

FILED

APRIL 16, 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 #15
APRIL 8, 2021
CASE MANAGEMENT CONFERENCE**

THIS MATTER, having come before the Court at a case management conference on April 8, 2021 and counsel for Plaintiffs and counsel for Defendants having been present, and with the consent of counsel, and for good cause having been shown;

IT IS on this 16th day of April 2021, **ORDERED** as follows:

1. PENDING OMNIBUS MOTIONS

Plaintiff's counsel shall withdraw their pending motions seeking reconsideration of the Court's February 13, 2020 orders dismissing plaintiffs' claims for failure to comply with Court orders regarding Plaintiff Fact Sheets and failure to serve Proof of Product Usage.¹

By April 15, 2021, Plaintiffs' counsel shall submit letter briefs in support of their proposals to address any of the Court's February 13, 2020 Orders not addressed in their April 7, 2021 correspondence, Merck's January 28 and March 3, 2020 submissions under the five-day rule, and Merck's February 18, 2020 Motion to Compel.

By April 19, 2021, Plaintiffs' counsel shall file motions to vacate prior dismissals with prejudice in those cases identified in Merck's March 31, 2020 correspondence to the Court for which Merck indicated that it would not oppose such a motion on the grounds that plaintiff's PFS is non-compliant.

¹ Plaintiffs' motion to reconsider CMO 8 shall not be withdrawn.

By April 29, 2021, Plaintiffs' counsel shall file all motions to vacate dismissals with prejudice for which they claim they are now in compliance and for which Merck's counsel has advised such motion will be opposed.

2. PENDING MOTIONS TO REINSTATE: PRODUCT USAGE AND PLAINTIFF FACT SHEETS

The Court will provide liaison counsel with a list of pending motions to reinstate for their review and feedback. Liaison counsel will then promptly provide feedback to the Court regarding their understanding of the status of those motions and whether they are opposed, unopposed, will be opposed and/or can be withdrawn.

3. MOTIONS TO CORRECT METADATA

By April 21, 2021, Marc J. Bern & Partners LLP shall submit to the court a list of metadata corrections 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.

Plaintiffs' counsel may correct metadata issues by submitting an order under the five-day rule or a consent order.

4. CONSENT ORDERS TO AMEND THE COMPLAINT TO ADD A LOSS OF CONSORTIUM CLAIM.

By April 19, 2021, Plaintiffs shall file amended complaints in:

- Cook, Jimmy v. Merck & Co., Inc., et al. (MID-L-3569-20)
- Hodge, Dianne v. Merck & Co., Inc., et al. (MID-L-3565-20)
- Weissbeck, David v. Merck & Co., Inc., et al. (MID-L-3474-20)

McKesson shall wait to file answers in the foregoing cases until after plaintiffs file and serve their further amended complaints.

5. 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 for which Plaintiff's counsel has the estate documentation necessary to file the substitution motion.

For cases in which the estate is not settled and/or established, the motion to substitute the estate shall be filed within two weeks of plaintiffs' counsel receipt of the estate documentation necessary to file the substitution motion.

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.

The following plaintiffs have not provided a materially complete PFS and therefore their cases are dismissed with prejudice:

- Aldrich, Rick v. Merck & Co., Inc., et al., MID-L-004980-19
- Brong, Stephanie v. Merck & Co., Inc., et al., MID-L-001518-19
- Coffey, Frank v. Merck & Co., Inc., et al., MID-L-006106-19
- Constantine, Diamond v. Merck & Co., Inc., et al., MID-L-002613-19
- Criscione, Jenny v. Merck & Co., Inc., et al., MID-L-003881-19
- Dooley, Jewell v. Merck & Co., Inc., et al., MID-L-001804-19
- Fitzjarell, Norma v. Merck & Co., Inc., et al., MID-L-004991-19
- Harper, Katherine v. Merck & Co., Inc., et al., MID-L-003449-19
- Heagy, Jesse v. Merck & Co., Inc., et al., MID-L-003822-19
- Hill, Gail v. Merck & Co., Inc., et al., MID-L-006642-19
- Kienow, Ronald v. Merck & Co., Inc., et al., MID-L-004972-19
- Kupferschmid, Deborah v. Merck & Co., Inc., et al., MID-L-001673-19
- Labianca, Barbara v. Merck & Co., Inc., et al., MID-L-004210-19
- Mock, Kevin v. Merck & Co., Inc., et al., MID-L-002676-19
- Moss, Carmon v. Merck & Co., Inc., et al., MID-L-004208-19
- Nadeau, Charles v. Merck & Co., Inc., et al., MID-L-004648-19
- Nagle, Rosemary v. Merck & Co., Inc., et al., MID-L-004505-19
- Padilla, Victoria v. Merck & Co., Inc., et al., MID-L-003889-19

- Palmer, Charles v. Merck & Co., Inc., et al., MID-L-004978-19
- Patterson, Sherwood v. Merck & Co., Inc., et al., MID-L-004240-19
- Rosen, Esther v. Merck & Co., Inc., et al., MID-L-001660-19
- Roth, Jane v. Merck & Co., Inc., et al., MID-L-002913-19
- Thomas, Verland v. Merck & Co., Inc., et al., MID-L-003346-19
- Thul, Carol v. Merck & Co., Inc., et al., MID-L-003453-19
- Turoff, Arline v. Merck & Co., Inc., et al., MID-L-004429-19
- Venters, Suzette v. Merck & Co., Inc., et al., MID-L-008278-19
- Welsch, Sallie v. Merck & Co., Inc., et al., MID-L-003350-19
- Yang, Deborah Youngren v. Merck & Co., Inc., et al., MID-L-004436-19

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 May 1, 2021.

8. SERVICE OF OUTSTANDING COMPLAINTS UPON MCKESSON, RESOLUTION OF OUTSTANDING ISSUES AND ANSWER SCHEDULE

By April 26, 2021, plaintiffs' counsel shall meet and confer with counsel for McKesson to discuss the 270 cases in which McKesson has been served with amended short form complaints, but in which McKesson has not filed its answers due to various deficiencies.

9. DECEASED PLAINTIFFS

As set forth in CMOs 10, 11, 12, 13 and 14, 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.

- Hall, Patricia. (deceased) v. Merck & Co., Inc., et al., MID-L-3146-19 (case filed 4/22/2019; DOD 3/11/2018)
- Durdin, Ronnie (deceased) & Barbara (admin) v. Merck & Co., Inc., et. al. (previously filed in Morgan, et al.), MID-L-5706-20 (original case filed 7/31/18; DOD 7/14/18)

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. BELLWETHER DISCOVERY CASES

The following cases are removed from the current Bellwether Discovery Cases.

- Martha Arnold v. Merck & Co., Inc., et. al., MID-L-5147-20
- Mildred Fields v. Merck & Co., Inc., et. al., MID-L-4809-20

The parties consent to a two week extension of the deadlines set forth in the August 27, 2020 Amended Bellwether Selection and Scheduling Order and shall provide a revised Order to the Court by April 16, 2021.

- 11.** For the reasons stated on the record at Case Management Conference # 15, a thirty (30)-day moratorium is hereby placed on the filing of all Motions in the Zostavax litigation for which filing is not specifically provided or required by this Order.

Any time-sensitive or emergent Motions including but not limited to those that must be filed to comply with applicable Statutes of Limitations are exempt from this moratorium.

This moratorium is subject to a thirty (30)-day extension, and any further extensions thereafter deemed necessary by the Court.

The next Case Management Conference is scheduled for May 4, 2021 at 10:00 AM, either telephonically or via a video link, which shall be circulated by liaison counsel or the Court at a later date.

/s/ Bruce J. Kaplan

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

Exhibit A

Plaintiff(s)' Name(s)	Original Case (if applicable)	Case Number
Albon III, Thomas J.	Burden, Kimberly et al.	MID-L-1886-18
Gardner, Roxanna		MID-L-0567-20
George, Gale		MID-L-8291-18
Montgomery, Leroy (Montomery, Celberta - spouse)		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
Sadler, Gorma		MID-L-0969-19
Solomon, Donald		MID-L-8307-18
Wagner, Jo Anne (Wegner, Jack - spouse)		MID-L-0504-19
Wampole, Mary (deceased) David, Erica (admin)		MID-L-0547-19
Wyckoff, Carol (Wyckoff, Donald - spouse)		MID-L-0511-19