

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

IN RE: ZOSTAVAX (ZOSTER VACCINE
LIVE) PRODUCTS LIABILITY
LITIGATION

MDL NO. 2848

CIVIL ACTION NO. 2:18-md-2848

PRETRIAL ORDER NO. 47
(Initial Discovery Plan)

I. SCOPE AND APPLICABILITY OF PLAN

This Initial Discovery Plan is intended to conserve judicial and party resources, eliminate duplicative discovery, serve the convenience of the parties and witnesses, and promote the just and efficient conduct of this litigation. The following protocol and limitations in this Pretrial Order ("PTO") shall apply to all cases in MDL 2848.

II. DISCOVERY ON PLAINTIFFS (BY DEFENDANTS)

The proposed Plaintiff Fact Sheet ("PFS") that shall be served on and responded to by individual plaintiffs, and the accompanying procedural requirements for completing that PFS, production of the relevant documents requested by the PFS, and completion of duly-executed authorizations for the release of relevant records, shall be the subject of a separate Pretrial Order ("PTO") that the parties anticipate jointly submitting for the Court's approval prior to the November 28, 2018 status conference. If the parties are unable to reach agreement concerning the form of the PFS and/or the proposed PTO, the parties shall submit competing proposals to the Court in advance of the November 28, 2018 status conference.

The parties agree that the requirements of Fed.R.Civ.P. 26(a)(1)(A) shall hereby be waived for all plaintiffs.

III. DISCOVERY ON DEFENDANTS (BY PLAINTIFFS)

A. There shall be no discovery served or propounded on the defendants in this MDL except that which is from the Plaintiffs' Co-lead Counsel and/or Plaintiffs Executive Committee of this MDL.

B. The parties agree that the requirements of Fed. R. Civ. P. 26(a)(1)(A) shall hereby be waived in each case for Merck. However, in an effort to advance the litigation, Merck will serve on Plaintiff's Co-Lead Counsel by no later than January 15, 2019, one Master Set of Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1)(A) for use in each case. If known, Defendants shall also provide the telephone numbers and address of any former employees disclosed therein.

C. The parties are continuing to meet and confer regarding the Defense Fact Sheet ("DFS"). The DFS shall be the subject of a separate PTO that the parties anticipate submitting for the Court's approval or areas of disagreement or other proposals for same. The parties shall continue negotiations over the form of the DFS and the proposed PTO.

D. Absent agreement of the parties or a Court Order increasing these limits for good cause, Plaintiffs' Co-lead Counsel and/or Plaintiffs Executive Committee may serve a total of 40 Interrogatories.

E. The Plaintiffs Executive Committee served a Rule 30(b)(6) deposition notice on Defendants on October 9, 2018. The parties have and will continue to meet and confer on the deposition(s) of the corporate witness(es) designated to testify on the matters subject to said deposition notice, including, but not limited to, organizational structure, internal terms used for ZOSTAVAX®, electronically stored information, litigation holds and preservation of documents. This(ese) deposition(s) will be completed by January 15, 2019. The parties further understand that the Plaintiffs Executive Committee intends to serve additional Rule 30(b)(6) deposition notices on

topics including but not limited to regulatory and post- marketing surveillance, sales and marketing, and scientific affairs.

The parties will separately meet and confer regarding the number of, and the timing of, Rule 30(b)(6) depositions to be taken in this litigation. Pending such meet and confer, Merck reserves the right to object that the Rule 30(b)(6) notices to be served by the Plaintiffs Executive Committee is excessive.

F. The Plaintiffs Executive Committee propounded a Master Set of Document Requests on Merck on October 22, 2018. Merck's written responses and objections were served on November 21, 2018 pursuant to Fed.R.Civ.P. 26 and 34. The Plaintiff Steering Committee is currently reviewing said objections and responses and the parties anticipate continuing to meet-and-confer regarding same. Additionally, the parties continue to meet-and-confer regarding document production, including keyword selection and search parameters; custodial files to be searched and corporate witnesses to be deposed, and the appropriate number of both; documents produced in individual actions prior to the formation of this MDL; and a timeline for documents to be produced in this litigation generally, as well as a timeline for production of specific documents in advance of each deposition, as well a certification that the production is complete. The procedural requirements for responding to same shall be the subject of a separate Pretrial Order that the parties anticipate submitting for the Court's approval prior to the status conference immediately following the November 28, 2018 status conference.

IV. ADDITIONAL DISCOVERY AND TRIAL PLAN


In addition to the matters related to the PFS and DFS, the parties shall continue negotiating and meeting-and-conferring regarding the plan(s) for further discovery and trial.

Prior to the status conference immediately following the November 28, 2018 status conference, the parties shall submit to the Court either a joint submission or competing

submissions regarding the selection of initial trial cases and schedules for expert disclosures. The submission shall include, but not limited to: parameters and timing for bellwether case selection; specific discovery to be conducted of cases selected pursuant to said parameters, including specific discovery of individual plaintiffs, additional defendant discovery, and a scheduling order relating to same; *Daubert* and/or summary judgment motions, and trial dates.

It is so **ORDERED**.

BY THE COURT:



Harvey Bartle, III J.

November 29, 2018