

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

**IN RE: ETHICON, INC.,
PELVIC REPAIR SYSTEM
PRODUCTS LIABILITY LITIGATION**

MDL No. 2327

**THIS DOCUMENT RELATES TO
ETHICON WAVE 2 CASES**

**PRETRIAL ORDER # 206
(Docket Control Order – Wave 2 Cases)**

At my request, the parties recently submitted a joint list of 200 of the oldest cases in the Ethicon MDL (not already in Ethicon Wave 1) that name only Ethicon, Inc., Ethicon, LLC and/or Johnson & Johnson (the “Ethicon defendants”) or allege claims against only the Ethicon defendants’ products. These cases, attached hereto as Exhibit A, will be known as the “Ethicon Wave 2 cases,” and it is **ORDERED** as follows:

A. SCHEDULING DEADLINES. The following deadlines shall apply in the Ethicon Wave 2 cases:

Plaintiff Fact Sheets.	01/19/2016
Defendant Fact Sheets.	02/19/2016
Deadline for written discovery requests.	04/05/2016
Expert disclosure by plaintiffs.	05/05/2016
Expert disclosure by defendants.	06/03/2016
Expert disclosure for rebuttal purposes.	06/17/2016
Deposition deadline and close of discovery.	07/01/2016
Filing of Dispositive Motions.	07/08/2016
Response to Dispositive Motions.	07/25/2016
Reply to response to dispositive motions.	08/04/2016
Filing of <i>Daubert</i> motions.	07/21/2016
Responses to <i>Daubert</i> motions.	08/08/2016
Reply to response to <i>Daubert</i> motions.	08/18/2016

1. **Discovery Completion Date.** The last date to complete depositions shall be the “discovery completion date” by which all discovery, including disclosures required by Federal Rule of Civil Procedure 26(a)(1), and (2), but not disclosures required by Federal Rule of Civil Procedure 26(a)(3), shall be completed.

2. **Limitations on Interrogatories, Requests for Admissions and Depositions.**

The following limitations apply:

- a. Defendants are limited to 10 interrogatories and 10 requests for admission per plaintiff.
- b. Plaintiffs are limited to 10 interrogatories and 10 requests for admission to the Ethicon defendants.
- c. In each individual member case, no more than 4 treating physicians may be deposed.¹
- d. Depositions of plaintiff’s friends and family members may be taken at any time prior to trial provided the deposition is requested before the discovery completion date.
- e. Depositions of any witness are limited to 3 hours absent agreement of the parties.
- f. The court will consider modifications to the above limitations upon good cause shown.

3. **Limitations on Experts.** The following limitations related to experts apply:

¹ To the extent disputes arise regarding the division of time between the parties for the deposition of treating physicians (three hours total absent agreement), I will address those disputes, rather than the assigned Magistrate Judge, Judge Eifert.

- a. The parties may conduct general and specific expert discovery on the products at issue in Ethicon Wave 2. In light of the bellwether trials that already occurred and the substantial discovery conducted to date on the Ethicon defendants' products, the parties are cautioned not to engage in duplicative general expert discovery, but instead, to tailor their discovery to the remaining Ethicon defendants' products at issue (to the extent such discovery is necessary), supplementing any discovery already completed and conducting specific causation discovery for the Ethicon Wave 2 plaintiffs. In light of the common products involved in Ethicon Wave 2, the likelihood of overlap in expert opinion from one case to another (except as to specific causation) and the need to streamline discovery in these cases, **each side is limited to no more than five (5) experts per case (exclusive of treating physicians)**. It is the court's expectation that these experts will overlap for plaintiffs who have the same product(s), to some extent, if not entirely.
- b. The parties shall coordinate the depositions of general causation experts. Insofar as multiple plaintiffs utilize the same general causation expert or experts, those experts shall be deposed only once on the issue of general causation. As to Ethicon's experts, plaintiffs are instructed to choose a lead questioner.
- c. The court encourages the coordination of depositions of specific causation experts to the extent there is overlap in the parties' use of specific causation experts for multiple plaintiffs.

- d. The court will consider modifications to the above limitations upon good cause shown.

B. MOTION PRACTICE.

1. **Early Dispositive Motions.** If discovery (e.g., the deposition of plaintiff and her implanting physician) reveals facts that could support a motion that would be dispositive of the *entirety* of a plaintiff's claims (e.g., causation, the statute of limitations), either party may seek the court's leave *in the individual member case* to file an early dispositive motion on that issue. If such leave is granted, the court shall set a briefing schedule at that time.

2. **Daubert Motions.** For the filing of *Daubert* motions on general causation issues only, the parties are instructed to file one *Daubert* motion per expert in the main MDL (MDL 2327) instead of the individual member case. Each side may file one response and one reply in the main MDL to each *Daubert* motion. This limitation does not apply to specific causation *Daubert* motions, responses and replies. Specific causation *Daubert* motions, responses and replies must be filed in the individual member cases. To the extent an expert is both a general and specific causation expert, the parties may file a general causation motion in the main MDL 2327 and an individual specific causation motion in an individual member case.

3. **Hearings.** Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.

4. **Page Limitations.** The page limitations provided in Local Rule of Civil Procedure 7.1(a)(2) apply to memoranda in support of all dispositive and *Daubert* motions, oppositions, and replies, and the court will not be inclined to grant motions to exceed the page limit.

5. **Confidential Documents.** In the past, the court has permitted parties to file placeholder exhibits in support of *Daubert*, dispositive and other motions, responses and replies in

the place of confidential documents that may be sealed and then, within five days, redact/dedesignate the documents or file a motion to seal. *Moving forward, the court will no longer permit this practice. Parties may no longer file placeholder exhibits.* The court expects leadership counsel for plaintiffs and the Ethicon defendants to resolve issues related to confidential designations well before the filing of motions. Filings containing placeholder exhibits will be struck. In the event there are issues related to sealing of confidential documents that the parties are unable to resolve, they must be brought to the court's attention in a consolidated manner as follows: A consolidated motion to seal is due on or before **June 10, 2016**, any response is due **June 20, 2016** and any reply is due **June 30, 2016**.

6. **Locations of Filings.** With the exception of the general causation *Daubert* motions as outlined above, the parties are reminded that they must file dispositive and *Daubert* motions on specific causation, responses and replies in the applicable member cases only, not in the Ethicon MDL.

C. CASES READY FOR TRANSFER, REMAND OR TRIAL

1. **Venue Recommendations.** By no later than **May 16, 2016**, the parties shall meet and confer concerning the appropriate venue for each of the cases, and the parties shall submit joint venue recommendations to the court by **May 24, 2016**. The parties' joint recommendation(s) shall identify the cases about which the recommended venue is in dispute. The court may then request briefing concerning the venue for those cases about which the parties disagree. Each party reserves the right to object to the venue selected by its adversary or the court.

2. **Transfer and Remand.** At the conclusion of pre-trial proceedings, the court, pursuant to PTO # 15 and 28 U.S.C. § 1404(a), will transfer each directly-filed case to a federal district court of proper venue as defined in 28 U.S.C. § 1391. In the alternative, pursuant to PTO

15 and 28 U.S.C. § 1407, cases that were transferred to this court by the MDL panel shall be remanded for further proceedings to the federal district court from which each such case was initially transferred.²

3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed and the court rules on the parties' pretrial motions. The trial date for cases transferred or remanded to other federal district courts shall be set by the judge to whom the transferred or remanded case is assigned (including the undersigned through intercourt assignment).

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327 and in the Ethicon Wave 2 cases identified in Exhibit A. In cases subsequently filed in this district after 2:15-cv-15339, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action at the time of filing of the complaint. In cases subsequently removed or transferred to this court, a copy of the most recent pretrial order will be provided by the Clerk to counsel appearing in each new action upon removal or transfer. It shall be the responsibility of the parties to review and abide by all pretrial orders previously entered by the court. The orders may be accessed through the CM/ECF system or the court's website at www.wvsd.uscourts.gov.

ENTER: November 20, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

²As expressly contemplated by PTO # 15, the Ethicon defendants do not waive their right to seek transfer—pursuant to 28 U.S.C. § 1406(a) or any other available ground—of any case to a court of proper venue, regardless of whether that case was transferred to or directly-filed in the Southern District of West Virginia.

EXHIBIT A

Case	Civil Action Number
Ankenman, Cathleen & John J.	2:12cv00872
Kowalski, Judith Mary	2:12cv01323
Hart, Mary Ann & William J.	2:12cv01326
Schroeder, Carreen & Matthew	2:12cv01327
Almendarez, Angela M.	2:12cv01329
Hines, Lynn & Gregory	2:12cv01331
Rose, Lola	2:12cv01336
Vandergriff, Debbie & Carl	2:12cv01342
Eaton, Cynthia & Frank	2:12cv01348
Aldrich, Jacqueline Marie & Darryl	2:12cv01364
Higgins, Susan & Bob	2:12cv01365
McDonald, Maria & Thomas	2:12cv01366
Glasgow, Carol	2:12cv01367
Valle, Maritza	2:12cv01368
Thomas, Mary	2:12cv01370
Fitzgerald, Alina & Christopher	2:12cv01371
Boudreau, Linda L. & Charles J.	2:12cv01373
Simpson, Sherry Gill & Ricky	2:12cv01414
Watson, Sandra Rosalie & Earl L.	2:12cv01426
Brady, Victoria Lee & Maurice Joseph	2:12cv01428
Mickle, Karen	2:12cv01432
Grayson, Pamela Sue	2:12cv01435
Pocztowski, Debra	2:12cv01470
Perry, Mary Lou	2:12cv01477
Ford, Deborah K. & Donald K. Blowers, Jr.	2:12cv01486
Brown, Valerie	2:12cv01489
Blackston, Ossie & John	2:12cv01493
Martin, Diann & Donald	2:12cv01495
Schomer, Margaret A.	2:12cv01497
Smith, Patricia G. & Mark	2:12cv01498
Cruse, Peggy D.	2:12cv01501
Raney, Barbara A. & Marcus	2:12cv01507
Espinoza, Rhondi	2:12cv01517
Majors, Jennifer A. & Jonathan S.	2:12cv01523
Flanigan, Iris & Earl David	2:12cv01524
Gologan, Didina & Alexandru	2:12cv01528
Burton, Kimberly Lee & Christopher Carl	2:12cv01529

Chase, Alvette	2:12cv01533
McGathey, Elizabeth M.	2:12cv01538
Ferguson, Teresa	2:12cv01544
Crews, Lillie Harriet & Wain E.	2:12cv01549
Spitzner, Bobbie Dianne & James W.	2:12cv01552
Sanders, Melissa & Charles, Jr.	2:12cv01562
Amidei, Betty	2:12cv01563
Childress, Sandra & Timothy	2:12cv01564
Cottrell, Teresa & Joe Palazzolo	2:12cv01565
Harper, Kathy	2:12cv01567
Wilson, Marcia & Robert	2:12cv01568
Rasos, Katherine	2:12cv01599
Walkingstick, Margaret Christine	2:12cv01616
Smythia, Rebecca	2:12cv01622
Smith, Andora	2:12cv01623
Lindberg, Patricia & Carl	2:12cv01637
Perez, Leezel & Jeffrey	2:12cv01640
Cole, Phyllis Smith & Willie Ray	2:12cv01645
Guffey, Gail	2:12cv01650
Hatfield, Nona & Billy Ray	2:12cv01657
Moore, Phyllis	2:12cv01659
Cooper, Jennifer & Dave	2:12cv01660
Carter, Tamara & David	2:12cv01661
Smallwood, Nancy & Leon, Sr.	2:12cv01662
Glenn, Rhonda & Era Fox, III	2:12cv01663
Allen, Diana & Timothy	2:12cv01676
Fleck, Jean E.	2:12cv01681
Lenz, Debera & Robert	2:12cv01692
Mooney, Konnie L. & James	2:12cv01695
Miller, Mona	2:12cv01696
Bailey, Pamela & Houston	2:12cv01700
Cedeno, Joyce	2:12cv01701
Colbert, Rhonda & Joseph	2:12cv01702
Hoch, Susan & Christopher	2:12cv01703
Johnson, Cynthia & Robert	2:12cv01704
Meyer, Linda & Steve	2:12cv01705
Muir, Marilyn & Scott	2:12cv01706
Shelton, Mary & Frank	2:12cv01707
Shennum, Janice	2:12cv01708
Swanson, Karen & Thomas	2:12cv01709
Parker, Belinda	2:12cv01710

Hutchison, Deanna Gail	2:12cv01711
Suter, Carol Ann & Troy W.	2:12cv01712
Denton, Shirley & Marvin	2:12cv01719
Frazier, Margaret & William Allen	2:12cv01731
Raines, Myra & Kenneth	2:12cv01735
Rhodes, Rebecca & Scott	2:12cv01736
Sidwell, Loretta & Jimmy	2:12cv01737
Williamson, Betty & Donald	2:12cv01739
Gibson, Susan & Michael	2:12cv01740
Savage, Stacey D. & Ebbie E. Ferrell	2:12cv01743
Blevins, Vickie Lea & Robert Oliver	2:12cv01746
Slade, Sebrina & Eric	2:12cv01753
Paris, Christin & Michael	2:12cv01759
Young, Tina L. & Jeffrey	2:12cv01772
Patrick, Lottie M. & John D.	2:12cv01776
Lane, Ann Jennette & Daniel Mark	2:12cv01785
Cutter, Jenesta & Larry A.	2:12cv01790
Burnett, Mary K.	2:12cv01795
Heuer, Myra	2:12-cv-01796
Hammett, Carolyn R.	2:12cv01802
Brookman, Lesley Mitchell & Michael	2:12cv01803
Merten, Janet & Gerard	2:12cv01817
Zutovsky, Linda & Leonard	2:12cv01818
Sierra, Ana & Luis	2:12cv01819
Hemingway, Veda & Gary	2:12cv01829
Strickland, Deborah J. & Matthew	2:12cv01830
Guy, Sheryl C.	2:12cv01831
Gray, Wanda	2:12cv01832
Abell, Emily S. & Michael K.	2:12cv01833
Bishop, Cheryl L.	2:12cv01834
Sybank, Bernie & Herman	2:12cv01836
Franklin, Betty	2:12cv01837
Gallehugh, Michelle & Ronnie	2:12cv01838
Parton, Lori Anne Copeland, Executrix of the Estate of Sue Bilbrey Copeland, deceased	2:12cv01848
Peterson, Winnie Elise	2:12cv01849
Jernigan, Joan E. & Fred T.	2:12cv01850
Luna, Tracy L.	2:12cv01853
Hays, Brenda & Roger	2:12cv01855
Sutton, Martha	2:12cv01857
Hensley, Mary M.	2:12cv01858

Bowles, Phyllis & Charles	2:12cv01865
Rogers, Ruby G. & Dwayne L.	2:12cv01877
Irwin, Priscilla A. & Daniel S.	2:12cv01878
Dycus, Myrtle Frances	2:12cv01879
Henry, Lana & Phillip Dean	2:12cv01938
Garland, Marian	2:12cv01939
Young-Poole, Brenda	2:12cv01962
Riggs, Donna & Gary	2:12cv01967
Zapata, Sandra	2:12cv01972
Slocumb, Kathryn	2:12cv01974
Hughes, Brenda L. & Ronnie	2:12cv01976
Poole, Cheryl & Kenneth	2:12cv01978
Devoe, Debra & Randy	2:12cv01979
Moon, Carolyn	2:12cv01980
Covington-Branker, Barbara M. & Brian B.	2:12cv01983
Cope, Michele A. & Barry	2:12cv01984
De Forrest, Patricia Ann & John H.	2:12cv01985
Cambre, Terri L.	2:12cv01986
Trimper, Carolyn S.	2:12cv01987
West, Peggy Sue & Larry R.	2:12cv01988
Phillips, Eleanor F. & John R.	2:12cv01989
Higgins, Anna R.	2:12cv01990
Brennon, Rebecca J.	2:12cv01995
Carr, Gwendolyn N. & Rundell D.	2:12cv01996
Bates, Diane	2:12cv02020
Bowers, Betty Jean	2:12cv02022
Beard, Gavie & Kenneth	2:12cv02025
Carroll, Margaret	2:12cv02026
Gullett, Brenda & Carl	2:12cv02027
Maddox, Brenda	2:12cv02028
Martin, Phyllis	2:12cv02029
Peterson, Tracy & Kevin	2:12cv02030
Reed, Deborah F. & Dale K.	2:12cv02059
Chrysler, Marion	2:12cv02060
Heddle, Bridget	2:12cv02071
Pratt, Cathy	2:12cv02072
Hernandez, Toni	2:12cv02073
Dawson, Kristen	2:12cv02074
Daugherty, Angela & Jimmy	2:12cv02076
Marshall, Natalie C. & David R.	2:12cv02077
Hand, Wanda M. & Charles W.	2:12cv02079

Burns-Martin, Dayna & Kevin	2:12cv02081
Brady, Deborah D.	2:12-cv-02086
Hicks, Shannon H. & James D.	2:12cv02094
McClain, Barbara Sue	2:12cv02095
Roberts, Brenda C. & Dwight	2:12cv02096
Clay, Crystal Lynn	2:12cv02097
Wilson, Tina	2:12cv02099
Scott, Teresa	2:12cv02100
Bishop, Jessie	2:12cv02101
Whinery, Joyce	2:12cv02102
Nelson, Kathryn M.	2:12cv02103
Loomis, Barbara & Dighton	2:12cv02104
Minogue, Bridgette	2:12cv02112
Doucette, Karen L.	2:12cv02125
Dunham, Lynne & David	2:12cv02131
Ursini, Tara	2:12cv02132
Anderson, Elaine	2:12cv02134
Crabtree, Reba & Jack	2:12cv02135
Lary, Sheryl & Kevin E.	2:12cv02136
Manor, Kristy & John E., III	2:12cv02137
Maxwell, Bonnie	2:12cv02138
Lewis, Marlene	2:12cv02139
Messina, Laritza & John	2:12cv02140
Morrison, Laura	2:12cv02141
Panske-Phillips, Emma & Luther Y., Jr.	2:12cv02142
Phillips, Ramona	2:12cv02143
Pitts, Michelle	2:12cv02144
Green, Janice	2:12cv02148
Pippin, Laura & Donald	2:12cv02152
Bihlmeyer, Donna & Joe	2:12cv02159
Semere, Yvonne	2:12cv02160
Hreiz, Amy Elizabeth & Adel Elias	2:12cv02165
Villarreal, Katherine & Carlos	2:12cv02167
Ogletree, Linda J. & John A.	2:12cv02168
Partin, Patricia Graham	2:12cv02179
Pageau, Tina Marie	2:12cv02180
Lambert, Corrie Ann & Ronson	2:12cv02183
Martin, Patricia J. & Dennis R., Sr.	2:12cv02185
Miller, Rose M.	2:12cv02187
Pieper, Laura & Mike	2:12cv02189
Pridmore, Hope Elaine & James O.	2:12cv02190