

UNITED STATES DISTRICT COURT
THE EASTERN DISTRICT OF PENNSYLVANIA

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

MDL No. 2848
Civil Action No. 2:18-md-2848

This Document Relates to:

CHERYL CINALLI and JAMES L. CINALLI,
Plaintiffs,

-against-

MERCK & CO., INC.;
MERCK SHARP AND DOHME CORP.; and
McKESSON CORP.,

Defendants

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, by and through the undersigned attorneys, hereby file this Complaint in accordance with Case Management Order No. 2 and PTO No. 22, and are bound by the rights, protections, privileges, and obligations of that PTO. Plaintiffs state that but for the Order permitting direct filing in the Eastern District of Pennsylvania pursuant to PTO no. 22, Plaintiffs would have filed this Complaint in the United States District Court for the **Northern** District Court of **West Virginia** as the place of remand as this case may have originally been filed there.

Plaintiffs further hereby allege as follows:

PARTIES

1. At all times relevant to this action Plaintiff Cheryl Cinalli (“Plaintiff”) was and is a citizen of the State of **West Virginia**, and resides in Fairmont, **West Virginia**.

2. Plaintiff James L. Cinalli is the spouse of Cheryl Cinalli, and was and is at all relevant times a resident and citizen of **West Virginia**.

3. At all relevant times to this action, as further detailed herein, Defendants MERCK & CO., INC., MERCK SHARP & DOHME CORP., McKESSON CORP. (collectively, “Defendants”), and each of them, introduced into interstate commerce the ZOSTAVAX vaccine, which was to be administered to individuals and consumers throughout the United States.

4. Defendant MERCK & CO., INC. (“Merck”) is a New Jersey corporation with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.

5. At all relevant times, Merck designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, distributed, and/or introduced into the stream of commerce the ZOSTAVAX vaccine, to be administered to consumers throughout the United States. Merck has conducted and continues to conduct business in **West Virginia** and derived and continues to derive substantial revenue from within **West Virginia**, from, including, but not limited to, its business activities related to ZOSTAVAX. Plaintiff’s claims arise out of Merck’s contacts with **West Virginia**.

6. Defendant MERCK SHARP & DOHME CORP. (“MSD”), is a wholly-owned subsidiary of Merck and part of the Merck family of companies.

7. MSD is a New Jersey corporation organized with its principal place of business located at 2000 Galloping Hill Road, Kenilworth, New Jersey 07033.

8. At all relevant times, MSD, individually through its predecessors and through the actions of Merck, designed, researched, developed, manufactured, tested, labeled, advertised, promoted, marketed, sold, supplied, distributed, and/or introduced into the stream of commerce the ZOSTAVAX vaccine, to be administered to consumers throughout the United States. MSD

has conducted and continues to conduct business in **West Virginia** and derived and continues to derive substantial revenue from within **West Virginia**, from including, but not limited to, its business activities related to ZOSTAVAX. Plaintiff's claims arise out of MSD's contacts with **West Virginia**.

9. Defendant McKesson Corp. ("McKesson") is a Delaware Corporation with its principal place of business at 2710 Gateway Oaks Drive, Sacramento, California 95833.

10. At all relevant times, McKesson, individually as an agent of Merck and/or MSD, packaged, labeled, re-packaged, marketed, promoted, supplied, distributed, sold, and/or introduced into the stream of commerce the ZOSTAVAX vaccine to consumers nationwide including **West Virginia**, including to the Plaintiff and/or Plaintiff's healthcare providers. McKesson conducts business throughout the United States and regularly, continuously, and presently does business in **West Virginia**, including marketing, distributing, and selling ZOSTAVAX in **West Virginia**. McKesson derived and continues to derive substantial revenue from within **West Virginia**, from including, but not limited to, its business activities related to ZOSTAVAX. Plaintiff's claims arise out of McKesson's contacts with **West Virginia**.

11. Defendants" where used hereinafter, shall refer to all subsidiaries, affiliates, divisions, franchises, partners, joint venturers, organizational units of any kind, predecessors, successors, assigns, officers, directors, employees, agents and representatives of Merck, MSD, McKesson, and each of them.

12. "Healthcare providers" where used hereinafter, shall refer to all pharmacists, prescribing physicians, treating physicians, nurse practitioners, person who administered ZOSTAVAX to Plaintiff, and any other medical professional who saw, diagnosed, treated, and or

prescribed medications or vaccinations to Plaintiff in connection with ZOSTAVAX, shingles, zoster-related conditions, and/or the injuries alleged herein.

JURISDICTION AND VENUE

13. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity of citizenship between the parties and the amount in controversy exceeds \$75,000.00 exclusive of interests and costs.

14. The District Court with proper venue pursuant to 28 U.S.C. § 1391 is the **Northern District of West Virginia**.

15. Plaintiff is a resident and citizen of **West Virginia**.

16. Merck and MSD are New Jersey corporations, each with its principal place of business in Kenilworth, New Jersey.

17. Based upon information and belief, at all relevant times, each Defendant was and is duly authorized to conduct business in **West Virginia** as a registered foreign corporation.

18. Defendants regularly conducted and solicited business within New Jersey and continue to do so.

19. Defendants at all relevant times sold and distributed ZOSTAVAX in **West Virginia** and continue to do so.

20. Defendants derive substantial revenue from goods used or consumed in **West Virginia**.

21. Each Defendant engages in continuous and systematic activity in **West Virginia**.

22. Each Defendant's continuous and system activity in **West Virginia** and its minimum contacts within **West Virginia** gave rise to Plaintiff's claims.

23. Each Defendant purposefully avails itself of the privilege of conducting activities

within New Jersey, thus invoking the benefits and protections of its laws.

24. Each Defendant has purposefully connected itself to **West Virginia** and has sufficient minimum contacts with **West Virginia** such that **West Virginia** courts' assertion of jurisdiction here is reasonable and does not offend the traditional notions of fair play and substantial justice.

25. The National Childhood Vaccine Injury Act of 1986 ("Vaccine Act"), 42 U.S.C. §§ 300aa-1 et seq. does not preempt Plaintiff from filing this Complaint:

- a. Pursuant to §11(c)(1)(A) of the Vaccine Act, the Vaccine Court has jurisdiction to only hear cases listed on the Vaccine Injury Table.
- b. The ZOSTAVAX vaccine is not a vaccine listed in the Vaccine Injury Table.

**AGENCY, ALTER-EGO, VICARIOUS, SUCCESSOR, AND CO-CONSPIRATOR
LIABILITY OF EACH DEFENDANT DUE TO THE RELATIONSHIPS BETWEEN
MERCK, MSD, AND McKESSON**

26. Plaintiffs incorporate by reference all prior allegations.

27. Each Defendant is individually, as well as jointly and severally, liable to Plaintiffs for Plaintiffs' damages.

28. Plaintiffs would not have an adequate remedy if Merck, MSD, and McKesson were not named parties in this action.

29. There exists and, at all times herein mentioned, a unity of interest in ownership between Merck and MSD.

30. Merck and MSD are not distinct corporate entities: the assets of Merck and MSD are common to both entities; Merck and MSD share and use facilities to conduct and engage in business activities; the business operations of Merck and MSD are the same; the employees and officers of Merck and MSD are largely the same people; the principal place of business of Merck

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