

# Cook Optionally Retrievable IVC Filters

## NOTICE OF CERTIFICATION

**To all residents of Canada:** (a) who were implanted with an IVC Filter Product, namely: the Gunther Tulip Vena Cava Filter Set, the Cook Celect Vena Cava Filter Set, and the Cook Celect Platinum Vena Cava Filter Set (collectively, the “**IVC Filter Products**”), at any time on or before January 8, 2020 which was manufactured, marketed, and/or sold or otherwise placed into the stream of commerce in Canada by the defendants Cook (Canada) Inc., Cook Incorporated, and William Cook Europe APS (collectively; and

(b) who by virtue of a personal relationship to one or more of such persons described in (a) above, have standing in this action pursuant to section 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, or any analogous provincial legislation.

[the “**Class**”]

**IMPORTANT** **This notice does not constitute medical advice. Individuals who have had any IVC Filter Product placed should consult with their physicians if they have any questions with respect to their course of treatment and/or medical condition.**

**Class Action Lawsuit:** Inferior vena cava (“**IVC**”) filters are devices designed to filter blood clots which may otherwise travel to the heart and/or lungs. Optionally retrievable IVC filters are a type of filter that may be removed if medically advisable to do so after a patient is no longer at risk of a pulmonary embolism. This class action lawsuit has been initiated in Ontario alleging that the Defendants marketed and sold IVC Filter Products without properly warning of alleged increased risks of complications and injuries. The class action seeks, among other things, damages, including for personal injuries, related to this alleged failure to warn as well as consequential damages suffered by family members. The Defendants deny the allegations, deny that the warnings were insufficient and stand by their products.

**Certification:** On January 8, 2020, the action was certified as a class action. The certification order appointed Arie Kuiper, Wendy Kopeck and Garry Kopeck to act as representative plaintiffs for the Class.

The following common issues have been certified to be determined by the Court:

- (a) Did the Defendants’ failure to disclose, or failure to sufficiently disclose, in their “Instructions for Use” (“**IFUs**”) that IVC Filter Products may cause injuries and complications, including device migration, perforation, fracture, and embolization, and if so, did such failure constitute a breach of the Defendants’ duty to warn?
- (b) If the answer to common issue (a) is “yes”, when did the breach of duty occur?
- (c) Did the Defendants’ fail to disclose, or fail to sufficiently disclose, in their IFUs the importance of timely removal of IVC Filter Products to avoid, reduce, or remediate complications, and if so, did such failure constitute a breach of the Defendants’ duty to warn?
- (d) If the answer to (c) is “yes”, when did the breach of duty occur?
- (e) Did the Defendants’ failure to disclose, or failure to sufficiently disclose, in their IFUs that the removal of their IVC Filter Products to avoid, reduce, or remediate complications may not be possible, and if possible, could require multiple surgeries, constitute a breach of the duty to warn?
- (f) If the answer to common issue (e) is “yes”, when did the breach of duty occur?

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This notice does not mean that the Court has taken a position as to the likelihood of recovery on the part of any plaintiffs, or as to the merits of the claims or defences asserted by either side.

**Participation in Class Action** Members of the Class who want to participate in the class action are automatically included and need not do anything at this time. *The Class Proceedings Act* provides that no Class member, other than the representative plaintiffs, will incur liability for legal costs if the action is dismissed.

Each Class member who does not opt out of the class action will be bound by the terms of any judgment or settlement and will not be allowed to pursue an independent action. If the class action is successful, Class members may be entitled to share in the amount of any award or settlement recovered.

**Opting Out** Class Members who do not want to participate in the class action must opt out. If you want to opt out of the class action, you must send a written, signed election, including your name, address, telephone number to: **McKenzie Lake Lawyers LLP, c/o Cook IVC Filter Class Action, 140 Fullarton Street, Suite 1800, London ON N6A 5P2** by March 16, 2021.

No person may opt out a minor (person under 18 years of age) or a mentally incapable member of the Class without permission of the Court after notice to The Children's Lawyer and/or the Public Guardian and Trustee, as appropriate.

Family members of any Class members who opt out will be deemed to have opted out. If a Class member is deceased, his or her estate trustee has the right to opt out.

A Class Member who opts out will not be entitled to participate in the class action. His or her right to pursue a claim in a separate proceeding will not be affected.

**Important** This notice does not constitute medical advice. Individuals who have been implanted with a retrievable IVC filter product should consult with their physicians if they have any questions with respect to their course of treatment and/or medical condition.

**Questions?** The court offices will be unable to answer any questions about the matters in this Notice. If you have any questions regarding the certification order or about the class action in general, information is available on Class Counsel's websites: [www.siskinds.com](http://www.siskinds.com), [www.mckenzielake.com](http://www.mckenzielake.com), and [kmlaw.ca](http://kmlaw.ca) or by contacting Class Counsel directly, as follows:

**Siskinds LLP**      **Toll Free Tel:** 1.800.461.6166  
**Email:** IVCFilters@siskinds.com

**McKenzie Lake  
Lawyers LLP**      **Toll Free Tel:** 1.844.672.5666  
**Email:** noble@mckenzielake.com

**Koskie Minsky  
LLP**      **Toll Free Tel:** 1.800.764.7717  
**Email:** ivcfiltersclassaction@kmlaw.ca

**This Notice was approved by order of the Ontario Superior Court of Justice.**