

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:

LASKA MOAK,

Plaintiff,

-against-

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

Defendants

Case No. _____

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff, by and through the undersigned attorneys, hereby files this Complaint in accordance with Case Management Order No. 2 and Pretrial Order No. (“PTO”) 22, and is bound by the rights, protections, privileges, and obligations of PTO 22. Plaintiff states that but for the Order permitting direct filing in the Eastern District of Pennsylvania pursuant to PTO 22, Plaintiff would have filed this Complaint in the United States District Court for the District Court **South Carolina**, and designates this Court as the place of remand as this case may have originally been filed there.

Plaintiff further hereby alleges as follows:

PARTIES

1. At all times relevant to this action Plaintiff Laska Moak (“Plaintiff”) was and is a citizen of the State of **South Carolina**, and resides in **Chapin, South Carolina**.

2. At all relevant times to this action, as further detailed herein, Defendants MERCK & CO., INC. and MERCK SHARP & DOHME 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.

3. 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.

4. 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 nationwide, including in **South Carolina**. Merck has conducted and continues to conduct business in **South Carolina** and derived and continues to derive substantial revenue from within **South Carolina**, from, including, but not limited to, its business activities related to ZOSTAVAX. Plaintiff’s claims arise out of Merck’s contacts with **South Carolina**.

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

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

7. 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 nationwide, including in **South Carolina**. MSD has conducted and continues to conduct business in **South Carolina** and derived and continues to derive substantial revenue from within **South Carolina**, from including,

but not limited to, its business activities related to ZOSTAVAX. Plaintiff's claims arise out of MSD's contacts with **South Carolina**.

8. At all relevant times, the non-party distributor, McKesson Corporation ("McKesson"), 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 **South Carolina**, including to the Plaintiff and/or Plaintiff's healthcare providers.

9. "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 and MSD, and each of them.

10. "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

11. 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.

12. The District Court with proper venue pursuant to 28 U.S.C. § 1391 is the District of **South Carolina**.

13. Plaintiff is a resident and citizen of **South Carolina**.

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

15. **South Carolina** has personal jurisdiction over Merck and MSD.

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

17. Defendants regularly conducted and solicited business within **South Carolina** and continue to do so.

18. Defendants at all relevant times sold and distributed ZOSTAVAX in **South Carolina** and continue to do so.

19. Defendants derive substantial revenue from goods used or consumed in **South Carolina**.

20. Each Defendant engages in continuous and systematic activity in **South Carolina**.

21. Each Defendant's continuous and system activity in **South Carolina** and its minimum contacts within **South Carolina** gave rise to Plaintiff's claims.

22. Each Defendant purposefully avails itself of the privilege of conducting activities within **South Carolina**, thus invoking the benefits and protections of its laws.

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

24. 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 DEFENDANTS, MERCK AND MSD, AND THE DISTRIBUTOR, MCKESSON

25. Plaintiff incorporates by reference all prior allegations.
26. Each Defendant is individually, as well as jointly and severally, liable to Plaintiff for Plaintiff's damages.
27. Plaintiff would not have an adequate remedy if Merck and MSD, were not named parties in this action.
28. There exists and, at all times herein mentioned, a unity of interest in ownership between Merck and MSD.
29. 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 and MSD is the same; the same bank accounts are used by Merck and MSD for business and other operations; Merck and MSD have no separate corporate formalities that exist or are observed.
30. No individuality and separateness exist between Merck and MSD; and any individuality and separateness of Merck and MSD that may have formerly existed has ceased.
31. As such, sufficient grounds exist for disregarding the corporate form and extending liability to MSD and Merck, for the acts of the other, through piercing the corporate veil, alter ego liability, vicarious liability, and/or successor liability.

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