

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	:	ALL CASES
LITIGATION,	:	
	:	
	:	
	:	
	:	
	:	CIVIL ACTION NO.
	:	1:20-MD-02974-LMM
	:	
	:	
	:	

**PRACTICE AND PROCEDURE ORDER AND  
NOTICE OF INITIAL CONFERENCE**

**1. Applicability of Order.** Prior to the Initial Conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of the Order shall govern the practice and procedure in those actions that were transferred to this Court by the Judicial Panel on Multi District Litigation pursuant to its order of December 16, 2020. This Order also applies to all tag-along actions filed in, removed to, or transferred to this Court.

**2. Consolidation.** Any tag-along actions filed in, removed to, or transferred to this Court, or directly filed in the Northern District of Georgia will automatically be consolidated with this action without the necessity of future motions or orders. This consolidation, however, does not constitute a

determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she, or it has not been named, served, or added in accordance with the Federal Rules of Civil Procedure.

**3. Initial Conference.** The Court will hold the initial case management conference via videoconference on February 9, 2021, at 10:00 a.m. Instructions for appearing via videoconference are as follows:

**Zoom Meeting Link:**

<https://ganduscourts.zoomgov.com/j/1606612652>

Meeting ID: 160 661 2652

Passcode: 123456

Dial by your location: +1 669 254 5252 US (San Jose)

+1 646 828 7666 US (New York)

+1 551 285 1373 US

+1 669 216 1590 US (San Jose)

**(a) Attendance.** Because of the global pandemic, the management conference will be held via videoconference. The Court is hopeful that future hearings may take place in person but will allow videoconferencing to be an option until it is safe to resume in-person hearings. Parties are not required to attend the conference, and parties with similar interests are expected to agree

to the extent practicable on a single attorney to act on their joint behalf at the conference. A party will not, by designating an attorney to represent its interests at the conference, be precluded from other representation during the litigation. Attendance at the conference will not waive objections to jurisdiction, venue, or service.

**(b) Service List.** This Order is being served electronically on the persons registered with the Northern District of Georgia's CM/ECF system and appearing as counsel in any of these cases currently filed in or transferred to this court. The Clerk's office will mail copies of the Order to others. Counsel are requested to forward a copy of the Order to other attorneys who should be notified of the conference. After the initial conference, all attorneys participating in these cases will be required to be registered with the Court's CM/ECF system.

**(c) Other Participants.** Persons who are not named as parties in this litigation but may later be joined as parties or are parties in related litigation pending in other federal and state courts are invited to attend in person or by counsel.

**4. Purposes and Agenda.** The conference will be held for the purposes specified in Federal Rules of Civil Procedure ("Rule") 16(a), 16(b),

16(c), and 26(f) and subject to the sanctions prescribed in Rule 16(f). The items listed in MCL 4<sup>th</sup> Section 22.6 shall, to the extent applicable, constitute a tentative agenda for the Initial Conference. If the parties have any suggestions as to any additional agenda items, these shall be filed in this case as a “Notice of Filing Additional Agenda Items.” These should be filed by January 25, 2021. The Court will issue a final agenda prior to the Initial Conference.

## **5. Preparations for Conference**

**(a) Procedures for Complex Litigation.** Counsel are expected to familiarize themselves with the Manual for Complex Litigation, Fourth, and be prepared at the conference to suggest procedures that will facilitate the just, speedy, and inexpensive resolution of this litigation.

**(b) Initial Conference of Counsel.** Before the conference, counsel should confer and seek consensus to the extent possible with respect to the potential items on the agenda, including a proposed discovery plan under Rule 26(f) and a suggested schedule under Rule 16(b) for joinder of parties, amendment of pleadings, consideration of any class action allegations, motions, and trial. If the parties have any suggestions as to any proposed case management orders, these shall be filed in this case as a

“Notice of Filing Suggested Case Management Orders.” These should be filed by January 25, 2021.

**(c) Preliminary Reports.** Counsel will submit to the Court by January 25, 2021, a brief consolidated written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. Counsel should include in these statements a list of all pending motions and a list of all related cases pending in state or federal courts and their current status, to the extent known. The statements should be sent to the Courtroom Deputy Clerk, Ms. Brittany Poley at [brittany\\_poley@gand.uscourts.gov](mailto:brittany_poley@gand.uscourts.gov). These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered into evidence against a party in later proceedings.

**(d) List of Affiliated Companies and Counsel.** To assist the Court in identifying any problems of recusal or disqualification, counsel will submit to the Court by January 25, 2021, a list of all companies affiliated with the parties and all counsel associated in the litigation.

**6. Interim Measures.** Until otherwise ordered by the Court:

**(a) Admission and Appearance of Counsel.** Attorneys

admitted to practice and in good standing in any United States District Court are admitted *pro hac vice* in this litigation. No motion or application for admission is required. Association of local co-counsel is not required. Counsel who appeared in the transferor district court before the transfer need not enter a separate appearance before this Court.

**(b) Pleadings.** Each Defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set at the conference.

**(c) Pending and New Discovery.** Pending the conference, all outstanding disclosure and discovery proceedings are stayed and no further discovery shall be initiated. This Order does not (1) preclude voluntary informal discovery as to the identification and location of relevant documents and witnesses; (2) preclude parties from stipulating to the conduct of a deposition that has already been scheduled; (3) prevent a party from voluntarily making disclosures, responding to an outstanding discovery request under Rules 33, 34, or 36; or (4) authorize a party to suspend its efforts in gathering information needed to respond to a request under Rules 33, 34, or 36. Relief from this stay may be granted for good cause shown, such as the ill health of a proposed deponent.

**(d) Motions.** No motion shall be filed under Rule 11, 12, or 56 without leave of Court and unless it includes a certificate that the movant has conferred with opposing counsel in a good-faith effort to resolve the matter without court action.

**(e) Orders of Transferor Courts.** All orders by transferor courts imposing dates for pleading or discovery are vacated.

**7. Master Docket File.** Any pleading or document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not in the transferor court. The Clerk of this Court will maintain a master docket case file under the style “In Re: PARAGARD IUD PRODUCTS LIABILITY LITIGATION” and the identification “MDL No. 2974.” When a pleading is intended to be applicable to all actions, this shall be indicated in the caption of the pleading by the words: “This Document Relates to All Cases.” When a pleading is intended to apply to less than all cases, this Court’s docket number for each individual case to which the pleading relates shall appear immediately after the words: “This Document Relates to” in the caption of the pleading. Documents relating to all actions should be filed in the master case (1:20-md-2974-LMM) and on the docket of each individual action. Documents relating to one or more, but not all, individual actions should be filed in the master case, and in the docket for each affected individual action.

The following is a sample of the pleading caption:

IN RE: PARAGARD IUD	)	MDL <u>DOCKET NO. 2974</u>
PRODUCTS LIABILITY	)	No. 1:20-md-02974-LMM
LITIGATION,	)	

**8. Liaison Counsel.** The Court will consider the appointment of liaison counsel for the parties. Prior to the Initial Conference, counsel for Plaintiffs and Defendants' counsel shall, to the extent they have not already done so, confer and seek consensus on the selection of a candidate for the position of liaison counsel for each group. This counsel will be charged with essentially administrative matters. For example, liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison group, and pending further orders of the Court, shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group and perform other tasks determined by the Court. Liaison counsel shall be required to maintain complete files with copies of all documents served upon them and shall make such files available to parties within their liaison group upon request. Liaison counsel are also authorized to receive orders and notices from the Judicial Panel on Multi District Litigation pursuant to Rule 4.1(d) of the Panel's Rules of Procedure or from the transferee court on behalf of all parties within their liaison group and shall be responsible for the preparation and transmittal of copies of such orders and notices to the parties in their liaison group. Plaintiffs' liaison counsel shall



coordinate the establishment of a document depository, real or virtual, to be available to all participating Plaintiffs' counsel. The expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison's group in a manner agreeable to the parties or set by the Court failing such agreement. The parties, if they have agreed upon the selection of a candidate for the position of liaison counsel for each group, shall file with the Court on or before February 2, 2021 a "Notice of Agreed Upon Liaison Counsel" and include the identity and contact information for the liaison counsel agreed upon by the parties. The parties should also include information as to why this individual qualifies for this position. If the parties are unable to agree upon the selection of a candidate for the position of liaison counsel for each group, applications and/or nominations for the designation of liaison counsel must be filed on or before February 2, 2021. Appointment of liaison counsel will be made by the Court after full consideration of the proposals. At the Initial Conference, liaison counsel, if appointed, and/or the parties should be prepared to discuss any additional needs for an organizational and leadership structure or any additional matters consistent with the efficient handling of this matter. Henceforth, liaison counsel for all parties shall meet and confer prior to the Court conferences; prepare agendas for the conferences and submit them to the Court three days before the conference; and report at the conference regarding the status of the case. The

designation of liaison counsel is made without either prejudice or advantage to any other leadership role by that attorney.

**9. Plaintiffs' Steering Committee.** The Court will consider the appointment of a Plaintiffs' Steering Committee ("PSC") to conduct and coordinate the discovery stage of this litigation with Defendants' representatives or committee. The Court recognizes that Plaintiffs will need substantial human and capital resources to pursue this litigation and the importance of a PSC in that endeavor, but also the downsides of creating an unnecessarily large leadership structure. Applications and/or nominations for the leadership positions must be filed on or before January 25, 2021. The main criteria for individual membership in the PSC will be: (a) willingness and availability to commit to a time-consuming project; (b) ability to work cooperatively with others; (c) professional experience in this type of litigation; and (d) willingness to commit the necessary resources to pursue this matter. Collectively, the Court seeks a PSC that is diverse and experienced, but also has a diversity of experiences – the leadership team should represent different skill sets, expertise, life experiences, and prior MDLs, so that together they can bring together a multiplicity of approaches to select the best ideas for moving this matter forward. The Court recognizes the value of both seasoned leadership and energetic attorneys with new ideas. Applications and/or nominations should succinctly address each of the above criteria as well as any

other relevant matters. No submissions longer than three (3) pages plus an appendix will be considered. The Court will only consider attorneys who have filed a civil action in this litigation. Appendix A to the application and/or nomination shall include a list of all state and federal Paragard IUD product liability cases in which the attorney appears as counsel. State cases shall be listed separately from federal cases, and the list of state cases shall include the court in which the case is pending, the court file number, the name of the presiding judge, and the presiding judge's telephone number. Appendix B shall include a list or chart of the other MDLs in which the attorney has performed work, including the presiding judge, the presiding judge's telephone number, the position (if any) held, the nature of the MDL (drug, device, antitrust, etc.), a phrase describing the nature of the work performed (e-discovery, science, depositions, etc.), and the extent of ongoing time commitment to that MDL. Attorneys may include specific non-MDL matters that they believe are highly relevant, but counsel are reminded that brevity and judgment are valuable traits in leadership counsel. Attorneys may include an optional Appendix C listing other attorneys whom they believe would be beneficial to leadership, in lieu of a separate nomination, with a single sentence explaining what unique expertise the individual brings as part of the proposed collective group.

Counsel are reminded that the Court intends to create an efficient leadership team at this phase of the litigation, and thus suggestions of large


leadership teams will not be as helpful to the Court as smaller proposals. Objections in writing may be made to the appointment of a proposed applicant and/or nominee. These must be filed on or before February 2, 2021. The objections must not be longer than three (3) pages and must be supported by necessary documentation.

**10. Defendants' Steering Committee.** The Court will consider Defendants' recommendations for membership on Defendants' Steering Committee and if such a committee is necessary.

**11. MDL 2974 Website.** A website particular to MDL 2974 will be created and can be accessed by going to this Court's website located at [www.gand.uscourts.gov/multi-district-litigation-cases](http://www.gand.uscourts.gov/multi-district-litigation-cases).

**12. Communication with the Court.** Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. All written communication should be sent to the Courtroom Deputy Clerk, Ms. Brittany Poley at [brittany\\_poley@gand.uscourts.gov](mailto:brittany_poley@gand.uscourts.gov).

**IT IS SO ORDERED** this 7<sup>th</sup> day of January, 2021.

  
**Leigh Martin May**  
**United States District Judge**