

**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)
)
)

 THIS DOCUMENT RELATES TO ALL CASES)

)

MDL NO. 2327

**PRETRIAL ORDER # 263
(ORDER APPOINTING LYNN A. BAKER AS SETTLEMENT MASTER
FOR PRIVATE SETTLEMENT AGREEMENTS BETWEEN ETHICON AND CERTAIN
PLAINTIFFS' COUNSEL)**

Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., (collectively, "Plaintiffs' Counsel") has entered into a separate Confidential Settlement Agreement (the "Settlement Agreement") with Ethicon, Inc. and related entities defined by agreement as "Ethicon" to resolve the claims related to the implantation of certain Ethicon Pelvic Mesh Products (as defined in the Settlement Agreement). Under the provisions of the Settlement Agreement, Plaintiffs' Counsel has agreed to seek the approval of this Court to appoint a Settlement Master to perform certain defined functions related to the administration and implementation of the Settlement Agreement. Professor Lynn A. Baker is well qualified to perform these and other functions discussed below.

Professor Baker is the Frederick M. Baron Chair in Law at the University of Texas School of Law, where she has taught since 1997, and where she also serves as Co-Director of the Center on Lawyers, Civil Justice, and the Media. Professor Baker has served as an expert or consultant on ethical and/or allocation issues in dozens of large-dollar, large-group settlements, including the multi-billion dollar BP Deepwater Horizon Economic and Property Damages and Medical Benefits class action settlements in 2012 (U.S. District Court for the Eastern District of Louisiana), the \$4.5 billion nationwide Vioxx settlement in 2007, and the \$1.27 billion nationwide Fen-Phen class

action settlement (Seventh Amendment) in 2006, numerous settlements involving various other pharmaceuticals and medical devices (including Fosamax, NuvaRing, Risperdal, hip replacement products, Prozac, Yaz/Yasmin, hormone replacement therapy, Paxil, Avandia, Seroquel, Gadolinium, Rezulin, Zyprexa, Ortho Evra, Bextra, Celebrex), and many settlements involving asbestos, silica, MTBE, and other toxins.

Professor Baker was previously appointed by this Court to serve as a Settlement Master in *In re: C.R. Bard, Inc., Pelvic Repair System Products Liability Litigation* (MDL No. 2187) (Pretrial Order #202, entered Nov. 24, 2015 (Doc. 1715)).

Accordingly, Plaintiffs' Counsel request, pursuant to the Court's inherent case management powers, the appointment of Professor Lynn A. Baker to assist in the administration and implementation of their settlement with Ethicon, with the authority to:

- Approve the objection criteria by which the claims of all Settling Claimants are evaluated;
- Assist Plaintiffs' Counsel in assigning a value and determining the allocation to each Plaintiff based the objective criteria;
- Assist Plaintiffs' Counsel in the formation of an Extraordinary Injury Fund and the determination of the amount from the Settlement Fund that shall constitute the Extraordinary Injury Fund;
- Serve as mediator to facilitate the resolution of any disputes that may arise related to the categorization and processing of claims under the terms of the Settlement Agreement; and
- Serve as mediator of claims as jointly requested by Plaintiffs' Counsel and Ethicon.

Ethicon does not oppose Plaintiffs' Counsel's request. The Court, pursuant to its inherent authority, and having considered the request, and cognizant of the important public policy of encouraging settlement among litigating parties, hereby issues the following Order.

IT IS ORDERED THAT:

1. Professor Lynn A. Baker is hereby appointed as the Settlement Master for the administration of the settlement reached between Beasley, Allen, Crow, Methvin, Portis & Miles, P.C., and Ethicon, related to the Ethicon Pelvic Mesh Products (as defined in the Settlement Agreement).
2. The duties of the Settlement Master shall be as set forth above, consistent with the Settlement Agreement entered into between Plaintiffs' Counsel and Ethicon.
3. In furtherance of the fair and efficient administration and implantation of the settlements, the Settlement Master may have *ex parte* communications with the parties to the Settlement Agreement, Plaintiffs' Counsel and their clients, Ethicon and its counsel, or the Court, and such *ex parte* communications shall not be deemed to have waived any attorney-client privileges.
4. The Settlement Master shall be compensated privately as specified respectively in the Settlement Agreement or by agreement with Plaintiffs' Counsel.
5. An affidavit by the Settlement Master has been submitted and is attached hereto.
6. The Settlement Master shall report to the Court on a quarterly basis or as requested by the Court.

The Court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327 and it shall apply to each member related case previously transferred to, removed to, or filed in this district, *where applicable*, which includes counsel in all member cases up to and including civil action number 2:17-cv-03308. In cases subsequently filed in this district, 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: July 13, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

STATE OF TEXAS :
COUNTY OF TRAVIS :

AFFIDAVIT OF LYNN A BAKER

Before me, the undersigned authority, on this day personally appeared Lynn A. Baker, who swore or affirmed to tell the truth, and stated as follows:

1. My name is Lynn A. Baker and I am an adult, resident citizen of the State of Texas. My business address is 3101 Lating Stream Lane, Austin, TX 78746.

2. I hold the Frederick M. Baron Chair in Law at the University of Texas School of Law, where I have taught since 1997, and where I also serve as Co-Director of the Center on Lawyers, Civil Justice, and the Media. I have also been a professor at the University of Arizona College of Law (1992-1997), and have been a visiting professor at Columbia University Law School (1997) and at Rutgers (Camden) University Law School (1997). I began my academic career teaching at the University of Virginia School of Law (1986-1992). Prior to that, I served as a law clerk to Judge Amalya L. Kearse on the U.S. Court of Appeals for the Second Circuit in Manhattan (1985-1986). I am a 1985 graduate of Yale Law School, where I served as an Article & Book Review Editor of the YALE LAW JOURNAL. I am a member in good standing of the Bars of the states of Texas (active) and Arizona (inactive) and of the United States Supreme Court.

3. As a law professor, one of my principal academic interests has been ethical issues in group litigation and settlements, including issues surrounding the allocation of settlement proceeds. I regularly teach a survey course on Professional Responsibility, which includes substantial discussion of these issues. I also often teach a seminar (titled "Mega-settlements") which focuses on large-dollar, complex settlements, and which involves extended, in-depth discussion of allocation issues in class action and

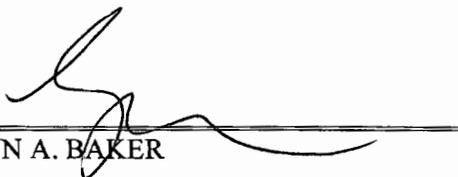
mass tort settings. I have frequently appeared as an invited speaker on these issues at symposia, conferences, and continuing legal education programs. My scholarly publications on these issues include: *Aggregate Settlements and Attorney Liability: The Evolving Landscape*, 44 Hofstra L. Rev. 291 (2016); *I Cut, You Choose: The Role of Plaintiffs' Counsel in Allocating Settlement Proceeds*, 84 Va. L. Rev. 1465 (1998) (with Charles Silver); *Mass Lawsuits and the Aggregate Settlement Rule*, 32 Wake Forest L. Rev. 733 (1997) (with Charles Silver); and *The Aggregate Settlement Rule and Ideals of Client Service*, 41 S. Tex. L. Rev. 227 (1999) (with Charles Silver). These publications have been cited by numerous commentators and courts, and in leading treatises including the ALI's Principles of Aggregate Litigation (2010).

4. I have served as an expert or consultant on ethical and/or allocation issues in dozens of large-dollar, large-group settlements, including the multi-billion dollar BP *Deepwater Horizon* Economic and Property Damages and Medical Benefits class action settlements in 2012 (U.S. District Court for the Eastern District of Louisiana), the \$4.5 billion nationwide Vioxx settlement in 2007, and the \$1.27 billion nationwide Fen-Phen class action settlement (Seventh Amendment) in 2006, numerous settlements involving various other pharmaceuticals and medical devices (including trans-vaginal mesh, Fosamax, NuvaRing, Risperdal, hip replacement products, Prozac, Yaz/Yasmin, hormone replacement therapy, Paxil, Avandia, Seroquel, Gadolineum, Rezulin, Zyprexa, Ortho Evra, Bextra, Celebrex), and many settlements involving asbestos, silica, MTBE, and other toxins. I have served as an expert in various settlements in connection with *In re WorldCom, Inc. Securities Litigation*, and in connection with class action settlements in twelve states involving alleged wage and hour violations by Wal-Mart.

5. I was appointed by the U.S. District Court for the Southern District of West Virginia to serve as a settlement allocation Special Master in *In re: C.R. Bard, Inc., Pelvic Repair System Products Liability Litigation* (MDL No. 2187) (Pretrial Order #202, entered Nov. 24, 2015).

6. I testified in the U.S. District Court for the Middle District of Pennsylvania in November 2012 as an expert regarding the fairness and reasonableness of the \$17.75 million class action settlement fund allocation plan, involving more than 3,000 class members. See *Wallace v. Powell*, 288 F.R.D. 347, 371 (M.D. Pa. 2012) (approving allocation plan for class settlement involving the Mericle Defendants). See also *Wallace v. Powell*, 301 F.R.D. 144, 163 (M.D. Pa. 2014) (approving related \$2.5 million class settlement with the Provider Defendants, and invoking my expert report regarding the fairness and reasonableness of the settlement fund allocation plan); *Wallace v. Powell*, 2015 WL 9268445, *16 (M.D. Pa. 2015) (approving related minimum \$4.7 million class settlement with the Powell Defendants, and invoking my previous expert opinions to support the reasonableness of the settlement).

7. A true and correct copy of my Curriculum Vitae is attached to this Affidavit.


LYNN A. BAKER

Sworn to and subscribed before me, this the 31 day of October, 2016.



Sylvia Reyna Ramirez
NOTARY PUBLIC
My Commission Expires: 11-14-17