

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

CATHERINE MCKELLOP-MAXWELL

PLAINTIFF

vs.

CAUSE NO 1:16-CV-2095-RLY-TAB

COOK INCORPORATED;
COOK MEDICAL LLC; AND
WILLIAM COOK EUROPE APS,

DEFENDANTS

SHORT FORM COMPLAINT

COMES NOW the Plaintiff named below, and for Complaint against the Defendants named below, incorporate The Master Complaint in MDL No. 2570 by reference (Document 213).

Plaintiff further shows the court as follows:

1. Plaintiff/Deceased Party:

CATHERINE MCKELLOP MAXWELL

2. Spousal Plaintiff/Deceased Party's spouse or other party making loss of consortium claim:

3. Other Plaintiff and capacity (i.e., administrator, executor, guardian, conservator):

4. Plaintiff's/Deceased Party's state of residence at the time of implant:

Texas

5. Plaintiff's/Deceased Party's state of residence at the time of injury:

Texas

6. Plaintiff's/Deceased Party's current state of residence:

Texas

7. District Court and Division in which venue would be proper absent direct filing:

United States District Court – Western District of Texas

8. Defendants (Check Defendants against whom Complaint is made):

- Cook Incorporated
- Cook Medical LLC
- William Cook Europe ApS

9. Basis of Jurisdiction:

Diversity of Citizenship

Other: _____

a. Paragraphs in Master Complaint upon which venue and jurisdiction lie: For purposes of remand and trial, venue is proper pursuant to 28 U.S.C. §1391 in the federal judicial district of each Plaintiff's state of residence. A substantial amount of activity giving rise to the claims occurred in this District, and Defendants may be found within this District. Therefore, venue is proper in this jurisdiction under 28 U.S.C. §1391.

b. Other allegations of jurisdiction and venue:

10. Defendants' Inferior Vena Cava Filter(s) about which Plaintiff(s) is making a claim

(Check applicable Inferior Vena Cava Filters):

Günther Tulip® Vena Cava Filter

X Cook Celect® Vena Cava Filter

Gunther Tulip Mreye

Cook Celect Platinum

Other:

11. Date of Implantation as to each product:

January 8, 2010

12. Hospital(s) where Plaintiff was implanted (including City and State):

St. David's North Austin Medical Center, 12221 North Mopac Expressway, Austin,
Texas 78758

13. Implanting Physician(s):

Joseph Khalil Imsais, MD, 12221 North Mopac Expressway, Austin, Texas
78758

14. Counts in the Master Complaint brought by Plaintiff(s):

- Count I: Strict Products Liability – Failure to Warn
- Count II: Strict Products Liability – Design Defect
- Count III: Negligence
- Count IV: Negligence Per Se
- Count V: Breach of Express Warranty
- Count VI: Breach of Implied Warranty
- Count VII: Violations of Applicable _____ (insert State)
Law Prohibiting Consumer Fraud and Unfair and Deceptive Trade Practices
- Count VIII: Loss of Consortium
- Count IX: Wrongful Death
- Count X: Survival
- Count XI: Punitive Damages
- Other: _____ (please state the facts supporting
this Count in the space, immediately below)
- Other: _____ (please state the facts supporting
this Count in the space, immediately below)

15. Attorney for Plaintiff(s):

Ben C. Martin and Thomas Wm. Arbon

16. Address and bar information for Attorney for Plaintiff(s):

3710 Rawlins Street, Suite 1230, Dallas, Texas 75219

Ben C. Martin, State Bar No.: 13052400

Thomas Wm. Arbon, State Bar No. 01284275

Respectfully submitted,

/s/ Ben C. Martin

Ben C. Martin, Bar No. 13052400

Thomas Wm. Arbon, Bar No. 01284275

The Law Office of Ben C. Martin

3710 Rawlins Street, Suite 1230

Dallas, TX 75219

Telephone: (214) 761-6614

Facsimile: (214) 744-7590

bmartin@benccmartin.com

tarbon@benccmartin.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2016, a copy of the foregoing was served electronically and notice of the service of this document will be sent to all parties by operation of the Court's electronic filing system to CM/ECF participants registered to receive service in this matter. Parties may access this filing through the Court's system. A copy of the foregoing was also served via U.S. Mail to the following non-CM/ECF participants:

Angela Spears
Rosen & Spears
5075 Westheimer, Suite 760
Houston, TX 77056

Cliff W. Marcek
Cliff W. Marcek, P.C.
700 South Third Street
Las Vegas, NV 89101

Anthony James Urban
Law Offices of Anthony Urban, P.C.
474 N. Centre Street, Third Floor
Pottsville, PA 17901

David J. Britton
Law Offices of David J. Britton
2209 N. 30th Street, Suite 4
Tacoma, WA 98403

Bard K. Brian
222 Kentucky Avenue, Suite 10
Paducah, KY 42001

Jay Harris
Harris, Reny & Torzewski
Two Maritime Plaza, 3rd Floor
Toledo, OH 43604

Brian J. Urban
Law Offices of Anthony Urban, P.C.
474 N. Centre Street, Third Floor
Pottsville, PA 17901

Justin Kyle Brackett
Tim Moore, Attorney at Law, P.A.
305 East King St.
Kings Mountain, NC 28086

Charles Rene Houssiere, III
Houssiere Durant & Houssiere, LLP
1990 Post Oak Blvd., Suite 800
Houston, TX 77056-3812

Marian S. Rosen
Rosen & Spears
5075 Westheimer, Suite 760
Houston, TX 77056

Corrie Johnson Yackulic
Corrie Yackulic Law Firm PLLC
315 5th Avenue South, Suite 1000
Seattle, WA 98104-2682

Peter C. Wetherall
Wetherall Group, Ltd.
9345 W. Sunset Road, Suite 100
Las Vegas, NV 89148

George Jerre Duzane
Duzane, Kooperman & Mondelli
603 Woodland Street
Nashville, TN 37206-4211

Thomas H. Terry, III
619 Calhoun Road
Bay Village, OH 44140

Joseph A. Napiltonia
Law Office of Joe Napiltonia
213 Third Avenue North
Franklin, TN 37064

Robert M. Hammers, Jr.
Jason T. Schneider, P.C.
611-D Peachtree Dunwoody Road
Atlanta, GA 30328

Lucas J. Foust
Foust Law Office
1043 Stoneridge Drive, Suite 2
Bozeman, MT 59718

W. Bryan Smith
Morgan & Morgan, LLC
2600 One Commerce Square
Memphis, TN 38103

Wilnar J. Julmiste
Anderson Glenn LLP – Boca Raton, FL
2201 NW Corporate Boulevard
Suite 100
Boca Raton, FL 33431

/s/ Ben C. Martin

Ben C. Martin

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Catherine McKellop-Maxwell

DEFENDANTS

Cook Incorporated, Cook Medical LLC and William Cook Europe APS,

(b) County of Residence of First Listed Plaintiff Travis County, TX (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address and Telephone Number) The Law Offices of Ben C. Martin 3710 Rawlins Street, Suite 1230 Dallas, Texas 75219

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Estate, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. 1391

Brief description of cause: Cook Incorporated IVC Filter Litigation

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Baker DOCKET NUMBER MDL 2570

DATE 08/04/2016 SIGNATURE OF ATTORNEY OF RECORD /s/ Ben C. Martin

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.