

1 Anne Schiavone (Admitted *Pro Hac Vice*)
2 **HOLMAN SCHIAVONE LLC**
3 4600 Madison Ave, Ste 810
4 Kansas City, MO 64112
5 Phone: (816) 283-8738
6 Facsimile: (816) 283-8739
7 Email: aschiavone@hslawllc.com

8 R. Andrew Jones (*Pro Hac Vice Admission Pending*)
9 **CORY WATSON, P.C.**
10 2131 Magnolia Avenue
11 Birmingham, AL 35205
12 Telephone : (205) 328-2200
13 Facsimile: (205) 324-7896
14 Email: ajones@corywatson.com

15 Andrew Van Arsdale
16 AVA LAW GROUP
17 CA State Bar No. 323370
18 3667 Voltaire Street
19 San Diego, CA 92106
20 Telephone: (800) 777-4141
21 Facsimile: (619) 222-3667
22 andrew@avalaw.com

23 *Attorneys for Plaintiffs*

24 **IN THE UNITED STATES DISTRICT COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 IN RE: ANGIODYNAMICS, INC.,
27 AND NAVILYST MEDICAL, INC.,
28 PORT CATHETER PRODUCTS
LIABILITY LITIGATION

Case No. 3:24-md-03125-JO-VET

29 **MEMORANDUM AND MOTION FOR APPOINTMENT OF PLAINTIFFS’**
30 **LEADERSHIP STRUCTURE AND REGARDING THE CREATION OF**
31 **COMMON BENEFIT FEE AND EXPENSE FUND**

32 Pursuant to the Court’s November 14, 2024, *Minute Order Regarding Initial Case*
33 *Management Conference*, the undersigned counsel (hereinafter “Movants”) hereby submit their
34 Memorandum and Motion for Appointment of Plaintiffs’ Leadership Structure and for Creation
35 of Common Benefit Fee and Expense Fund. Movants represent the majority – but not all – of the
36 Plaintiffs with cases currently filed in this litigation. Movants have met, conferred, and

1 collectively agreed on the proposed slate of attorneys submitted. In support hereof, they state as
2 follows:

3 **INTRODUCTION**

4 On October 4, 2024, the Judicial Panel on Multidistrict Litigation (“JPML”) issued a
5 Transfer Order as to all cases filed in federal judicial districts across the country that shared
6 common issues of fact regarding Defendants Angiodynamics Inc, Navilyst Medical Inc., and PFM
7 Medical Port Catheter products, thereby establishing the instant Multi-District Litigation
8 (“MDL”) proceeding. (Dkt. 1). On November 5, 2024, the Court set the initial case management
9 conference for November 14, 2024. (Dkt. 72). At the case management conference, the Court
10 ordered that any proposed leadership slates be filed by December 13, 2024. Per the Court’s
11 instructions, Movants respectfully submit the proposed slate which Movants believe is comprised
12 of individuals with leadership experience in multi district litigations, as well as experience in
13 litigating single plaintiff cases.

14 28 U.S.C. § 1407 provides the JPML authority to transfer cases to MDL judges for
15 “coordinated or consolidated pretrial proceedings[.]” 28 U.S.C. § 1407(b). An MDL judge in such
16 a proceeding “may exercise such inherent powers as are necessary to manage and complete those
17 pretrial proceedings”. *In RE: Bard IVC Filters Products Liability Litigation, No. MDL 15-02641*,
18 603 F. Supp.3d 822, 831 (D. Ariz. 2022). The appointment of lead plaintiffs’ counsel is “essential”
19 in an MDL, particularly where there are many cases involved. *See Id.*

20 The Federal Judicial Center's Manual for Complex Litigation sets forth various factors
21 to be considered in determining the attorneys for a proposed leadership structure, as follows: 1)
22 the qualifications, functions, organization, and compensation of the attorneys; 2) whether there
23 has been full disclosure of all agreements and understandings among counsel; 3) the designated
24 attorneys’ competence for assignments; 4) whether there are clear and satisfactory guidelines for
25 compensation and reimbursement, and whether the arrangements for coordination among
26 counsel are fair, reasonable, and efficient; 5) whether designated counsel fairly represent the
27 various interests involved in the litigation; 6) the attorneys’ resources, commitment, and
28 qualifications to accomplish the assigned tasks; and 7) the attorneys’ ability to command their

1 colleagues’ respect and work cooperatively with opposing counsel and the court. Manual for
 2 Complex Litigation (Fourth) § 10.224 (2004). As to determining the types of appointments and
 3 assignments of responsibilities, the Manual notes that the most important and overriding factor
 4 to consider is achieving efficiency and economy in the litigation without jeopardizing fairness to
 5 the parties. *See* Manual, § 10.221.

6 The proposed leadership and organizational structure includes a diverse group of
 7 experienced, knowledgeable, and accomplished attorneys who are invested in the instant MDL.
 8 Many have cases and clients already in the MDL and are committed to seeing it run efficiently
 9 and effectively. Those who do not plan on filing cases soon. The group of attorneys proposed
 10 has been formed over several months, with many of these attorneys working together and
 11 collaborating on an informal basis on the Port Catheter cases leading up to the MDL’s creation.
 12 Movants believe this is a strong leadership group that will both advance the interests of all
 13 plaintiffs, work cooperatively and collaboratively, and work well with opposing counsel and the
 14 Court.

15 **ARGUMENT**

16 **I. Proposed Leadership Slate**

17 The undersigned Movants collectively submit the following leadership slate of attorneys on
 18 behalf of Plaintiffs:

19

Plaintiffs’ Lead Counsel		
Counsel Name	Law Firm	Exhibit (Resume)
20 Anne Schiavone – Co-Lead Counsel	Holman Schiavone LLC 4600 Madison, Ste 810 Kansas City, MO 64112	1
21 R. Andrew Jones – Co-Lead Counsel	Cory Watson, P.C. 2131 Magnolia Ave S Birmingham, AL 35205	2
22 Andrew van Arsdale – Co-Lead Counsel	AVA Law Group 3667 Voltaire Street San Diego, CA 92106	3

23
24
25
26
27
28

Plaintiffs' Liaison Counsel		
Counsel Name	Law Firm	Exhibit (Resume)
Jennifer Domer	Cutter Law, P.C. 401 Watt Avenue, Ste. 100 Sacramento, CA 95864	4

Plaintiffs' Executive Committee (PEC)		
Counsel Name	Law Firm	Exhibit (Resume)
Chelsea Dickerson – Executive Committee Member	Dickerson Oxton LLC 1100 Main St. Ste 2550 Kansas City, MO 64105	5
Ryan Cavanaugh – Executive Committee Member	Constant Legal Group LLP 737 Bolivar Road, Ste 440 Cleveland, OH 44115	6
Kim Boldt – Executive Committee Member	Ratzan Weissman & Boldt 2850 Tigertail Ave, Ste 400 Miami, FL 33133	7
Mark O'Connor – Executive Committee Member	Beus O'Connor McGroder 701 N. 44 th Street Phoenix, AZ 85008	8

Plaintiffs' Steering Committee (PSC)		
Counsel Name	Law Firm	Exhibit (Resume)
Teresa Bowen Hatch – Steering Committee Member	Bowen Hatch Law, PC 1902 Wright Place, Ste. 200 Carlsbad, CA 92008	9
Nicholas Rowley – Steering Committee Member	Trial Lawyers for Justice 548 Market St., Pmb 66906 San Francisco, CA 94104	10
Blair B. Matyszczyk – Steering Committee Member	Dickerson Oxton LLC 1100 Main St., Ste 2550 Kansas City, MO 64105	11
Roman Balaban – Steering Committee Member	Balaban Law 8055 E. Tufts Ave., Ste. 325 Denver, CO 80237	12

The attorneys proposed for leadership positions believe it is appropriate to have three co-leads appointed, four executive committee members, as well as three steering committee members and one liaison counsel. The co-leads and PEC members may appoint additional attorneys to the steering committee and to appropriate sub-committees hereafter as work progresses in the MDL an further needs are determined. The proposed leadership slate has been chosen based on each attorney and firm's desired involvement and commitment to the litigation,

1 and more importantly, based on their skill and experience in MDLs and state consolidated
2 litigations. This proposed leadership structure will achieve the objectives of being highly
3 organized and ensuring that work on the plaintiffs’ side of the case is done efficiently. As there
4 is much work to be done on an MDL, having enough members devoted to these efforts and who
5 are assigned specific roles will serve these purposes. Appointment of the proposed counsel and
6 the assignment of responsibilities to these positions is consistent with the Manual’s
7 recommended organizational structure and the ultimate goal of achieving “efficiency and
8 economy” in the litigation. *See* MANUAL § 10.221.

9 **II. The Proposed Leadership Slate Attorneys Have the Appropriate Organization,
10 Qualifications, and Competence to Serve on Behalf of Plaintiffs in the MDL and
Work Cooperatively with Opposing Counsel and the Court.**

11 Movants meet the factors set forth in the Manual on Complex Litigation, § 10.224. The
12 suggested Co-Leads are appropriate to lead the selected group overall and to advance the
13 interests of all plaintiffs in the MDL. The group has already demonstrated the ability to work
14 together in a coordinated and collegial manner. The individuals proposed represent a diverse and
15 talented group of attorneys with extensive prior experience. Many have already committed time
16 and resources to advance the Port Catheter cases prior to the MDL. The proposed individuals are
17 dedicated to continuing this work to see that the MDL is prosecuted efficiently and effectively.

18 **a. Proposed Co-Lead Counsel**

19 The attorneys comprising the proposed slate have reached a consensus that attorneys
20 Anne Schiavone, Andrew van Arsdale, and R. Andrew Jones should serve as Co-Lead Counsel
21 in the MDL. Movants believe a co-lead structure with these three attorneys will advance the
22 efficient and effective operation of the MDL as they have extensive mass tort litigation and
23 leadership experience. These attorneys command the respect of their colleagues in being
24 advanced unanimously by the group to serve in these roles. Proposed Co-Lead Anne Schiavone
25 as discussed *infra*, has already engaged with opposing counsel to date. *See infra*, p. 12; Manual,
26 § 10.224. Each proposed Co-Lead Attorney has submitted materials describing their experience
27 and qualifications to serve in this role (Exhibits A-C attached hereto). Below is a summary of
28 each of their credentials:

1 1. Anne Schiavone

2 Anne Schiavone is an experienced litigator with expertise in medical products liability,
3 environmental and toxic torts, and personal injury litigation. Ms. Schiavone currently serves as
4 President of the Missouri Association of Trial Attorneys, overseeing a board of approximately
5 130 individuals and leading a membership of approximately 1,400 attorneys. She has been
6 invited to speak at various conferences throughout the country on various topics relating to
7 medical device litigation and litigating cases in general.

8 Ms. Schiavone served as an executive committee member in the *In Re: Atrium Medical*
9 *Corporation C-Qur Mesh Products Litigation* (MDL No. 2753) for approximately five and a half
10 years. She was one of five lawyers who served on the executive committee of the litigation. This
11 complex litigation was overseen by Judge McCafferty of the United States District Court of New
12 Hampshire. During her time on the executive committee, Ms. Schiavone took the majority of the
13 corporate liability depositions and was extensively involved in all aspects of the MDL. In
14 addition to deposing various individuals, she worked extensively on jurisdictional issues which
15 evolved into a two-day jurisdictional hearing and was very involved in the trial preparation of
16 bellwether cases. In the *In Re: Atrium Medical Corporation C-Qur Mesh Products Litigation*,
17 Ms. Schiavone worked closely with an appointed accountant to ensure that the time and expenses
18 submitted by each involved firm complied with the Common Benefit Order entered by the Court,
19 and that leadership were good stewards of the common benefit fund.

20 In addition to serving on the executive committee of the Atrium litigation, Ms. Schiavone
21 served on the Plaintiff's Steering Committee of the *In Re: Davol/CR Bard Hernia Mesh*
22 *Multicase Management*, Master Docket No. PC-2018-9999. Ms. Schiavone is currently a
23 member of the executive committee in the *In Re: Bard Implanted Port Catheter Products*
24 *Liability Litigation* (MDL 3081). She worked with other attorneys for an extensive period of
25 time, prior to the formation of the *In In Re: Bard MDL*, on an efficient and effective leadership
26 structure for that litigation.

27 Over her 25 years of practice, Ms. Schiavone has worked on various mass torts and multi
28 plaintiff cases. One such complex litigation involved multiple plaintiffs who were diagnosed

1 with leukemia with the allegations essentially being that the leukemias were caused by benzene
2 exposure from the former Amoco Refinery, which was acquired by BP Corporation North
3 America. Ms. Schiavone appeared in front of Judge Bough, United States District Court for the
4 Western District of Missouri as a counsel for plaintiffs in an FLSA class action entitled *Deborah*
5 *Chappel et al. v. Navika Capital Group et al.*, Case No. 14-cv-001499. She was counsel in a data
6 breach class action, *KA v. Children's Mercy Hospital*, Case No. 1861-CV17350, in the Circuit
7 Court of Jackson County, Missouri. In the cases of *KA v. Children's Mercy*, Case No. 18-CV-
8 00516 and *KA v. Children's Mercy*, Case No. 18-CV-00514, both data breach class actions, she
9 was counsel for plaintiffs. Ms. Schiavone has the experience, knowledge, dedication, ability, and
10 attributes to be a leader of plaintiffs' counsels in this litigation. Ms. Schiavone has submitted
11 materials in Exhibit A attached hereto regarding her qualifications.

12 2. R. Andrew Jones

13 R. Andrew Jones is a Principal at Cory Watson, P.C. based in Birmingham, Alabama. His
14 work is primarily focused on representing plaintiffs in complex litigation involving defective
15 pharmaceutical products, medical devices, and environmental or workplace toxic exposures,
16 often in cases involving MDLs. Mr. Jones has been in practice for 11 years, and in that time, he
17 has held leadership roles in numerous cases, including being appointed to leadership roles in
18 other MDLs. Additionally, Mr. Jones benefits from the extensive experience of his colleagues,
19 as other Cory Watson attorneys have been appointed lead or co-lead plaintiffs' counsel in
20 fourteen (14) multidistrict, class, or consolidated complex state actions.

21 Mr. Jones' prior roles include:

- 22 • MDL 3081 – *In re: Bard Implanted Port Catheter Products Liability*
23 *Litigation*: Science Committee
- 24 • MDL 2974 – *In re: Paragard IUD Products Liability Litigation*: Plaintiffs'
25 Steering Committee
- MDL 2691 – *In re: Viagra (Sildenafil Citrate) and Cialis (Tadalafil) Products*
Liability Litigation: Science and Law and Briefing Committees

26 In addition to his work in MDLs, Mr. Jones spearheaded a 1,200-plaintiff consolidated
27 litigation involving environmental contamination. In that role, he took the lead in all aspects of
28

1 the case, including written discovery, preparing experts, briefing and oral arguments, and in
2 negotiating a global settlement. Mr. Jones also recently worked with a small team of just four
3 lawyers from two firms to litigate—and ultimately favorably resolve—18 cases involving a
4 pharmaceutical product that caused devastating vision loss for the firms’ clients.

5 In sum, Mr. Jones’—and Cory Watson’s—experience in these and other similar cases has
6 provided him with the necessary preparation, skill, and resources to serve as co-lead counsel in
7 MDL 3125 should this Court grant his application. If appointed, this litigation will be a priority
8 for Mr. Jones and his firm, and he will work diligently to advance these cases with a spirit of
9 collaboration with all other appointed counsel.

10 3. Andrew van Arsdale

11 Andrew Van Arsdale is an attorney with AVA Law Group in Billings, Montana. AVA Law
12 Group also has an office in San Diego, California. Mr. Van Arsdale is licensed to practice in
13 California, Montana, Nevada, and Washington, D.C. He has primarily focused on federal multi-
14 district litigation, complex state court litigation, and federal bankruptcy matters. Throughout his
15 career, he has had the privilege of representing a diverse range of clients, including individuals,
16 businesses, and organizations, in complex legal matters. He has successfully litigated cases at
17 both the state and federal levels, gaining valuable experience in all stages of the litigation
18 process, from initial pleadings through trial and settlement negotiations.

19 Mr. Van Arsdale has successfully represented plaintiffs in environmental contamination
20 cases, including cases involving toxic exposure and water contamination: *Deveraux et al. v.*
21 *Meadowlark et al.*, DV-56-2022-0001121-PI. He is well-versed in the Federal Rules of Civil
22 Procedure and has a proven track record of effectively managing complex cases to achieve
23 favorable outcomes for his clients.

24 Mr. Van Arsdale has extensive experience in federal MDL proceedings and complex
25 litigation matters, including in *In re: Camp Lejeune Water Litigation*, 7:23-CV-897, the 3M
26 Combat Arms Earplug Products Liability Litigation, MDL No. 2885; Johnson & Johnson Talcum
27 Powder Litigation, MDL No. 2738; and *In re: JUUL Labs, Inc.*, MDL No. 2913. Mr. Van Arsdale
28 also has expertise in handling complex state court litigation matters involving multiple parties,

1 intricate legal issues, and significant discovery challenges, such as the Southern California
2 Clergy Cases, Judicial Council Coordinated Proceeding (JCCP) 5101 and *In re: Northern*
3 *California Clergy Cases*, JCCP 5108.

4 Throughout his career, Mr. Van Arsdale has demonstrated strong leadership abilities and
5 the capacity to effectively manage complex legal matters, none more important than the clients
6 themselves. He has a keen eye for identifying key legal issues, developing case strategies, and
7 coordinating efforts with co-counsel and other parties to ensure the efficient progress of the
8 litigation. He possesses excellent communication skills and can work collaboratively with co-
9 counsel, local liaison counsel, opposing counsel, and other stakeholders involved in the
10 litigation.

11 In light of his qualifications, experience, and commitment to the interests of the plaintiffs
12 in this litigation, Mr. Van Arsdale respectfully requests appointment as Co-Lead in this litigation
13 and is confident that his involvement will contribute to the efficient and fair resolution of this
14 complex litigation.

15 **b. Organization of Counsel on the Proposed Slate**

16 The proposed leadership group have already worked in a coordinated, informal structure
17 before the MDL was created to advance the Port Catheter cases. Several of the attorneys
18 proposed have engaged in regularly scheduled calls over the past several weeks, and several
19 months in the case of some of the attorneys, in anticipation of the formation of the MDL and
20 have discussed matters pertinent to the prosecution of the cases. Other members of the slate have
21 joined more recently as the MDL has been formed and discussions have continued concerning
22 who is best to lead the group. Many of these attorneys have worked on various litigations
23 previously. The group formed and evolved over time based not only on prior, established
24 relationships, but also as introductions were made to new attorneys with diverse qualities and
25 experience members believed would be important to add to the group. Additional attorneys have
26 participated in meetings since the formation of the MDL and have been involved in discussions
27 relating to their interest and commitment to a steering or subcommittee appointment should the
28 proposed slate be approved, with the authority to appoint additional individuals. Moreover, many

1 of the individuals who have been part of this recent discussion regarding appointments, as well
2 as the individuals proposed for the executive committee, have been cooperatively working on
3 the *In Re: Bard Implanted Port Catheter Products Liability Litigation*, MDL 3081.

4 Anne Schiavone, who is included in the proposed slate, was heavily involved in the
5 briefing of the Motion to Transfer and presented the oral argument to the Judicial Panel for Multi
6 District Litigation. This participation and initiative show the commitment of these individuals,
7 as well as their proposed colleagues. Should different interests develop moving forward in the
8 MDL, counsel believes Ms. Schiavone's history of cooperation will be able to continue to resolve
9 any such issues that may arise. In having cases involved in the MDL and investing time and
10 resources to date, Movants are committed to doing whatever possible to work together to
11 advance the purposes and objectives of the MDL appropriately and timely for all Plaintiffs. The
12 proposed slate members understand and appreciate the role they would play if appointed to the
13 proposed leadership positions and, in having experience in either mass tort or complex litigation,
14 would undertake that role seriously and work with the Court to effectively and efficiently run
15 the MDL pretrial proceedings.

16 **c. Qualifications & Competency of Counsel on the Proposed Slate**

17 The proposed slate of attorneys has substantial experience with mass tort litigation or
18 complex litigation and trial work. The firms and attorneys proposed have a record of success in
19 seeing various mass tort litigations to conclusion. Each attorney has submitted materials that
20 further explain their qualifications and willingness to participate. (Exhibits A-K).

21 The group includes competent liaison counsel with years of trial experience and
22 experience specific to the United States District Court for the Southern District of California.
23 Additionally, the group includes attorneys with experience in reviewing discovery and working
24 with various courts on discovery-related issues in MDL proceedings, who are well-respected
25 amongst the plaintiffs' bar associations. In reviewing the materials submitted herewith, it is
26 evident that the proposed attorneys come from a variety of backgrounds and have the competence
27 necessary to lead the litigation.

1 The proposed leadership structure satisfies the factors set forth in the Manual on
2 competence for assignments, qualifications, and on their resources and commitment to the MDL.
3 Manual, § 10.224.

4 **d. Willingness to Work Cooperatively with Opposing Counsel & the Court**

5 Movants are committed to working cooperatively with opposing counsel. Some of the
6 proposed leadership slate members have already had various scheduling meetings or meet and
7 confers as part of litigating the port catheter cases prior to their transfer to the MDL while they
8 were pending in other federal district courts across the country. This involves the same defense
9 counsel and firms who are involved in the instant MDL. Counsel have been able to work
10 amicably with opposing counsel to date and expect no less moving forward as the MDL proceeds.

11 **III. Movants' Position Regarding the Creation of a Common Benefit Fee and Expense
12 Fund**

13 Movants agree that a common benefit fee and expense fund should be created for the
14 benefit of this litigation. Movants agree that the fund should be administered by the proposed
15 co-leads and other members of Plaintiffs' leadership. Plaintiffs will formally move for the
16 creation of a common benefit fee and expense fund once leadership has been appointed.

17 **CONCLUSION**

18 Movants respectfully request that the Court approve the proposed leadership structure
19 submitted herein as such attorneys comprising the slate have the requisite knowledge, skills, and
20 experience to appropriately lead the litigation on behalf of all plaintiffs. The proposed structure
21 will best serve the objectives to achieve organization and harness the appropriate attorneys to
22 serve on the steering committee and any necessary sub-committees. The proposed Plaintiff's
23 Executive Committee not only bring diversity, but also apt experience and background in
24 complex litigation, trials, or mass tort litigation to ensure the litigation is run as effectively as
25 possible. Such attorneys are committed to working cooperatively with the Court and Defendants
26 to achieve the same goals and overall are a good fit for appointment of the leadership roles
27 requested based on the factors set forth by the Federal Judicial Center's Manual for Complex
28 Litigation (Fourth), § 10.224 (2004).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Respectfully submitted,

Dated: December 13, 2024

/s/ Anne Schiavone
Anne Schiavone (Admitted *Pro Hac Vice*)
HOLMAN SCHIAVONE LLC
4600 Madison Ave, Ste 810
Kansas City, MO 64112
Phone: (816) 283-8738
Facsimile: (816) 283-8739
Email: aschiavone@hslawllc.com

/s/ R. Andrew Jones
R. Andrew Jones (*Pro Hac Vice Admission*
Pending)
CORY WATSON, P.C.
2131 Magnolia Avenue
Birmingham, AL 35205
Telephone : (205) 328-2200
Facsimile: (205) 324-7896
Email: ajones@corywatson.com

AVA LAW GROUP

/s/ Andrew Van Arsdale
Andrew Van Arsdale
CA State Bar No. 323370
3667 Voltaire Street
San Diego, CA 92106
Telephone: (800) 777-4141
Facsimile: (619) 222-3667
andrew@avalaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on December 13, 2024, a copy of the foregoing was served electronically and notice of the service of this document will be sent to all parties by operation of the Court’s electronic filing system to CM/ECF participants registered to receive service in this matter.

By: /s/ Anne Schiavone
Anne Schiavone

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28