

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

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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

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This Document Relates to All Actions

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**SECOND AMENDED CASE MANAGEMENT ORDER # 19**  
**(THIRD AMENDED BELLWETHER TRIAL PLAN)**

This order supersedes all prior Case Management Order No. 19 (and any amendments to CMO 19) and Case Management Order No. 17.

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 before the dates listed below.

<i>Hill and Gage</i>	<i>Brand</i>
October 28, 2016 ( <i>past</i> )	March 14, 2017 ( <i>past</i> )

2. Bellwether Depositions: Case-Specific Fact Depositions 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 representative 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 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 in Exhibits A and C. The parties agree to provide dates each of their experts are available for deposition with their expert disclosures.<sup>1</sup>

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<sup>1</sup> For any expert who is deposed prior to August 3, 2017, the deadlines for filing *Daubert* motions contained in Exhibits A and B shall apply. For any expert who is deposed in *Hill and Gage* on or after August 3, 2017 (specifically including Dr. Kaufmann), any *Daubert* motion particular to such an expert shall be filed within 10

	<i>Hill and Gage</i>	<i>Brand</i>
Plaintiffs	March 17, 2017 ( <i>past</i> )	<i>See Exhibit C</i>
Defendants	June 12(non-medical) and 29 (medical)( <i>past</i> )	<i>See Exhibit C</i>
Rebuttal	Not permitted	<i>See Exhibit C</i>

4. Independent Medical Examinations: Any independent medical examinations of the plaintiff shall be requested by Defendants on or before the dates listed below. The parties shall work together to establish a protocol for IMEs.

<i>Hill and Gage</i>	<i>Brand</i>
March 20, 2017 ( <i>past and requested</i> )	<i>See Exhibit C</i>

5. Close of Discovery: Discovery must be complete by the dates listed below.

	<i>Hill and Gage</i>	<i>Brand</i>
Non-Expert	June 22, 2017 ( <i>past</i> )	<i>See Exhibit C</i>
Expert	July 22, 2017 ( <i>past</i> )	<i>See Exhibit C</i>

6. Preliminary Witness & Exhibit Lists: Preliminary witness and exhibit lists are due on or before the dates listed below. 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 witness listed in discovery” or such general statements.

<i>Hill and Gage</i>	<i>Brand</i>
August 1, 2017 ( <i>past</i> )	<i>See Exhibit C</i>

7. 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 the dates listed below. The briefing schedule for motions for summary judgment and Daubert motions is controlled by Local Rule 56-1, which requires the parties to submit their responses and replies on or before the dates listed below. A hearing on Daubert and Motions for Summary Judgment will be set by separate order.

	<i>Hill and Gage</i>	<i>Brand</i>
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days after the depositions is completed; any response brief will be due 30 days after the filing of the *Daubert* motion; and, any reply shall be filed 7 days after the response is filed.

Motions	August 9, 2017 ( <i>past</i> )	<i>See Exhibit C</i>
Responses	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Replies	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

8. 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.

9. Bifurcation: Any party who believes that bifurcation of trial is appropriate with respect to any issue or claim shall notify the court as soon as practicable and no later than the dates listed below.

<i>Hill and Gage</i>	<i>Brand</i>
<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

10. Motions in Limine: Motions in limine, responses, and replies shall be filed as follows. By separate Order, the Court will establish any hearing date for these motions.

	<i>Hill and Gage</i>	<i>Brand</i>
Motions	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Responses	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Replies	No replies.	No replies.

11. 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 designation, and redirect designations and related objections shall be filed in accordance with the following schedule:

	<i>Hill and Gage</i>	<i>Brand</i>
Affirmative Deposition Designations	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Counter Designations and Objections	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Re-direct Deposition Designations, Responses to Objections and Objections to Counter Designations	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

Objections to Re-Direct and Responses to Objections to Counter Designations	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>
Responses to Objections to Re-direct Designations & Submit to Court for Rulings	<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

12. 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, on or before the dates listed below. 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.

<i>Hill and Gage</i>	<i>Brand</i>
<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

13. Final Exhibit List: All parties shall file and serve their final exhibit list for each of the bellwether trial cases on or before the dates listed below.

<i>Hill and Gage</i>	<i>Brand</i>
<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

14. Jury Instructions and Verdict Form: All parties shall file and serve their proposed jury instructions and verdict forms on or below the dates listed below:

<i>Hill and Gage</i>	<i>Brand</i>
<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

15. 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, on or before the dates listed below.

<i>Hill and Gage</i>	<i>Brand</i>
<i>See Exhibit A &amp; B</i>	<i>See Exhibit C</i>

16. Final Pretrial Conference: A final pretrial conference will be held October 12, 2017 at 10:00 a.m.

17. Jury Selection and Voir Dire: Jury selection will begin in accordance with the dates below. All parties may file with the clerk requests for the Court to cover particular subjects or to ask particular questions during voir dire. Such requests shall be filed in accordance with the


dates below. After the Court completes its initial voir dire, the parties will have an opportunity to ask additional questions at the Court's discretion.

	<i>Hill and Gage</i>	<i>Brand</i>
Requests to the Court to cover particular subjects or ask particular questions during voir dire	See Exhibit A & B	See Exhibit C
Jury Selection	See Exhibit A & B	See Exhibit C

18. Trial Date: Trial in *Hill* will begin October 23, 2017. Trial in *Gage* will begin April 30, 2018. Trial in *Brand* will begin September 10, 2018.

19. Additional deadlines: Any deadlines not specifically referenced above are set forth in Exhibits A-C.

SO ORDERED this 23rd day of August 2017.

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

Distributed Electronically to Registered Counsel of Record

## EXHIBIT A

Hill Deadlines	Proposed Dates
Defendants' Non-Medical Expert Report Disclosures	6/12/17
Defendants' Medical Expert Report Disclosures	6/29/17
Rebuttal Expert Reports to Non-Medical Expert Reports	6/19/17
Rebuttal Expert Reports to Medical Expert Reports	7/6/17
Close of Fact Discovery	6/22/17
Expert Deposition Deadline	7/17/17
Expert Discovery Deadline	7/22/17
Preliminary Witness & Exhibit Lists	8/1/17
<i>Daubert</i> and Summary Judgment Motions	8/9/17
Motions for bifurcation of issues and claims	8/21/17
Affirmative Depo Designations by page and line	8/23/17
Responses to <i>Daubert</i> and Motions for Summary Judgment	9/6/17
Motions in Limine	9/12/17
Counter Depo Designations and Objections	9/12/17
Final Witness List and Notice of Witnesses to Attend Trial	9/18/17
Replies to <i>Daubert</i> and Motions for Summary Judgment	9/20/17
Final Exhibit List	9/23/17
Responses to Motions In Limine	9/26/17
Re-direct Depo Designations, Responses to Objections, and Objections to Counter Designations	9/26/17
Hearing on <i>Daubert</i> , motions for summary judgment, and motions in limine	TBD
Objections to Re-direct and Responses to Objections to Counter Designations	10/4/17
Jury Instructions & Verdict Forms	10/6/17
Responses to Objections to Re-direct Designations & Submit to Court for Rulings	10/9/17
Parties submit stipulations of facts, trial briefs, and notice to Court of use of evidence presentation equipment	10/9/17
Requests to the Court to cover particular subjects or ask particular questions during voir dire.	10/16/17
Final Pretrial Conference	10/12/17
Jury Selection	10/23/17
Trial Start Date	10/23/17

**EXHIBIT B**

<b>Gage Deadlines</b>	<b>Proposed Date</b>
<i>Daubert</i> Motions	8/9/2017 (past)
Summary Judgment Motions	8/11/2017 (past)
Responses to <i>Daubert</i> Motions	9/6/2017
Response to Summary Judgment Motions	9/8/2017
Replies to <i>Daubert</i> Motions	9/20/2017
Replies to Summary Judgment Motions	9/22/2017
Hearing on <i>Daubert</i> and Summary Judgment Motions	TBD
Motions for Bifurcation of Issues and Claims	2/12/2018
Affirmative Deposition Designations by Page and Line	2/14/2018
Motions in Limine	2/26/2018
Counter Deposition Designations and Objections	3/6/2018
Responses to Motions in Limine	3/12/2018
Final Witness List and Notice of Witnesses to Attend Trial	3/19/2018
Re-Direct Deposition Designations, Responses to Objections, and Objections to Counter Designations	3/20/2018
Final Exhibit List	3/23/2018
Hearing on Motions in Limine	TBD (Approx. 1 month before trial)
Objections to Re-direct and Responses to Objections to Counter Designations	3/28/2018
Responses to Objections to Re-Direct Designations & Submit to Court for Rulings	4/2/2018
Jury Instructions and Verdict Forms	4/13/2018
Parties Submit Stipulation of Facts, Trial Briefs, and Notice to Court of Use of Evidence Presentation Equipment	4/16/2018
Requests to the Court to Cover particular Subjects or Ask particular Questions During Voir Dire	4/16/2018
Final Pretrial Conference	TBD (Approx. 2 weeks before trial)
Jury Selection	4/30/2018
Trial Start Date	4/30/2018

**EXHIBIT C**

<b>Brand</b>	<b>Date</b>
Deadline for Conducting Independent Medical Examination	2/2/2018
Case Specific Fact Discovery and Treating Physician Discovery	2/5/2018
Fact Discovery	2/26/2018
Disclosure of Non Retained Experts	3/21/2018
Plaintiff Retained Expert Reports	4/18/2018
Defendant Retained Expert Reports	5/18/2018
Plaintiff Rebuttal Expert Reports	6/1/2018
Expert Discovery	6/29/2018
Affirmative Depo Designations by page and line	6/29/2018
Preliminary Witness and Exhibit List	7/2/2018
<i>Daubert</i> and Summary Judgment Motions	TBD
Motions for bifurcation of issues and claims	7/23/2018
Counter Depo Designations and Objections	7/23/2018
Re-direct Depo Designations, Responses to Objections, and Objections to Counter Designations	7/30/2018
Final Witness List and Notice of Witnesses to Attend Trial	8/3/2018
Responses to <i>Daubert</i> and Motions for Summary Judgment	8/6/2018
Motions in Limine	8/06/2018
Objections to Re-direct and Responses to Objections to Counter Designations	8/6/2018
Replies to <i>Daubert</i> and Motions for Summary Judgment	8/13/2018
Responses to Motions In Limine	8/13/2018
Responses to Objections to Re-direct Designations & Submit to Court for Rulings	8/13/2018
Parties submit stipulations of facts, trial briefs, and notice to Court of use of evidence presentation equipment	8/13/2018
Hearing on <i>Daubert</i> , motions for summary judgment, and motions in limine	TBD
Jury Instructions & Verdict Forms	8/20/2018



Final Pretrial Conference	TBD
Jury Selection	9/10/2018
Trial Start Date	9/10/2018