

FILED

March 30, 2026

HON. BRUCE J. KAPLAN, P.J.Cv.

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DEAN DOUGLAS, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF ALICE DOUGLAS,
DECEASED

Plaintiff

vs.

MERCK & CO., INC., et al.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: MIDDLESEX COUNTY

MCL NO.: 282

DOCKET NO.: MID-L-7848-14

**ORDER FOR DISMISSAL WITH
PREJUDICE**

THIS MATTER, having come before the Court upon the motion of Defendants Merck & Co., Inc. and Merck Sharp & Dohme LLC (“Merck”), through their counsel, Fox Rothschild, LLP for an Order dismissing Plaintiff’s complaint with prejudice for failure to provide sufficient documents or information to comply with the Amended Docket Control Order and the Court having considered the moving papers, any opposition thereto, and the arguments of counsel, if any; and for good cause been shown:

IT IS, on this 30th day of March 2026, hereby **ORDERED**:

- a. Merck’s motion to dismiss this case with prejudice is **DENIED**.
- b. Service of this Order shall be deemed effectuated upon all parties upon its upload to eCourts.

- c. Pursuant to Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically within seven (7) days of the date of this Order.

15/ Bruce J. Kaplan

Hon. Bruce J. Kaplan, P.J.Cv.

OPPOSED

STATEMENT OF REASONS

This matter comes before the Court by way of Defendant’s motion to dismiss with prejudice for Plaintiff’s failure to comply with the Amended Docket Control Order (“Amended DCO”). The Court also is in receipt of the opposition, reply, and the sur-replies of the parties.

The sole issue before the Court is whether Plaintiff’s delinquent compliance with the Amended DCO via service of radiology records upon Defendant on March 16, 2026 merits a denial of the instant motion to dismiss the case. Per the moving papers, it is represented that the instant Plaintiff was on notice since 2011 that radiographic evidence of her femur fracture was required in order to proceed with her claim in the Fosamax litigation. However, Plaintiff cured her deficiency by submitting the required radiology records under the Amended DCO to Defendants on March 16, 2026.

While the Court recognizes the argument that there was significant delay in obtaining the required documents, Plaintiff represents that they requested the medical records multiple times and there were circumstances beyond their control including change in the record retrieval company that resulted in the delay. A dismissal with prejudice is appropriate when “the actions of the party show a deliberate and contumacious disregard of the court’s authority . . .” Hyer v. Vill. of Ridgewood Bd. of Educ., 2025 WL 2753554, at *7 (N.J. Super. Ct. App. Div. Sept. 29, 2025) (internal quotations and citations omitted). The Court finds that the delay in providing the radiographic evidence here was neither deliberate nor contumacious, and as the Defendant now possesses the evidence that is required for Plaintiff to be in compliance with the Amended DCO, the Court finds that there is no reason to dismiss this case at this time.

Similarly, the Court shall not be awarding attorney’s fees and costs associated with the Motion to Dismiss as the Court does not believe that the delay in providing the radiology records was in bad faith. So it is Ordered.