

**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**

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THIS DOCUMENT RELATES TO ALL CASES LISTED  
ON EXHIBIT 1

**PRETRIAL ORDER # 64  
(Third Amended Docket Control Order for Remaining Cook MDL Cases)**

By PTO # 59, I identified in Exhibit A attached to the PTO, 253 Cook cases in which the Cook defendants were the only named defendants.<sup>1</sup> By PTO # 62, I granted plaintiffs' request for a ninety-day extension of the deadlines in PTO # 59 in order to comply with the requirement that the parties confirm the appropriateness of inclusion of the 253 Cook cases in Cook Wave 1. I also provided an updated Exhibit A, after two cases on the list were dismissed. By PTO # 63, I clarified PTO # 62, paragraph A.1 with respect to confirming cases for inclusion in the Cook Wave 1. On August 31, 2015, the parties complied with paragraph A.1 of PTO # 63 by filing a Joint Submission of Cases for Cook Wave 1 Pursuant to Pretrial Order # 63 [docket 382] and a Supplemental Joint Submission of Cases for Cook Wave 1 Pursuant to Pretrial Order # 63 [docket 384]. On September 4, 2015, the parties filed a Request to Exclude *Janice Perkins* Case from Cook Wave 1 and Notice of Dual Representation in *Priscilla Strickland* Cases. [Docket 386]. I address the following issues raised in the parties' submissions.

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<sup>1</sup> As noted in PTO # 59, these numbers excluded six cases left over in the Discovery Pool. *Christian, et al. v. Cook Inc., et al.*, 2:13-cv-20841; *Calkins v. Cook Inc., et al.*, 2:13-cv-20348; *Demarcus v. Cook Inc., et al.*, 2:13-20350; *Ward v. Cook Inc., et al.*, 2:13-cv-15879 *Gann v. Cook Inc.*, 2:13-cv-20698, and *Lyons, et al. v. Cook Inc., et al.*, 2:13-cv-21164.

First, the parties have identified a number of cases that involve dual products or have or will be dismissed.<sup>2</sup> These cases will be excluded from Cook Wave 1 pursuant to the directive contained in my PTOs cited above and in conferences with the parties.

Second, Cook argues that there are three cases in which the plaintiffs have “uncommon medical circumstances” making them inappropriate for inclusion in Wave 1. (*Jackson, Rogers, and Henson*). Plaintiffs “have not agreed to Cook’s position regarding these cases, but they do not oppose excluding these cases from Cook Wave 1 ....” [Docket 382, p. 2]. As I am not choosing bellwether cases, these potential outliers are not of concern and do not fall within the exclusion factors I identified in the PTOs above. They will be included in Cook Wave 1.

Third, Cook argues that cases on the list in which a Plaintiff Profile Form (“PPF”), Plaintiff Fact Sheet (“PFS”) or valid, signed authorization for the release of hospital or medical records have not been produced to Cook should be excluded from Cook Wave 1. I disagree. A plaintiff’s failure to provide a PPF and the accompanying authorizations is adequately addressed in PTO # 8. There is no provision in this PTO or the ones that preceded it for the production of a PFS or a Defendant Fact Sheet (“DFS”). I expect the parties to attempt to resolve the issue of if and when the PFS and any DFS should be produced.

Fourth, there are three instances in which individual plaintiff’s counsel filed notices purporting to comply with PTO # 63, despite my stated preference that the Notice be filed jointly. Counsel in *Craft, et al. v. Cook Medical, Inc., et al.* (2:13-cv-19162) and *Green, et al. v. Cook Medical, Inc., et al.* (2:13-cv-2644) filed a notice in MDL 2440 stating that the *Craft* case is listed on Exhibit A to PTO # 63. [Docket 383]. Indeed, *Craft* is on the list and will be included in Cook

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<sup>2</sup> As noted, the parties filed a supplemental Joint Submission [docket 384] and an updated list of cases. In the supplemental submission, the parties note that they removed the cases of *Guzman, et al. v. Cook Inc., et al.* (2:14-cv-10568), because plaintiff was also implanted with another manufacturer’s product, and *Schneider v. Cook Inc., et al.* (2:14-cv-22644), because plaintiff intends to dismiss her case. These cases will not be included in Cook Wave 1.

Wave 1. The Notice further states that the *Green* case is not listed on Exhibit A. Although counsel makes no argument one way or the other about whether the case should be included in the Cook Wave 1, I decline to do so because, while naming the Cook defendants, the case also names American Medical Systems, Inc., and resides in the AMS MDL.

In the final instance, counsel filed in the individual case, *Blithe, et al. v. Cook Medical, Inc., et al.*, 2:15-cv-12729 [docket 3], a notice stating that the case was not included on Exhibit A to PTO # 63, but asked to be included. The Clerk is **DIRECTED** to file this Notice in MDL 2440. This case was filed on August 27, 2015, and Cook has not yet been served. It will not be included in Cook Wave 1.

Finally, the parties requested that the case of *Perkins v. Cook, Inc., et al.* (2:13-cv-19553) be excluded from Cook Wave 1 because plaintiff was also implanted with another manufacturer's product. [Docket 386]. *Perkins* will be removed from Cook Wave 1. In addition, two cases, 2:14-cv-11157 and 2:14-cv-22490 (*Strickland v. Cook, Inc., et al.*), are duplicate cases filed by two different firms on plaintiff's behalf. *Id.* For now, I will keep both cases in the Wave, but will enter an order addressing the duplicate representation issue. I strongly urge plaintiff's counsel to resolve the dual representation issue immediately.

With these findings, I attach to this PTO, Exhibit 1, which identifies 119 cases included in Cook Wave 1. With the entry of this order, discovery may commence on the cases identified in Exhibit 1. It is **ORDERED** that the following deadlines, previously identified, remain in force and effect:

#### **A. SCHEDULING DEADLINES.**

The following deadlines apply in the Cook Wave 1 cases:

Deadline for written discovery requests.	01/04/2016
Expert disclosure by party with burden of proof.	12/21/2015
Expert disclosure by opposing party.	01/18/2016
Expert disclosure for rebuttal purposes.	02/02/2016
Deposition deadline and close of discovery.	02/16/2016
Filing of dispositive and <i>Daubert</i> motions.	03/07/2016
Responses to dispositive and <i>Daubert</i> motions.	03/22/2016
Reply to response to dispositive and <i>Daubert</i> motions.	03/28/2016

The last date to complete depositions shall be the “discovery completion date” by which all discovery, including disclosures required by Federal Rule of Civil Procedure 26(a)(1), and (2), but not disclosures required by Federal Rule of Civil Procedure 26(a)(3), shall be completed. Pursuant to Local Rule 26.1(c), the court adopts and approves the agreements of the parties with respect to limitations on discovery (numbers of interrogatories, requests for admissions, and depositions).

**B. MOTION PRACTICE.**

1. If discovery (e.g., the deposition of plaintiff and her implanting physician) reveals facts that could support a motion that would be dispositive of the *entirety* of a plaintiff’s claims (e.g., causation, the statute of limitations), either party may seek the court’s leave to file an early dispositive motion on that issue. If such leave is granted, the court shall set a briefing schedule at that time.

2. Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.

3. The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies, and the court will not be inclined to grant motions to exceed the page limit. The parties shall provide

courtesy copies to the court in accordance with Local Civil Rule 7.1(a)(5), and requests that such courtesy copies include the header added upon filing.

4. In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *Moving forward, the court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and the Cook defendants to resolve issues related to confidential designations well before the filing of motions. Filings containing placeholder exhibits will be struck. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: A consolidated motion to seal is due on or before **January 18, 2016**, any response is due **February 3, 2016**, and any reply is due **February 10, 2016**.

5. The parties are reminded that they must file dispositive and *Daubert* motions, responses and replies in the applicable member cases only, not in the Cook MDL.

### **C. CASES READY FOR TRANSFER, REMAND OR TRIAL**

1. By no later than **February 1, 2016**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall submit venue recommendations to the court, either jointly or separately, by **February 15, 2016**. The parties' recommendation(s) shall identify the cases about which the recommended venue is and is not in dispute. The court may then request briefing concerning the venue for those cases about which the parties disagree. Each party reserves the right to object to the venue selected by its adversary or the court.

2. At the conclusion of pre-trial proceedings, the court, pursuant to PTO # 13 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO # 13 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.<sup>3</sup>

3. If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' pretrial motions. The trial date for cases transferred or remanded to other federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercircuit assignment).

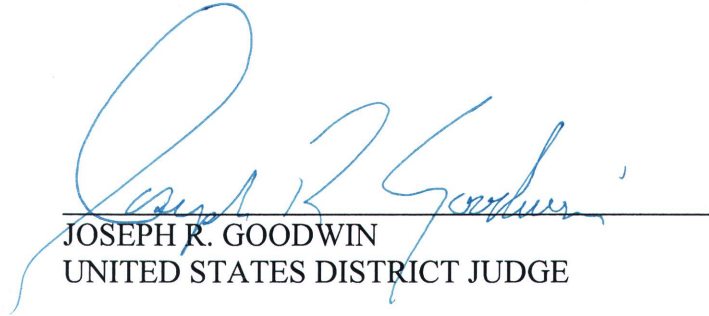
The court **DIRECTS** the Clerk to file a copy of this order in 2:13-md-2440 and in the cases listed on Exhibit A from PTO # 63 and Exhibit 1 attached hereto. In cases subsequently filed in this district after 2:15-cv-12729, a copy of the most recent pretrial order will be provided by the Clerk to counsel 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

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<sup>3</sup>As expressly contemplated by PTO # 13, the Cook defendants do not waive their right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.

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: September 8, 2015



JOSEPH R. GOODWIN  
UNITED STATES DISTRICT JUDGE

## Exhibit 1

Civil Action No.	Case Name
2:12-cv-07016	Patricia A. Morgan v. Cook Incorporated, et al.
2:13-cv-14357	Debbie Elliot-Mercer v. Cook Incorporated, et al.
2:13-cv-17053	Lisa Webb v. Cook Incorporated, et al.
2:13-cv-17071	Marion Watkins v. Cook Incorporated, et al.
2:13-cv-17407	Christine L. Roy v. Cook Incorporated, et al.
2:13-cv-17890	Nancy J. Strauss v. Cook Incorporated, et al.
2:13-cv-18566	Rosemary Neal, Patrick Neal v. Cook Incorporated, et al.
2:13-cv-19003	Karen Rose, Gary Rose v. Cook Incorporated, et al.
2:13-cv-19162	Victoria Craft, Carl Craft v. Cook Medical, Inc., et al.
2:13-cv-19263	Earnestine Fox v. Cook Incorporated, et al
2:13-cv-19601	Zena A. Kimbrell, Bruce A. Kimbrell v. Cook Incorporated, et al.
2:13-cv-19776	Dorothy Sanders v. Cook Incorporated, et al.
2:13-cv-19794	Jeanette Case, Richard Case v. Cook Incorporated, et al.
2:13-cv-20106	Diane Palumbo, Dominic Palumbo v. Cook Incorporated, et al
2:13-cv-20199	Melinda Friend v. Cook Incorporated, et al.
2:13-cv-20346	Barbara Elaine Blythe v. Cook Incorporated, et al.
2:13-cv-20353	Judy Maxine Gower v. Cook Incorporated, et al.
2:13-cv-20354	Pamela G. Hampton v. Cook Incorporated, et al.
2:13-cv-20358	Inez Lassiter v. Cook Incorporated, et al.
2:13-cv-20360	Kimberly C. Martin v. Cook Incorporated, et al.
2:13-cv-20363	Wanda Jean Rhodes v. Cook Incorporated, et al.
2:13-cv-20364	Nancy Ann Roberts v. Cook Incorporated, et al.
2:13-cv-20365	Juana Maria Rogers v. Cook Incorporated, et al.
2:13-cv-20366	Deborah A. Rohrer v. Cook Incorporated, et al.
2:13-cv-20369	Beatrice Elizabeth Vest v. Cook Incorporated, et al.
2:13-cv-20818	Juana Rivera, Gomez Rivera v. Cook Incorporated, et al.
2:13-cv-26420	Nancy Kinsey, John Kinsey v. Cook Biotech, Inc., et al
2:13-cv-28243	Norma Leben, Clay Leben v. Cook Incorporated, et al.
2:13-cv-30140	Betty Baskett v. Cook Incorporated, et al.
2:13-cv-30345	Judy Diann Odom v. Cook Incorporated, et al.
2:13-cv-30953	Valerie M. McLucas, George E. McLucas v. Cook Incorporated, et al.
2:13-cv-31744	Cheryl Tidwell v. Cook Incorporated, et al.
2:13-cv-32701	Marian Niccum v. Cook Incorporated, et al.
2:13-cv-33179	Beatriz Cox v. Cook Incorporated, et al.
2:14-cv-00692	Leota C. Rainwater, DeWayne K. Rainwater v. Cook Incorporated, et al.
2:14-cv-00731	Vickie L. Cingolani, John Cingolani v. Cook Incorporated, et al.
2:14-cv-01428	Karin Davis, Forrest Davis v. Cook Incorporated, et al.
2:14-cv-01714	Heather Chandler v. Cook Incorporated, et al.
2:14-cv-04164	Teresa Ann Taylor v. Cook Incorporated, et al.
2:14-cv-04798	Sandra Lavoie v. Cook Incorporated, et al.
2:14-cv-06003	Mary E. Brinkley, Gary Brinkley v. Cook Incorporated, et al.
2:14-cv-06203	Brandi M. Hicks v. Cook Incorporated, et al.



2:14-cv-07723	Christina Baca v. Cook Incorporated, et al.
2:14-cv-07724	Masoumeh Massira, Frank Kalantari v. Cook Incorporated, et al.
2:14-cv-09685	Julie Mattus, Jeffrey Mattus v. Cook Incorporated, et al.
2:14-cv-09823	Patsy Adams v. Cook Incorporated, et al.
2:14-cv-10380	Wilma Noe v. Cook Incorporated, et al.
2:14-cv-10464	Mary Ann Harrison, Kenneth Harrison v. Cook Incorporated, et al.
2:14-cv-10465	Bessie W. Barnett v. Cook Medical, Inc.
2:14-cv-10567	Kathy Christian, J. C. Christian Jr. v. Cook Incorporated, et al.
2:14-cv-10871	Amy Jackson, Michael Todd Jackson v. Cook Incorporated, et al.
2:14-cv-11137	Christal Cantrell, Chris Cantrell v. Cook Incorporated, et al.
2:14-cv-11139	Diana Brown v. Cook Incorporated, et al.
2:14-cv-11157	Priscilla Strickland v. Cook Incorporated, et al.
2:14-cv-11371	Marjorie Ruth Motherwell, Dave E. Motherwell Sr. v. Cook Incorporated, et al.
2:14-cv-11746	Virginia Kay Jackson v. Cook Incorporated, et al.
2:14-cv-11800	Linda Brown, Johnny Brown v. Cook Incorporated, et al.
2:14-cv-13035	Loletta Scogin, Gerald Scogin v. Cook Incorporated, et al.
2:14-cv-13430	Pamela R. DeCanter, Ryan DeCanter v. Cook Incorporated, et al.
2:14-cv-13433	Michele M. Findling, Robert Findling v. Cook Incorporated, et al.
2:14-cv-13440	Debra Ingram, Charles Ingram v. Cook Incorporated, et al.
2:14-cv-13442	Tracy McLean v. Cook Incorporated, et al.
2:14-cv-13447	Ronda Joy Pearman v. Cook Incorporated, et al.
2:14-cv-13452	Angela Ramirez, Antonio Ramirez v. Cook Incorporated, et al.
2:14-cv-13660	Diann Quinley v. Cook Incorporated, et al.
2:14-cv-13946	Tonya D. Hunt v. Cook Incorporated, et al.
2:14-cv-15073	Sandra Baker, Richard Baker v. Cook Incorporated, et al.
2:14-cv-15271	Janice Salzbrunn, Bernard Salzbrunn v. Cook Incorporated, et al.
2:14-cv-15272	Flora Collins, Greg Collins v. Cook Incorporated, et al.
2:14-cv-16077	Mary Proveaux v. Cook Incorporated, et al.
2:14-cv-16510	Mary Jane Kirby v. Cook Incorporated, et al.
2:14-cv-16511	Teresa Mae Schrader v. Cook Incorporated, et al.
2:14-cv-16923	Maria Serrano v. Cook Incorporated, et al.
2:14-cv-18428	Linda Blankenship v. Cook Incorporated, et al.
2:14-cv-18572	Naomi S. Clifford v. Cook Incorporated, et al.
2:14-cv-18823	Carol Wilbur, Raymond Wilbur v. Cook Incorporated, et al.
2:14-cv-18868	Frances Gallawa v. Cook Incorporated, et al.
2:14-cv-19378	Marla Delores Blanton, William Blanton v. Cook Incorporated, et al.
2:14-cv-19564	Beverly Louise Cook v. Cook Incorporated, et al.
2:14-cv-19565	Judith E. Daley v. Cook Incorporated, et al.
2:14-cv-19566	Ellen Louise Smith v. Cook Incorporated, et al.
2:14-cv-19567	Annabell L. Moore v. Cook Incorporated, et al.
2:14-cv-19805	Patricia K. McCracken v. Cook Incorporated, et al.
2:14-cv-20056	Valeria Phillips v. Cook Incorporated, et al.
2:14-cv-20342	Shari L. Nolan, Gary Nolan v. Cook Incorporated, et al.
2:14-cv-22479	Carol Darden, Richard Darden v. Cook Incorporated, et al.

2:14-cv-22485	Georgie L. Henson v. Cook Incorporated, et al.
2:14-cv-22486	Barbara Ruth Robillard, William Robillard v. Cook Incorporated, et al.
2:14-cv-22487	Tammie Lea Stephan v. Cook Incorporated, et al.
2:14-cv-22490	Priscilla Dawn Strickland, Mark Parks v. Cook Incorporated, et al.
2:14-cv-22525	Johanna Del Rio v. Cook Incorporated, et al.
2:14-cv-22561	Elizabeth Baker v. Cook Incorporated, et al.
2:14-cv-22710	Gloria Dobson, David Dobson v. Cook Incorporated, et al.
2:14-cv-23510	Patricia Noble v. Cook Incorporated, et al.
2:14-cv-23551	Heidi Paul, Matthew Paul v. Cook Incorporated, et al.
2:14-cv-24063	Cassandra Ward v. Cook Incorporated, et al.
2:14-cv-24088	Mary S. Farris v. Cook Incorporated, et al.
2:14-cv-24589	Jayne Gardner, David Gardner v. Cook Incorporated, et al.
2:14-cv-24709	Rosalind Philp v. Cook Incorporated, et al.
2:14-cv-25036	Virginia Garrison v. Cook Incorporated, et al.
2:14-cv-25729	Pamela S. Lopes v. Cook Incorporated, et al.
2:14-cv-26359	Mary Barner v. Cook Incorporated, et al.
2:14-cv-27435	Raye Ann Sanders v. Cook Incorporated, et al.
2:14-cv-29356	Cecilia J. Spruill v. Cook Incorporated, et al.
2:14-cv-29984	Alma Russell, William Russell v. Cook Incorporated, et al.
2:14-cv-30296	Jonna Miller v. Cook Incorporated, et al.
2:14-cv-30604	Elaine Odegard v. Cook Incorporated, et al.
2:14-cv-31008	Barbara Thomas, Michael Thomas v. Cook Incorporated, et al.
2:14-cv-31299	Lani Goodrum, Louis Goodrum v. Cook Incorporated, et al.
2:15-cv-00365	Brenda Haggard, W. L. Haggard v. Cook Incorporated, et al.
2:15-cv-00484	Kathleen Madhoun v. Cook Incorporated, et al.
2:15-cv-00679	Brenda G. Laurella v. Cook Incorporated, et al.
2:15-cv-00771	Alicia Martinez, Octavio Martinez v. Cook Incorporated, et al.
2:15-cv-01055	Martha Obregon v. Cook Incorporated, et al.
2:15-cv-02280	Geneva Mitchell v. Cook Incorporated, et al.
2:15-cv-02301	Patricia Yuricha v. Cook Incorporated, et al.
2:15-cv-02659	Nanette Rode, James Rode v. Cook Incorporated, et al.
2:15-cv-03667	Carolyn Hardison v. Cook Incorporated, et al.
2:15-cv-05219	Cynthia Hansen Nealeigh v. Cook Incorporated, et al.