

**IN THE UNITED STATES DISTRICT COURT
FOR THE 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 ALL CASES

**PRETRIAL ORDER # 79
(ORDER AMENDING PTO # 68 - ORDER ESTABLISHING REPORTING ON
PAYMENT TO THE MDL 2440 FUND)**

Pursuant to Pretrial Order # 12, as amended by Pretrial Order # 45¹, Cook Incorporated, Cook Biotech, Inc. and Cook Medical, Inc. (“Cook”) are required to pay into the MDL 2440 Fund, five percent (5%) of any sum to be paid in settlement of a claim. PTO # 12 explicitly orders that “[a] total assessment for payment of attorneys’ fees and approved common benefit and MDL expenses of five percent (5%) of the Gross Monetary Recovery [as defined in the PTO] shall apply to all Covered Claims [as defined in the PTO].” Pretrial Order No. 12, ECF No. 44, ¶ 3.a. In addition,

Defendants are directed to withhold the Assessment from amounts paid on any Covered Claim and to pay the Assessment directly into the MDL 2440 Fund as a credit against the Settlement or Judgment. If for any reason the Assessment is not or has not been so withheld, the Defendants as well as the plaintiff and his or her counsel are jointly responsible for paying the Assessment into the MDL 2440 Fund promptly.

Id. ¶ 3.c.

By PTO # 68, I set forth a mechanism for reporting all payments of assessments made into the MDL 2440 Fund to the court. That process, set forth again below, will remain in place.

¹ PTO # 45 amended paragraph 3.e of PTO # 12 only, leaving the remaining provisions of PTO # 12 in place.

However, I find it necessary to supplement the reporting process to collect additional information on settlements of Covered Claims to confirm that all 5% payments that must be paid into the common benefit fund by defendants pursuant to PTO # 12 (as amended by PTO # 45), are making their way to the common benefit fund. To that end, the court **ORDERS** that PTO # 68 be amended as follows:

A. MDL Settlement Summary Report

No later than April 30, 2017, Cook shall provide the court with a report (“MDL Settlement Summary Report”) as of March 31, 2017, of *all* settlements made by Cook on Covered Claims as defined in PTO # 12 (as amended by PTO # 45), by plaintiff’s firm or settlement group, and indicate whether 5% has been paid into the common benefit fund for that particular settlement. If not, Cook must estimate a date when the 5% will be paid. Thereafter, within thirty (30) calendar days of the end of each quarter, Cook shall update the initial MDL Settlement Summary Report to reflect all settlements reached and payments made into the MDL 2440 Fund by or on behalf of Cook during the preceding quarter (e.g., by July 31, 2017, Cook shall provide a report on all payments from April 1, 2017, through June 30, 2017). The MDL Settlement Summary Report will essentially become a running report updated and supplemented every quarter. Such MDL Settlement Summary Reports shall be submitted to the court via email and maintained by the court in chambers for in camera review and reconciliation with the amounts received by the MDL 2440 Fund. The MDL Settlement Summary Reports will not be filed or kept in the court Clerk’s office.

A template for the MDL Settlement Summary Report is attached hereto as Exhibit A. For each settlement on a Covered Claim, the MDL Settlement Summary Report shall set forth in a form substantially similar to Exhibit A, (1) plaintiff’s counsel or group of plaintiff’s counsel; (2) the maximum potential number of covered claims in the settlement group; (3) the date of execution

of the applicable Master Settlement Agreement; (4) the cumulative maximum potential settlement amount under the Master Settlement Agreement; (5) the 5% assessment amount to be paid if the maximum potential settlement amount is paid; (6) the date(s) and amount(s) paid to the MDL 2440 Fund to date; and (7) the estimated date(s) of any unpaid assessments, if any.

B. MDL Fund Report

In addition, no later than April 30, 2017, Cook shall provide the court with a report (“MDL Fund Report”) on all payments made into the MDL 2440 Fund by or on behalf of Cook through March 31, 2017.² Thereafter, within thirty (30) calendar days of the end of each quarter, Cook shall provide the court with an MDL Fund Report on all payments made into the MDL 2440 Fund by or on behalf of Cook during the preceding quarter (*e.g.*, by July 31, 2017, Cook shall provide a report on all payments from April 1, 2017, through June 30, 2017). Such MDL Fund Reports shall be submitted to the court via email and maintained by the court in chambers for in camera review and reconciliation with the amounts received by the MDL 2440 Fund. The MDL Fund Reports will not be filed or kept in the court Clerk’s office.

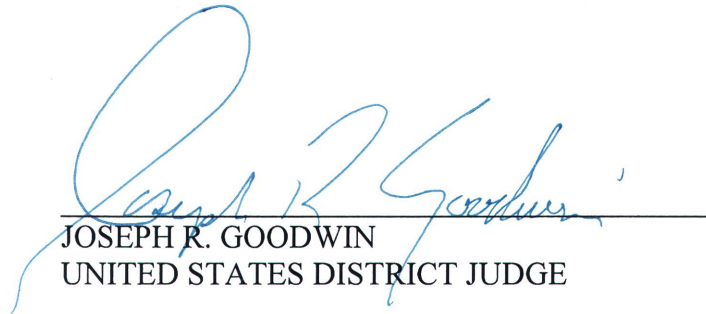
A template form MDL Fund Report is attached hereto as Exhibit B. In addition, template forms for use as an exhibit to attach to the MDL Fund Reports are attached hereto as Exhibit C. For each payment made into the MDL 2440 Fund by or behalf of Cook, the MDL Fund Report shall set forth in a form substantially similar to Exhibit B, (1) the date of the payment to the MDL 2440 Fund; (2) the amount of the payment to the MDL 2440 Fund; (3) a wire confirmation number or other proof of payment; (4) the total number of claims for which the payment to the MDL 2440 Fund was made; (5) the cumulative total amount to be paid in settlement of the claims; (6) the amount of each payment to the MDL 2440 Fund; (7) the name and other identifying information

² The court directs Cook to proceed under PTO # 12 (as amended by PTO # 45) for submission of its report for the period ending December 31, 2016, if any.

for each claimant on whose behalf the payment was made; (8) and the attorney or law firm representing each such claimant.

The court **DIRECTS** the Clerk to file a copy of this order in 2:13-md-2440 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, which includes counsel in all member cases up to and including civil action number 2:17-cv-00071. In cases subsequently filed in this district, 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: February 2, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

[FIRST] COOK MDL SETTLEMENT SUMMARY REPORT FOR THE MDL 2440 FUND

Defendants Cook Incorporated, Cook Biotech, Inc. and Cook Medical, Inc. (“Cook”) advise the Court that pursuant to Pretrial Order # 12, as amended by Pretrial Order # 45, five percent (5%) of any settlement amount paid to any claimant settling with Cook is being paid into the MDL 2440 Fund. By this [First] MDL Settlement Summary Report for the MDL 2440 Fund, Cook is providing the Court a list of all settlements made by Cook on Covered Claims as defined by PTO # 12 (as amended by PTO # 45), by plaintiff’s counsel or group, and indicating whether 5% has been paid into the common benefit fund for that particular settlement. If not, defendants are directed to estimate a date when the 5% will be paid. Thereafter, the MDL Settlement Summary Report shall be updated and supplemented within thirty (30) calendar days of the end of each quarter.

A sample report is set forth below:

| Settling Plaintiff’s Counsel | Maximum Potential Number of Covered Claims in Settlement Group | Date of Execution for Master Settlement Agreement | Cumulative Maximum Potential Settlement Amount | 5% Assessment Owed | Date and Amount Paid to MDL 2440 Fund | Estimated Date(s) of any unpaid Assessment |
|-------------------------------------|-----------------------------------------------------------------------|----------------------------------------------------------|-------------------------------------------------------|---------------------------|----------------------------------------------|---------------------------------------------------|
| Smith & Jones, LLC | 400 | 1/1/16 | \$4,000,000 | \$200,000 | \$200,000 paid 1/09/16 | |
| Wilson & Smith, LLC | 200 | 1/1/16 | \$2,000,000 | \$100,000 | \$50,000 paid 1/09/16 | 6/1/17 |
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*Lead Counsel for Cook Incorporated, Cook
Biotech, Inc. and Cook Medical, Inc.*

Dated: _____

EXHIBIT B

[FIRST] COOK MDL FUND REPORT OF PAYMENTS TO THE MDL 2440 FUND

Defendants Cook Incorporated, Cook Biotech, Inc. and Cook Medical, Inc. (“Cook”) advise the Court that pursuant to Pretrial Order # 12, as amended by Pretrial Order # 45, five percent (5%) of any settlement amount paid to any claimant settling with Cook is being paid into the MDL 2440 Fund. By this [First] Report of Payments to the MDL 2440 Fund, Cook is providing the Court a list of all payments made to the MDL 2440 Fund from [INSERT DATE] through [INSERT DATE] by or on behalf of Cook. Exhibits [INSERT EXHIBIT LETTERS] attached hereto set forth dates of payments to the MDL 2440 Fund, the amounts of such payments, the name of each claimant on whose behalf the payments were made, and the name of each claimant’s attorney.

A summary of all payments detailed in the attached exhibits is set forth in the chart below.

[illegible]

*Lead Counsel for Cook Incorporated, Cook
Biotech, Inc. and Cook Medical, Inc.*

Dated: _____

EXHIBIT C

| | |
|---------------------------------------|---------------------------------------------------------------|
| Settlement | [INSERT FIRM NAME] |
| Total Number of Claims | [INSERT TOTAL NUMBER OF CLAIMS] |
| Total Settlement Amount | [INSERT CUMULATIVE TOTAL SETTLEMENT AMOUNT] |
| Amount Paid to MDL 2440 Fund | [INSERT CUMULATIVE AMOUNT PAID TO MDL 2440 FUND] |
| Date of Payment to MDL 2440 Fund | [INSERT PAYMENT DATE] |
| Wire Confirmation or Proof of Payment | [INSERT WIRE CONFIRMATION # OR ATTACH OTHER PROOF OF PAYMENT] |

| Settlement Firm | Claimant Data | | | |
|-------------------------------|----------------------|---------------|-----------|------------|
| Associated Counsel / Attorney | Def.'s Claim # | SSN | Last Name | First Name |
| | | ###-##-[XXXX] | | |
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