

**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
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THIS DOCUMENT RELATES TO COOK WAVE 1 CASES

**PRETRIAL ORDER # 67
(Fifth Amended Docket Control Order for Remaining Cook MDL Cases (Cook Wave 1))**

Pending is a Joint Motion for Temporary Stay of Discovery, filed October 21, 2015. [ECF No. 404]. In the Motion, the parties jointly seek an order (1) staying all discovery in MDL 2440 to allow the parties to devote their full resources to reaching a global settlement of all cases, federal and state, involving Cook biodesign products used to treat stress urinary incontinence and pelvic organ prolapse; and (2) extending the discovery deadlines set in PTO # 65 (Fourth Amended Docket Control Order for Remaining Cook MDL Cases (Cook Wave 1)) by 90 days.

It is **ORDERED** that the Joint Motion is **GRANTED in part** and **DENIED in part**. I will extend the deadlines contained in PTO # 65 by 30 days, as set forth below. At the private meeting with counsel on November 19, 2015, the parties should be prepared to report their progress.

A. SCHEDULING DEADLINES.

The following deadlines apply in the Cook Wave 1 cases:

Deadline for written discovery requests.	02/03/2016
Expert disclosure by party with burden of proof.	01/20/2016
Expert disclosure by opposing party.	02/17/2016
Expert disclosure for rebuttal purposes.	03/03/2016
Deposition deadline and close of discovery.	03/17/2016
Filing of dispositive and <i>Daubert</i> motions.	04/06/2016
Responses to dispositive and <i>Daubert</i> motions.	04/21/2016
Reply to response to dispositive and <i>Daubert</i> motions.	04/27/2016

The last date to complete depositions shall be the “discovery completion date” by which all discovery, including disclosures required by Federal Rule of Civil Procedure 26(a)(1), and (2), but not disclosures required by Federal Rule of Civil Procedure 26(a)(3), shall be completed. Pursuant to Local Rule 26.1(c), the court adopts and approves the agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions).

B. MOTION PRACTICE.

1. If discovery (e.g., the deposition of plaintiff and her implanting physician) reveals facts that could support a motion that would be dispositive of the *entirety* of a plaintiff’s claims (e.g., causation, the statute of limitations), either party may seek the court’s leave to file an early dispositive motion on that issue. If such leave is granted, the court shall set a briefing schedule at that time.

2. Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.

3. The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies, and the court will not be inclined to grant motions to exceed the page limit. The parties shall provide courtesy copies to the court in accordance with Local Civil Rule 7.1(a)(5), and requests that such courtesy copies include the header added upon filing.

4. In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or

file a motion to seal. *Moving forward, the court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and the Cook defendants to resolve issues related to confidential designations well before the filing of motions. Filings containing placeholder exhibits will be struck. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: A consolidated motion to seal is due on or before **February 27, 2016**, any response is due **March 4, 2016**, and any reply is due **March 11, 2016**.

5. The parties are reminded that they must file dispositive and *Daubert* motions, responses and replies in the applicable member cases only, not in the Cook MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL.

1. By no later than **March 2, 2016**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall submit venue recommendations to the court, either jointly or separately, by **March 16, 2016**. The parties' recommendation(s) shall identify the cases about which the recommended venue is and is not in dispute. The court may then request briefing concerning the venue for those cases about which the parties disagree. Each party reserves the right to object to the venue selected by its adversary or the court.

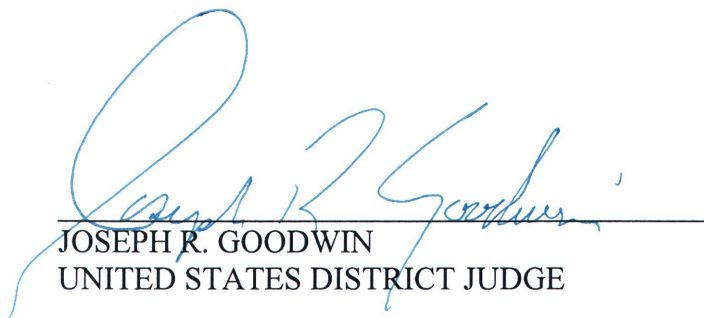
2. At the conclusion of pre-trial proceedings, the court, pursuant to PTO # 13 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 13 and 28 U.S.C. § 1407,

cases that were transferred to this court by the MDL panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.¹

3. If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' pretrial motions. The trial date for cases transferred or remanded to other federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercourt assignment).

The court **DIRECTS** the Clerk to file a copy of this order in 2:13-md-2440 and in the Cook Wave 1 cases. In cases subsequently filed in this district after 2:15-cv-13743, 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: October 23, 2015


JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

¹As expressly contemplated by PTO # 13, the Cook defendants do not waive their right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.