

**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 3 CASES**

**PRETRIAL ORDER # 210
(Docket Control Order – Wave 3 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 Waves 1 or 2) 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 3 cases,” and it is **ORDERED** as follows:

A. SCHEDULING DEADLINES. The following deadlines shall apply in the Ethicon

Wave 3 cases:

Plaintiff Fact Sheets.	03/21/2016
Defendant Fact Sheets.	04/19/2016
Deadline for written discovery requests.	06/06/2016
Expert disclosure by plaintiffs.	07/04/2016
Expert disclosure by defendants.	08/02/2016
Expert disclosure for rebuttal purposes.	08/16/2016
Deposition deadline and close of discovery.	08/30/2016
Filing of Dispositive Motions.	09/06/2016
Response to Dispositive Motions.	09/23/2016
Reply to response to dispositive motions.	10/03/2016
Filing of <i>Daubert</i> motions.	09/19/2016
Responses to <i>Daubert</i> motions.	10/07/2016
Reply to response to <i>Daubert</i> motions.	10/17/2016

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 3. In light of the bellwether trials and Waves 1 and 2 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 3 plaintiffs. In light of the common products involved in Ethicon Wave 3, 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 **August 9, 2016**, any response is due **August 19, 2016** and any reply is due **August 29, 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 **July 15, 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 **July 25, 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

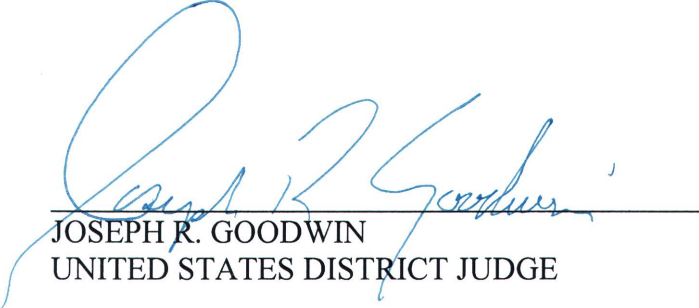
3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed 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 3 cases identified in Exhibit A. In cases subsequently filed in this district after 2:15-cv-16245, 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

² As 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.

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: December 18, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

EXHIBIT A

	Case	Civil Action Number
1	Angelia M. & Manuel M. Ramirez	2:12-cv-02191
2	Mary Frances & Joseph L. Richard	2:12-cv-02192
3	Dawn & David Sequino	2:12-cv-02193
4	Susan & Stanley Struckus	2:12-cv-02194
5	Mary & Jeffrey Ward	2:12-cv-02198
6	Leslie Warner	2:12-cv-02199
7	Judy Haddon	2:12-cv-02200
8	Nancy & Steve Russell	2:12-cv-02201
9	Grace & Edward Eack	2:12-cv-02219
10	Leslie & Eric Rodgers	2:12-cv-02221
11	Mattie & Ronnie Todd	2:12-cv-02242
12	Kathy & Joseph Birt	2:12-cv-02251
13	Patricia & Martin, Jr. Kuks	2:12-cv-02257
14	Charlotte A. & Troy Day	2:12-cv-02264
15	Norma J. & James Kustes	2:12-cv-02265
16	Frankie & Jimmy Miller	2:12-cv-02266
17	Edith A. & Roger Richardson	2:12-cv-02267
18	Tonya Rogers	2:12-cv-02268
19	Ruth & Anthony Coffman	2:12-cv-02278
20	Shannon O'Neal & James W. Hewatt	2:12-cv-02279
21	Linda & Greg Combs	2:12-cv-02283
22	Joyce Dobson	2:12-cv-02298
23	Barbara A. & Joseph R. Wilcox	2:12-cv-02300
24	Samantha L. Webb	2:12-cv-02314
25	Karen Conley	2:12-cv-02315
26	Helen Harper	2:12-cv-02316
27	Deborah Blankenship	2:12-cv-02327
28	Tammy & James, III Carroll	2:12-cv-02328
29	Mary Pritchett	2:12-cv-02329
30	Christina Tullier	2:12-cv-02331
31	Helen Van Wyck	2:12-cv-02374
32	Linda & Ralph Burroughs	2:12-cv-02378
33	Patricia Warren	2:12-cv-02381
34	Traci & Marty Goss	2:12-cv-02382
35	Deborah & John Greene	2:12-cv-02386
36	Geraldine & John Yaletchko	2:12-cv-02401
37	Mary & Keith Horton	2:12-cv-02402
38	Bonnie Odum	2:12-cv-02404
39	Janet Hawkins	2:12-cv-02409
40	Bonnie & Calvin Huggins	2:12-cv-02412
41	Norma & Larry Carroll	2:12-cv-02414
42	Kimberly Stevens	2:12-cv-02424
43	Stephanie & Steven Blanchard	2:12-cv-02429

	Case	Civil Action Number
44	Katherine Didomizio	2:12-cv-02436
45	Cynthia & Raymond, Sr. Falcon	2:12-cv-02446
46	Melissa Mincey	2:12-cv-02448
47	Rhonda & Anthony Arnette	2:12-cv-02475
48	Dawn & Michael Baker	2:12-cv-02476
49	Rhonda & Roger Harvey	2:12-cv-02477
50	Donna & Earl Matthews	2:12-cv-02478
51	Terri Milan	2:12-cv-02479
52	Donna Murphy	2:12-cv-02485
53	Francesca Bopp	2:12-cv-02486
54	Elisabeth Payne	2:12-cv-02488
55	Joanne Phillips	2:12-cv-02489
56	Martha & Kenneth Brown	2:12-cv-02498
57	Janie L. & Clarence J. Moret	2:12-cv-02501
58	Barbara Hatfield	2:12-cv-02509
59	Debbie & James E. Howard	2:12-cv-02511
60	Linda Madding	2:12-cv-02512
61	Shirley L. & George W. Knight	2:12-cv-02515
62	Rhonda Cooper	2:12-cv-02532
63	Brandy & Jeffrey Swinney	2:12-cv-02539
64	Deborah L. & David K. Slone	2:12-cv-02544
65	Carla J. Thorpe	2:12-cv-02546
66	Pamela & Jackie Lee, Sr. Harvey	2:12-cv-02556
67	Alice Sue Wilkin	2:12-cv-02563
68	Patsy & Howard Mays	2:12-cv-02565
69	Dorothy Hunt	2:12-cv-02575
70	Tammy & Bryon Jackson	2:12-cv-02576
71	Patricia & Floyd Marks	2:12-cv-02577
72	Mary Clayborne	2:12-cv-02579
73	Wanda Clayborne	2:12-cv-02580
74	Anita Fisher	2:12-cv-02581
75	Kathleen & Albert Young Flynn	2:12-cv-02582
76	Rhonda & Billy Garner	2:12-cv-02583
77	Trina Hill	2:12-cv-02584
78	Michellyn & Michael Murphy	2:12-cv-02600
79	Bonita Taylor	2:12-cv-02601
80	Nancy & Darryl Rivers	2:12-cv-02602
81	Rhonda T. Brantley	2:12-cv-02605
82	Gayle King	2:12-cv-02606
83	Kandy P. & Rick Dotson	2:12-cv-02633
84	Ila Cosgray	2:12-cv-02634
85	Tabitha Williamson	2:12-cv-02642
86	Lori & Duane Morse	2:12-cv-02657

	Case	Civil Action Number
87	Nancy Parks	2:12-cv-02660
88	Joyce & William Thomas	2:12-cv-02662
89	Debbie & Charles Tomlinson	2:12-cv-02663
90	Robin & Jack Webb	2:12-cv-02669
91	Judy Wiley	2:12-cv-02670
92	Deborah & Steven Ray, Jr. Young	2:12-cv-02672
93	Kathleen & Glennon Toennies	2:12-cv-02687
94	Victoria Soltanshahi	2:12-cv-02688
95	Karen A. & Thomas F. Lyszczarz	2:12-cv-02689
96	Barbara Lawyer-Johnson	2:12-cv-02690
97	Antoinette & Ronnie James	2:12-cv-02696
98	Shelia L. Bracato	2:12-cv-02697
99	Martha M. & James Stevenson	2:12-cv-02700
100	Brenda Simpson	2:12-cv-02716
101	Susan Walker	2:12-cv-02728
102	Alberta Clark	2:12-cv-02734
103	Sara & Terrance Bell	2:12-cv-02741
104	Jennifer & Hilario Aguilar	2:12-cv-02742
105	Emma G. Honeycutt	2:12-cv-02746
106	Sharon K. & Timothy T. Carrell	2:12-cv-02751
107	Dorothy F. Foust	2:12-cv-02752
108	Monica Lynn & James Charles Bauernfeind	2:12-cv-02768
109	Diana N. Farris	2:12-cv-02776
110	Teresa Alltop	2:12-cv-02782
111	Dion & Sheldon Cole	2:12-cv-02786
112	Tammy & Johnny Coward	2:12-cv-02788
113	Constance Fisher	2:12-cv-02792
114	Lisa & Patrick Fritz	2:12-cv-02796
115	Susan & Hubert Jones (SUSAN JONES IS DECEASED)	2:12-cv-02797
116	Tracey Ryan Smith	2:12-cv-02798
117	Susan Clones	2:12-cv-02799
118	Kathy Robertson	2:12-cv-02802
119	Donna & Hugh Snoddy	2:12-cv-02803
120	Janet & Larry Taulbee	2:12-cv-02804
121	Donna & Joe Moosman	2:12-cv-02805
122	Linda Heatherly	2:12-cv-02807
123	Jennifer D. & David C. Marshall	2:12-cv-02809
124	Selena & Chane Thompson	2:12-cv-02814
125	Karla A. Guidry	2:12-cv-02816
126	Cathy Lynn Stanley	2:12-cv-02817
127	Lottie & Edward Brusseau	2:12-cv-02819
128	Nettie Watts	2:12-cv-02823
129	Julia & Willis Walker	2:12-cv-02826

	Case	Civil Action Number
130	Kimberly Hill	2:12-cv-02829
131	Patricia & Stephen Caughorn	2:12-cv-02832
132	Victoria Gutierrez	2:12-cv-02857
133	Peggy S. Wollitz	2:12-cv-02858
134	Mattie J. Brooks	2:12-cv-02865
135	Bonnie S. & Robert G. Smith	2:12-cv-02876
136	Lisa A. Russell	2:12-cv-02879
137	Sandra Sweeney	2:12-cv-02880
138	Kathy & Phillip Kidd	2:12-cv-02883
139	Terry Page	2:12-cv-02884
140	Tymika Tunstall	2:12-cv-02906
141	Thelma & Harold Cole	2:12-cv-02908
142	Susan D. Bartley	2:12-cv-02921
143	Tina M. Douglas	2:12-cv-02922
144	Dawn Cordea	2:12-cv-02934
145	Lillie R. & Ernest P. Miller	2:12-cv-02942
146	Kathy Blake	2:12-cv-02943
147	Charlotte Ann Schaub	2:12-cv-02947
148	Rhonda Mitchell	2:12-cv-02949
149	Inez & Carlton S. Creel	2:12-cv-02950
150	Brenda J. & Barry Wooden	2:12-cv-02951
151	Anne M. Currie	2:12-cv-02955
152	Audrey & Theron Smallridge	2:12-cv-02956
153	Jamie & Steven Rutherford	2:12-cv-02959
154	Trudy M. & Dale R. Usey	2:12-cv-02960
155	Janice & Don Fields	2:12-cv-02971
156	Grethel Taylor	2:12-cv-02975
157	Margaret Polly	2:12-cv-02979
158	Leslie Elder	2:12-cv-02987
159	Shannon L. Smith	2:12-cv-02989
160	Susan & Simon Thomas Grizzle	2:12-cv-02991
161	Vicki & Randall Trammell	2:12-cv-02994
162	Katy Sue & Daniel Wilson	2:12-cv-02997
163	Mary Allmon	2:12-cv-02999
164	Deborah & Robert Kisell	2:12-cv-03013
165	Sharita Malone	2:12-cv-03037
166	Tammy & Danny Richmond	2:12-cv-03038
167	April & Danny Berry	2:12-cv-03074
168	Delilah & Walter Bishop	2:12-cv-03075
169	Stephanie & Davin Booher	2:12-cv-03076
170	Carmen & Jose L. Castillo	2:12-cv-03077
171	Araceli Baez	2:12-cv-03078
172	Judy K. & Benny Damron	2:12-cv-03079

	Case	Civil Action Number
173	Yolanda & Edward G. Garcia	2:12-cv-03080
174	Phyllis A. King	2:12-cv-03081
175	Ronda L. Reed	2:12-cv-03082
176	Catherine L. & David Young	2:12-cv-03083
177	Mary Diana Book	2:12-cv-03085
178	Mary Cox	2:12-cv-03087
179	Shirlene Franklin	2:12-cv-03091
180	Lori & Mark Ludwig	2:12-cv-03093
181	Deborah & Tony Mattingly	2:12-cv-03097
182	Melissa Moore	2:12-cv-03108
183	Carol Noffsinger	2:12-cv-03118
184	Glenna T. Hensley	2:12-cv-03119
185	Kimberly & Glen A. Martello	2:12-cv-03122
186	Tammy Webb-Henson	2:12-cv-03123
187	Katherine & Henry, II Smallwood	2:12-cv-03124
188	Jeannie Holland	2:12-cv-03125
189	Julia Smith	2:12-cv-03128
190	Kelly L. & John D. White	2:12-cv-03129
191	Shari & Ronnie L. Thomas	2:12-cv-03130
192	Sara Camille Jones	2:12-cv-03131
193	Christine & Joseph Webb	2:12-cv-03136
194	Debra & Stephen Krauser	2:12-cv-03140
195	Tracy & Kevin Woosley	2:12-cv-03145
196	Lydia & Douglas Blackwell	2:12-cv-03155
197	Floreen Leland	2:12-cv-03161
198	Joann S. Bradley	2:12-cv-03162
199	Geraldean Gaylor	2:12-cv-03163
200	Christine Walker	2:12-cv-03166