

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

CHARLESTON DIVISION

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

MDL 2327

THIS DOCUMENT RELATES TO ALL CASES

**Pretrial Order # 329
(Order Re: Dismissal of Settled and Paid Cases)**

When a settlement of an individual plaintiff's case occurs, the parties in that case are obligated (as in any litigation) to arrange for the case to be promptly dismissed with prejudice. It has come to the court's attention that there have been inefficiencies and delays in the process of dismissal of settled cases, which the court now addresses in this Order.

NOTWITHSTANDING ANY PREVIOUS ORDERS OR DIRECTIVES, the court **ORDERS** that the parties follow this procedure:

A. Motions to Dismiss.

1. When a plaintiff has provided defendant with an executed, valid release, and defendant has authorized disbursement to plaintiff of the settlement amount to which plaintiff's counsel has agreed whether from a Qualified Settlement Fund ("QSF") or otherwise, defendant shall promptly file with the court, in each individual case, a Motion to Dismiss with Prejudice of that plaintiff's case. The Motion to Dismiss must include a declaration from defense counsel that (a) defendant has received a valid, executed release from plaintiff; and (b) the

settlement funds to be paid to plaintiff (via a QSF or otherwise) have been disbursed to plaintiff's counsel.

2. The style of the Motion and any proposed order must include the name of every named plaintiff (including derivative plaintiffs) and every named defendant in the case, listed individually, along with the individual case number.
3. The Motion to Dismiss must either (1) state that other defendants remain and the case should remain open; or (2) because no other defendants remain, ask the court to close the case and strike it from the docket.
4. The Motion to Dismiss shall be served on plaintiff's counsel of record via ECF. The Motion to Dismiss shall be served on any pro se plaintiff via U.S. Mail.
5. When filing, defendant should choose the following event on ECF:

Motions/Applications/Petitions→Motion→ Dismiss → Ethicon MDL →

Pursuant to Ethicon PTO 329 Only.

B. Objections. Any objections to the Motion to Dismiss must be filed in the individual case within **seven (7) days** from the date of the filing of the Motion to Dismiss. If the plaintiff does not file an objection within the seven (7) days, the court will grant the motion to dismiss with prejudice.

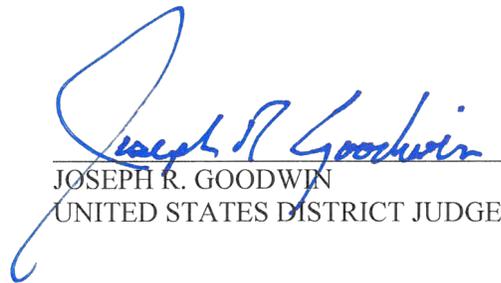
C. Lists/Prepared Orders. Lists or prepared orders must also be provided by defendant to the court in one of two formats:

1. List via Email. The defendant may email a list (in Microsoft Excel) of all motions to dismiss filed pursuant to this order in the format provided on Exhibit A to the court (at MaryAnne_Williams@wvsd.uscourts.gov) on the 16th and last day of each month. The court will then attach and enter the appropriate order to the list when provided; or

2. Individual Orders via Email. The defendant may email the court (at MaryAnne.Williams@wvsd.uscourts.gov) on the 16th and last day of each month, one PDF file that includes **ALL** proposed orders granting the motions to dismiss referenced above.¹ A proposed order is attached as Exhibit B.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327. 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: February 21, 2019



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

¹ It is the court's intention that the PDF document of the proposed Orders sent to the court on the 16th will include an Order for each motion filed from the 1st through the 15th of the month, and the PDF document of the proposed Orders sent to the court on the last day of the month will include an Order for each motion filed from the 16th through the last day of the month.

EXHIBIT A

Civil Action No. Must be in this format 2:12-cv-00231	Case Style e.g. Smith, et al v. Ethicon, Inc., et al	MDL Defendant(s)	Co-Defendant(s)	Motion to Dismiss filed date	ECF No. of the Motion in the Individual	Response date If no response leave blank

EXHIBIT B

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

CHARLESTON DIVISION

Plaintiff(s) (list all active plaintiffs),

Plaintiff(s),

v.

Civil Action No. _____

Judge _____

Defendant(s) (list all active defendants),

Defendant(s).

ORDER

(Dismissing Claims of Ethicon, Inc., Ethicon LLC and
Johnson & Johnson defendants With Prejudice)

Pending in this civil action is Defendants' Motion to Dismiss with Prejudice filed by defendant(s) Ethicon, Inc., Ethicon LLC and Johnson & Johnson (make sure all defendants whose claims are being dismissed are listed) (collectively, "Ethicon defendants") pursuant to the procedures established by the Pretrial Order # 329. *See* Pretrial Order ("PTO") # 329, *In re: Ethicon, Inc., Pelvic Repair System Products Liability Litigation*, No. 2:12-md-2327 ("Ethicon MDL 2327").

As stated in PTO # 329, the court established certain procedures to prompt dismissals of settled cases. Under these procedures, the court directed the Ethicon defendants to file a motion to dismiss in each individual case where a plaintiff has provided an executed, valid release, and the defendants have authorized disbursement to the plaintiff of the settlement amount to which the plaintiff's counsel has agreed.

[Type here]

The Ethicon defendants have complied with the directives and procedures, and the plaintiff(s) _____ (has or have) not filed an opposition. _____
(Select either “No other defendant(s) remain” or “Other defendant(s) remain”) in this case. It appearing to the court that the parties have jointly agreed to settle and have settled the claims of the Ethicon defendants, the dismissal of the Ethicon defendants in this case is appropriate.

The court **ORDERS** that:

1. the Motion to Dismiss with Prejudice is **GRANTED**;
2. the Ethicon defendants are **DISMISSED WITH PREJUDICE** from this action; and
3. if there are no remaining defendants in this civil action, then the court further **ORDERS** that (a) the civil action is dismissed with prejudice (b) stricken from the docket, and (c) all pending motions are **DENIED** as moot.

The court **DIRECTS** the Clerk to:

1. dismiss the Ethicon defendants from the individual civil action;
2. if no other defendant(s) remain in an individual action, then (a) strike the action from the docket, and (b) close the case;
3. file a copy of this order in the individual case; and,
4. send a copy of this Order to counsel of record and any unrepresented party.

ENTER: (leave blank)

(do NOT list name of Judge here)