

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

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

This Document Relates to: All Actions

**CASE MANAGEMENT ORDER # 25
(BELLWETHER SELECTION PLAN PROTOCOL)**

This Case Management Order outlines the protocol for compliance with Paragraphs 5 through 8 of the court's previous Order on the Cook Defendants' Motion for Screening Order And Bellwether Selection Plan (Filing No. 9322) (hereinafter "Order").

1. Using information provided by the Plaintiffs, Cook prepared a census for the court of all cases in the MDL and whether they are category 1, 2, 3, 4, 5, 6, or 7, and submitted the Census to the court on February 22, 2019, in compliance with Paragraph 2 of the Order.

2. On April 25, 2019, Cook provided the Plaintiffs' Steering Committee with a list of all the Tulip cases that Plaintiffs' counsel self-selected as Category 5 or Category 6 (the "Tulip Bellwether Pool"); as well as a list of every Celect case that Plaintiffs' counsel self-selected as a Category 5 or Category 6 case (the "Celect Bellwether Pool"). Each list was numbered, assigning each case a unique number, starting with one.

3. By **May 6, 2019**, Plaintiffs are directed to provide any edits or corrections they have to the Tulip Bellwether Pool and the Celect Bellwether Pool to Cook.

4. By **May 8, 2019**, the parties shall jointly submit a final joint Tulip Bellwether Pool list and a final Celect Bellwether Pool list to the court. Each list shall again be numbered identifying each case with a unique number, starting with one.

5. The court will then use random selection to identify 24 cases from Categories 5 and 6 from the bellwether pools: 16 Tulip and 8 Celect (the “Initial Bellwether Discovery Cases”). Specifically, at the **May 9, 2019**, hearing, the court will randomly select cases using <http://www.random.org> to generate random numbers within the range of unique numbers assigned to the Tulip Bellwether Pool and the Celect Bellwether Pool while in the presence of counsel for both Plaintiffs and Defendants.¹

6. By **May 17, 2019**, all Initial Bellwether Discovery Case plaintiffs shall submit updated medical authorizations to an agreed-on third-party medical records vendor, an updated Plaintiff Profile Sheet as provided for in Third Amended Case Management Order 4 (if applicable), and all medical records in plaintiffs’ possession, custody, or control to Cook.

7. The parties shall update the court on the status of medical records collection as to the Initial Bellwether Discovery Cases on at the **June 13, 2019**, hearing.

¹ Waiver of Lexecon is confirmed by Plaintiffs for all Tulip Bellwether Pool and Celect Bellwether Pool cases only. Nothing in this Case Management Order or otherwise shall indicate a waiver of Lexecon as to the remaining cases.

8. On **July 1, 2019**, the parties shall exercise their strikes by teleconference. The strikes allow Plaintiffs and Cook to strike from consideration 4 Tulip cases and 2 Celect cases each. Plaintiffs shall exercise their first strike, then Cook shall follow with its first strike, and the parties will continue to exercise alternating strikes until all strikes are exhausted. The 12 remaining cases comprise the Bellwether Pool.


9. On **July 8, 2019**, the parties will each submit briefs (no more than 12 pages total) containing a summary of facts and the parties' positions on why cases should or should not be selected as a bellwether case for each of the 12 remaining cases.

10. At the **July 11, 2019**, hearing, the court will hear argument on the selection of specific cases for trial as the next bellwether trials.

11. On **July 25, 2019**, based on the parties' briefing and any oral argument desired by the court, the court will select three representative cases as the next bellwether trials: two Tulip cases and a Celect case.

12. At the **August 15, 2019**, hearing, the parties will hold a pre-trial conference to set all pretrial deadlines for the three cases selected as the next bellwether trials. The court will determine case-specific pretrial schedules and deadlines, including the exact trial start dates, in a separate order.

SO ORDERED this 2nd day of May 2019.


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

Distribution to all electronically registered counsel of record via CM/ECF.

Distribution to all non-registered counsel of record to be made by Plaintiffs' lead counsel.