

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: PARAGARD IUD) MDL DOCKET NO. 2974
PRODUCTS LIABILITY)
LITIGATION) (1:20-md-02974-LMM)
) **This Document Relates to All Cases**

CASE MANAGEMENT ORDER
REGARDING DIRECT FILING

This Order will govern the terms, conditions, and procedure in MDL No. 2974 for the filing of a Short Form Complaint, as defined below, directly into this Court's MDL No. 2974 docket.

1. Purpose, Scope & Definitions

1.1 This Order pertains to complaints brought against the following Defendants only: Teva Pharmaceuticals USA, Inc.; Teva Women's Health, LLC; Teva Branded Pharmaceutical Products R&D, Inc.; The Cooper Companies, Inc.; and/or CooperSurgical, Inc. (hereinafter referred to in this Order as "Defendants"). If a plaintiff brings a complaint against any defendant other than the Defendants listed in the preceding sentence, that complaint may not be directly filed into MDL No. 2974 in the U.S. District Court for the Northern District of Georgia, and the provisions permitting direct filing pursuant to the terms and conditions of this Order do not apply.

1.2 A plaintiff whose complaint names one or more of the Defendants specifically listed in paragraph 1.1 above, and names only one or more of those Defendants, and whose complaint would be subject to transfer to MDL No. 2974 may file her complaint directly into MDL No. 2974 in the Northern District of Georgia, subject to and in accordance with the terms and provisions set forth in this Order.

1.3 The inclusion of a complaint in this MDL, whether such complaint was or will be filed originally or directly in the Northern District of Georgia, shall not constitute a determination by this Court that jurisdiction or venue is proper in this district. This Order shall not operate as a waiver by Defendants of any defenses as to venue or personal jurisdiction in any complaint filed pursuant to this Order.

1.4 “Second Amended Master Complaint” means the Second Amended Master Personal Injury Complaint ([Doc. No. 79](#)).

1.5 A “Short Form Complaint” is an abbreviated, plaintiff-specific complaint (1) that adopts the allegations in the Second Amended Master Complaint; (2) contains the individual plaintiff-specific allegations, as required in [Exhibit A](#); and (3) in which the plaintiff alleges injury(ies) proximately caused by breakage (other than thread or string breakage) of her Paragard upon removal. A purported short form complaint in which the plaintiff does not allege the

breakage (other than thread or string breakage) of her Paragard upon removal may not be directly filed in MDL No. 2974.

1.6 Nothing in this Order is intended to prohibit any plaintiff from filing an individual original long form complaint in another court of proper venue and jurisdiction asserting claims against defendants not identified in the Second Amended Master Complaint. Nothing in this Order forbids the plaintiff from filing a notice of tag-along action in the JPML, and nothing herein forbids the defendant(s) from filing an objection to a conditional transfer order with the JPML.

1.7 Plaintiffs and Defendants each reserve the right to seek exceptions, amendments, or modifications to this Order from the Court, and if such exceptions, amendments, or modifications are not agreed to, the issue(s) shall be briefed according to the direction of the Court.

2. Form, Filing, Service, and Requirements of the Short Form Complaint

2.1 A plaintiff who files a complaint directly in MDL No. 2974 as permitted by this Order must utilize the Court-ordered Short Form Complaint, attached hereto as **Exhibit A**. A plaintiff filing a Short Form Complaint directly into MDL No. 2974 must make a good faith effort to provide all the information set forth in **Exhibit A**. Only a fully completed Short Form Complaint in the form of **Exhibit A** may be directly filed into this Court's MDL No. 2974 docket. No other form of a

short form complaint is acceptable, and the form may not be changed, modified, or altered, without consent of Plaintiffs and Defendants and approval by the Court. The format of the Short Form Complaint, [Exhibit A](#), will be made available on the Court's website in electronic form.

2.2 The Defendant(s) against whom the individual plaintiff is bringing her lawsuit shall be listed individually and separately in the caption of the individual plaintiff's Short Form Complaint.

2.3 A plaintiff may not name in her Short Form Complaint a Defendant that previously has been dismissed from that individual plaintiff's lawsuit.

2.4 A plaintiff may not name a defendant in her Short Form Complaint that is not a named Defendant in the Second Amended Master Complaint.

2.5 Cases directly filed in this Court's MDL No. 2974 docket pursuant to this Order shall not name more than a single plaintiff in each directly filed case, provided, however, that any such case may include consortium plaintiff(s), as permitted by law, or the appropriate representative(s) of an Estate or Incapacitated Plaintiff.

2.6 Prior to directly filing a case pursuant to this Order, counsel for each plaintiff is instructed to conduct a PACER search to ensure that a previous complaint has not been filed for the same plaintiff. Prior to directly filing a case pursuant to this Order, counsel for each plaintiff shall also make a reasonable

effort to determine if that plaintiff has filed a case in any state court. At a minimum, counsel shall search for any Pennsylvania and California state filings. If a prior complaint has been filed for the same plaintiff and that case is currently pending (whether in state court, directly filed into MDL No. 2974, pending transfer from the district court where originally filed, or transferred to MDL No. 2974), no subsequent complaint may be filed by a different law firm on behalf of that same plaintiff. If a subsequent complaint is filed on behalf of any plaintiff already in suit, the Court may, *sua sponte* or pursuant to an Order to Show cause, dismiss the second filed action. Absent a substitution or withdrawal of counsel, the attorney that filed the original complaint shall presumptively be case counsel for that plaintiff through all stages of the litigation, including trial and resolution, if applicable.

2.7 Service of a Short Form Complaint on Defendants shall be made in accordance with Case Management Order Regarding Service ([Doc. No. 66](#)).

2.8 Any directly filed complaint that does not comply with the foregoing provisions is subject to the presumptive transfer and/or Order to Show Cause procedures in Section 5 below.

2.9 All factual allegations pled in the Second Amended Master Complaint and responsive pleading(s) filed by Defendants in response thereto are deemed pled in and supersede (a) any previously filed complaint and responsive pleading that is

now pending in this MDL proceeding; and (b) in any Short Form Complaint hereafter filed, provided, however, an individual Short Form Complaint is applicable only as against Defendants identified in the Second Amended Master Complaint. At this time, Defendants are not required to file an individual responsive pleading directed to an individual Short Form Complaint. Responsive pleadings directed to the Short Form Complaints, including the timing and schedule, will be the subject of a subsequent Case Management Order.

2.10 All plaintiffs with a case that is pending in MDL No. 2974 as of the date of this Order shall file an individual Short Form Complaint within sixty (60) days of the date of this Order. Any plaintiff whose case is transferred to MDL No. 2974 after the date of this Order shall file an individual Short Form Complaint within sixty (60) days after the case is docketed in MDL No. 2974.

2.11 Should the volume of cases being filed present an undue burden on the Parties or the Court, the Parties reserve the right to approach the Court on that issue.

3. Venue, Jurisdiction & Choice of Law

3.1 Plaintiffs' and Defendants' agreement concerning direct filing is solely for and limited to the purpose of consolidated discovery and related pretrial proceedings as provided by [28 U.S.C. §1407](#) and pursuant to the JPML's Transfer Orders.

3.2 Filing a case directly in MDL No. 2974 will not determine the choice of law of any individual plaintiff's case, including, but not limited to, regarding the statute of limitations.

3.3 Nothing in this Order shall operate to waive or be construed as a waiver of any Defendant's rights to file a motion to dismiss or motion to transfer based on improper venue, *forum non conveniens*, lack of personal jurisdiction, the requirements of 28 U.S.C. §1407, or *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998). Such defenses are specifically preserved and not waived.

3.4 It is further ordered that for those cases properly directly filed pursuant to this Order, Defendants will not challenge venue or personal jurisdiction during the pretrial proceeding in this MDL and solely as to the pretrial proceedings in this MDL. The inclusion of any action in this MDL, whether such action was or will be filed originally or directly in the Northern District of Georgia, shall not constitute a determination by this Court that jurisdiction or venue is proper in this district, nor shall it be relied upon by any plaintiff in opposing any motion challenging venue or personal jurisdiction filed by any Defendant with regard to proceedings other than the pretrial proceedings in MDL No. 2974.

4. Transfer Following Pretrial Proceedings

4.1 This Court shall not be deemed to be the “transferor court” simply by virtue of the complaint having been directly filed into MDL No. 2974. The direct filing of Short Form Complaints in MDL No. 2974 in the Northern District of Georgia as provided for and permitted by this Order is solely for the purposes of consolidated discovery and related pretrial proceedings as provided by [28 U.S.C. §1407](#), and Plaintiffs and Defendants submit to this Court’s personal jurisdiction and venue in the Northern District of Georgia for those purposes only.

4.2 Upon completion of all pretrial proceedings in this MDL, or at such other earlier time as this Court may deem appropriate, pursuant to [28 U.S.C. §1404\(a\)](#), this Court presumptively will transfer each directly filed case to the plaintiff’s federal district of residence unless the Plaintiff and Defendants jointly advise the Court that the case should be transferred to another district in which venue and jurisdiction is proper. In the event that the parties are unable to agree to a venue for transfer, the party seeking transfer to a jurisdiction other than Plaintiff’s state of residence shall promptly raise the issue with the Court. Further procedures for transfers will be the subject of a future Case Management Order.

5. Procedure for Improper or Incomplete Directly Filed Complaints

5.1 Only a Short Form Complaint in which a plaintiff alleges breakage (other than thread or string breakage) of her Paragard upon removal may be filed

directly into this Court's MDL No. 2974 docket. If a plaintiff directly files into this MDL any complaint that does not allege breakage (other than thread or string breakage) of her Paragard upon removal, Defendants may send to the plaintiff's counsel a presumptive transfer order, in the form attached as **Exhibit B**, transferring the case to the district in which that plaintiff resides, and plaintiff's counsel shall have fourteen (14) days to challenge such transfer. If the plaintiff's counsel and Defendants cannot agree after a meet and confer, the issue may be briefed to the Court. If plaintiff's counsel fails to timely challenge Defendants' presumptive order, then, at the expiration of the 14-day period, Defendants shall submit the presumptive transfer order to the Court for entry.

5.2 If a plaintiff directly files a Short Form Complaint that does not make a good faith effort to provide all information required in **Exhibit A**, provides excessive responses of "I don't know" or "To be determined," or if the plaintiff's Short Form Complaint substantively modifies or changes the **Exhibit A** form, then the Short Form Complaint is presumptively deficient. Defendants shall list presumptively deficient Short Form Complaints on a proposed "Order to Show Cause" as to why the complaint(s) should not be dismissed and shall provide that list to the individual plaintiffs' counsel for purposes of a meet and confer. If no resolution can be reached in the meet and confer, Defendants may file a request for

an Order to Show Cause as to why the complaint(s) should not be dismissed for the Court's consideration.

5.3 Plaintiffs and Defendants shall act in good faith with regard to completing and/or challenging any Short Form Complaint filed in accordance with this Order.

Dated: June 11, 2021

Agreed to by:

/s/ C. Andrew Childers

C. Andrew Childers
Georgia Bar No. 124398
Childers, Schlueter & Smith, LLC
1932 N. Druid Hills Rd., Suite 100
Atlanta, GA 30319
Tel: (404) 419-9500
Fax: (404) 419-9501
achilders@cssfirm.com
Plaintiffs' Liaison Counsel

/s/ Lori G. Cohen

Lori G. Cohen, Esq.
Allison Ng, Esq.
Greenberg Traurig, LLP
Terminus 200
3333 Piedmont Road NE, Suite 2500
Atlanta, GA 30305
Telephone: 678.553.2385
CohenL@gtlaw.com
nga@gtlaw.com
Co-Liaison Counsel for Defendants

/s/ Erin K. Copeland

Erin K Copeland
TX Bar No. 24028157
Fibich Leebron Copeland & Briggs
1150 Bissonnet Street
Houston, TX 77005
Tel: (713) 751-0025
Fax: (713) 751-0030
ecopeland@fibichlaw.com
Plaintiffs' Co-Lead Counsel

/s/ Frederick M. Erny

Frederick M. Erny, Esq.
Gina M. Saelinger, Esq.
Ulmer & Berne, LLP
600 Vine Street, Suite 2800
Cincinnati, OH 45202
Telephone: 513.698.5000
[fern@ulmer.com](mailto:ferny@ulmer.com)
gsaelinger@ulmer.com
Co-Lead Counsel for Defendants

/s/ Timothy M. Clark

Timothy M. Clark

California Bar No. 284447

Sanders Phillips Grossman, LLC

16755 Von Karman Ave., Suite 200

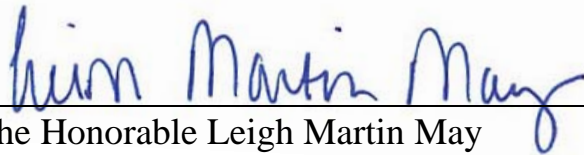
Irvine, CA 92606

Tel: (949) 338-8147

tclark@thesandersfirm.com

Plaintiffs' Co-Lead Counsel

SO ORDERED, this the 14th day of June, 2021.



The Honorable Leigh Martin May
United States District Judge
Northern District of Georgia

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: PARAGARD PRODUCTS	:	MDL <u>DOCKET NO. 2974</u>
LIABILITY LITIGATION	:	
	:	
This document relates to:	:	1:20-md-02974-LMM
	:	
[NAME(S) OF ALL PLAINTIFFS	:	
IN THE SHORT FORM	:	
COMPLAINT]	:	Civil Action No.: _____
	:	
vs.	:	
	:	
[NAME(S) OF ALL DEFENDANTS	:	
PLAINTIFF IS BRINGING	:	
CLAIMS AGAINST IN THE SFC]	:	

SHORT FORM COMPLAINT

Come(s) now the Plaintiff(s) named below, and for her/their Complaint against the Defendant(s) named below, incorporate(s) the Second Amended Master Personal Injury Complaint (Doc. No. 79), in MDL No. 2974 by reference.

Plaintiff(s) further plead(s) as follows:

1. Name of Plaintiff placed with Paragard: _____

2. Name of Plaintiff's Spouse (if a party to the case): _____

3. If case is brought in a representative capacity, Name of Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

4. State of Residence of each Plaintiff (including any Plaintiff in a representative capacity) at time of filing of Plaintiff's original complaint: _____

5. State of Residence of each Plaintiff at the time of Paragard placement:

6. State of Residence of each Plaintiff at the time of Paragard removal:

7. District Court and Division in which personal jurisdiction and venue would be proper:

8. Defendants. (Check one or more of the following five (5) Defendants against whom Plaintiff's Complaint is made. The following five (5) Defendants are the only defendants against whom a Short Form Complaint may be filed. No other entity may be added as a defendant in a Short Form Complaint.):

- A. Teva Pharmaceuticals USA, Inc.
- B. Teva Women’s Health, LLC
- C. Teva Branded Pharmaceutical Products R&D, Inc.
- D. The Cooper Companies, Inc.
- E. CooperSurgical, Inc.

9. Basis of Jurisdiction

- Diversity of Citizenship ([28 U.S.C. § 1332\(a\)](#))
 - Other (if Other, identify below):
-

10.

Date(s) Plaintiff had Paragard placed (DD/MM/YYYY)	Placing Physician(s) or other Health Care Provider (include City and State)	Date Plaintiff’s Paragard was Removed (DD/MM/YYYY)* *If multiple removal(s) or attempted removal procedures, list date of each separately.	Removal Physician(s) or other Health Care Provider (include City and State)** **If multiple removal(s) or attempted removal procedures, list information separately.

11. Plaintiff alleges breakage (other than thread or string breakage) of her Paragard upon removal.

Yes

No

12. Brief statement of injury(ies) Plaintiff is claiming:

Plaintiff reserves her right to allege additional injuries and complications specific to her.

13. Product Identification:

a. Lot Number of Paragard placed in Plaintiff (if now known):

b. Did you obtain your Paragard from anyone other than the HealthCare Provider who placed your Paragard:

Yes

No

14. Counts in the Master Complaint brought by Plaintiff(s):

Count I – Strict Liability / Design Defect

Count II – Strict Liability / Failure to Warn

Count III – Strict Liability / Manufacturing Defect

Count IV – Negligence

Count V – Negligence / Design and Manufacturing Defect

Count VI – Negligence / Failure to Warn

- Count IX – Negligent Misrepresentation
 - Count X – Breach of Express Warranty
 - Count XI – Breach of Implied Warranty
 - Count XII – Violation of Consumer Protection Laws
 - Count XIII – Gross Negligence
 - Count XIV – Unjust Enrichment
 - Count XV – Punitive Damages
 - Count XVI – Loss of Consortium
 - Other Count(s) (Please state factual and legal basis for other claims not included in the Master Complaint below):
-
-

15. “Tolling/Fraudulent Concealment” allegations:

a. Is Plaintiff alleging “Tolling/Fraudulent Concealment”?

Yes

No

b. If Plaintiff is alleging “tolling/fraudulent concealment” beyond the facts alleged in the Master Complaint, please state the facts and legal basis applicable to the Plaintiff in support of those allegations below:

16. Count VII (Fraud & Deceit) and Count VIII (Fraud by Omission) allegations:

a. Is Plaintiff is bringing a claim under Count VII (Fraud & Deceit), Count VIII (Fraud by Omission), and/or any other claim for fraud or misrepresentation?

Yes

No

b. If Yes, the following information must be provided (in accordance with [Federal Rule of Civil Procedure 8](#) and/or 9, and/or with pleading requirements applicable to Plaintiff's state law claims):

i. The alleged statement(s) of material fact that Plaintiff alleges was false: _____

ii. Who allegedly made the statement: _____

iii. To whom the statement was allegedly made: _____

iv. The date(s) on which the statement was allegedly made: _____

17. If Plaintiff is bringing any claim for manufacturing defect and alleging facts beyond those contained in the Master Complaint, the following information must be provided:

a. What does Plaintiff allege is the manufacturing defect in her Paragard? _____

18. Plaintiff's demand for the relief sought if different than what is alleged in the Master Complaint: _____

19. Jury Demand:

- Jury Trial is demanded as to all counts
- Jury Trial is NOT demanded as to any count

s/ _____
Attorney(s) for Plaintiff

Address, phone number, email address and Bar information:

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE: PARAGARD IUD)	MDL <u>DOCKET NO. 2974</u>
PRODUCTS LIABILITY)	
LITIGATION)	(1:20-md-02974-LMM)
)	
)	This Document Relates to [<i>Identify Plaintiff's Individual Case</i>]

[PROPOSED] ORDER TO TRANSFER VENUE TO THE UNITED STATES DISTRICT COURT FOR THE [*INSERT FEDERAL DISTRICT COURT*]

In its Transfer Order dated December 16, 2020, the Judicial Panel on Multi-District Litigation established MDL No. 2974. Pursuant to Case Management Order Regarding Direct Filing (Doc. No. __), this Court has ordered that actions in which a plaintiff alleges breakage (other than thread or string breakage) of her Paragard upon removal may be directly-filed on this Court's MDL No. 2974 docket. Therein, this Court ordered that those cases directly filed in the MDL No. 2974 docket in which a plaintiff does not allege breakage (other than thread or string breakage) of her Paragard upon removal would be subject to the provisions in Section 5.1, including a request for presumptive transfer to the jurisdiction in which the plaintiff resides.

Defendants [*names*] have submitted a presumptive transfer order and being fully advised in the premises, the Court finds as follows:

1. Plaintiff, [*insert Plaintiff's Name*], filed a complaint on [*insert date*] directly in the United States District Court for the Northern District of Georgia, [*insert case number*], against Defendants [*insert Defendant(s)' Name(s)*].
2. Plaintiff is a citizen and resident of the state of [*insert state of residence*], residing at [*insert address*]. Defendants are citizens of a State other than the State of Georgia.
3. Plaintiff does not allege in her complaint breakage (other than thread or string breakage) of her Paragard upon removal.
4. Plaintiff's action therefore does not satisfy the requirements in the CMO Regarding Direct Filing (Doc. No. __) allowing for the direct filing of Plaintiff's action in the Federal District Court for the Northern District of Georgia.
5. This action could have been filed in the United States District Court for the [*insert jurisdiction of Plaintiff's state of residence*]. [28 U.S.C. §1391\(b\)\(2\)](#).

Therefore, the Court enters this Order transferring this action from the United States District Court for the Northern District of Georgia to the United States District Court for the [*insert Plaintiff's federal district of residence*], with each party to bear its own respective fees and costs relating to the transfer of venue.

SO ORDERED, this the _____ day of _____, 2021.

The Honorable Leigh Martin May
United States District Judge
Northern District of Georgia