

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: ALL CASES

**PRETRIAL ORDER # 42
(Second Amended Docket Control Order)**

It is **ORDERED** that PTO # 19 (Docket Control Order) and PTO # 37 (First Amended Docket Control Order) are amended with respect to paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 17 and 18, as set forth below:

7. *Expert Reports.*

a. On **November 3, 2014**, plaintiffs shall provide the name and specialty of experts along with proposed deposition dates to occur by **January 2, 2015**. Plaintiffs shall serve expert reports by **November 10, 2014**.

b. On **November 10, 2014**, defendants shall provide the name and specialty of experts along with proposed deposition dates to occur by **January 9, 2015**. Defendants shall serve expert reports by **November 17, 2014**.

c. Plaintiffs shall serve rebuttal expert reports by **December 1, 2014**, for all Discovery Pool cases.

8. *Written Discovery.* The parties shall serve any and all final, non-duplicative written discovery no later than **December 1, 2014**.

9. *Expert Discovery.* Expert Discovery for Discovery Pool cases shall be completed by **January 9, 2015**. Expert depositions shall not begin until after Defendants have served expert

reports. With regard to medical examinations, Pretrial Order # 43 (Protocol for Medical Examinations) sets forth the schedule for medical examinations of the three (3) bellwether Plaintiffs and supplemental expert depositions. Upon entry of Pretrial Order # 43 (Protocol for Medical Examinations), the parties shall meet and confer to determine a schedule and protocol for medical examinations of the Plaintiffs in the remaining Discovery Pool cases.

10. *Case-Specific Discovery.* Discovery on all Discovery Pool cases shall be completed by **January 9, 2015**.

11. *Bellwether Cases.* Parties will make presentations to the Court on **January 12, 2015**, 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 **January 13, 2015**.

12. *Motion Practice.*

a. In all Discovery Pool cases and the three 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 three 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**.

c. In the three 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. The parties may file placeholder exhibits for documents with potential sealing issues. However, within five days of filing, the party who filed the at-issue exhibits must either file the appropriate motion to seal or file a motion with the at-issue exhibits (de-designated or redacted) attached asking that the court direct the Clerk to replace the placeholder exhibits with the attached exhibits.

13. *Pretrial*. The Court shall conduct pretrial and final settlement conferences at dates to be determined at an upcoming status conference.

14. *Deposition Designations*. Deposition designations 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**.

15. *Exhibit and Witness Lists*. The parties will exchange exhibit and witness lists by **March 13, 2015**.

16. The parties shall file a proposed integrated pretrial order 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).

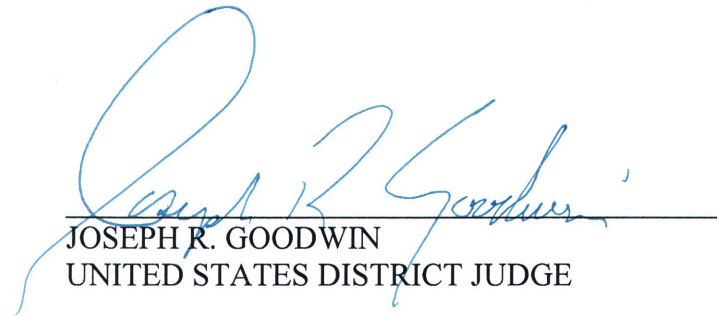
17. The parties shall file proposed jury instructions in charge form on substantive theories of recovery or defense, on damages and on evidentiary matters peculiar to the case, and special interrogatories, if any be appropriate to the case, along with a proposed verdict form on **April 10, 2015**. The 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 **April 20, 2015 at 8:30 a.m.** In the event the first Bellwether trial has settled or is otherwise resolved, the court will proceed to trial on the next Bellwether on **April 20, 2015**. The remaining two trials will begin on **May 18, 2015 at 8:30 a.m.** and **June 8, 2015 at 8:30 a.m.**

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 2:14-cv-19567. 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: June 30, 2014



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE