

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE: COOK MEDICAL, INC., IVC
FILTERS MARKETING, SALES
PRACTICES AND PRODUCT
LIABILITY LITIGATION

Case No. 1:14-ml-2570-RLY-TAB
MDL No. 2570

This Document Relates to All Actions

Plaintiffs' Tender of Proposed CMO 19 (Bellwether Trial Schedule)

1. On September 8, 2017, this Court held a status conference in which the Court addressed the parties' proposed bellwether pre-trial and trial schedules.

2. During the hearing, the Court heard extensive argument on whether the three bellwether trials should be litigated simultaneously to ensure that if the first trial does not go forward, the parties can fill the October 2017 trial spot with another bellwether trial.

3. During the hearing, this Court agreed that the parties should work to ensure each of the three bellwether trials would be ready to go in October 2017: "I don't mean to interrupt, but if I set aside three or four weeks to try Hill and it, and it is resolved, I am going to want to have something ready to go to fill that three or four weeks." [Hrg. Transcript at 33.]

4. The Court went further: "I would want to make sure that if we do set aside basically October to try Hill, that case is not ready to go or is not going for

whatever reason, I would want something in this MDL to fill that time slot.” [Hrg. Transcript at 34.]

5. Plaintiffs believe the issue has been resolved and have already tendered a proposed CMO consistent with the Court’s statements.¹

6. Cook has now tendered a six-page brief (with more than seventy pages of attachments) re-arguing this issue. [See Dkt. No. 2643.]

7. Plaintiffs will not rehash all of the arguments made during the September 8, 2017, hearing; instead, Plaintiffs simply request the Court to enter the attached bellwether trial schedule.²

Respectfully submitted this 23rd day of September, 2016.

Respectfully submitted,

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/s/ Joseph N. Williams

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¹ The proposed CMO, which is attached to this tender as Exhibit A, was e-mailed to Ms. Doyle on September 22, 2016.

² Cook has also filed a motion requesting that both of their bellwether cases be tried before the Plaintiffs’ selection. [Dkt. No. 2645.] Plaintiffs are preparing a response and will file that response shortly.

CERTIFICATE OF SERVICE

I hereby certify that on September 23, 2016, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the CM/ECF participants registered to receive service in this MDL.

/s/ Joseph N. Williams _____

Joseph N. Williams

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CASE MANAGEMENT ORDER # 19
(BELLWETHER TRIAL PLAN)

Following the Court's selection of three matters as bellwether trial cases in this MDL, the Court issues this Bellwether Trial Plan, which supersedes and amends the Court's Case Management Order No. 17. It is the Court's intention that should the *Hill* case resolve prior to October 2, 2017, then the *Brand* case shall be tried on October 2, 2017. If both the *Hill* and *Brand* cases are resolved prior to October 2, 2017, then the *Gage* case shall be tried on October 2, 2017. As such, each of the deadlines below apply to all three bellwether cases.

1. Motions for Leave to Amend: All motions for leave to amend the pleadings or to join additional parties in bellwether trial cases shall be filed on or October 14, 2016.
2. Bellwether Depositions: Case-Specific Fact Depositions in Bellwether Cases shall be limited to (1) Plaintiff(s); Plaintiff's treating physicians, (3) sales representatives directly associated with the sale of the specific product implanted in the plaintiff, and (4) two additional fact witnesses. The parties agree that the sales representative depositions will generally occur prior to implanting/retrieval physician depositions. If the parties disagree regarding the proper sequencing of depositions, and sequence of question in depositions, in a specific Bellwether case, they will meet and confer prior to contacting the Court for assistance in resolving the issue. Additional Case-Specific depositions may be taken by agreement or by leave of Court upon good cause shown.

3. Expert Disclosures: Plaintiffs and Defendants shall make the disclosures required by Fed. R. Civ. P. 26(a)(2) on or before the dates listed below. The parties agree to provide dates each of their experts are available for deposition with their expert disclosures.

Plaintiffs	January 16, 2017
Defendants	March 16, 2017

4. Independent Medical Examinations: Any independent medical examinations of the plaintiff shall be requested by Defendants on or February 20, 2017. The parties shall work together to establish a protocol for IMEs.
5. Close of Discovery: Non-expert discovery must be completed by April 20, 2017. Expert discovery must be completed by May 19, 2017.
6. Motions for Summary Judgment and Daubert Motions: Motions for summary judgment and *Daubert* motions regarding the limitation or exclusion of expert testimony are due on or before June 9, 2017. The briefing schedule for motions for summary judgment and *Daubert* motions is controlled by Local Rule 56-1.
7. Summary Judgment Requirements: Absent prior leave of the Court, and for good cause shown, all issues raised in a motion for summary judgment under Fed. R. Civ. P. 56 must be raised by a party in a single motion. If a party intends to use expert testimony in connection with a motion for summary judgment to be filed by that party prior to the deadline for motions for summary judgment, such expert disclosures must be served on opposing counsel no later than 90 days prior to the filing of a motion for summary judgment. If such expert disclosures are served, the parties shall confer within 7 days to stipulate to a date for responsive disclosures (if any) and completion of expert discovery necessary for efficient resolution of the anticipated motion for summary judgment.
8. Witness and Exhibit Lists: All parties shall file and serve their final witness and exhibit lists for each of the bellwether trial cases 30 days before the final pretrial conference for each case. The lists should reflect the specific potential witnesses the party may call at each bellwether trial. It is not sufficient for a party to simply incorporate by reference “any witness listed in discovery” or such general statements. The list of final witnesses shall include a brief synopsis of the expected testimony.
9. Trial Date: Trial in the first bellwether matter is set to begin Monday, October 2, 2017. After completion of that trial (whether it be the *Hill* case or the *Brand* case), the second bellwether trial shall begin Monday March 6, 2018. Trial in the Third Bellwether will start August 9, 2018

SO ORDERED this:

Hon. Richard Young
United States District Court
Southern District of Indiana

AGREED TO BY:

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