

**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 2440

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 6
(Initial Hearing Summary, Plan for Proceeding Forward)

The court conducted an initial case management conference on August 1, 2013. Judge Joseph R. Goodwin and Magistrate Judge Cheryl Eifert addressed a variety of issues summarized below:

- 1. Introduction of Parties and Attorneys.** Following introduction of the parties, Judge Goodwin initially noted contradictory descriptions by the parties of the Cook products in their position statements; that the Cook Defendants view their products as something very different from traditional mesh.
- 2. Master Pleadings/Short Form Complaint/Direct Filing.** Judge Goodwin noted that with the uptick in filings in the last several months, lawyers have not followed his orders related to direct filings. As to Cook in particular, parties have improperly named Cook defendants on Short Form Complaints. It is the court's preference that until Master Pleadings have been adopted by the court, parties wishing to name Cook should file in their home districts and be transferred by the MDL Panel. Regarding the filing of Master Pleadings, the parties have discussed this issue, but Judge Goodwin indicated that before this occurs, the proper party defendants should be determined. The parties will exchange information by **August 10, 2013**, on this issue, and report to

the court by **August 22, 2013**, regarding their progress in determining the proper party defendants and their readiness to file Master Pleadings.

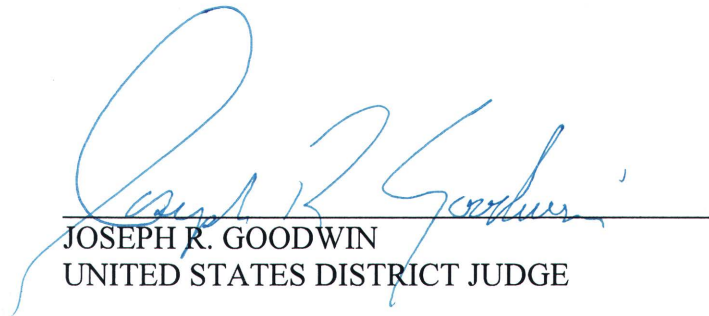
3. **Extension and Stay.** It is **ORDERED** that the extension of time for responding by motion or answer to the complaint(s) until a date to be set by this court, as set forth in PTO # 1, paragraph 7 remains in force.
4. **Discovery.** Pursuant to the subsequent agreement of the parties, it is **ORDERED** that the stay on discovery is lifted.
5. **Tolling Agreement.** The Cook Defendants are unwilling to enter into tolling agreements at this time.
6. **Proposed Early Discovery Plan & Proposed Case Schedule.** The Cook Defendants initially sought the entry of a PTO adopting Plaintiff Profile Forms, Plaintiff Fact Sheets and a Defendant Fact Sheet and choosing a Discovery Pool 1 of four cases previously filed in Kentucky and Tennessee. Plaintiffs objected. The parties subsequently agreed to require all plaintiffs to complete a Plaintiff Profile Form within 60 days of filing, after which the parties will propose the initial discovery pool. Once the Master Pleadings and Short Form Complaint have been adopted, the Direct Filing Order accompanying such pleadings will contain such language about completing the Plaintiff Profile Form. At the September Status Conference, Judge Goodwin will revisit the issue of the makeup of the initial discovery pool and the plan for proceeding forward. Judge Goodwin noted that because this is currently the smallest MDL, the parties could streamline certain processes and adjust procedures for efficiency's sake.

7. **Other Discovery Matters.** Plaintiffs will provide the Cook defendants with proposed Master Discovery Requests. Counsel for the Cook Defendants reported that he provided plaintiffs with the Rule 26(a)(1)(A) disclosures served in the Tennessee cases.
8. **Protective Order.** The parties reported they likely would reach agreement on this. If not, Judge Eifert instructed the parties that they contact her by phone.
9. **Uniform Certificate of Service.** Judge Goodwin has entered an order related to this topic.
10. **Waivers of Service.** The Cook Defendants are willing to enter into a waiver of service order. Judge Goodwin will enter an order related to waiver of service once the proper party defendants have been determined.
11. **Science Day.** Judge Goodwin will permit a science day presentation from both sides. It is **ORDERED** that on September 19, 2013, the date of the next status conference, beginning at 1:00 p.m., the court will conduct a science day in this MDL. The information presented may not be used as evidence by either side, and the presentation will be off the record. Plaintiffs expressed some concern that the date was too early, and Judge Goodwin agreed to permit a supplemental science day in the future if necessary.
12. **Future Status Conferences.** By PTO # 3, Judge Goodwin entered an order setting future status conferences.

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-cv-17890. 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: August 6, 2013



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE