

FILED

SEPTEMBER 8 , 2021

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

IN RE: ZOSTAVAX® LITIGATION

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

CASE NO. 629

MASTER DOCKET NO. MID-L-4999-18

**AMENDED CASE MANAGEMENT
ORDER #19
AUGUST 25, 2021**

CASE MANAGEMENT CONFERENCE

THIS MATTER, having come before the Court at a case management conference on August 25, 2021 and counsel for plaintiffs and counsel for defendants having been present, and for good cause having been shown;

IT IS on this 8th day of September, **ORDERED** as follows:

1. PENDING MOTIONS CHARTS

- CMO 18 is amended to reflect that Defense liaison counsel and plaintiffs' liaison counsel shall provide monthly lists to the court setting forth the pending motions for their respective clients. Plaintiffs' list shall include the pending motions from all plaintiffs' counsel and the defense list shall include pending motions for both Merck and McKesson. The lists shall be provided with each Case Management Conference agenda.

2. PROOF OF USE PAGE/LINE REFERENCE REQUIRED

The plaintiffs identified in Exhibit A shall, by September 13, 2021, provide the page and line reference for the proof of use documentation previously provided to defense counsel.

3. PROCEDURE FOR FILING OF MOTIONS

Given the number of Plaintiffs and the number and frequency of Motions filed, pursuant to the Court's instructions at the August 25, 2021 Case Management Conference, the following procedure will apply with regards to the filing of motions going forward:

- a. Prior to the Liaison Counsel Meeting, Counsel will provide a proposed Agenda to the Court which delineates by name, docket , and type of motion counsel intends to file within 30 days following the Case Management Conference.
- b. The Court will discuss with liaison counsel at the Liaison Counsel meeting the motions included on the Agenda;
- c. At the Case Management Conference, the Court will identify those motions to be filed and the date of filing, which shall be memorialized in the case management order.
- d. **Motions Not Subject to this Procedure:**
 - i. Motions for Pro Hac Vice Admission
 - ii. Motions for Relieving Pro Hac Vice Admission
 - iii. Unopposed motions will require prior notice to Judge Kaplan's law clerks via e-mail, but will not have to follow this formal procedure

If the parties encounter an emergent issue that requires motion practice before an upcoming case management conference, the parties may contact the Court for guidance regarding the filing of such motions.

Counsel may file motions in the cases set forth in Exhibits B and C. Plaintiffs' motions are set forth in Exhibit B and Defense motions are set forth in Exhibit C. Any court ordered filing deadline is specified in Exhibits B and C.

4. MOTIONS TO AMEND TO SUBSTITUTE THE ESTATE

With respect to cases listed in Exhibit D and for any not included in the last list submitted by plaintiff's counsel or who has died since August 24, 2021, plaintiffs' counsel shall provide a list to the court and opposing counsel by September 13, 2021, which sets forth the following:

- The name and docket number for all cases for which the plaintiff is deceased, and the complaint needs to be amended to substitute the estate for the deceased plaintiff.
- The information plaintiff's counsel has in their possession to support the motion to amend to substitute the estate ("motion to amend").
- The information still needed to file the motion to amend.
- The efforts that have been made to obtain the outstanding information needed to file the motion to amend.
- Whether or not the motion to amend has been filed.
- If the motion to amend has not been filed, the reasons it has not.

5. AMENDED SHORT FORM COMPLAINTS TO CORRECT LOSS OF CONSORTIUM ALLEGATION ERRORS

- Plaintiffs' counsel shall either dismiss or file and serve corrected amended short form complaints to include the corrected loss of consortium allegations in the following cases by September 13, 2021:

- Fitzgerald, Webster MID-L-5741-20
- Brandenburg, Alan MID-L-5307-20
- Byrd, Sandy MID-L-4984-20

6. MOTIONS TO REINSTATE: NECESSITY OF RE-FILED COMPLAINTS

- Plaintiff's counsel shall either dismiss or file and serve a re-filed short form complaints in the following cases by September 13, 2021:

- Adam, Judith MID-L-196-19
- Brandenburg, Alan MID-L-5307-20
- Byrd, Sandy MID-L-4984-20
- Jenkins, Gwendell MID-L-728-18
- Manego, Elwyn MID-L-7375-18

- Those cases also addressed in paragraph 3 of CMO 19 shall file one complete and corrected short form complaint.

7. MCKESSON OMNIBUS DISMISSAL ORDER

Counsel for McKesson and Plaintiffs shall meet and confer and submit an omnibus dismissal Order with an exhibit listing all applicable cases from which McKesson shall be dismissed.

- 8.** The Bern law firm shall file no later than September 15, 2021 a motion for the Pro Hac Vice admission of Mollie Wellins on the Master Docket, which will allow for the Pro Hac Vice admission in all active Bern cases in the Zostavax MCL.

- 9.** After notice and consultation with counsel the Court will be entering amended orders outlining the procedure for dismissal motions based on failure to comply with Proof of Use and Plaintiff Fact Sheet obligations, which orders will be entered simultaneously with the entry of this order.

10. NEXT CASE MANAGEMENT CONFERENCE

The next Liaison Counsel meeting is scheduled for September 21, 2021 at 9:30 am, and the next Case Management Conference is scheduled for September 23, 2021 at 9:30 am, via a video link, which shall be circulated by liaison counsel or the Court on a later date.

/s/ Bruce J. Kaplan

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

The posting of this Order on eCourts shall constitute service upon all counsel of record. If applicable, pursuant to *Rule 1:5-1(a)*, the movant shall serve a copy of this Order upon all parties not served electronically within seven (7) days of receipt of this Order.

SEE ATTACHED EXHIBITS

EXHIBIT A: CMO 19

Plaintiff	Docket No.
Arthur, Lynne	MID-L-007892-20
Averlett, Dorothy	MID-L-005385-20
Baker, Darrell	MID-L-003368-18
Beachy, Dale	MID-L-003830-19
Beaston, Nancy	MID-L-007175-18
Beberg, Harlan	MID-L-004853-20
Bechler, Russell	MID-L-004128-20
Bishop, Margy	MID-L-005648-20
Bowie, Virginia (deceased) Matta, Laura (admin)	MID-L-003780-20
Bradford, Johnnie Mae	MID-L-007162-18
Brittain, Pamela S.	MID-L-005588-20
Broemmer, Ronald	MID-L-004981-20
Brown, Geraldine W.	MID-L-003329-20
Brown, Wanda	MID-L-004823-20
Burks, Melvin	MID-L-008576-18
Burns, Donna	MID-L-005592-20
Carns, Steven	MID-L-005556-20
Cordell, Donna	MID-L-006539-18
Costello, June	MID-L-002596-19
Crandall, Paul	MID-L-007421-18
Crouch, Shirley	MID-L-007500-18
Cullar, Norma	MID-L-005332-20
Culler, Fred	MID-L-005346-20
Eiland, June	MID-L-003475-20
Engleman, Robert	MID-L-005610-20
First, David	MID-L-005013-20
Fleischer, Eugene	MID-L-004186-20
Foggin, Brenda	MID-L-000449-19
Fox, Wavell	MID-L-004881-20
Golden, Dianna	MID-L-005488-20
Green, Judy	MID-L-007135-18
Hall, Freddie	MID-L-005402-20
Hawkins, Betty	MID-L-005459-20
Johnson, Pauline	MID-L-004885-20
Kirk, Gene	MID-L-004891-20
Lafleur, Stanley	MID-L-004788-20
Lozano, Edward	MID-L-003779-20
Lumpkin, Mary	MID-L-004143-20

Plaintiff	Docket No.
Mai, Diana	MID-L-007224-18
Manley, Jimmy	MID-L-001780-19
Manning, Sarah	MID-L-008265-18
Martin, Gloria	MID-L-008116-18
Martucci, Arlene	MID-L-000887-19
Melvin, Alvin	MID-L-004916-20
Menesses, Rickey	MID-L-001839-19
Messer, Linda	MID-L-007249-18
Miller, Charlotte	MID-L-003394-20
Moose, Mary	MID-L-007635-17
Morgan, Jeanette	MID-L-004575-18
Mowery, Diana Kay	MID-L-004262-20
Muller, Gloria	MID-L-000842-19
Murphy, Anne	MID-L-005082-19
Nichols, Kenneth	MID-L-005670-20
Nickell, Dorothy	MID-L-003754-20
Nikkels, Esther R.	MID-L-000182-19
Nilo, Rosemary (deceased) Downs, Kristina Nilo (admin)	MID-L-006309-18
Noles, James	MID-L-000186-19
Pace, Leroy	MID-L-008087-18
Perrone, Ralph	MID-L-000889-19
Phillips, Bonnie	MID-L-003322-20
Pinaire, Ann	MID-L-000014-19
Putman, Judy	MID-L-003559-20
Ragsdale, Ida	MID-L-005031-20
Richard, Bobbie (deceased) Richard, Dallas (admin)	MID-L-003790-20
Riddle, Helen	MID-L-003544-20
Riffle, Del	MID-L-004117-20
Rose, Robert	MID-L-006256-18
Ross, Kenneth	MID-L-003749-20
Rubin, Sandra	MID-L-005210-19
Safford, Robert	MID-L-003667-20
Saunders, Barbara	MID-L-005003-20
Scott, Henrietta	MID-L-004118-20
Slayton, Shirley	MID-L-004149-20
Smith, Margaret	MID-L-005274-19
Spurlock, Larry	MID-L-003523-20
Standiferd, Elizabeth	MID-L-005716-20

Plaintiff	Docket No.
Stewart, John	MID-L-005353-20
Warfield, Kathy	MID-L-007525-17
Weber, Lloyd W.	MID-L-005643-20
Whitehead, Jackie	MID-L-006566-18
Whitten, Theodora	MID-L-005502-20
Widere, Virginia	MID-L-005051-20
Williams, Linda (TN) (deceased) Williams, Kevin (admin)	MID-L-003338-20
Wilson, Shirley	MID-L-000900-19
Wolcott, Betty	MID-L-005058-20
Woods, Cornelius	MID-L-003340-20
Wright, Martha	MID-L-004246-20
Young, Melvin	MID-L-008125-18
Zignego, Deborah	MID-L-007248-18

EXHIBIT B: CMO 19

Plaintiff	Docket No.
Bowie, Virginia	MID-L-3870-20
Cheever, Adelaide	MID-L-8569-18
Charron, Michael	MID-L-77-19
Cotton, Marie	MID-L-7578-17
Eblowitz, Sheila	MID-L-4812-20
Heckadon, David Michael	MID-L-3250-20
Pierce, Cynthia	MID-L-2628-19
Richards, Hubert	MID-L-3664-20
Simmons, Theodore	MID-L-5006-20
Tomerline, Hazel	MID-L-3553-20
Williams, Linda Carol	MID-L-3338-20

EXHIBIT C: CMO 19

Plaintiff	Docket No.
Adams, Dennis	MID-L-5850-18
Alessi, Denise	MID-L-6767-18
Bindler, Judith*	MID-L-4538-19
Grandison, Michael*	MID-L-877-19
Gunderson, Marvin*	MID-L-4457-17
Hagerman, James*	MID-L-4959-19
Justice, Virginia	MID-L-5654-20
Lawrence, Lois	MID-L-3391-20
Loftus, April	MID-L-0138-19
Paillette, Carl	MID-L-5488-19
Powell, Carmen	MID-L-0152-21
Schmidt, Julie	MID-L-4206-19
Schroeder, Lois*	MID-L-3259-20
Thompson, Stephania	MID-L-1908-19

*Defense counsel shall advise plaintiff's counsel by September 3, 2021 if there are any material deficiencies that remain in the PFS and shall file any applicable motions to dismiss by September 13, 2021.

EXHIBIT D: CMO 19

Plaintiff	Docket No.
Becker, Sharon (deceased) Thome, Sarah (admin)	MID-L-8301-18
Burt, Jerry D. (deceased) Burt, Kevin D. (admin)	MID-L-2500-18
Frederick, Fred (deceased). Frederick, Elizabeth (admin)	MID-L-4188-20
Heckadon, David (deceased), Heckadon, Diana (admin)	MID-L-3250-20
Little, Loretta (deceased), Smiley, Roy Thomas (admin)	MID-L-0090-19
Rash, Shelby (deceased), Rash, Suzan (admin), Rash-Raney, Judy (admin)	MID-L-1292-19
Tomerline, Hazel (deceased), Beckham, Gloria (admin)	MID-L-3553-20
Voelker, James (deceased), Voelker, Lois P. (admin)	MID-L-0545-19
White, Judith (deceased), White, Joseph (admin)	MID-L-2830-19