

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

In re: Cook Medical, Inc. Pelvic Repair System Products Liability Litigation)
MDL No. 2440

THIS DOCUMENT RELATES TO THE CASES LISTED
BELOW AND THE DISCOVERY POOL CASES

PRETRIAL ORDER # 53
(Third Amended Docket Control Order)

By PTO # 52 I chose Bellwether cases for this MDL.¹ PTO # 19 (Docket Control Order) and PTO # 37 (First Amended Docket Control Order) addressed the discovery deadlines for the Discovery Pool of cases from which the Bellwethers were chosen. With the selection of the four Bellwether cases it is **ORDERED** that the following deadlines apply in the Discovery Pool *and* Bellwether cases as follows:

1. Motion Practice.

a. In all Discovery Pool cases and the four Bellwether cases chosen by the court, Non-*Daubert* based Dispositive Motions shall be filed by **February 12, 2015**. Response briefs shall be filed by **February 19, 2015**. Reply briefs shall be filed by **February 23, 2015**.

b. In the four Bellwether cases chosen by the court, all *Daubert* motions shall be filed by **February 12, 2015**. Response briefs shall be filed by **February 19, 2015**. Reply briefs shall be filed by **February 23, 2015**.

¹ As noted in PTO # 52, on April 20, 2015, I will try *Ailey v. Cook Inc., et al.*, 2:13-cv-18888 with *Lingo v. Cook Inc., et al.*, 2:13-cv-20359, as a backup. On May 18, 2015, I will try *Watkins v. Cook Inc., et al.*, 2:13-cv-20370, and on June 8, 2015, I will try *Hovey v. Cook Inc., et al.*, 2:13-cv-18900. If *Watkins* is dismissed or not otherwise ready for trial on May 18, 2015, I will try *Hovey* on that date.

c. In the four Bellwether cases chosen by the court, all motions in limine, supplemental *Daubert* motions as to the agreed upon medical examinations and *Daubert* based dispositive motions shall be filed by **March 16, 2015**. Response briefs shall be filed by **March 23, 2015**. Motions in limine are limited to 3 pages each; responses are limited to 2 pages each.

d. The court will determine a deadline for *Daubert*-based dispositive motions and motions in limine in the remaining Discovery Pool cases at a later date.

e. Dates for summary judgment and *Daubert* hearings, if any, will be set at an upcoming status conference.

f. Local Rule of Civil Procedure 7.1(a)(2) applies regarding the page limits on memoranda in support of dispositive motions as well as responses and replies. The court will not be inclined to grant motions to exceed the page limit. The court requests that the parties abide by Local Civil Rule 7.1(a)(5) regarding courtesy copies.

g. A party who wishes to file confidential documents must file a motion to seal well before the filing is due so that the opposing party can respond and the Court can rule on the motion. The court encourages the parties to resolve issues related to confidential documents on a wholesale basis well in advance of the dispositive motion deadline. Filings containing placeholder exhibits will be struck.

2. *Trial and Other Deadlines – April 20, 2015 Trial.*

a. *Pretrial.* The Court shall conduct a pretrial conference for the April 20, 2015, trial on **April 15, 2015 at 10:00 a.m.** I will notify the parties of any final settlement conferences.

b. *Deposition Designations.* Deposition designations for the April 20, 2015 trial shall be submitted to the Court by **March 30, 2015**. Any objections to an opposing party's designations and any counter-designations shall be submitted to the Court by **April 7, 2015**.

Any objections to the counter-designations, and any counter-designations to an opposing party's counter-designations, shall be submitted to the Court by **April 13, 2015**. The presiding Magistrate Judge, Judge Eifert, will conduct a hearing on any outstanding designation deposition issues on **April 14, 2015 at 9:00 a.m.** in Huntington.

c. *Exhibit and Witness Lists.* The parties will exchange exhibit and witness lists for the April 20, 2015 trial by **March 13, 2015**.

d. The parties shall file a proposed integrated pretrial order for the April 20, 2015 trial pursuant to Fed. R. Civ. P. 16 three (3) days prior to the pretrial conference. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in Local Civil Rule 16.7(b).

e. For the April 20, 2015 trial, the parties shall file proposed jury instructions in charge form on substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate to the case, along with a proposed verdict form on **April 10, 2015**. The court requests that the parties email the proposed jury instructions to the court's law clerk in Word format.

f. *Trial.* The court will conduct the first trial on **April 20, 2015 at 8:30 a.m.** In the event the first Bellwether trial (*Ailey*) is dismissed or not otherwise ready for trial, the court will proceed to trial on the backup (*Lingo*).

3. *Trial and Other Deadlines – May 18, 2015 and June 8, 2015 Trials.*

a. *Pretrial.* The Court shall conduct a pretrial conference for the May 18 and June 8, 2015 trials on **May 13, 2015 at 10:00 a.m.** I will notify the parties of any final settlement conferences.

b. *Deposition Designations.* Deposition designations for the May 18 and June 8, 2015 trials shall be submitted to the Court by **April 30, 2015**. Any objections to an opposing party's designations and any counter-designations shall be submitted to the Court by **May 6, 2015**. Any objections to the counter-designations, and any counter-designations to an opposing party's counter-designations, shall be submitted to the Court by **May 11, 2015**. The presiding Magistrate Judge, Judge Eifert, will conduct a hearing on any outstanding designation deposition issues on **May 12, 2015 at 9:00 a.m.** in Huntington.

c. *Exhibit and Witness Lists.* The parties will exchange exhibit and witness lists for the May 18 and June 8, 2015 trials by **April 13, 2015**.

d. The parties shall file a proposed integrated pretrial order for the May 18 and June 8, 2015 trials pursuant to Fed. R. Civ. P. 16 three (3) days prior to the pretrial conference. The proposed integrated pretrial order, signed by all counsel and unrepresented parties, shall set forth the matters listed in Local Civil Rule 16.7(b).

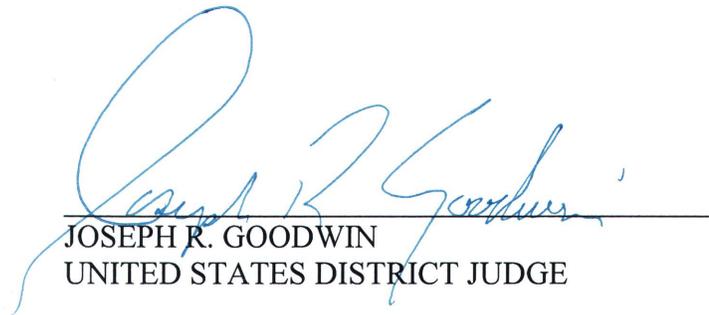
e. For the May 18 and June 8, 2015 trials, the parties shall file proposed jury instructions in charge form on substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate to the case, along with a proposed verdict form on **May 10, 2015**. The court requests that the parties email the proposed jury instructions to the court's law clerk in Word format.

f. *Trial.* The court will conduct the second and third trials on **May 18 and June 8, 2015 at 8:30 a.m.** In the event *Watkins* is dismissed or not otherwise ready for trial, the court will proceed to trial of the *Hovey* case.

The Court **DIRECTS** the Clerk to file a copy of this order in 2:13-md-2440 and in *Ailey v. Cook Inc., et al., 2:13-cv-18888, Lingo v. Cook Inc., et al., 2:13-cv-20359, Watkins v. Cook*

Inc., et al., 2:13-cv-20370, and Hovey v. Cook Inc., et al., 2:13-cv-18900. In cases subsequently filed in this district after 2:15-cv-00487, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this Court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the Court. The orders may be accessed through the CM/ECF system or the Court's website at www.wvsd.uscourts.gov.

ENTER: January 13, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE