

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

<b>IN RE: COOK MEDICAL, INC. PELVIC REPAIR SYSTEM PRODUCTS LIABILITY LITIGATION</b>	<b>MDL No. 2440</b>  <b>JOSEPH R. GOODWIN U.S. DISTRICT JUDGE</b>
<b>THIS DOCUMENT APPLIES TO ALL CASES</b>	

**PRETRIAL ORDER # 19  
(Docket Control Order)**

1. Identity of cases. Group 1 will consist of cases filed on or before **January 13, 2014**.
2. Plaintiff Profile Forms. By **January 20, 2014**, each plaintiff filed in this MDL must serve substantively complete Plaintiff Profile Forms (PPFs) for cases to be considered for Discovery Pool. For exceptional circumstances and good cause shown, Plaintiff Profile Forms may be submitted by January 27, 2014.
3. Discovery Pool Cases. By **February 10, 2014**, the parties shall file a list of a total of thirty (30) cases, fifteen (15) for each side, to be included in the Discovery Pool.
4. Discovery Pool Cases – Case – Specific Discovery. Case-Specific Discovery for Discovery Pool Cases commences on **February 17, 2014**. Case-Specific Depositions shall be limited to: (1) Plaintiff(s); (2) one additional fact witness,

which may include an additional physician, if the case involves a single Plaintiff; (3) implanting physician; (4) post-implant physician; (5) sales representative or distributor directly associated with the sale of the product to implanting physician; and (6) any representative or any Defendant who was present in the operating room during the implantation or post-implant surgeries.

5. Plaintiff Fact Sheets. By **February 17, 2014**, each Plaintiff in the Discovery Pool must serve a substantially completed Plaintiff Fact Sheet (PFS).
6. Defendant Fact Sheets. By **February 17, 2014**, Defendants shall serve a substantially completed Defendant Fact Sheet (DFS) for each case in the Discovery Pool (30 cases). The defendants will disclose the identity and locations of all sales representatives for each case in the Discovery Pool in the Defendants Fact Sheets.
7. Expert Reports.
  - a. On **April 21, 2014**, plaintiffs shall provide the name and specialty of experts along with proposed deposition dates to occur by June 2, 2014. Plaintiffs shall serve expert reports by **April 28, 2014**.
  - b. On **April 28, 2014**, defendants shall provide the name and specialty of experts along with proposed deposition dates to occur by June 9, 2014. Defendants shall serve expert reports by **May 5, 2014**.
  - c. Plaintiffs shall serve rebuttal expert reports by **May 12, 2014** for all Discovery Pool cases.

8. Written Discovery. Parties shall serve any and all final, non-duplicative written discovery no later than **May 16, 2014.**
9. Expert Discovery. Expert Discovery for Discovery Pool cases shall be completed by **June 11, 2014.** Expert depositions shall not begin until after Defendants have served expert reports.
10. Case-Specific Discovery. Discovery on all Discovery Pool cases shall be completed by **June 11, 2014.**
11. Bellwether Cases. Parties will make presentations to the Court on **June 16, 2014** on all Discovery Pool cases, and the Court shall select a total of three (3) cases to be Bellwether trial cases. The Court shall complete its selection for the final three (3) Bellwether trial cases and inform the parties as to the order in which the cases will be tried no later than **June 19, 2014.**
12. Motion Practice.
  - a. In all Discovery Pool cases and the three Bellwether cases chosen by the court, Daubert Motions and Non-Daubert based Dispositive Motions shall be filed by **June 30, 2014.** Response briefs shall be filed by **July 7, 2014.**
  - b. In the three Bellwether cases chosen by the court, Daubert based Dispositive motions and motions in limine shall be filed by **July 21, 2014.** Response briefs shall be filed by **July 28, 2014.** Motions in limine are limited to 3 pages each, responses are limited to 2 pages each.

- c. 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.
  - d. Dates for summary judgment and *Daubert* hearings, if any, will be set at an upcoming status conference.
  - e. 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.
13. Pretrial. The Court shall conduct pretrial and final settlement conferences at dates to be determined at an upcoming status conference. The Court will issue future orders related to conduct of the pretrial conference and submission of a Proposed Pretrial Order.
14. Deposition Designations. Deposition designations shall be submitted to the Court by **July 21, 2014**. Any objections to an opposing party's designations and any counter-designations shall be submitted to the Court **July 28, 2014**. Any objections to the counter-designations, and any counter-designations to an opposing party's counter-designations, shall be submitted to the Court by **August 4, 2014**.
15. Exhibit and Witness Lists. The parties will exchange exhibit and witness lists by **July 21, 2014**.

16. The parties shall file a proposed integrated pretrial order pursuant to Fed. R. Civ. P. 16 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).
17. 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 **August 4, 2014**. The court requests that the parties email the proposed jury instructions to the court's law clerk in Word format.
18. *Trial.* The parties will have three (3) Cook cases ready for trial with the first trial beginning on **August 11, 2014 at 8:30 a.m.** The subsequent trials will begin on **September 8, 2014** and **November 3, 2014**. In the event the first Bellwether trial has settled or is otherwise resolved, the court will proceed to trial on the next Bellwether on August 11, 2014.

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 2:13-cv31943. 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](http://www.wvsd.uscourts.gov).

ENTER: December 19, 2013



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JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE