

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 the**
BELLWETHER POOL
PLAINTIFF CASES

CASE MANAGEMENT ORDER FOR BELLWETHER POOL PLAINTIFFS

Except as stated otherwise in this Order, nothing herein is intended to (1) eliminate any applicable provisions of the Federal Rules of Civil Procedure or local court rules; or (2) be interpreted as waiving, abridging, modifying, or limiting the Parties' rights under *Lexecon v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

“BELLWETHER POOL” means the initial pool of 10 cases from which the first bellwether case(s) selected to be tried on or after October 28, 2024, will come, as set forth in Amended Case Management Order on Certain Aspects of Bellwether Process (Doc. No. 551). The deadlines set forth in Doc. No. 551 and the First Amended Scheduling Order (Doc. No. 541) remain in effect.

1. **BELLWETHER POOL Plaintiff and Plaintiff Spouse Depositions:**

No later than September 29, 2023, Plaintiffs' Leadership shall provide to Defendants' counsel a schedule of BELLWETHER POOL Plaintiff deposition

dates, to include two potential dates for each Plaintiff and Spouse and the location for each such deposition. Depositions of BELLWETHER POOL Plaintiffs and Spouses shall occur between October 12, 2023 and November 3, 2023, subject to Plaintiffs and Spouses' availability.¹ Defendants shall be entitled to take these depositions in-person at Defendants' election. Plaintiff's Counsel and/or Plaintiffs' Leadership reserve the right to appear in-person at all Plaintiff and Plaintiff's Spouse depositions. Defendants will notice these depositions and arrange (and pay) for the court reporter and/or videographer. Any party desiring remote access is responsible for arranging and paying for remote access.²

2. **BELLWETHER POOL Sales Representative Depositions:**

Within 14 days after Plaintiffs' counsel makes a request to Defendants' counsel to take the deposition of a sales representative who called on a BELLWETHER POOL Plaintiff's placing or removing healthcare provider, if such individual is in the employ of or under the control of the Defendants, Defendants' counsel will provide 2 proposed dates and the location at which that individual will be deposed. If the individual is not in the employ of or under the control of the

¹ Plaintiffs' Leadership shall meet and confer with Defendants' Counsel regarding any Plaintiffs and Spouses who are unavailable for a deposition during this timeframe and shall make reasonable efforts to schedule these depositions before October 12, 2023.

² Subject to witness availability, the general order of depositions will be (1) Plaintiffs and Spouses; (2) Health Care Providers and Additional Fact Witnesses; (3) and Sales Representatives (if any).

Defendants, Defendants' counsel will so advise Plaintiffs' counsel within 4 business days of a request to take an individual sale representative's deposition. For clarity and to avoid confusion in the event multiple sales representatives may have called on a BELLWETHER POOL Plaintiff's placing or removing healthcare provider, Plaintiffs' counsel must specify the name of the one sales representative to be deposed in each BELLWETHER POOL Plaintiff's case, if applicable. Plaintiffs shall be entitled to take these depositions in-person at Plaintiffs' election. Defendants' counsel reserves the right to appear in-person at all sales representative depositions. Plaintiffs will notice these depositions and arrange (and pay) for the court reporter and videographer. Any party desiring remote access is responsible for arranging and paying for remote access.

3. **BELLWETHER POOL Healthcare Provider Depositions:**

No later than October 3, 2023, Plaintiffs' Counsel and Defendants' Counsel shall meet and confer about (1) the name(s) of the Plaintiff's placing healthcare provider(s) to be deposed; (2) the name(s) of the Plaintiff's removing healthcare provider(s) to be deposed; (3) mutually-agreeable date(s) or date ranges the parties are available for such depositions; and (4) how much total deposition time the parties would like to request from each such healthcare provider, up to a total of 7 hours. After and in accordance with the required meet and confer, Plaintiffs' Leadership

will contact the healthcare providers to obtain their availability (including the dates, times, and location), and thereafter Plaintiffs' Leadership shall coordinate with Defendants' Lead Counsel to schedule the deposition at a date, time, length, duration, and location mutually convenient to the parties and the healthcare provider. If the healthcare provider requests to be compensated for his/her deposition time, Plaintiffs' Leadership shall obtain the healthcare provider's requested hourly rate and promptly provide that information to Defense counsel. The parties shall split equally [50/50] the examination time given by the healthcare provider for the deposition, and the party who notices the deposition will question first. The party who selected the Plaintiff's case into the BELLWETHER POOL shall issue a notice of videotaped deposition and arrange for the court reporter and/or videographer. For the Court's random selections, the parties will alternate, by case number, which party notices the deposition (starting with Viola Adhami, which Plaintiffs shall notice). Either or both parties may elect to participate in-person or remotely. In the event that Plaintiffs or Defendants decide not to notice the deposition of the placing or removing healthcare provider for one of that party's respective picks (including assigned random selections as previously specified), the party declining to notice the deposition shall promptly notify the other party so that that other party may decide whether to notice the deposition. The party who notices a deposition shall be

responsible for paying the healthcare provider's hourly rate, court reporter costs, and videographer costs.

4. **BELLWETHER POOL – Additional Witness Deposition.**

Within 14 days of each BELLWETHER Plaintiff and Plaintiff's Spouse depositions (whichever is later), Plaintiffs' Counsel and Defendants' Counsel shall meet and confer about (1) the one additional fact witness to Plaintiff's claim for injuries (*See* Doc. 431, p. 6); (2) mutually-agreeable date(s) or date ranges the parties are available for such depositions; and (3) the time for such depositions, up to a total of 7 hours. The parties will also meet and confer about contacting and scheduling those witnesses and the order of questioning of those witnesses, depending on the identity of the witness and circumstances. Either or both parties may elect to participate in person or remotely. If the parties cannot reach agreement, the dispute will be brought to the Court.

5. **Communications with BELLWETHER POOL Plaintiffs' Healthcare Providers**

Plaintiffs' counsel shall copy Defendants' counsel on all written and email communications with a BELLWETHER POOL Plaintiff's placing or removing healthcare provider or such provider's staff.

Defendants' counsel (including anyone employed by Defendants' counsel or acting on their behalf) shall not contact any of the BELLWETHER POOL Plaintiff's

healthcare providers without prior written permission from Plaintiffs' Counsel and/or Plaintiffs' Leadership.

Prior to a BELLWETHER POOL Plaintiff's placing or removing healthcare provider's deposition, the BELLWETHER POOL Plaintiff may not show, provide to, or otherwise disclose to a BELLWETHER POOL Plaintiff's placing or removing healthcare provider the contents of any document produced by Defendants in this litigation that is not otherwise publicly available, any internal documents produced by Defendants, or any transcripts/videos of any depositions.

Prior to a BELLWETHER POOL Plaintiff's placing or removing healthcare provider's deposition, Plaintiffs' Counsel (including anyone employed by Plaintiffs' counsel) may not show, provide to, or otherwise disclose to a BELLWETHER POOL Plaintiff's placing or removing healthcare provider the contents of any document produced by Defendants in this litigation that is not otherwise publicly available, any internal documents produced by Defendants, or any transcripts/videos of any depositions, with the sole exception that a transcript or video of one healthcare provider in the specific BELLWETHER POOL Plaintiff's case may be shown to another healthcare provider in that same specific BELLWETHER POOL Plaintiff's case. If a scientific study is shown or provided to a BELLWETHER POOL Plaintiff's placing or removing healthcare provider, (or any other of the

BELLWETHER POOL Plaintiff's healthcare providers who may be an additional fact witness) at any time before the healthcare provider's deposition, then as soon as practicable after such study is provided or shown to the healthcare provider, Plaintiffs' counsel must provide a copy of the study (or studies) to Defendants' counsel.

Any *ex parte* communications by Plaintiffs' counsel with a Plaintiff's healthcare provider before that provider's deposition shall be limited to the facts of the specific Plaintiff's medical history and treatment. Plaintiffs' counsel may have a pre-deposition, *ex parte* communication with the Plaintiff's healthcare provider about the following: (1) the healthcare provider's understanding of the risks and benefits of Paragard as they pertained to the Plaintiff; (2) the healthcare provider's past and present use of Paragard; (3) any risk and benefit information the healthcare provider received from sales representatives of the Defendants; and (4) scientific literature, seminars, warnings or other tools the doctor used to obtain knowledge about the risks and benefits of Paragard. Plaintiffs' counsel may not have a pre-deposition, *ex parte* communication with the Plaintiff's healthcare provider about the theories of liability in the Paragard litigation.

IT IS SO ORDERED this 26th day of September, 2023

A handwritten signature in blue ink, reading "Leigh Martin May", is written over a horizontal line.

LEIGH MARTIN MAY
UNITED STATES DISTRICT JUDGE