

**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 # 43
(Agreed Protocol for Medical Examinations)**

Pursuant to Fed. R. Civ. P. 35, Defendants Cook Incorporated, Cook Medical Incorporated, and Cook Biotech Incorporated (collectively the “Cook Defendants”) have agreed on the following protocol for the medical examination of Plaintiffs in the bellwether cases in MDL 2440, as those Plaintiffs have put their physical condition at issue in the lawsuits filed against the Cook Defendants in MDL 2440. The Court finds that good cause exists to order such examinations and **ORDERS** as follows:

1. Plaintiffs’ Medical Examinations of Bellwether Plaintiffs

No later than January 14, 2015, counsel for Plaintiffs shall produce to lead counsel for the Cook Defendants copies of any final reports or memoranda from any prior medical examinations conducted by non-treating (examining) physicians of any of the bellwether plaintiffs in the course of this litigation.

2. Cook Defendants’ Medical Examinations of Bellwether Plaintiffs

The Cook Defendants’ Medical Examinations of bellwether plaintiffs shall be completed by February 4, 2015. Counsel for the Cook Defendants shall produce to co-lead and individual counsel for Plaintiffs copies of any final reports or memoranda from the non-treating

(examining) physician from any such examinations by February 11, 2015. Supplemental depositions of Cook Defendant's medical examiners will occur by February 27, 2015.

3. Protocol for Cook Defendants' Medical Examinations

Counsel for the Cook Defendants shall provide Plaintiffs' counsel with proposed dates, times and locations for the Defense Medical Examinations by January 16, 2015. Thereafter, the parties shall meet and confer to arrange for dates, times and locations that are mutually acceptable to the parties.

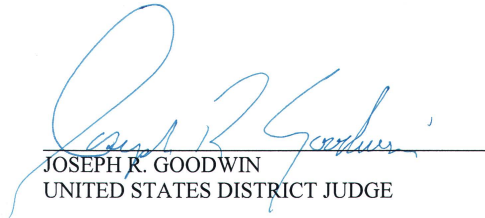
The protocol for the Defense Medical Examination shall be as follows:

- (1) The Cook Defendants shall be entitled to one physical examination of each bellwether plaintiff by a medical doctor with a current and valid license to practice medicine in the United States (the "Examining Doctor") in an appropriate medical office and examination room;
- (2) The Examining Doctor shall not be entitled to ask any questions of the bellwether plaintiff that relate to prior medical history, personal or family history and any other conversation or investigation other than pleasantries and verbal communication necessary for purposes of the physical examination;
- (3) No representative of the Cook Defendants shall be present at the Defense Medical Examinations; however, the bellwether plaintiff shall be entitled to bring one non-lawyer representative with her to the Defense Medical Examination to be present before, during and after the examination.

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

Respectfully submitted,

/s/ Benjamin H. Anderson

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