

**FILED**

**SEPTEMBER 8 , 2021**

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

**IN RE: ZOSTAVAX LITIGATION**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: MIDDLESEX COUNTY**

MCL NO. 629

**AMENDED CASE MANAGEMENT  
ORDER: PRODUCT USAGE**

**THIS MATTER** having come before the Court by way of 5 Day Order filed on July 21, 2021, and the Court having discussed the matter with counsel at the August 26, 2021 Case Management Conference No. 19, and for good cause having been shown,

**IT IS** on this 8th day of September, 2021

**ORDERED** as follows:

**I. SCOPE OF ORDER**

This Case Management Order (“CMO”) amends the Product Usage Order dated August 21, 2019 and paragraph 3 of CMO 16 as set forth below.

**II. PROOF OF USE (POU)**

If any plaintiff fails to produce POU by the deadlines set forth above in Paragraph 4 of CMO 8 dated February 20, 2020, and the issue is not resolved during the Meet and Confer Request Process as set forth in paragraph 3 of CMO 16, the following motion procedure may be utilized.

a. Merck may file and serve a Motion to Dismiss (MTD) without Prejudice for failure to provide POU.

b. Plaintiff shall file and serve any opposition to the MTD within fourteen (14) days of the date the MTD is filed and served.

c. The MTD shall be returnable at the next CMC following the opposition deadline or as otherwise set by the Court.

d. If the case is dismissed without prejudice pursuant to this Order and is not reinstated within sixty (60) days of that Order, any motion to dismiss with prejudice filed shall be in accordance with R. 4:23-5(a)(2) and shall comply with the notice requirements and procedures set forth in Case Management Order No. 19 (“CMO 19”) *and*, in the case of omnibus motions, Order dated July 27, 2021 permitting and explaining the filing of omnibus motions. Counsel for both the Plaintiff and Defendant shall advise whether oral argument is requested or waived.

*/s/ Bruce J. Kaplan*

**Hon. 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.