (deceased) (Vonbargen) v. Merck & Co., Inc., et al., MID-L-5575-20 (case filed 7/3/2018; DOD 3/21/2017)
- Krueger, Steven (deceased) (Vonbargen) v. Merck & Co., Inc., et al., MID-L-5577-20 (case filed 7/3/2018; DOD 11/10/2017)

- Wallace, Winifred (deceased) (Vonbargen) v. Merck & Co., Inc., et al., MID-L-5743-20 (case filed 7/3/2018; DOD 12/31/2017)
- Hathcock, Ronald (should be Donald) (deceased) v. Merck & Co., Inc., et al., MID-L-3374-19 (case filed 4/22/2019; DOD 1/21/2019)
- Marling, John (deceased) v. Merck & Co., Inc., et al., MID-L-0616-19 (case filed 1/15/2019; DOD 4/6/2018)

If Plaintiffs' counsel has proof that the Plaintiff in any of the aforementioned cases was not deceased at the time the Complaint was filed, they may file a motion for reconsideration of the dismissal on that basis only.

Plaintiffs' counsel may seek to file a new Complaint through an estate representative.

10. ASSESSMENT OF CASES SUBJECT TO PENDING MOTIONS FOR RECONSIDERATION AND/OR PROPOSED FIVE DAY RULE ORDERS

By March 29, 2021, Plaintiffs' counsel shall provide counsel for Merck with a complete list of the cases previously dismissed, subject to dismissal, or subject to a motion to compel in which they now believe they have satisfied their discovery obligations.

Following Merck's receipt of the aforementioned list but in advance of the April 8, 2021 case management conference, the parties shall meet and confer to determine if any of those cases may be reinstated by consent order and if any cases previously dismissed without prejudice that remain noncompliant can be voluntarily dismissed with prejudice and promptly notify the court of this determination.

The next Case Management Conference is scheduled for April 8, 2021 at 10:00 AM, either telephonically or via a video link, which shall be circulated by liaison counsel at a later date.

ISI Bruce J. Kaplan

HONORABLE BRUCE J. KAPLAN, J.S.C.

EXHIBIT A

Single Plaintiff Refiles

Chantos, Beverly	MID-L-8658-18
Farina, Herb	MID-L-2099-19
Gardner, Roxanna	MID-L-0567-20
George, Gale	MID-L-8291-18
Guie, Louise	MID-L-4533-19
Hamilton, Frank	MID-L-0479-19
Herold, Gerald	MID-L-0486-19
Hobson, Robert	MID-L-0980-19
Howard, Jackson and Nina	MID-L-7474-18
Keim, Sandra	MID-L-8269-18
Lee, Patsy Ann	MID-L-0139-19
Marmon, Bruce	MID-L-0617-19
Montgomery, Leroy	MID-L-0678-19
Morrison, Eva Jewel	MID-L-0679-19
Nostrom, Joy	MID-L-0572-19
Podgorski, Carolyn	MID-L-0892-19
Radford, James	MID-L-0528-19
Ross, Sterling	MID-L-8551-18
Sadler, Gorma	MID-L-0969-19
Sampson, Bonita	MID-L-1476-19
Solomon, Donald	MID-L-8307-18
Spickerman, Charlotte	MID-L-4294-19
Springer, Diane	MID-L-3834-19
Thompson, Marlene	MID-L-0500-19
Wagner, Jo Anne	MID-L-0504-19
Wampole, Mary and David, Erica	MID-L-0547-19
Watson, Luseal	MID-L-4434-19
Wyckoff, Carol and Donald	MID-L-0511-19

Multi-Plaintiff Cases

Adway, Mealon	Vonbargen, Shirley et al.	MID-L-4043-18
Albon III, Thomas J.	Burden, Kimberly et al.	MID-L-1886-18
Bird, Donald	Morgan, Jeanette et al.	MID-L-4575-18
Brattin, Shirley	Brattin, Shirley et al.	MID-L-1318-18
Cattani, Valdemar	Cattani, Valdemar et al.	MID-L-6039-17
Durdin, Ronnie	Morgan, Jeanette et al.	MID-L-4575-18
Harris, Janice	Vonbargen, Shirley et al.	MID-L-4043-18
Lumpkin, Mary	Brattin, Shirley et al.	MID-L-1318-18
MacCoy, Jean	Metz, Carole et al.	MID-L-4236-18
Matthews, Linda	Burden, Kimberly et al.	MID-L-1886-18
McDonald, Judy	Sisnetsky, Eugene et al.	MID-L-7525-17
Prohaska, John	Vonbargen, Shirley et al.	MID-L-4043-18
Rogers, Sonya	Vonbargen, Shirley et al.	MID-L-4043-18
Ryder, Bonnie	Vonbargen, Shirley et al.	MID-L-4043-18
Shreve, Farra	England, Dessie et al.	MID-L-4659-17
Shreve, Leroy	England, Dessie et al.	MID-L-4659-17
Vonbargen, Shirley	Vonbargen, Shirley et al.	MID-L-4043-18
Wolfe, Nola	Brattin, Shirley et al.	MID-L-1318-18
Yates, Adrian	Hess, David et al.	MID-L-7301-17