

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

In Re: COOK MEDICAL, INC., IVC FILTERS
MARKETING, SALES PRACTICES AND
PRODUCTS LIABILITY LITIGATION

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

This Document Relates to All Actions

CASE MANAGEMENT ORDER # 27
(BELLWETHER TRIAL PLAN)

Pursuant to the Court's Amended Case Management Order No. 25 (Dkt. 10593), this Court enters the following scheduling order for the bellwether trial selections (*McDermitt (1:18-cv-946-RLY-TAB)*, *Burrage (1:18-cv-273-RLY-TAB)* and *Johnson (1:17-cv-1236-RLY-TAB)*):

1. **Motions for Leave to Amend:** All motions for leave to amend the pleadings or to joining additional parties in *McDermitt* shall be filed on or before September 30, 2019.
2. **Bellwether Depositions:** Case-Specific Fact Deposition in Bellwether Cases shall be limited to (1) Plaintiff(s), (2) 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 representatives' depositions will generally occur prior to implanting/retrieval physician depositions. If the Parties disagree regarding the proper sequencing of depositions and the sequence of questions 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 Fact 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) in *McDermitt* on or before the date(s) identified in Exhibit A.
4. **Independent Medical Examinations:** Any independent medical examinations of the Plaintiff in *McDermitt* shall be requested by Defendants on or before the date(s) identified in Exhibit A. The Parties shall follow the protocol outlined for these examinations in Case Management Order No. 21 (Dkt. 4978).

5. Close of Discovery: Discovery must be completed in *McDermitt* by the dates identified in Exhibit A. Extensions may be granted by agreement or by leave of Court upon good cause shown.

6. Preliminary Witness & Exhibit Lists: Preliminary witness and exhibit lists in *McDermitt* are due on or before the date(s) identified in Exhibit A. The lists should reflect the specific potential witnesses and exhibits at each bellwether trial. It is not sufficient for a Party to simply incorporate by reference “any witnesses listed in discover” or such general statements.

7. Motions for Summary Judgment and Daubert Motions: Motions for summary judgment and *Daubert* motions regarding the limitation or exclusion of expert testimony in *McDermitt* are due on or before the dates identified in Exhibit A. Responses to motions for summary judgment and *Daubert* motions are due on or before the dates identified in Exhibit A. Replies are due on or before the dates identified in Exhibit A. A hearing on *Daubert* motions and motions for summary judgment will be set by a separate order.

8. Bifurcation: Any Party who believes that bifurcation of trial is appropriate with respect to any issue or claim in *McDermitt* shall notify the Court as soon as practicable and no later than the date(s) identified in Exhibit A.

9. Motions in Limine: Motions *in limine*, responses, and replies, in *McDermitt* shall be filed in accordance with the dates identified in Exhibit A. A hearing on motions *in limine* will be set by a separate order.

10. Deposition Designations: The Parties shall exchange deposition designations in a form that lists the portions of the deposition(s), including the specific page and line numbers, that the Party intends to offer as evidence at trial. Deposition designations, counter designations, and redirect designations and related objections in *McDermitt* shall be filed in accordance with the dates identified in Exhibit A. A hearing on deposition designations will be set by a separate order.

11. Final Witness Lists: All Parties shall file and serve their final witness list, which identifies and notifies the other Party of the identity of all witnesses who will attend the trial, in *McDermitt* on or before the date(s) identified in Exhibit A. 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.

12. Final Exhibit Lists: All Parties shall file and serve their final exhibit list in *McDermitt* on or before the date(s) identified in Exhibit A.

13. Jury Instructions and Verdict Forms: All Parties shall file and serve their proposed jury instructions and verdict forms in *McDermitt* on or below the date(s) identified in Exhibit A.

14. Stipulations of Fact, Trial Briefs, and Notice to Court of Use of Evidence Presentation Equipment: The Parties shall file their stipulations of fact, file and serve their trial briefs, and submit their Notice to Court of use of Evidence Presentation Equipment, in *McDermitt* on or before the date(s) identified in Exhibit A.


15. Final Pretrial Conference: A final pretrial conference in *McDermitt* will be set by a separate order.

16. Trial Dates: Trial of *McDermitt* will begin on April 27, 2020, pursuant to the schedule in Exhibit A. Should *McDermitt* be dismissed or summary judgment granted, *Johnson* shall take its place as the next case to be tried, and the parties shall submit an amended Exhibit A within 7 days of the dismissal or judgment.

Counsel shall submit proposed schedules for the discovery and trials of *Johnson* and *Burrage* within 15 days of the date of this Order. *Johnson* will be tried in October 2020 and *Burrage* will be tried in February 2021.

17. Additional Deadlines: Any additional deadlines not specifically referenced above for *McDermitt* are set forth in Exhibit A.

SO ORDERED this 25th day of October 2019.


RICHARD L. YOUNG, JUDGE
United States District Court
Southern District of Indiana

Distributed Electronically to Registered Counsel of Record.

| EXHIBIT A -- <i>McDermitt</i> Deadlines | |
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| DEADLINE | TASK |
| 12/6/19 | Fact Discovery Closes |
| 12/13/19 | Plaintiff Expert Disclosures & Reports |
| 1/6/20 | Deadline for Conducting Independent Medical Examinations |
| 1/13/20 | Defendant Expert Disclosures & Reports |
| 2/13/20 | Expert Discovery Closes |
| 2/20/20 | <i>Daubert</i> and Summary Judgment Motions |
| 2/17/20 | Affirmative Depo Designations by Page and Line |
| 2/17/20 | Preliminary Witness and Exhibit List |
| 2/27/20 | Counter Depo Designations and Objections |
| 3/9/20 | Re-direct Depo Designations, Responses to Objections, and Objections to Counter Designations |
| 3/9/20 | Motions in Limine and to Bifurcate Issues and Claims |
| 3/11/20 | Final Witness List and Notice of Witnesses to Attend Trial |
| 3/16/20 | Objections to Re-direct Depo Designations and Responses to Objections to Counter Designations |
| 3/18/20 | Responses to <i>Daubert</i> and Motions for Summary Judgment |
| 3/23/20 | Responses to Motions in Limine |
| 3/23/20 | Responses to Objections to Re-direct Depo Designations & Submit to Court for Rulings |
| 3/25/20 | Parties Submit Stipulations of Facts, Trial Briefs, and Notice to Court of Use of Evidence Presentation Equipment |
| 3/27/20 | Jury Instructions & Verdict Forms |
| 4/1/20 | Replies to <i>Daubert</i> and Motions for Summary Judgment |

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| TBD | Hearing on <i>Daubert</i> , Summary Judgment, and In Limine Motions |
| TBD | Final Pretrial Conference |
| 4/27/20 | Jury Selection |
| 4/27/20 | Trial Start Date |