

IN RE: ZOSTAVAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

CASE NO. 629

**CASE MANAGEMENT ORDER #9
JULY 7, 2020
CASE MANAGEMENT CONFERENCE**

THIS MATTER, having come before the Court at a case management conference on July 7, 2020 and counsel for Plaintiffs and counsel for Defendants having been present, and for good cause having been shown;

IT IS on this ____23rd____ day of July 2020, ORDERED as follows:

1. PLAINTIFF FACT SHEET RELATED ORDERS AND MOTIONS

- By July 14, 2020, Merck shall submit a response to Bern's July 6, 2020 supplemental submission regarding Merck's five-day rule dismissal orders submitted and briefed in March 2020.
- Bern shall submit any response to Merck's submission within 7 days of receipt of Merck's submission.
- These submissions shall be sent to Matthew Steen, at matthew.steen@njcourts.gov

2. PRODUCT USAGE RELATED ORDERS AND MOTIONS.

- By July 14, 2020, Merck shall submit a response to Bern's July 6, 2020 supplemental submission regarding Merck's five day rule dismissal orders submitted and briefed in March 2020.
- Bern shall submit any response to Merck's submission within 7 days of receipt of Merck's submission.
- These submissions shall be sent to Matthew Steen, at matthew.steen@njcourts.gov

3. IRREGULARITIES IN AUTHORIZATIONS AND DECLARATIONS

- By July 14, 2020, Merck will submit a letter brief and examples to plaintiffs' counsel and the Court regarding irregularities found in authorizations and declarations with a proposed resolution.
- Bern shall submit any response to Merck's submission within 7 days of Merck's submission.
- These submissions shall be sent to Matthew Steen, at matthew.steen@njcourts.gov

4. BELLWETHER CASE SELECTION

- Merck shall promptly identify replacement cases for the two Bellwether Discovery plaintiffs who are deceased and the four cases voluntarily dismissed.
- The upcoming deadlines in the Bellwether Order shall be extended by 60 days.
- Counsel shall submit a revised Bellwether Order incorporating this extension.

5. STATUS OF VOLUNTARY DISMISSALS

- Counsel for Merck will submit a chart to plaintiffs' counsel and the court delineating those cases for which counsel has agreed to dismissal with prejudice, but the order has not been posted to the court's website or returned to Merck's counsel.
- Counsel shall work with the court to expedite submission of completed orders to the court and, upon request by the court, resubmit any orders previously submitted.

6. AMENDED COMPLAINTS AND RESPONSIVE PLEADINGS

- The parties shall meet and confer and prepare a schedule for the filing of amended complaints for single plaintiff cases and Merck's and McKesson's answers thereto.
- For cases in which a motion to reinstate is pending and plaintiffs have filed an amended complaint and have previously served Defendants, Defendants shall file answers to these amended complaints 20 days after the court's order granting reinstatement or 20 days from the date of service, whichever is greater. No answers to such amended complaints shall be required unless the Court orders reinstatement.

- For cases in which a motion to reinstate is pending in which plaintiffs have filed an amended complaint but have ***not*** previously served Defendants, Defendants shall file answers to these amended complaints 35 days from the date they are served by plaintiffs. No answers to such amended complaints shall be required unless the Court orders reinstatement.
- For both amendments to original complaints and newly filed bifurcated complaints, Defendants shall not file answers to complaints naming a deceased plaintiff until 20 days after the order granting plaintiff's motion to amend the caption to include the estate or 35 days after a newly filed complaint on behalf of the estate if amendment is not appropriate under the New Jersey Court rules.
- Defendants shall not file answers to complaints filed for cases currently dismissed with prejudice unless an order is granted reinstating that case. If plaintiffs have previously served Defendants with amended complaints for cases that were dismissed with prejudice, if the case is reinstated, an answer shall be filed 20 days after the order granting reinstatement or 20 days from the date of service, whichever is greater. If plaintiffs have ***not*** previously served Defendants. Defendants shall file answers to these amended complaints 35 days from the date they are served by plaintiffs.
- Defendants shall not file answers to complaints alleging a loss of consortium which names only one plaintiff until 20 days after the order granting plaintiff's motion to amend the complaint or 35 days from a newly filed complaint.
- Counsel will continue to communicate regarding any spelling related errors or irregularities in pleadings and plaintiffs' counsel shall make a motion to correct those errors at a later date to be determined by the court.
- Counsel for plaintiffs and McKesson shall meet and confer to prepare a schedule for the McKesson's answers once service of the bifurcated amended complaints is achieved.
- For new complaints filed and served since March 17, 2020, Defendants shall file answers 35 days after service unless subject to a stipulation extending time to answer.

7. MOTIONS TO DISMISS CASES WITH PREJUDICE, PREVIOUSLY DISMISSED WITHOUT PREJUDICE

- Defendants may seek dismissal with prejudice of cases dismissed without prejudice for more than 60 days for which motions to reinstate have not been filed.

8. LISA TETUAN V. MERCK, ET. AL.

- Sadaka Law Offices shall dismiss Lisa Tetuan v. Merck, et. al., MID-L-3233-18.

9. UPDATED CASE LIST

- Within 14 days of the court's orders granting all pending motions to bifurcate multi-plaintiff complaints, Bern LLP shall submit their case list to the court via email to Marisol Rodriguez at Marisol.Rodriguez@njcourts.gov

The next Case Management Conference is scheduled for August 26, 2020 at 11:00 AM, telephonically.

/s/ James F. Hyland

James F. Hyland, J.S.C.