

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

CHARLESTON DIVISION

IN RE: ETHICON, INC.
PELVIC REPAIR SYSTEMS
PRODUCT LIABILITY LITIGATION

MDL No. 2327

THIS DOCUMENT RELATES TO ALL CASES

PRETRIAL ORDER # 268
(Motion for a Protective Order and Motion for *De Bene Esse* Deposition)

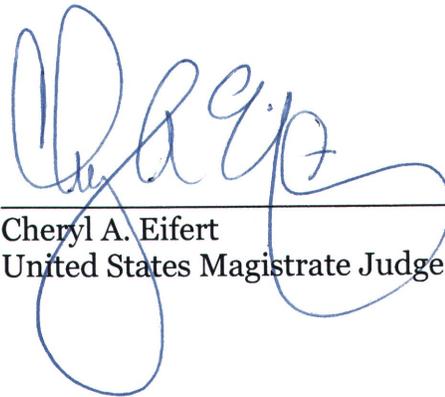
Pending are Defendants' Motion for a Protective Order Precluding *De Bene Esse* Deposition of Plaintiffs' Expert Witness Scott A. Guelcher, Ph.D, (ECF No. 4132), and Plaintiffs' Motion for *De Bene Esse* Deposition of Dr. Scott A. Guelcher, (ECF No. 4226). The undersigned held a telephonic hearing on the motions on August 9, 2017. For the reasons more fully explained at the hearing, the court **DENIES** the motion for a protective order and **GRANTS** the motion for leave to conduct a *de bene esse* deposition of Dr. Guelcher.

The potential benefits associated with taking a *de bene esse* deposition of Dr. Guelcher outweigh the court's general concern that regularly allowing such depositions will prevent the efficient and orderly resolution of this multidistrict litigation. Dr. Guelcher is a biomaterials expert witness who proposes to offer the same opinions in a vast number of cases. Consequently, having the *de bene esse* deposition available for use, when appropriate, may reduce litigation costs and prevent trial delay. Because Dr.

Guelcher's testimony is not plaintiff specific, allowing the taking of his *de bene esse* deposition should not prejudice Defendants.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-02327 and in the Ethicon Wave 5 cases. In cases subsequently filed in this district after 2:17-cv-03308, 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 <http://www.wvsd.uscourts.gov>.

ENTERED: August 9, 2017



Cheryl A. Eifert
United States Magistrate Judge