

Gardasil Vax Suits Sent To North Carolina

By **Emily Field**

Law360 (August 4, 2022, 6:13 PM EDT) -- The Judicial Panel on Multidistrict Litigation on Thursday sent suits alleging that Merck's Gardasil vaccine caused injuries to North Carolina over Merck's objections that it's unprecedented to consolidate suits subject to the National Childhood Vaccine Injury Act.

Merck argued that an MDL composed of claims subject to the Vaccine Act would cause a flood of meritless claims that would overwhelm the already overwhelmed claim process and the publicity around the litigation would spread misinformation about vaccines and vaccine hesitancy. But those concerns belong elsewhere, the JPML said, and the question is whether the suits involve common factual issues and whether centralization will be efficient.

"In this litigation, all plaintiffs allege that they were injured by the Gardasil vaccine in the same manner — through an autoimmune reaction caused by structural similarities between proteins in the vaccine's antigens and within the vaccine recipient's own cells," the panel said. "In view of the common issues arising from these allegations, we conclude that centralization will provide significant efficiencies."

While the panel acknowledged that it had not consolidated suits subject to the Vaccine Act before, it said it has centralized personal injury suits related to vaccines in the past. The law allows for government compensation for vaccine-related injuries. It also permits patients to sue vaccine makers directly after exhausting the claim process.

The panel sent more than 30 suits to the Western District of North Carolina to be presided over by U.S. District Judge Robert J. Conrad, who is already overseeing one of the suits.

"He is a skilled jurist who has not yet had the opportunity to preside over an MDL," the panel said.

Pharmaceutical giant Merck has been hit with numerous lawsuits related to the company's Gardasil vaccine, which is administered to prevent human papillomavirus infection and associated cancers. Plaintiffs have complained of numerous health problems, including autoimmune disorders, neurologic problems and other serious complications.

The plaintiffs accuse Merck of deceiving regulators and the public about the danger posed by its product in order to reap billions of dollars in profits.

Gardasil was approved by the U.S. Food and Drug Administration in 2006.

"We stand behind the safety and efficacy of our Gardasil vaccine and will vigorously defend against these allegations," a Merck spokesperson told Law360 on Thursday.

Andrew Downing of Downing Allison & Jorgenson told Law360 that the panel's decision is a big step forward for the plaintiffs.

"They have been living with injuries caused by the HPV vaccination for years," Downing said. "This decision by the Judicial Panel recognizes that there are victims of Gardasil all over the country, and consolidation will allow their cases to be presented to a jury in an efficient manner."

Last month, the panel heard arguments over whether to centralize the suits.

Merck attorney Allyson M. Julien of Goldman Ismail Tomaselli Brennan & Baum LLP argued in favor of informal coordination, claiming that there are no common alleged injuries among many of the plaintiffs.

Merck also told a Georgia federal court on **Aug. 2** that a teenager's suit blaming its Gardasil vaccine for her autoimmune disorders bolsters "anti-vaxxer" rhetoric and includes "poorly disguised design-defect claims" that are disallowed by the U.S. Supreme Court.

Merck is represented by Allyson M. Julien of Goldman Ismail Tomaselli Brennan & Baum LLP.

The plaintiffs are represented by Andrew Downing of Downing Allison & Jorgenson, Tracy L. Turner of Pendley Baudin & Coffin LLP and Bijan Esfandiari of Baum Hedlund Aristei Goldman PC.

The case is In Re: Gardasil Products Liability Litigation, case number 3036, before the U.S. Judicial Panel on Multidistrict Litigation.

--Additional reporting by Greg Lamm and Madeline Lyskawa. Editing by Emily Kokoll.