

**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 1 CASES**

**PRETRIAL ORDER # 195
(First Amended Docket Control Order – Wave 1 Cases)**

The parties recently requested clarifications to this Docket Control Order, which I provided in a conference call and via email. I now amend this Docket Control Order to reflect those clarifications. In particular, I have made modification to: A (expert disclosures); and A.2.c. The remaining provisions remain in effect:

In the Ethicon Wave 1 cases it is **ORDERED** as follows:

A. SCHEDULING DEADLINES. The following deadlines shall apply in the Ethicon Wave 1 cases:

Plaintiff Fact Sheets.	10/19/2015
Defendant Fact Sheets.	11/19/2015
Deadline for written discovery requests.	01/04/2016
Expert disclosure by plaintiffs.	12/17/2015
Expert disclosure by defendants.	01/18/2016
Expert disclosure for rebuttal purposes.	02/01/2016
Deposition deadline and close of discovery.	02/16/2016
Filing of dispositive and <i>Daubert</i> motions.	03/07/2016
Responses to dispositive and <i>Daubert</i> motions.	03/21/2016
Reply to response to dispositive and <i>Daubert</i> motions.	03/28/2016

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 1. 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 1 plaintiffs. In light of the common products involved in Ethicon Wave 1, 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 Bard'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 **February 8, 2016**, any response is due **February 16, 2016** and any reply is due **February 23, 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 **January 11, 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 **January 19, 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

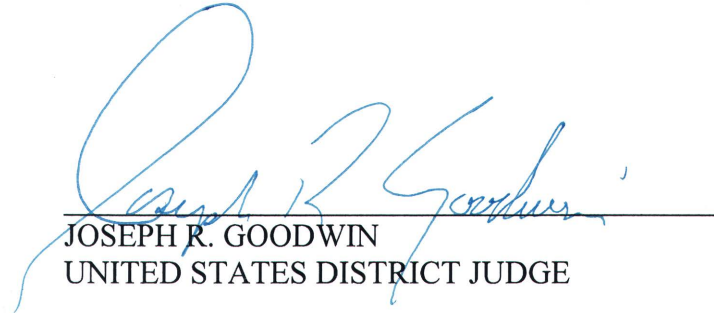
3. **Trial Settings.** If a case is to be tried in the United States District Court for the Southern District of West Virginia (either by agreement of the parties or where venue in the Southern District is determined to be proper by the court), the case shall be deemed trial-ready when discovery is completed 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 intercircuit assignment).

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327 and in the cases listed on Exhibit A. In cases subsequently filed in this district after 2:15-cv-12905, 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

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.

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: September 3, 2015



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

Exhibit A

Case No.	Case Style
2:11-cv-00809	Wilma Johnson v. Ethicon, et al.
2:12-cv-00256	Amy and Brent Holland v. Ethicon, et al.
2:12-cv-00258	Carrie Smith v. Ethicon, et al.
2:12-cv-00261	Mary F. Cone v. Ethicon, et al.
2:12-cv-00265	Doris Chappell Jackson v. Ethicon, et al.
2:12-cv-00276	Cathy and John Warlick v. Ethicon, et al.
2:12-cv-00277	Joy and Kevin Essman v. Ethicon, et al.
2:12-cv-00279	Susan Thaman v. Ethicon, et al.
2:12-cv-00286	Quillan R. and Thomas W. Garnett v. Ethicon, et al.
2:12-cv-00322	Linda B. Ryan v. Ethicon, et al.
2:12-cv-00335	Sandra Wolfe v. Ethicon, et al.
2:12-cv-00337	Kathleen Wolfe v. Ethicon, et al.
2:12-cv-00341	Helen M. Brown and Robert E. Ruttkay v. Ethicon, et al.
2:12-cv-00344	Rose and Jesus Gomez v. Ethicon, et al.
2:12-cv-00347	Deborah and Felipe Lozano v. Ethicon, et al.
2:12-cv-00351	Kathy Barton v. Ethicon, et al.
2:12-cv-00352	Charlotte Hargrove v. Ethicon, et al.
2:12-cv-00358	Amanda and Raymond Deleon v. Ethicon, et al.
2:12-cv-00368	Sharon and Michael Boggs v. Ethicon, et al.
2:12-cv-00369	Dawna Hankins v. Ethicon, et al.
2:12-cv-00376	Charlene Logan Taylor v. Ethicon, et al.
2:12-cv-00378	Tina and Kenneth Morrow v. Ethicon, et al.
2:12-cv-00379	Teri Key and Johnny Shively v. Ethicon, et al.
2:12-cv-00380	Terrie S. and Ralph R. Gregory v. Ethicon, et al.
2:12-cv-00381	Susan C. and Leonard Hayes v. Ethicon, et al.
2:12-cv-00387	Maru LuEllen and Thomas Lawrence Kilday v. Ethicon, et al.
2:12-cv-00389	Janice Renee Swaney v. Ethicon, et al.
2:12-cv-00397	Deborah A. Smith v. Ethicon, et al.
2:12-cv-00401	Carol Jean Dimock v. Ethicon, et al.
2:12-cv-00423	Pamela Free v. Ethicon, et al.
2:12-cv-00443	Holy and Jason Jones v. Ethicon, et al.
2:12-cv-00455	Pamela Gray-Wheeler and Stan Wheeler v. Ethicon, et al.
2:12-cv-00468	Amelia R. and Ernest B. Gonzales v. Ethicon, et al.
2:12-cv-00469	Patricia Tyler v. Ethicon, et al.
2:12-cv-00470	Mary Jane and Daniel Olson v. Ethicon, et al.
2:12-cv-00476	Harriet Beach v. Ethicon, et al.
2:12-cv-00481	Miranda Patterson v. Ethicon, et al.
2:12-cv-00483	Carey Beth and David Cole v. Ethicon, et al.
2:12-cv-00485	Danni Laffoon v. Ethicon, et al.
2:12-cv-00486	Karen and Joel Forester v. Ethicon, et al.
2:12-cv-00489	Melissa and Charles Clayton v. Ethicon, et al.
2:12-cv-00490	Shirley and William Freeman v. Ethicon, et al.
2:12-cv-00491	Gwendolyn T. Young v. Ethicon, et al.
2:12-cv-00493	Nancy and Daniel Hooper v. Ethicon, et al.

Case No.	Case Style
2:12-cv-00494	Penelope Ann Link and Dan Richard Saurino v. Ethicon, et al.
2:12-cv-00495	Andrea Carol and Mark Thomas Chandlee v. Ethicon, et al.
2:12-cv-00496	Sonya M. and James R. Moreland v. Ethicon, et al.
2:12-cv-00497	Dina Sanders Bennett v. Ethicon, et al.
2:12-cv-00498	Myndal Johnson v. Ethicon, et al.
2:12-cv-00499	Kimberly Thomas v. Ethicon, et al.
2:12-cv-00500	Krystal and Gregory Teasley v. Ethicon, et al.
2:12-cv-00501	Jennifer and David Sikes v. Ethicon, et al.
2:12-cv-00504	Donna T. and James W. Pilgreen v. Ethicon, et al.
2:12-cv-00505	Mary and Kenneth Thurston v. Ethicon, et al.
2:12-cv-00506	Martha and Stuart Newman v. Ethicon, et al.
2:12-cv-00510	Charlene Miracle v. Ethicon, et al.
2:12-cv-00511	Nancy Williams v. Ethicon, et al.
2:12-cv-00516	Patricia Conti v. Ethicon, et al.
2:12-cv-00517	Joann Lehman v. Ethicon, et al.
2:12-cv-00539	Ann Louise Ruppel and Robert Dean Fuller v. Ethicon, et al.
2:12-cv-00540	Nancy and Kenneth Feidler v. Ethicon, et al.
2:12-cv-00547	Brenda and James Riddell v. Ethicon, et al.
2:12-cv-00548	Rhoda Schachtman v. Ethicon, et al.
2:12-cv-00554	Sharon and Gardner Carpenter v. Ethicon, et al.
2:12-cv-00555	Carolyn Sue Doyle v. Ethicon, et al.
2:12-cv-00567	Noemi and Cesar Padilla v. Ethicon, et al.
2:12-cv-00571	Mary Catherine Wise v. Ethicon, et al.
2:12-cv-00591	Beverly Kivel v. Ethicon, et al.
2:12-cv-00594	Frances Ann and Herman Cortez v. Ethicon, et al.
2:12-cv-00595	Mary and Thomas Hendrix v. Ethicon, et al.
2:12-cv-00601	Deanna Jean and Bennie G. Thomas v. Ethicon, et al.
2:12-cv-00609	Patricia O. Powell v. Ethicon, et al.
2:12-cv-00651	Robin Bridges v. Ethicon, et al.
2:12-cv-00652	Maria C. and Mark A. Stone v. Ethicon, et al.
2:12-cv-00654	Stacy and Kevin Shultis v. Ethicon, et al.
2:12-cv-00657	Judy G. Williams v. Ethicon, et al.
2:12-cv-00663	Ana Ruebel v. Ethicon, et al.
2:12-cv-00666	Donna and Leon Loustaunau v. Ethicon, et al.
2:12-cv-00669	Teresa and Ricky J. Stout v. Ethicon, et al.
2:12-cv-00679	Lisa and Henry Stevens v. Ethicon, et al.
2:12-cv-00683	Louise Grabowski v. Ethicon, et al.
2:12-cv-00736	Karen and Thomas Daniell v. Ethicon, et al.
2:12-cv-00737	Beth and Stuart Harter v. Ethicon, et al.
2:12-cv-00738	Sheri and Gary Scholl v. Ethicon, et al.
2:12-cv-00746	Margaret Kirkpatrick v. Ethicon, et al.
2:12-cv-00747	Karyn E. and Douglas E. Drake v. Ethicon, et al.
2:12-cv-00748	Myra abd Richard Byrd v. Ethicon, et al.
2:12-cv-00749	Jennifer D. and Willem C.J. Van Rensburg v. Ethicon, et al.

Case No.	Case Style
2:12-cv-00751	Raquel and Ernesto De La Torre v. Ethicon, et al.
2:12-cv-00755	Cheryl Lankston v. Ethicon, et al.
2:12-cv-00756	Dee and Michael Woolsey v. Ethicon, et al.
2:12-cv-00757	Barbara Jean and Keith Bridges v. Ethicon, et al.
2:12-cv-00759	Diane and Robert Matott v. Ethicon, et al.
2:12-cv-00760	Lois and Gerald Durham v. Ethicon, et al.
2:12-cv-00761	Barbara J. and Gary L. Ware v. Ethicon, et al.
2:12-cv-00762	Janet D. Jones v. Ethicon, et al.
2:12-cv-00765	Rachel and Dwan Taylor v. Ethicon, et al.
2:12-cv-00766	Kimberly Garnto v. Ethicon, et al.
2:12-cv-00767	Rebecca and Charles Oehring v. Ethicon, et al.
2:12-cv-00768	Sandra and Christian LaBadie v. Ethicon, et al.
2:12-cv-00769	Kimberly T. Burnham v. Ethicon, et al.
2:12-cv-00772	Harmony Minniefield v. Ethicon, et al.
2:12-cv-00773	Tina and Keith Patterson v. Ethicon, et al.
2:12-cv-00779	Dee and Timothy McBrayer v. Ethicon, et al.
2:12-cv-00783	Wendy Hagans v. Ethicon, et al.
2:12-cv-00784	Schultz et al v. Ethicon, Inc. et al
2:12-cv-00786	Swint et al v. Ethicon, Inc et al
2:12-cv-00787	Joplin v. Ethicon, Inc et al
2:12-cv-00799	Quijano v. Ethicon, Inc. et al
2:12-cv-00800	Morrison et al v. Ethicon, Inc et al
2:12-cv-00806	Hill et al v. Ethicon, Inc. et al
2:12-cv-00807	Sweeney et al v. Ethicon, Inc. et al
2:12-cv-00811	Zoltowski et al v. Johnson & Johnson et al
2:12-cv-00821	Barr et al v. Ethicon, Inc. et al
2:12-cv-00828	Nix et al v. Ethicon, Inc. et al
2:12-cv-00829	Georgilakis et al v. Ethicon, Inc et at
2:12-cv-00830	Parrilla v. Ethicon, Inc. et al
2:12-cv-00842	Stubblefield v. Ethicon, Inc. et al
2:12-cv-00846	Raines et al v. Ethicon, Inc. et al
2:12-cv-00848	Fisk v. Ethicon, Inc et al
2:12-cv-00854	Ballard et al v. Ethicon, Inc et al
2:12-cv-00856	Massicot v. Ethicon, Inc. et al
2:12-cv-00859	Olmstead v. Ethicon, Inc. et al
2:12-cv-00860	Pelton v. Ethicon, Inc. et al
2:12-cv-00861	Smith et al v. Ethicon, Inc. et al
2:12-cv-00863	Gunter et al v. Ethicon, Inc
2:12-cv-00864	Nolan v. Ethicon, Inc. et al
2:12-cv-00867	Rock v. Ethicon et al
2:12-cv-00873	Walker et al v. Ethicon, Inc. et al
2:12-cv-00875	Holzerland et al v. Ethicon, Inc. et al
2:12-cv-00876	Hoy et al v. Ethicon, Inc. et al
2:12-cv-00878	Fox et al v. Johnson & Johnson, Inc. et al

Case No.	Case Style
2:12-cv-00880	Massey et al v. Ethicon, Inc. et al
2:12-cv-00883	Wroble et al v. Ethicon, Inc et al
2:12-cv-00886	Umberger et al v. Ethicon, Inc. et al
2:12-cv-00887	Kaiser et al v. Johnson & Johnson et al
2:12-cv-00888	Bruhn et al v. Ethicon, Inc et al
2:12-cv-00899	Barker et al v. Ethicon, Inc. et al
2:12-cv-00921	Wilson v. Ethicon, Inc et al
2:12-cv-00923	Atemnkeng et al v. Ethicon, Inc. et al
2:12-cv-00931	Collins v. Ethicon, Inc. et al
2:12-cv-00938	Kriz et al v. Ethicon, Inc. et al
2:12-cv-00939	Reyes et al v. Ethicon, Inc. et al
2:12-cv-00956	Justus v. Ethicon, Inc. et al
2:12-cv-00957	Funderburke v. Ethicon, Inc. et al
2:12-cv-00958	White et al v. Ethicon, Inc. et al
2:12-cv-00960	Amsden et al v. Ethicon, Inc. et al
2:12-cv-00961	Greene v. Ethicon, Inc. et al
2:12-cv-00967	Shepherd v. Ethicon, Inc. et al
2:12-cv-00995	Blake et al v. Ethicon, Inc. et al
2:12-cv-00997	Springer et al v. Ethicon, Inc. et al
2:12-cv-01004	Frye v. Ethicon, Inc. et al
2:12-cv-01011	Hankins et al v. Ethicon, Inc. et al
2:12-cv-01013	Lee et al v. Ethicon, Inc. et al
2:12-cv-01018	Gwinn et al v. Ethicon, Inc. et al
2:12-cv-01021	Ruiz v. Ethicon, Inc. et al
2:12-cv-01023	Burkhart v. Ethicon, Inc. et al
2:12-cv-01052	Babcock v. Ethicon, Inc. et al
2:12-cv-01053	Baugher v. Ethicon, Inc. et al
2:12-cv-01071	Schnering et al v. Ethicon, Inc. et al
2:12-cv-01081	Dixon v. Ethicon, Inc. et al
2:12-cv-01088	Wheeler et al v. Ethicon, Inc. et al
2:12-cv-01090	Wright v. Ethicon, Inc. et al
2:12-cv-01119	Rhynehart v. Ethicon, Inc. et al
2:12-cv-01121	Guinn v. Ethicon, Inc. et al
2:12-cv-01124	Bellito-Stanford et al v. Ethicon, Inc. et al
2:12-cv-01145	Constance Daino v. Ethicon, Inc. et al
2:12-cv-01146	Monica Freitas v. Ethicon, Inc. et al
2:12-cv-01148	Denise Sacchetti v. Ethicon, Inc. et al
2:12-cv-01149	Cindy Smith v. Ethicon, Inc. et al
2:12-cv-01150	Roberta Warmack v. Ethicon, Inc. et al
2:12-cv-01151	Laura Waynick v. Ethicon, Inc. et al
2:12-cv-01171	Patti Ann Phelps v. Ethicon, Inc. et al
2:12-cv-01198	Stacy Pangborn v. Ethicon, Inc. et al
2:12-cv-01199	Lisa Thompson v. Ethicon, Inc. et al
2:12-cv-01202	Diane Kropf v. Ethicon, Inc. et al

Case No.	Case Style
2:12-cv-01203	Joan Adams v. Ethicon, Inc. et al
2:12-cv-01206	Jeanie Holmes v. Ethicon, Inc. et al
2:12-cv-01215	Karen Bollinger v. Ethicon, Inc. et al
2:12-cv-01216	Christine Wiltgen v. Ethicon, Inc. et al
2:12-cv-01225	Ida Deanne Evans v. Ethicon, Inc. et al
2:12-cv-01262	Saundra Landes v. Ethicon, Inc. et al
2:12-cv-01267	Angela Coleman v. Ethicon, Inc. et al
2:12-cv-01273	Rebekah Barlett v. Ethicon, Inc. et al
2:12-cv-01274	Janice Colonna v. Ethicon, Inc. et al
2:12-cv-01275	Long v. Johnson & Johnson et al
2:12-cv-01277	Duncan v. Ethicon, Inc et al
2:12-cv-01278	Nix v. Ethicon, Inc. et al
2:12-cv-01279	Bertoni et al v. Ethicon, Inc. et al
2:12-cv-01283	Cyrus v. Ethicon, Inc. et al
2:12-cv-01284	Floyd v. Ethicon, Inc. et al
2:12-cv-01285	Simpson et al v. Ethicon, Inc. et al
2:12-cv-01286	Wilson v. Ethicon, Inc. et al
2:12-cv-01293	Costello v. Ethicon, Inc. et al
2:12-cv-01294	Herrera-Nevarez v. Ethicon, Inc
2:12-cv-01299	Destefano-Rasten et al v. Ethicon, Inc. et al
2:12-cv-01304	Irwin et al v. Ethicon, Inc. et al
2:12-cv-01305	Lager v. Ethicon, Inc. et al
2:12-cv-01311	Ridgley et al v. Ethicon, Inc. et al
2:12-cv-01318	Banks v. Johnson & Johnson, Inc. et al