

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

	:	
IN RE: ZOSTAVAX (ZOSTER	:	MDL 2848
VACCINE LIVE) PRODUCTS	:	Civil Action No: 18-md-2848
LIABILITY LITIGATION	:	
	:	Judge Harvey Bartle, III
This Document Relates to: ALL	:	
ACTIONS	:	

PRETRIAL ORDER NO. 22
(Direct Filing --- Stipulated)

The parties hereby submit this Stipulated Order regarding direct filing in the MDL.

I. Scope of Order

This Order applies to actions related to Zostavax (Zoster Vaccine Live) that are directly filed in MDL No. 2848. This Order only applies to claims brought by U.S. residents.

II. Direct Filing of Cases into MDL No. 2848

A. Direct Filing. To eliminate delays associated with transfer of cases filed in or removed from other federal district courts to this Court, and to promote judicial efficiency, any plaintiff whose case would be subject to transfer to MDL No. 2848 may file his or her case directly in MDL No. 2848 in the Eastern District of Pennsylvania, **subject to the provisions set forth below.**

B. Designation in Complaint. For cases directly filed in the MDL pursuant to this Order, the complaint must utilize the caption set forth in Section I below and include: (1) a statement indicating that it is being filed in accordance with Case

Management Order No. and (2) a designation of venue, which will be the presumptive place of remand subject to the provisions set forth in Section E of this Order regarding venue and personal jurisdiction.

For any case filed in the Eastern District of Pennsylvania before entry of this Order, but after August 2, 2018, to be considered a direct-filed case pursuant to this Order, plaintiff(s) must file within forty-five (45) days of entry of this Order a “Notice of Direct Filed Action Pursuant to Pretrial Order No. ___” that includes a designation of venue, which will be the presumptive place of remand subject to the provisions set forth in Section E of this Order regarding venue and personal jurisdiction. Cases filed in the Eastern District of Pennsylvania before August 2, 2018 cannot be designated as direct-filed cases pursuant to this Order.

C. Pretrial Proceedings Only; No Lexecon Waiver. Each case filed directly in MDL No. 2848 will be filed in MDL No. 2848 for pretrial proceedings only, consistent with the Judicial Panel on Multidistrict Litigation’s August 2, 2018 Transfer Order. Plaintiffs and defendants’ agreement to this Order does not constitute a waiver under *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998) by either party.

D. No Concession as to Jurisdiction or Venue. Solely for purposes of pretrial proceedings, defendants will not challenge the personal jurisdiction or venue of any action filed directly in this MDL. The inclusion of any action in MDL No. 2848 pursuant to this Order shall not constitute a determination by this Court that personal jurisdiction or venue is proper in the Eastern District of Pennsylvania. The transfer of a

case filed pursuant to this Order following pretrial proceedings in this MDL does not constitute a determination that jurisdiction or venue is proper in the court to which the case is transferred, unless the MDL Court has specifically found that jurisdiction or venue is proper in the court to which the case is transferred. Neither the existence of this Order nor any of its terms shall in any manner be construed as a waiver of any defendant's right to assert that any court lacks personal jurisdiction over any defendant or that venue is improper in any district as to any action filed in, transferred from, or transferred to, this MDL.

E. Transfer for Trial to Federal District Court of Proper Venue. This Court shall not be deemed to be the "transferor court" simply by virtue of the action having been directly filed into MDL No. 2848. Upon completion of all pretrial proceedings applicable to a case filed directly before this Court in MDL 2848 pursuant to this Order, this Court, pursuant to 28 U.S.C. § 1404(a), will transfer that case to the federal district court in the district of proper venue as defined by 28 U.S.C. § 1391, based on the district the plaintiff(s) designate(s) in his/her direct filed Complaint, in the manner set forth in Section J below. This designated venue will be the presumptive place of remand (a) as long as that venue would be proper pursuant to 28 U.S.C. § 1391, had the complaint been filed in that venue, and (b) as long as defendants would have been subject to personal jurisdiction in that venue, had the complaint been filed there. Should a party submit that the place of remand should be elsewhere, then that party must make a showing of good cause as to why the case should be remanded elsewhere. Such good cause could include where the plaintiff resided at the time of vaccination, where plaintiff

resided at time of injury, location of relevant healthcare professionals, or some other factors. Further, the parties may agree to a place of remand different than what the plaintiff so designates. The plaintiff's designated venue shall not be considered for purposes of any determination by any court as to whether: (a) the designated district court is a court of proper venue; or (2) the designated district court has personal jurisdiction over defendants for that plaintiff's claims. Nothing contained in this Order shall preclude the parties from agreeing, at a future date, to try cases filed pursuant to this Order in the Eastern District of Pennsylvania.

F. Choice of Law. The fact that a case was filed directly in MDL No. 2848 pursuant to this Order will have no impact on the applicable choice of law, including the statute of limitations, in any case. Any choice of law issues will be decided at a later date.

G. Statute of Limitations. Defendants stipulate and agree that the filing of a complaint directly in MDL No. 2848 pursuant to this Order shall stop the running of any statute of limitations, statute of repose, or prescriptive or preemptive period as if the complaint had been filed in an appropriate venue.

H. No Waiver as to Service or Personal Jurisdiction. Defendants' agreement to this direct filing Order shall not constitute an appearance by or for any defendant not properly served and shall not waive any defendant's personal jurisdiction defenses.

I. Caption. The caption for any complaint that is directly filed in MDL No. 2848 before this Court shall bear the following caption:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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

Plaintiff,

vs.

Defendants.

MDL NO. 2848
Master Docket No.: 18-md-2848

JUDGE HARVEY BARTLE, III
DIRECT FILED COMPLAINT
PURSUANT TO PRETRIAL
ORDER NO. _____

Civil Action No.: _____

J. Filing under This Order. When utilizing and invoking this Order to file a case directly in this MDL, plaintiff shall assert the following leading paragraph:

Plaintiff(s) file(s) this Complaint pursuant to PTO No. ____, and is(are) to be bound by the rights, protections and privileges and obligations of that PTO. Plaintiff(s) state(s) that but for the Order

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permitting direct filing in the Eastern District of Pennsylvania pursuant to PTO No. ___, Plaintiff(s) would have filed this Complaint in the United States District Court for the _____. Further, in accordance with PTO No. ___, Plaintiff(s), hereby designate(s) the United States District Court for the _____ as the place of remand as this case may have originally been filed there.

K. Single Plaintiff Complaints. Cases directly filed in this Court pursuant to this Order shall not name more than a single plaintiff in the case, provided, however, that any such case may include consortium plaintiff(s) as permitted by law and, in the event of a wrongful death action, the appropriate representative(s) of the Estate.

L. Attorney Admission. Any attorney admitted to practice and in good standing in any United States District Court is admitted *pro hac vice* in this litigation and association of co-counsel for purposes of filing and/or litigation, including direct filing, is not required.

M. Filing. All complaints must be filed in hard copy accompanied by a floppy disk or CD Rom in PDF format. Prior to any plaintiff's lawyer filing a complaint directly in MDL No. 2848, that attorney must register for and have an Eastern District of Pennsylvania CM/ECF login name and password. All attorneys must familiarize themselves with the Eastern District of Pennsylvania's Electronic Case Filing Attorney User Manual for Civil Cases, which can be found at https://ecf.paed.uscourts.gov/documents/ug_ci.pdf.


N. **Signature Block.** When electronically filing the pleadings, the signature block shall follow the below format:

RESPECTFULLY SUBMITTED,

/s/ Jane Doe
Jane Doe
NAME OF LAW FIRM
ADDRESS
TELEPHONE
FAX
EMAIL@EMAIL.com
Bar Identification No.:
Attorney for Plaintiff

O. **Filing Fees.** Payment of filing fees may be made by either check or credit card. Should Plaintiff's counsel elect to pay by credit card, Plaintiff's counsel will be required to submit a credit card authorization form which will be processed by the Clerk at the time of filing. Thereafter, the Clerk's Office will maintain the firm's credit card number, expiration date and the signature of one of the firm's partners for future filings. Information regarding filing fees can be found at <http://www.paed.uscourts.gov/court-info/faqs#Financial> and <http://www.paed.uscourts.gov/services/cccn>.

IT IS SO ORDERED, this 25th day of October 2018.


HON. HARVEY BARTLE, III
United States District Judge