

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

**IN RE CONAGRA PEANUT BUTTER  
PRODUCTS LIABILITY LITIGATION**

**Civil Action No.**  
**1:07-md-1845 TWT**

**ALL CASES**

## **INITIAL CASE MANAGEMENT ORDER**

## I. GENERAL STATEMENTS

**A. Scope.**

**This Case Management Order applies to all cases transferred to this Court and consolidated for pre-trial purposes including any “tag-alongs.”**

**B. Captions; Filing.**

1. A Master Docket is hereby established for the pretrial proceedings in the actions consolidated herein and in all other cases filed in or transferred to this Court or consolidated herewith for pretrial purposes. The Master Docket will bear the number appearing in the caption below and on this Order. Separate dockets also shall be maintained for each individual action and for any consolidated class action, and entries shall be made therein in accordance with the regular procedures of the Clerk of this Court, except as modified by this Order or a future Order of

this Court. The Clerk shall file a separate copy of this Order in each such separate docket.

2. Every pleading, motion, and other document filed in these consolidated actions, or in any separate action included therein shall bear the following caption:

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

IN RE CONAGRA PEANUT BUTTER PRODUCTS LIABILITY LITIGATION	) ) ) ) )	Civil Action No. 1:07-md-1845 TWT
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3. When a pleading, motion or other document is intended to be applicable to all consolidated actions, the words "ALL CASES" shall appear immediately below "1:07-md-1845 TWT" in the caption set out above. When a paper is filed and the caption shows that the paper is to be applicable to "ALL CASES," the party filing such shall electronically file such document in the Master Docket. No further copies need be filed, nor docket entries made.

4. When a pleading, motion or other document is filed and the caption shows it is to be applicable to less than all of the consolidated cases, the caption shall also bear the name and case number of the case(s) to which they apply

directly under the words "Products Liability Litigation" along with the words "This document applies to:." The filing party shall file such document electronically in both the Master Docket and the docket of each specific action to which the document is intended to be applicable.

5. All filing in these cases is to be performed electronically in accordance with the Court's procedures on electronic filing.

C. Service of Documents.

In lieu of service of documents pursuant to Fed. R. Civ. P. 5, service of all papers shall be made on liaison counsel for plaintiffs and liaison counsel for defendants via electronic means, facsimile, hand delivery or mail. Plaintiffs' liaison counsel shall be responsible for the receipt and dissemination of each served document to all known plaintiffs' counsel and any pro se litigants. Defendants' liaison counsel shall be responsible for the receipt and dissemination of each served document to all known defendants' counsel.

D. Amendments and Modifications to the Order.

Nothing in this Order is intended to limit any party's opportunity to seek amendment of this Order or other relief from the Court should this Order prove to be unworkable for any reason or fail effectively to manage case preparation.

## II. ORGANIZATION OF COUNSEL

### A. Plaintiffs.

By previous Order dated September 5, 2007, this Court appointed Elizabeth J. Cabraser as Plaintiffs' Lead Counsel and Robert H. Smalley, III, as Plaintiffs' Liaison Counsel, along with other designated counsel constituting an Executive Committee and Plaintiffs' Steering Committee, as set forth therein. Additionally, the Court designated all such counsel as interim class counsel to act on behalf of the putative class pending further order of the Court.

The Court will exercise its common benefit authority, as generally described in Sections 14.11 and 14.121 of the *Manual for Complex Litigation*, Fourth Edition ("MCL 4th,") to prevent unjust enrichment in connection with costs advanced and work performed for the common benefit, as to all clients of attorneys who have or who will file cases or make claims that are adjudicated or resolved through these MDL proceedings. This court reserves decision upon the appropriate methodology (e.g., percentage of any recovery and/or lodestar) and source (e.g. common fund or individual recoveries) pending further development of the litigation. Plaintiffs' Lead Counsel is directed (a) to provide for the oversight and direction of common benefit assignments and common benefit time and expenses; (b) to establish a mechanism for the collection of cost advances by designated counsel to fund

common benefit expenses; and (c) to establish a system for the ongoing reporting and submission of common benefit time and expenses in a manner generally consistent with the recommendations of Section 40.23 of the MCL 4th, to be submitted to the court *in camera* upon request of the court.

**B. Defendants.**

Lead counsel for Defendants is:

James H. Walsh, Esquire  
McGuireWoods LLP  
901 East Cary Street  
One James Center  
Richmond, VA 23219

Liaison counsel for Defendants are :

James Neale, Esquire  
McGuireWoods LLP  
Court Square Building  
310 Fourth Street N.E., Suite 300  
P.O. Box 1288  
Charlottesville, VA 22902-1288

Angela M. Spivey, Esquire  
McGuireWoods LLP  
The Proscenium  
1170 Peachtree Street, N.E.  
Suite 2100  
Atlanta, Georgia 30309-7649

Bethany G. Lukitsch, Esquire  
McGuireWoods LLP  
One James Center  
Richmond, VA 23219

### **III. JURISDICTION**

The parties agree that this Court has subject matter and personal jurisdiction over cases originally filed in it, and has jurisdiction, pursuant to the Order of the Judicial Panel on Multidistrict Litigation as of July 17, 2007, as to those cases that may be transferred to this Court for pretrial purposes. This Order does not waive any timely challenges to personal jurisdiction made by a new party named and served after the date of this Order.

### **IV. MASTER COMPLAINT**

1. All Plaintiffs alleging a class action shall jointly file a Master Complaint with putative class definition(s) no later than October 31, 2007. Defendants shall file its responsive pleading no later than November 30, 2007.
2. No amendments to the Master Complaint shall be made after June 1, 2008 except by Leave of Court for good cause shown.

### **V. DISCOVERY**

#### **A. All Discovery Will Be Conducted in MDL No. 1845.**

It is the intention of this Court that no action will be remanded to the trial court until the discovery period has ended, and the Court has had the opportunity to rule on any pretrial motions then appropriate for decision and/or such objections to pretrial filings as may have been filed. The procedures and deadlines set forth

herein shall not apply to and are not intended to limit any party's right to take non-duplicative, case-specific discovery after remand, except that additional discovery of ConAgra may occur only with leave of Court for good cause shown. Discovery served by the parties in any MDL case prior to transfer to this Court that has yet to be answered is quashed and need not be answered. However, the parties may use and rely on discovery responses served in any case prior to transfer. All depositions noticed in any case prior to transfer to this Court likewise are quashed, but depositions taken prior to transfer of a case shall not be subject to re-notice or re-examination and may be used and relied upon herein. Discovery taken in this MDL proceeding may be used in any similar proceedings pending in any state court provided all parties to such state court proceedings agree to be bound by the provisions of the Confidentiality Order entered herein.

**B. Plaintiff's Verified Fact Sheet.**

1. General Statement: Plaintiffs will answer the Verified Fact Sheet approved by the Court (a copy of which is attached as *Exhibit 1*) within sixty (60) days of entry of the Order approving the form of the Verified Fact Sheet or from the date of transfer to this MDL, whichever is later. Defendants shall raise within forty-five (45) days any alleged deficiency with respect to such information. Notwithstanding, nothing herein shall waive Defendants' right to challenge the

validity or accuracy of the substantive information contained in any Verified Fact Sheet.

2. Record Authorizations: Each Plaintiff shall execute the following authorization forms as part of his or her Verified Fact Sheet (copies of which are attached to this Order as *Exhibit 4*).

- a. A HIPAA-compliant medical records authorization;
- b. Employment records authorization (for plaintiffs claiming lost wages).

C. Defendant ConAgra's Documents.

Documents have been produced over the last several months by ConAgra in various federal and state cases claiming injury from the ingestion of salmonella bacteria allegedly in peanut butter. Subject to the Confidentiality Order in this MDL, such documents may be used in these proceedings. ConAgra specifically reserves the right pursuant to Fed. R. Civ. P. 26 to claw back a document inadvertently produced in discovery that is subject to a claim of privilege or of protection as trial preparation material or that has been miscategorized under the Confidentiality Order.



**D. Confidentiality.**

The Confidentiality Order (a copy of which is attached hereto as *Exhibit 3*) will apply to all documents, data and other information produced in this case by Plaintiffs, Defendants or any non-party, as well as the documents described in paragraph VC above.

**E. Numbering System.**

All discovery materials will be uniquely identified by a suitably identifying prefix indicating the producing party and unique page. The combination of letters and digits should then be used throughout the discovery process and at trial whenever referring to a particular document or page.

**F. Written Discovery and Document Requests.**

**1. Coordination.**

The parties shall be entitled to serve document requests and written discovery on each other and subpoenas requesting documents to non-parties in accordance with the Federal Rules of Civil Procedure except as those procedures may be modified in this Order. Plaintiffs shall serve only joint requests for production of documents, interrogatories and requests for admission upon any Defendant, except with leave of Court for good cause shown. To the extent a party produces documents pursuant to a jointly propounded document request that party

shall only be required to produce the documents once to a joint, online electronic depository. The hosting fees of such depository shall be jointly paid for by Defendants (50%) and Plaintiffs (50%). To the extent a party responds to jointly propounded interrogatories or requests for admission, that party shall only be required to produce such responses once to liaison counsel or in the case of documents or data, the joint, online depository. No party shall knowingly request documents or information available to it in such depository.

2. Limitations.

a. Plaintiffs' discovery directed to ConAgra.

Without leave of Court or written stipulation otherwise, and subject to section F1 regarding joint filing and coordination, the number of interrogatories jointly served by or on behalf of Plaintiffs against Defendant ConAgra shall not exceed fifty (50) in number, including all subparts and definitions. Likewise, no more than seventy-five (75) joint requests for admissions shall be filed on behalf of Plaintiffs against ConAgra (not including requests to admit the authenticity of documents). Any discovery requests already served by Plaintiffs and answered prior to the date of this Order shall not count against Plaintiffs' total.

**b. Plaintiffs' discovery directed to other Defendants.**

Without leave of Court or written stipulation, and subject to section F1 regarding joint filing and coordination, the number of joint interrogatories served by or on behalf of Plaintiffs against any Defendant other than ConAgra shall not exceed forty (40) in number including all subparts and definitions. Likewise, no more than forty (40) joint requests for admissions (not including requests to admit the authenticity of documents) shall be filed on behalf of Plaintiffs against any Defendant other than ConAgra.

Any additional discovery may be by agreement of the parties or by leave of Court for good cause shown.

**c. Written discovery directed to Putative Class Plaintiffs.**

Without leave of Court or written stipulation, the number of joint interrogatories served by or on behalf of any Defendant against class Plaintiffs shall not exceed fifty (50) in number, including all subparts and definitions. Likewise, no more than seventy-five (75) joint requests for admissions (not including requests to admit the authenticity of documents) shall be filed on behalf of any Defendant against class Plaintiffs.

d. Written discovery directed to individual Plaintiffs.

Without leave of Court or written stipulation, the number of interrogatories served by or on behalf of any Defendant against any individual Plaintiff shall not exceed twenty-five (25) in number, including all subparts and definitions.

Likewise, no more than thirty (30) requests for admissions (not including requests to admit the authenticity of documents) shall be filed by any Defendant against any individual Plaintiff.

G. Depositions.

1. Coordination.

No witness from any party may be deposed more than once as part of discovery, regardless of the number of consolidated complaints or amended complaints, except upon agreement of the parties or with leave of Court for good cause shown. Plaintiffs are required to coordinate with each other, and Defendants are required to coordinate with each other, to identify, schedule and examine witnesses. Liaison Counsel for Plaintiffs and Defendants are further required to use their best efforts to coordinate any scheduling and examination of common non-party witnesses who are required to give testimony in these actions.

In all depositions, counsel shall work in good faith to minimize unnecessary duplication of questioning. To the extent it is necessary for multiple counsel from

either side to question a witness, counsel shall not ask the witness questions previously asked by other counsel, unless there is a good faith reason to believe that the answer may be different or clarification of a prior answer is necessary.

2. Length and Number of Depositions.

a. Party Depositions.

The limits on the number of depositions imposed by the Federal Rules of Civil Procedure and Local Rules shall not apply in this matter, subject to the limitations set forth in this section. Plaintiffs, as a group, may take the Rule 30(b)(6) Fed. R. Civ. P. deposition(s) of ConAgra and up to twenty (20) depositions of current employees or agents of ConAgra or its past or current parent organizations, subsidiaries or affiliates, whether or not specifically named as a Defendant in this litigation, and the Rule 30(b)(6) deposition(s) of any other Defendants (and up to eight (8) depositions of current employees or agents of each such additional Defendant or its past or present parent organizations, subsidiaries or affiliates, whether or not specifically named as a Defendant in this litigation). All such depositions shall be noticed and taken jointly and subject to section F1 herein. Defendants, as a group, may take each Plaintiff's deposition and each class

representative's deposition.<sup>1</sup> All such depositions shall be noticed and taken jointly.

Each party deposition shall be limited to seven (7) hours absent Court order or agreement of the parties. The parties shall meet and confer as to the limitation on hours for ConAgra's 30(b)(6) deposition(s). With respect to party depositions of Defendant(s) noticed by Plaintiffs, six of the seven hours shall be allocated to Plaintiffs, absent Court order or agreement of the parties. If Plaintiffs do not use their full time on direct examination, then they may use up to the remainder of the time on redirect examination. The remaining one hour shall be allocated to Defendants. With respect to party depositions of Plaintiffs noticed by Defendants, six of the seven hours shall be allocated to Defendants, absent Court order or agreement of the parties. If Defendants do not use their full time on direct examination, then they may use up to the remainder of the time on redirect examination. The remaining one hour shall be allocated to Plaintiffs. Except as

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<sup>1</sup> To the extent Defendant ConAgra believes that Plaintiffs failed to include a sufficient cross-section of class representatives in the Master Complaint, Liaison Counsel shall meet and confer with respect to whether Defendant ConAgra should be permitted to take the deposition of other persons who had previously been proposed as class representatives, but were not included in the Master Complaint. Factors such as health or continued willingness to serve as a Class Representative shall be considered. The Court shall resolve any dispute which Liaison Counsel are unable to resolve with respect to this issue. Nothing herein shall be deemed to preclude ConAgra from taking the deposition of any Plaintiff in an individually filed case, whether or not a potential class member or otherwise deposing any person in accordance with the law.

otherwise set forth above, the parties shall coordinate the noticing of depositions to avoid duplication.

If Plaintiffs notice a deposition of a Plaintiff, or if Defendants notice a deposition of a Defendant, then time shall be allocated 3.5 hours for Plaintiffs and 3.5 hours for Defendants.

Party depositions shall be taken in the city of the deponent's residence or place of business absent consent by the parties or Court Order otherwise.

**b. Non-Party Depositions.**

Except as may otherwise be provided herein, all non-party depositions shall be governed and shall be taken in accordance with the Federal Rules of Civil Procedure.

Each non-party deposition shall be limited to seven hours absent Court order or agreement of the parties.

With respect to non-party depositions noticed by Plaintiffs, six of the seven hours shall be allocated to Plaintiffs, absent Court order or agreement of the parties. If Plaintiffs do not use their full time on direct examination, then they may use up to the remainder of their time on redirect examination. The remaining one hour shall be allocated to Defendants.

With respect to non-party depositions noticed by Defendants, six of the seven hours shall be allocated to Defendants, absent Court order or agreement of the parties. If Defendants do not use their full time on direct examination, then they may use up to the remainder on their time on redirect examination. The remaining one hour shall be allocated to Plaintiffs.

With respect to non-party depositions noticed by both Plaintiffs and Defendants, 3.5 hours out of the seven hours shall be allocated to Defendants, and 3.5 hours of the seven hours shall be allocated to Plaintiffs absent Court order or agreement of the parties.

c. Additional Depositions.

In the event that counsel for any party reasonably believes that the deposition of one or more specific witnesses is necessary to develop an adequate record, but is barred from taking those depositions by the provisions of Paragraphs 2(a) and (b) above, counsel for all parties shall confer in good faith, and attempt to agree to provide necessary discovery. If counsel for the parties are unable to reach agreement, then the party requesting one or more additional depositions may apply for leave of Court to take such depositions.



**d. Additional Time for Depositions.**

In the event that counsel for any party anticipates that it will not be able to complete examination of any witness within the time allotted, counsel for all parties shall confer in good faith in advance of the scheduled deposition, if possible, and attempt to agree to extend the examination for the time reasonably needed to complete the examination. If counsel for the parties are unable to reach agreement, the party requesting additional time may apply for leave of Court to extend the deposition.

**e. Approval of Expedited Discovery.**

Permission to take expedited discovery of a Plaintiff and/or health care provider for a Plaintiff shall be granted to the extent Plaintiff or a member of his or her family is terminally ill; there is an urgent need to record and preserve the testimony because of the gravity of the illness; and Plaintiff has completed the Plaintiff Fact Sheet and Defendants have had reasonable opportunity to obtain relevant medical, financial and other records prior thereto. The Court expects counsel to cooperate with one another to resolve any such matters.

**f. Objections.**

The objection of one counsel to a question at a deposition shall be deemed to have been made (a) on behalf of all other parties; and (b) on all grounds for a form

objection. No objection, other than form shall be waived by failure to assert it during the deposition.

4. Deposition Exhibits.

All deposition exhibits shall be numbered with the name of the witness and then sequentially within that witness's deposition, regardless of which party introduces the exhibit.<sup>2</sup>

Counsel will make their best efforts to use the previously marked exhibit number in subsequent depositions. The index of exhibits annexed to each deposition transcript shall contain, for each exhibit marked or referred to in the deposition, the document production (Bates) number, the exhibit number and a brief description of the exhibit.

H. Privilege Log.

1. Timing.

A privilege log that complies with the requirements of Federal Rules of Civil Procedure and the Local Rules for the Northern District of Georgia shall be served by any party withholding documents on the basis of privilege or protection on a rolling basis beginning sixty (60) days after the initial production of documents

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<sup>2</sup> Because of concerns that disclosure may reveal counsel's work product, *see Sporck v. Peil*, 759 F.2d 312 (3d Cir. 1985), or impede the ability to test a witness' recollection, the Court will not require parties to identify, in advance, exhibits they intend to use as exhibits at depositions. If, however, depositions become delayed or disrupted, then the Court may require pre-deposition disclosure of documents that will be employed at depositions.

responsive to the document request to which the privilege or protection was asserted and every four weeks thereafter.

**2. Categories of Documents That Do Not Need to Be Logged.**

The parties do not need to log any of the following categories of withheld documents, subject to the exceptions set forth herein:

- a. routine attorney-client privileged communications after February 13, 2007 unless also provided to a third party (except for retained consulting experts, attorney staff and vendors);
- b. routine work product as defined by Fed. R. Civ. P. 26(b)(3) specifically regarding this MDL proceeding (including but not limited to any actions transferred or otherwise included in these coordinated proceedings in the future, related state court actions, and related claims) or any related government actions or investigations made after February 13, 2007;
- c. communications among counsel for the Defendants or among counsel for the Plaintiffs relating to joint litigation efforts after February 13, 2007.

The fact that a document is or is not included or required to be included on the Privilege Log shall not determine whether the document is in fact privileged or otherwise protected from disclosure.

**3. Redacted Documents.**

Where a page or part of a page of a document is redacted, the fact of the redaction shall be made clear on the face of the document. The basis for the redaction may also be made clear on the face of the document; alternatively, a

Redaction Log setting forth the document number and basis for redaction shall be served within sixty (60) days after completing production of documents responsive to the document request to which the redacted document was produced.

#### **VI. INITIAL DISCLOSURES**

Initial disclosures shall be waived.

#### **VII. SCHEDULE**

##### **A. Master Complaint.**

As previously set forth, Plaintiffs alleging a class action shall jointly file a Master Complaint with putative class definition(s) no later than **October 31, 2007**. Defendants shall file its responsive pleading no later than **November 30, 2007**.

##### **B. Class Certification.**

1. Motions for class certifications (and any amendments) must be filed by **December 6, 2007**. In addition, Plaintiffs shall identify experts and provide experts' reports by **December 6, 2007** to the extent that Plaintiffs intend to rely on such experts during the class certification process.

2. Defendant(s) must file a memorandum in opposition to motions for class certification by **February 4, 2008**. Defendant(s) shall provide reports for any expert they intend to rely on in opposing class certification by **February 4, 2008**. Defendant(s) may not reference or rely upon any matter within their possession,

custody or control which is responsive to any timely filed discovery request for such matter and which has not been produced timely to plaintiffs or by February 4, 2006, whichever is later.

3. Plaintiffs may file a reply to any memorandum in opposition to class certification by **March 26, 2008**.

4. Hearings on motions for class certification shall be heard by the Court as soon as practicable thereafter.

C. **Disclosure of Expert Witnesses**.

5. Plaintiff(s) shall file and serve a document identifying by full name, address, and telephone number each person whom Plaintiff(s) expects to call as an expert at trial (excluding any plaintiff specific healthcare provider or other case specific expert) and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been disclosed to other parties by **December 1, 2008**.

6. Defendant(s) shall file and serve a document identifying by full name, address, and telephone number each person whom Defendant(s) expects to call as an expert at trial (excluding any Plaintiff specific healthcare provider or other case specific expert) and certifying that a written report prepared and signed by the expert including all information required by Fed. R. Civ. P. 26(a)(2)(B) has been

disclosed to other parties by **January 31, 2009**.

D. **Close of Discovery**


All discovery shall be completed by **April 15, 2009**.

**VIII. SETTLEMENT**

The parties are expected to consider and discuss settlement on an ongoing basis. Mediation, as appropriate, may be ordered by the Court.

IT IS SO ORDERED.

DATED this 23 day of October, 2007.

  
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Hon. Thomas W. Thrash, Jr.  
United States District Judge

# General Information

Court	United States District Court for the Northern District of Georgia; United States District Court for the Northern District of Georgia
Federal Nature of Suit	Personal Injury - Product Liability[365]
Docket Number	1:07-md-01845
Status	CLOSED