

**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. 18-md-2848**

**PRETRIAL ORDER NO. 346  
(Amended Group A Bellwether Selection and Scheduling Order -- Stipulated)**

**I. SCOPE OF ORDER**

This Order will serve to amend and supplement PTOs 82 and 313, which govern the guidelines and procedures for selecting and conducting case-specific discovery in bellwether cases as part of *In Re: Zostavax (Zoster Vaccine Live) Products Liability Litigation* (“MDL No. 2848”). To the extent not modified herein, the provisions of PTOs 82 and 313 shall remain in full force and effect.<sup>1</sup> This Order may be modified or amended for good cause shown, after appropriate notice and opportunity to be heard is provided to the affected parties, when the Court believes the interest of justice requires modification.

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<sup>1</sup> PTOs 82 and 313 were entered on January 30, 2019 and July 17, 2020, respectively. PTO 313 included amended scheduling orders for both Groups A and B. As of this filing, the parties are only seeking modification of Group A scheduling orders and will meet and confer regarding any further modifications for Group B, should the Court deem necessary or the parties agree further modification are appropriate.

## **II. GROUP A BELLWETHER DISCOVERY AND TRIAL CASES**

1. In accordance with PTO 82, the parties selected sixteen (16) Group A Bellwether Discovery Cases and conducted Core Fact Discovery on those cases. Subsequently, the parties selected six (6) of the Group A Bellwether Discovery Cases as Group A Bellwether Trial Pool Cases and conducted Additional Fact Discovery on those six (6) cases.<sup>2</sup>

2. Following further discovery and workup of the six (6) Group A Bellwether Trial Pool Cases, which will include expert discovery, *Daubert* motion practice, and dispositive motion practice, three (3) cases will be selected as the Group A Bellwether Trial Pool Cases for bellwether trials. One case will be selected by the Plaintiffs' Executive Committee, one case will be selected by the Defendants' Liaison Counsel, and one case will be selected by the Court following briefing by the parties no later than September 24, 2021. The three (3) Group A Bellwether Trial Pool Cases will proceed to final pretrial and trial as set forth below in Section III.

3. In the event that a Group A Bellwether Trial Pool Case is dismissed before trial, the Court may at its discretion allow the selection of a replacement case by the Plaintiffs Executive Committee or Defendants' Liaison Counsel, depending upon the circumstances of the dismissal, or otherwise adjust the balance of selections and/or the terms of this PTO to ensure the integrity of the bellwether process.

4. The bellwether cases that are initially selected and those that are ultimately picked as the initial trials are to be representative cases.

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<sup>2</sup> Additional depositions in the remaining Group A Trial Pool Cases also may be taken if the Court grants leave for additional depositions or the parties agree that additional depositions are appropriate.

### III. AMENDED SCHEDULE FOR GROUP A BELLWETHER TRIAL POOL CASES

March 5, 2021	Completion of all remaining fact discovery for the Group A Bellwether Trial Pool Cases, including depositions of former or current Merck employees.
March 19, 2021	Plaintiffs to serve expert reports in the six (6) Group A Bellwether Trial Pool Cases and to provide two dates on which each expert is available for deposition.
April 28, 2021	Defendants to serve expert reports in the six (6) Group A Bellwether Trial Pool Cases and provide two dates on which each expert is available for deposition.
May 19, 2021	Rebuttal reports due, if any, in the six (6) Group A Bellwether Trial Pool Cases. If any rebuttal reports are served, two dates on which the expert is available for deposition are to be provided.
July 6, 2021	Deadline for expert depositions in the six (6) Group A Bellwether Trial Pool Cases.
July 30, 2021	<i>Daubert</i> motions and dispositive motions due in the six (6) Group A Bellwether Trial Pool Cases.
August 16, 2021	Opposition briefs to <i>Daubert</i> motions and dispositive motions due in the six (6) Group A Bellwether Trial Pool Cases.
September 2, 2021	Reply briefs to <i>Daubert</i> motions and dispositive motions due in the six (6) Group A Bellwether Trial Pool Cases.
TBD	Oral argument on <i>Daubert</i> motions and dispositive motions in the six (6) Group A Bellwether Trial Pool Cases, at the discretion of the Court.
September 24, 2021	Selection of three (3) trial cases out of the six (6) Group A Bellwether Trial Pool Cases.
November 8, 2021	Group A Bellwether Trial Case No. 1 will commence.
January 18, 2022	Group A Bellwether Trial Case No. 2 will commence.
March 28, 2022	Group A Bellwether Trial Case No. 3 will commence.

The Court will set all final pre-trial schedules and deadlines for the final three (3) Group A Bellwether Trial Cases, which shall include schedules and deadlines for the following: (1) motions *in limine*, oppositions, replies, and argument(s), if so determined by the Court; (2) deposition designations, counter designations and objections, and objections to counter designations and reply

designations; (3) fact witness and expert witness lists; (4) exhibit lists designations and objections; (5) proposed jury instructions; (6) proposed *voir dire* questions; and (7) a date for a final pre-trial conference; and (8) other deadlines and hearings as the Court requires.

It is so **ORDERED**.

**BY THE COURT:**

/s/ Harvey Bartle III

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Harvey Bartle, III, J.

March 2, 2021