

**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 7 CASES**

**PRETRIAL ORDER # 269
(Docket Control Order – Wave 7 Cases)**

I find that certain additional cases involving West Virginia plaintiffs should be placed in a Wave and worked up for trial. To that end, I have attached a list of West Virginia cases not already in an Ethicon Wave 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 7 cases.” Because the parties have conducted extensive discovery in Waves 1 through 6, I have shortened the deadlines in Wave 7. It is **ORDERED** as follows:

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

Wave 7 cases:

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| Plaintiff Fact Sheets. | 10/25/2017 |
| Defendant Fact Sheets. | 11/27/2017 |
| Deadline for written discovery requests. | 12/27/2017 |
| Expert disclosure by plaintiffs. | 12/13/2017 |
| Expert disclosure by defendants. | 01/12/2018 |
| Expert disclosure for rebuttal purposes. | 01/26/2018 |
| Deposition deadline and close of discovery. | 02/09/2018 |
| Filing of Dispositive Motions. | 03/01/2018 |
| Response to Dispositive Motions. | 03/15/2018 |
| Reply to response to dispositive motions. | 03/22/2018 |

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| Filing of <i>Daubert</i> motions. | 03/07/2018 |
| Responses to <i>Daubert</i> motions. | 03/21/2018 |
| Reply to response to <i>Daubert</i> motions. | 03/28/2018 |

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. The Ethicon defendants are limited to 10 interrogatories, 10 requests for production of documents and 10 requests for admission per plaintiff.
- b. Each plaintiff is limited to 10 interrogatories, 10 requests for production of documents 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 7. In light of the bellwether trials, Waves 1, 2, 3, 4, 5 and 6 and the substantial discovery conducted to date, 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 7 plaintiffs. In light of the common products involved in Ethicon Wave 7, 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. **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.² 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 must file a general causation motion in the main MDL 2327 and an individual specific causation motion in an individual member case.

2. **Hearings.** Hearing dates for dispositive and *Daubert* motions, if any, will be set at a future status conference.

3. **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.

4. **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

² If parties wish to adopt previous *Daubert* motions on general causation experts, they may so indicate in a filing in the main MDL 2327.

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 **January 16, 2018**, any response is due **January 30, 2018** and any reply is due **February 6, 2018**.

5. **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. PRETRIAL AND SETTLEMENT CONFERENCES

1. **Pretrial and Settlement Conferences:** The court shall notify the parties as to the date of the Pretrial and Final Settlement Conferences at a later date.

2. **Deposition Designations:** The court shall notify the parties as to the dates of affirmative deposition designation, including identifying exhibits to be offered through the deposition testimony, objections to an opposing party's designation and accompanying exhibits, and any counter-designations at a later date.

3. **Exhibit and Witness Lists, Proposed Integrated Pretrial Order and Proposed Jury Instructions/Special Interrogatories/Verdict Form:** The court shall notify the parties as to the dates of exchanging and/or filing of Exhibit and Witness Lists, Proposed Integrated Pretrial Order and Proposed Jury Instructions/Special Interrogatories/Verdict Form at a later date.

D. TRIAL

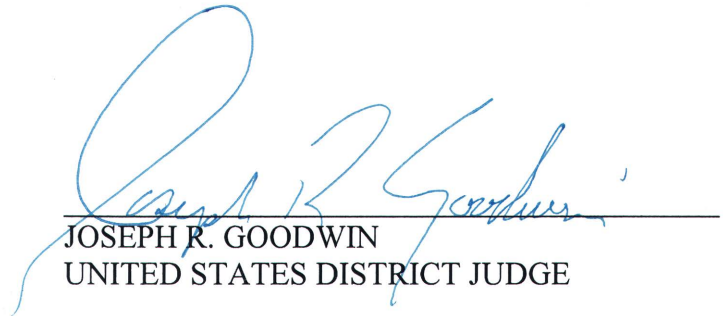
1. **Trial:** All Wave 7 cases will be set for trial beginning on **May 15, 2018** at **8:30 a.m.** at the United States District Court, Southern District of West Virginia, Room 6600 and will be tried seriatim without interruption, except for weekends and court holidays, as pending on the trial date until all remaining Wave 7 cases are completed.

E. COMMON BENEFIT TIME. I have entered a number of Pretrial Orders related to the eventual recovery of the cost of special services performed and expenses incurred by participating counsel in this and the other MDLs assigned to me. While I have not yet expressed an opinion regarding whether payment of common benefit fees is appropriate, nor will I here, I direct the parties' attention to PTO # 18, and its warning that "[n]o time spent on developing or processing purely individual issues in any case for an individual client (claimant) will be considered or should be submitted, nor will time spent on any unauthorized work." Pretrial Order No. 18, ECF No. 282, ¶ C. The nature of this litigation persuades me that I should inform counsel that at this point in the litigation, where most if not all of the general causation discovery has been completed, it is difficult to envision that any work performed by counsel on individual wave cases would rise to the level of common benefit work.

The court **DIRECTS** the Clerk to file a copy of this order in 2:12-md-2327 **and in the Ethicon Wave 7 cases listed on Exhibit A.** In cases subsequently filed in this district after 2:17-cv-03944, 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: September 8, 2017



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE

**EXHIBIT A
WAVE 7 CASES**

| Count | Case Number | Case Style |
|--------------|--------------------|--------------------------------------|
| 1 | 2:12-cv-08646 | Perry et al v. Ethicon, Inc. et al |
| 2 | 2:12-cv-08805 | Horst et al v. Ethicon, Inc. et al |
| 3 | 2:12-cv-09172 | Trevail et al v. Ethicon, Inc. et al |
| 4 | 2:12-cv-09311 | Bryant et al v. Ethicon, Inc. et al |
| 5 | 2:12-cv-09644 | Spinks v. Ethicon, Inc. et al |
| 6 | 2:13-cv-02563 | Cline et al v. Ethicon, Inc. et al |
| 7 | 2:13-cv-03373 | Massey et al v. Ethicon, Inc. et al |
| 8 | 2:13-cv-03398 | Miller et al v. Ethicon, Inc. et al |
| 9 | 2:13-cv-03487 | Clutter et al v. Ethicon, Inc. et al |
| 10 | 2:13-cv-03621 | Dailey et al v. Ethicon, Inc. et al |
| 11 | 2:13-cv-03758 | Adams et al v. Ethicon, Inc. et al |
| 12 | 2:13-cv-04514 | Walls v. Ethicon, Inc. et al |
| 13 | 2:13-cv-05489 | Sheets et al v. Ethicon, Inc. et al |
| 14 | 2:13-cv-05677 | Harris v. Ethicon, Inc. et al |
| 15 | 2:13-cv-06172 | Adams et al v. Ethicon, Inc. et al |
| 16 | 2:13-cv-06200 | Crowder et al v. Ethicon, Inc. et al |
| 17 | 2:13-cv-07057 | Gorby v. Ethicon, Inc. et al |
| 18 | 2:13-cv-07552 | Perry v. Ethicon, Inc. et al |
| 19 | 2:13-cv-07854 | Musgrave et al v. Ethicon, Inc. |
| 20 | 2:13-cv-08502 | Hall et al v. Ethicon, Inc. et al |

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| 21 | 2:13-cv-08506 | Miller et al v. Ethicon, Inc. et al |
| 22 | 2:13-cv-09237 | Davis v. Ethicon, Inc. et al |
| 23 | 2:13-cv-10287 | Sawyer et al v. Ethicon, Inc. et al |
| 24 | 2:13-cv-11946 | Dove v. Ethicon, Inc. et al |
| 25 | 2:13-cv-12827 | Browning et al v. Ethicon, Inc. et al |
| 26 | 2:13-cv-12972 | Butler v. Ethicon, Inc. et al |
| 27 | 2:13-cv-13263 | Lane et al v. Ethicon, Inc. et al |
| 28 | 2:13-cv-14448 | Hager v. Ethicon, Inc. et al |
| 29 | 2:13-cv-14694 | Fleshman et al v. Ethicon, Inc. et al |
| 30 | 2:13-cv-16151 | Watts et al v. Ethicon, Inc. et al |
| 31 | 2:13-cv-16271 | Moore v. Ethicon, Inc. et al |
| 32 | 2:13-cv-17140 | Zande et al v. Ethicon, Inc. et al |
| 33 | 2:13-cv-18487 | McKinney et al v. Ethicon, Inc. et al |
| 34 | 2:13-cv-18643 | Samples v. Ethicon, Inc. et al |
| 35 | 2:13-cv-20172 | Thomas et al v. Ethicon, Inc. et al |
| 36 | 2:13-cv-21184 | Thomas et al v. Ethicon, Inc. et al |
| 37 | 2:13-cv-22023 | Morgan v. Ethicon, Inc. et al |
| 38 | 2:13-cv-22854 | Ferguson v. Ethicon, Inc. et al |
| 39 | 2:13-cv-22900 | Pritt et al v. Ethicon, Inc. et al |
| 40 | 2:13-cv-22901 | Farley v. Ethicon, Inc. et al |
| 41 | 2:13-cv-25013 | Patton et al v. Ethicon, Inc. et al |

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| 42 | 2:13-cv-25932 | Neely v. Ethicon, Inc. et al |
| 43 | 2:13-cv-26601 | Shivley et al v. Ethicon, Inc. et al |
| 44 | 2:13-cv-26811 | Higginbotham et al v. Ethicon, Inc. et al |
| 45 | 2:13-cv-27170 | Anderson et al v. Ethicon, Inc. et al |
| 46 | 2:13-cv-27366 | Renforth et al v. Ethicon, Inc. et al |
| 47 | 2:13-cv-27727 | Davis v. Ethicon, Inc. et al |
| 48 | 2:13-cv-29380 | Hurley v. Ethicon, Inc. et al |
| 49 | 2:13-cv-31164 | Jackson v. Ethicon, Inc. et al |
| 50 | 2:13-cv-31232 | Kerns et al v. Johnson & Johnson Corporation et al |
| 51 | 2:13-cv-31240 | Goodnight v. Ethicon, Inc. et al |
| 52 | 2:13-cv-32037 | Hanna et al v. Ethicon, Inc. et al |
| 53 | 2:13-cv-32698 | Stratton et al v. Ethicon, Inc. et al |
| 54 | 2:14-cv-00081 | Corfee et al v. Ethicon, Inc. et al |
| 55 | 2:14-cv-01100 | Hicks v. Ethicon, Inc. et al |
| 56 | 2:14-cv-01379 | Sutphin v. Ethicon, Inc. |
| 57 | 2:14-cv-02800 | Paynter et al v. Ethicon, Inc. et al |
| 58 | 2:14-cv-02950 | Casto et al v. Ethicon, Inc. et al |
| 59 | 2:14-cv-03389 | Cooper et al v. Ethicon, Inc. et al |
| 60 | 2:14-cv-03398 | Demcoe v. Ethicon, Inc. et al |
| 61 | 2:14-cv-04174 | Howell et al v. Ethicon, Inc. et al |
| 62 | 2:14-cv-04366 | Miller et al v. Ethicon, Inc. et al |

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| 63 | 2:14-cv-06748 | German v. Ethicon, Inc. et al |
| 64 | 2:14-cv-07246 | Sheets v. Ethicon, Inc. et al |
| 65 | 2:14-cv-07281 | Sheppard v. Ethicon, Inc. et al |
| 66 | 2:14-cv-07467 | Ryan v. Ethicon, Inc. et al |
| 67 | 2:14-cv-07917 | McNew v. Ethicon, Inc. et al |
| 68 | 2:14-cv-07971 | Gilkerson et al v. Ethicon, Inc. et al |
| 69 | 2:14-cv-08149 | Moore v. Ethicon, Inc. et al |
| 70 | 2:14-cv-08427 | Epling v. Ethicon, Inc. et al |
| 71 | 2:14-cv-09014 | Bailey v. Ethicon, Inc. et al |
| 72 | 2:14-cv-09070 | Garcia v. Ethicon, Inc. et al |
| 73 | 2:14-cv-10224 | Pruitt et al v. Ethicon, Inc. et al |
| 74 | 2:14-cv-12186 | Winals et al v. Ethicon, Inc. et al |
| 75 | 2:14-cv-12441 | Hanshaw et al v. Ethicon, Inc. et al |
| 76 | 2:14-cv-12835 | Jones v. Ethicon, Inc. et al |
| 77 | 2:14-cv-12919 | Kitchen v. Ethicon, Inc. et al |
| 78 | 2:14-cv-14350 | Whitt et al v. Ethicon, Inc. et al |
| 79 | 2:14-cv-14412 | Orndorff v. Ethicon, Inc. et al |
| 80 | 2:14-cv-14497 | Cadle v. Ethicon, Inc. et al |
| 81 | 2:14-cv-14687 | Lane et al v. Ethicon, Inc. et al |
| 82 | 2:14-cv-15099 | Meaige v. Ethicon, Inc. et al |
| 83 | 2:14-cv-16229 | Edwards et al v. Ethicon, Inc. et al |

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| 84 | 2:14-cv-16478 | Vandevender v. Ethicon, Inc. et al |
| 85 | 2:14-cv-22107 | Gunn v. Ethicon, Inc. et al |
| 86 | 2:14-cv-24201 | Lively v. Ethicon, Inc. et al |
| 87 | 2:14-cv-25229 | Velazquez v. Ethicon, Inc. |
| 88 | 2:14-cv-25281 | Christensen v. Ethicon, Inc. et al |
| 89 | 2:14-cv-25281 | Christensen v. Ethicon, Inc., et al |
| 90 | 2:14-cv-25584 | Vargas v. Ethicon, Inc. et al |
| 91 | 2:14-cv-25603 | Vugrinovich v. Ethicon, Inc. et al |
| 92 | 2:14-cv-26253 | Rowe et al v. Ethicon, Inc. et al |
| 93 | 2:14-cv-28237 | Starr v. Ethicon, Inc. et al |
| 94 | 2:14-cv-28300 | Anderson et al v. Ethicon, Inc. et al |
| 95 | 2:14-cv-28853 | Harless v. Ethicon, Inc. et al |
| 96 | 2:14-cv-29176 | Messer v. Ethicon, Inc. |
| 97 | 2:14-cv-29917 | Crane et al v. Ethicon, Inc. et al |
| 98 | 2:14-cv-30297 | Chatman v. Ethicon, Inc. et al |
| 99 | 2:14-cv-30635 | Morrison et al v. Ethicon, Inc. et al |
| 100 | 2:14-cv-30787 | Flowers v. Ethicon, Inc. et al |
| 101 | 2:15-cv-00800 | Absten et al v. Ethicon, Inc. et al |
| 102 | 2:15-cv-02800 | Dickson v. Ethicon, Inc. et al |
| 103 | 2:15-cv-03033 | Jewell v. Ethicon, Inc. et al |
| 104 | 2:15-cv-03766 | Phillips et al v. Ethicon, Inc. et al |

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| 105 | 2:15-cv-04533 | Aquino v. Ethicon, Inc. et al |
| 106 | 2:15-cv-06267 | Price v. Ethicon, Inc. et al |
| 107 | 2:15-cv-11330 | Watson et al v. Ethicon, Inc. et al |
| 108 | 2:15-cv-11685 | Woods et al v. Ethicon, Inc. et al |
| 109 | 2:15-cv-12165 | Bandy v. Ethicon, Inc. et al |
| 110 | 2:15-cv-12552 | Mendez et al v. Ethicon, Inc. et al |
| 111 | 2:15-cv-12764 | Michael v. Ethicon, Inc. et al |
| 112 | 2:15-cv-13283 | Johnson v. Ethicon, Inc. et al |
| 113 | 2:15-cv-14261 | Parkins et al v. Ethicon, Inc. et al |
| 114 | 2:15-cv-14783 | Mullins et al v. Ethicon, Inc. et al |
| 115 | 2:15-cv-14871 | Mueller v. Ethicon, Inc. et al |
| 116 | 2:16-cv-00188 | Oliverio et al v. Ethicon, Inc. et al |
| 117 | 2:16-cv-01436 | Casto v. Ethicon, Inc. et al |
| 118 | 2:16-cv-01635 | Demont v. Ethicon, Inc. et al |
| 119 | 2:16-cv-01780 | Murdock et al v. Ethicon, Inc. et al |
| 120 | 2:16-cv-01994 | Watts v. Ethicon, Inc. et al |
| 121 | 2:16-cv-02193 | Lyons v. Ethicon, Inc. et al |
| 122 | 2:16-cv-03506 | Prater et al v. Ethicon, Inc. et al |
| 123 | 2:16-cv-03858 | Hackler v. Ethicon, Inc. et al |
| 124 | 2:16-cv-04003 | Lantz v. Ethicon, Inc. et al |
| 125 | 2:16-cv-04149 | Bravo v. Ethicon, Inc. et al |

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| 126 | 2:16-cv-04176 | Wolfe et al v. Ethicon, Inc. et al |
| 127 | 2:16-cv-04407 | Gore et al v. Ethicon, Inc. et al |
| 128 | 2:16-cv-05064 | Westfall v. Ethicon, Inc. et al |
| 129 | 2:16-cv-05082 | Oliver et al v. Ethicon, Inc. et al |
| 130 | 2:16-cv-05198 | Lodato et al v. Ethicon, Inc. et al |
| 131 | 2:16-cv-05965 | Stepp v. Ethicon, Inc. et al |
| 132 | 2:16-cv-06368 | Perry et al v. Ethicon, Inc. et al |
| 133 | 2:16-cv-09555 | Young v. Ethicon, Inc. et al |
| 134 | 2:16-cv-09879 | McCauley v. Ethicon, Inc. et al |
| 135 | 2:16-cv-10461 | Johnson v. Ethicon, Inc. et al |
| 136 | 2:16-cv-10986 | Trembly v. Ethicon, Inc. et al |
| 137 | 2:16-cv-11228 | Dingess v. Ethicon, Inc. et al |
| 138 | 2:16-cv-11448 | Ball v. Ethicon, Inc. et al |
| 139 | 2:16-cv-11923 | Foster v. Ethicon, Inc. et al |
| 140 | 2:16-cv-11943 | Young v. Ethicon, Inc. et al |
| 141 | 2:16-cv-12290 | Wiblin v. Ethicon, Inc. et al |
| 142 | 2:16-cv-12361 | Walker v. Ethicon, Inc. et al |
| 143 | 2:16-cv-12747 | Wickline et al v. Ethicon, Inc. et al |
| 144 | 2:17-cv-00376 | Nichols v. Ethicon, Inc. et al |
| 145 | 2:17-cv-00788 | Leighton v. Ethicon, Inc. et al |
| 146 | 2:17-cv-01801 | Cricks v. Ethicon, Inc. et al |

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| 147 | 2:17-cv-01875 | Toney v. Ethicon, Inc. et al |
| 148 | 2:17-cv-02116 | Amos et al v. Ethicon, Inc. et al |
| 149 | 2:17-cv-02857 | Watkins v. Ethicon, Inc. et al |
| 150 | 2:17-cv-03062 | McNish v. Ethicon, Inc. et al |