

**IN THE 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 CASES

CASE MANAGEMENT ORDER #21
PROTOCOL FOR INDEPENDENT MEDICAL EXAMINATION

Pursuant to Fed. R. Civ. P. 35, and Amended Case Management Order #19, Defendants Cook Incorporated, Cook Medical LLC (f/k/a Cook Medical Incorporated), and William Cook Europe ApS (collectively “Cook”), and the bellwether plaintiffs in this MDL (“Plaintiffs”), have agreed on the following protocol for the independent medical examination of Plaintiffs (“IME”), as those Plaintiffs have put certain aspects of their physical condition at issue in the lawsuits filed against Cook. The Court finds that good cause exists to order such examinations and **ORDERS** as follows:

1. Cook’s Request for an IME

Pursuant to Amended Case Management Order #19, ¶ 4, Cook must request an IME by the provided date (“Request Date”).

2. Plaintiffs’ Past Medical Examinations

Plaintiffs shall produce copies of any final reports, test results, notes, memoranda, and patient completed or patient-provided information from any prior medical examinations conducted by non-treating (examining) physicians of any of the Plaintiffs in the course of this litigation no later than sevendays from the Request Date, if that information has not otherwise been produced in the litigation.

3. Cook's Medical Examinations of Plaintiffs

Plaintiffs' medical examinations shall be completed at least ten days prior to Cook's expert disclosure deadline. Cook shall produce copies of any final reports, test results, or memoranda from the non-treating (examining) physicians from any such examinations within seven days of the production of expert reports. Supplemental depositions of Cook's medical examiners will occur before the close of expert discovery.

4. Protocol for Cook's Medical Examinations

Cook shall provide Plaintiffs with proposed dates, times, locations, and details regarding the scope of examinations, as well as the identity (and CV where available) of the examining health care provider, no later than fourteen days from the Request Date. Thereafter, the parties shall meet and confer to arrange for dates and times that are mutually acceptable to the parties.

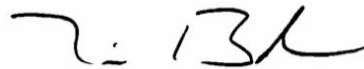
The protocol for the IMEs shall be as follows:

- (a) Cook is entitled to two IMEs of each Plaintiff by licensed health care professionals ("Health Care Professionals") in an appropriate office and/or examination room;
- (b) The Health Care Professionals are entitled to ask any questions of the Plaintiffs that relate to prior medical histories, personal or family histories and any other conversation or investigation that the Health Care Professionals would normally engage in during their examinations;
- (c) The Health Care Professionals are entitled to conduct examinations of the Plaintiffs related to their general health, cardiovascular system, gastrointestinal system, psychiatric state, etc.;

- (d) No representative of Cook shall be present at the IMEs; however, the Plaintiffs may bring one non-lawyer representative with them to the IMEs, and may be present before, during, and after the examinations; and
- (e) The parties shall bear their own costs for conducting the IMEs. Cook shall bear the cost of retaining the Health Care Professionals. Plaintiffs shall bear the cost of the travel expenses incurred in attending the IMEs if the IME is located in the jurisdiction in which they live, in which the case was originally filed, and/or in the jurisdiction that the case is currently pending. Cook shall bear the cost of Plaintiff's travel if the IMEs located elsewhere. In limited situations, Cook will agree to cover the travel expenses of a (non-lawyer) companion to accompany the Plaintiff to an IME where necessary and reasonable.
- (f) Plaintiffs maintain the right to object to the timing, geographic location, scope and extent of the requested examination(s), as well as the examining health care provider.

IT IS SO ORDERED.

Dated: 6/7/2017



Tim A. Baker
United States Magistrate Judge
Southern District of Indiana

Copies to all registered counsel of record via the Court's ECF system.
All non-registered counsel of record will be served by Plaintiffs' Lead Counsel.