

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

**IN RE: PARAGARD IUD PRODUCTS
LIABILITY LITIGATION**

MDL No. 2974

TRANSFER ORDER

Before the Panel:* Defendants in the two actions listed on Schedule A move under Panel Rule 7.1 to vacate our order that conditionally transferred these actions to the Northern District of Georgia for inclusion in MDL No. 2974.¹ Plaintiffs in both actions oppose the motions.

This litigation centers on allegations that the Paragard intrauterine device (IUD) has a propensity to break upon removal. Defendants argue that transfer of the two actions listed on Schedule A is not warranted because they involve different alleged failure mechanisms. Specifically, in the Eastern District of New York *Miller* action, plaintiff alleges that she sought removal of her Paragard IUD “via hysteroscope because it had migrated into the bladder.” Compl. ¶ 58, *Miller v. Teva Pharms. USA, Inc.*, C.A. No. 1:20-06217 (E.D.N.Y. filed Dec. 22, 2020), ECF No. 1. Defendants contend that plaintiff’s allegations suggest that her Paragard IUD had perforated the uterus and migrated to the bladder. Therefore, they argue, *Miller* will involve unique questions of fact and law.

With respect to the Northern District of West Virginia *Sigley* action, plaintiff alleges that her physician was unable to remove the Paragard IUD on the first two attempts. Compl. ¶¶ 54–55, *Sigley v. Teva Pharms. USA, Inc.*, C.A. No. 1:20-00257 (N.D.W.Va. filed Nov. 13, 2020), ECF No. 1. Subsequent diagnostic imaging showed the device “was broken inside Plaintiff’s uterine cavity.” *Id.* ¶ 56. Plaintiff then underwent a procedure to remove the device, but only a portion of the Paragard was removed. *Id.* ¶ 57. The embedded piece of the Paragard was later removed “from Plaintiff’s uterine cavity” via surgery that entailed “a large abdominal incision.” *Id.* ¶ 61. Defendants argue that plaintiff does not allege that her Paragard broke upon removal and that surgery involving a “large abdominal incision” is inconsistent with the allegation that a piece of

* Judge Catherine D. Perry did not participate in the decision of this matter.

¹ Defendants Teva Pharmaceuticals USA, Inc., Teva Women’s Health, LLC, The Cooper Companies, Inc., and CooperSurgical, Inc., move to vacate the CTO as to both actions. Defendant Teva Women’s Health, Inc., moves to vacate the CTO as to the Eastern District of New York *Miller* action. Defendant Teva Branded Pharmaceutical Products R&D, Inc., moves to vacate the CTO as to the Northern District of West Virginia *Sigley* action.

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the Paragard was embedded in plaintiff's uterine cavity. Defendants conclude that *Sigley*, like *Miller*, must involve a perforation and migration of the Paragard IUD, rather than breakage upon removal, and therefore is inappropriate for inclusion in this MDL.

We do not agree. Defendants' interpretation of plaintiffs' allegations requires a level of exacting scrutiny that is not appropriate at this stage of the litigation. For instance, to determine whether surgery involving an abdominal incision necessarily means perforation and migration of the Paragard IUD seemingly would require expert medical evidence. With respect to *Miller*, while plaintiff alleges the Paragard IUD was removed because it was in her bladder, her allegation that the Paragard was removed via hysteroscope suggests it is just as likely that the device was still in the uterus at the time of removal. Determining which possibility is correct would require discovery regarding plaintiff's medical history.

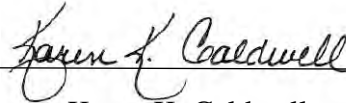
All that is needed to fall within the scope of this MDL is that plaintiff allege that the Paragard IUD broke upon removal. In *Miller*, plaintiff alleges that her physician attempted to remove her Paragard and that, "[d]espite following the instructions provided by Defendants, the Paragard IUD was missing an arm upon removal which remained embedded within the pelvis." *Miller* Compl. ¶ 59. In *Sigley*, plaintiff alleges that her physician attempted to remove the Paragard, but that it was unable to be removed and that subsequent diagnostic imaging showed that the device had broken. *Sigley* Compl. ¶¶ 54–56. These allegations are sufficient to bring these actions within the ambit of this MDL. If, after transfer, the transferee court determines that these actions involve a different failure mechanism than the other actions in the MDL and that coordinated or consolidated pretrial litigation will not enhance justice and efficiency, the transferee court can suggest Section 1407 remand with a minimum of delay. *See* Panel Rules 10.1–10.3.

Accordingly, after considering the argument of counsel, we find that the actions listed on Schedule A involve common questions of fact with the actions transferred to MDL No. 2974, and that transfer under 28 U.S.C. § 1407 will serve the convenience of the parties and witnesses and promote the just and efficient conduct of the litigation. In our order centralizing this litigation, we held that the Northern District of Georgia was an appropriate Section 1407 forum for actions in which plaintiffs allege that the Paragard IUD has a propensity to break upon removal, causing complications and injuries, including surgeries to remove the broken piece of the device, infertility, and pain. *See In re Paragard IUD Prods. Liab. Litig.*, MDL No. 2974, __ F. Supp. 3d __, 2020 WL 7382603, at *1 (J.P.M.L. Dec. 16, 2020). *Miller* and *Sigley*, on the face of the complaints, likewise involve allegations that plaintiffs Paragard IUDs broke upon removal and will involve the same common questions regarding the Paragard's development, manufacture, testing, labeling, and marketing.

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IT IS THEREFORE ORDERED that the actions listed on Schedule A are transferred to the Northern District of Georgia and, with the consent of that court, assigned to the Honorable Leigh Martin May for coordinated or consolidated pretrial proceedings.

PANEL ON MULTIDISTRICT LITIGATION

A handwritten signature in cursive script, reading "Karen K. Caldwell", is positioned above a horizontal line.

Karen K. Caldwell
Chair

Nathaniel M. Gorton
David C. Norton
Dale A. Kimball

Matthew F. Kennelly
Roger T. Benitez

**IN RE: PARAGARD IUD PRODUCTS
LIABILITY LITIGATION**

MDL No. 2974

SCHEDULE A

Eastern District of New York

MILLER v. TEVA PHARMACEUTICALS USA, INC., ET AL., C.A. No. 1:20-06217

Northern District of West Virginia

SIGLEY v. TEVA PHARMACEUTICALS, USA, INC., ET AL., C.A. No. 1:20-00257