

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF KANSAS**

**IN RE: ETHICON, INC., POWER MORCELLATOR )  
PRODUCTS LIABILITY LITIGATION )**

**(This Document Relates to All Cases) )**

**MDL No: 2652**

**D. Kan. No. 15-md-2652-KHV**

**PRACTICE AND PROCEDURE ORDER  
UPON TRANSFER PURSUANT TO 28 U.S.C. § 1407(a)**

It appearing that civil actions transferred to this Court and listed on Schedule A merit special attention as complex litigation., it is hereby ORDERED that:

1. Prior to the initial scheduling conference and entry of a comprehensive order governing all further proceedings in this case, the provisions of this Order shall govern the practice and procedure in those actions that are transferred to this Court by the Judicial Panel on Multidistrict Litigation pursuant to its order dated October 15, 2015. Those cases are listed on Schedule A attached to this Order. This Order will also apply to any related actions later filed in or removed to this Court, and any actions later transferred to this MDL docket by the Judicial Panel on Multidistrict Litigation.

2. The civil actions listed on Schedule A are consolidated for pretrial purposes. This consolidation, however, does not constitute a determination that the actions should be consolidated for trial, nor does it have the effect of making any entity a party to any action in which he, she or it has not been named, served or added in accordance with the Federal Rules of Civil Procedure.

3. All matters relating to pretrial and discovery proceedings in this case will be addressed at an initial scheduling conference to be held on **Wednesday, November 18, 2015 at 1:00 p.m.** in the Special Proceedings Courtroom, Room #655, Robert J. Dole United States Courthouse, 500 State Avenue, Kansas City, Kansas. Counsel are expected to familiarize themselves with the *Manual for*

*Complex Litigation Fourth* (Fed. Judicial Center 2004) (“MCL 4th”) and be prepared at the conference to suggest procedures that will facilitate the expeditious, economical, and just resolution of this litigation. The items listed in MCL 4th Sections 11.21, 11.211, 11.212, 11.213 and 11.214 shall, to the extent applicable, constitute a tentative agenda for the conference. Counsel shall confer and seek consensus to the extent possible with respect to the items on the agenda, including a proposed discovery plan, amendment of pleadings, and consideration of any class action allegations and motions. On or before **November 10, 2015**, the parties may submit suggestions as to any case management orders or additional agenda items. In considering proposed discovery plans, counsel should focus on the common discovery needs of this particular MDL docket, and realistically address the fact that these cases basically involve a single common defendant, serious personal injuries, a small number of cases and a finite number of common discovery issues. Counsel should anticipate a time line which is geared to completing common fact discovery in less than 12 to 18 months and remanding the cases to their respective transferee courts immediately thereafter. Many of the legal issues in this MDL arise exclusively under state law, and the Court does not expect to address such issues prior to remand. Finally, to the extent that the parties are interested in exploring alternative dispute resolution, they should expect ADR to occur on a track which is parallel to ongoing discovery, which shall not be held in abeyance.

4. At the initial scheduling conference, the Court will discuss an organizational structure for counsel including possible appointment of plaintiffs’ lead counsel and/or a plaintiffs’ steering committee. As part of the organizational structure, the Court also intends to appoint liaison counsel. Any counsel interested in seeking a leadership role in the organizational structure shall be present at the initial scheduling conference and by **November 6, 2015**, shall submit a proposal by email (not to be

filed) at [ksd\\_vratil\\_chambers@ksd.uscourts.gov](mailto:ksd_vratil_chambers@ksd.uscourts.gov) and [ksd\\_ohara\\_chambers@ksd.uscourts.gov](mailto:ksd_ohara_chambers@ksd.uscourts.gov) addressing his or her qualifications for selection, including the factors set out in MCL 4th Section 10.224 and any case specific issues that might inform the appropriate structure. Counsel submitting proposals shall provide copies to other plaintiffs' counsel. Criteria for the above appointments include (1) willingness and ability to commit to a time-consuming process; (2) ability to work cooperatively with others; (3) professional experience in this type of litigation; (4) access to sufficient resources to advance the litigation in a timely manner; and (5) achieving a leadership team that adequately reflects the diversity of legal talent available and the requirements of the case and achieves diversity with respect to gender, race, national origin, geography, years of practice, age and other relevant factors. The Court expects that counsel in leadership positions will vigorously discharge their duties and be committed to meeting the accelerated schedule which the Court intends to adopt. This schedule will include frequent in-person status conferences in Kansas City, Kansas. Counsel will be expected to give their responsibilities in this MDL docket the highest priority, and appointments will be reviewed on an ongoing basis to guarantee that counsel are willing and able to discharge that responsibility. Any application for a leadership role shall explicitly address this requirement in addition to the five other factors set forth above.

Liaison counsel will be charged with essentially administrative matters. For example, liaison counsel shall be authorized to receive orders and notices from the Court on behalf of all parties within their liaison groups. To the extent such orders and notices are not available electronically to all parties, liaison counsel shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Liaison counsel shall maintain complete files with copies of all documents served upon them and make such files available to parties within their liaison groups upon request. Liaison counsel are authorized to receive orders and notices from the Judicial Panel on Multidistrict Litigation pursuant to

Rule 5.2 of the Panel's Rules of Procedure on behalf of all parties within their liaison groups and shall prepare and transmit copies of such orders and notices to the parties in their liaison groups. Expenses incurred in performing the services of liaison counsel shall be shared equally by all members of the liaison group in a manner agreeable to the parties or as determined by the Court failing such agreement.

5. On or before **November 10, 2015**, plaintiffs and defendants shall submit to the chambers of District Judge Kathryn H. Vratil and the chambers of Magistrate Judge James P. O'Hara, by either mail or email at [ksd\\_vratil\\_chambers@ksd.uscourts.gov](mailto:ksd_vratil_chambers@ksd.uscourts.gov) and at [ksd\\_ohara\\_chambers@ksd.uscourts.gov](mailto:ksd_ohara_chambers@ksd.uscourts.gov), a brief written statement indicating their preliminary understanding of the facts involved in the litigation and the critical factual and legal issues. These statements will not be filed with the Clerk, will not be binding, will not waive claims or defenses, and may not be offered in evidence against a party at later proceedings. The parties' statements shall list all pending motions, as well as related cases pending in state or federal court, together with their current status, including any discovery taken to date, to the extent known. The parties shall be limited to one such submission for all plaintiffs and one such submission for all defendants.

6. Each party represented by counsel shall appear at the initial scheduling conference through the attorney who will have primary responsibility for the party's interest in this litigation. Attendance at the conference will not waive objections to jurisdiction, venue or service.

7. For purposes of notice to all counsel, this Order will be filed in each of the 15 individual District of Kansas cases which correspond to the cases listed on Schedule A attached to this Order. Before the initial scheduling conference, service of all documents shall be made on each of the attorneys on the docket sheet for each of the 15 individual District of Kansas cases which correspond to the cases listed on Schedule A. The parties shall present to the Court at the initial scheduling conference a list

of attorneys and their addresses, email addresses and telephone numbers. Only one attorney for each party separately represented shall be included on such a list.

8. Each defendant is granted an extension of time for responding by motion or answer to the complaint(s) until a date to be set by the Court. Pending the initial scheduling conference and further orders of this court, all outstanding discovery proceedings are stayed, no further discovery shall be initiated, and the time requirements to perform any acts or file any papers pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure are tolled.

9. The Clerk of the Court will maintain a master docket case file under the style “**In Re: Ethicon, Inc., Power Morcellator Products Liability Litigation**” and the identification number in the District of Kansas is **15-md-2652** and the Multidistrict Litigation identification number is **MDL 2652**. When a pleading is intended to be applicable to all actions, this shall be indicated in caption by the words: “**This Document Relates to All Cases.**” When a pleading is intended to apply to other than all cases, this Court’s docket number for each individual case to which the document is related shall appear immediately after the words “**This Document Relates to...**”.

10. Any document which is to be filed in any of these actions shall be filed with the Clerk of this Court and not with the transferor district. The District Court of Kansas is an electronic court and all filings shall be submitted electronically unless otherwise ordered by the court. Counsel are required to register for electronic filing using the NextGen/CSO application via PACER ([www.PACER.gov](http://www.PACER.gov)). For further information and instructions regarding NextGen/CSO, counsel may go to [www.ksd.uscourts.gov](http://www.ksd.uscourts.gov) and use the NextGen Info link, or contact Marla Gonzales at 913-735-2208 or [marla\\_gonzales@ksd.uscourts.gov](mailto:marla_gonzales@ksd.uscourts.gov)

11. The parties are directed to make all entries on the master docket sheet (15-md-2652) with

a notation listing the cases to which the document applies; except that a document closing a case will also be entered on the individual docket sheet for the case to which it applies. All documents shall be filed in the master file. Unless specifically ordered otherwise, no chambers copies need to be provided.

12. Any document filed in any of these actions which is substantially identical to any other document filed in another of these actions shall be sufficient if it incorporates by reference the document to which it is substantially identical. Where counsel for more than one party plan to file substantially identical documents they shall join in the submission of such documents and shall file only one document on behalf of all so joined.

13. Any order including protective orders previously entered by this Court or any transferor district court shall remain in full force and effect unless modified by this Court upon application.

14. When an action that properly belongs as a part of In Re: Ethicon, Inc., Power Morcellator Products Liability Litigation is hereinafter filed in the District of Kansas or removed or transferred here from another court, the Clerk of this Court shall:

- a. File a copy of this Order in the separate file for such action;
- b. Make an appropriate entry on the master docket sheet;
- c. Mail to the attorneys for the plaintiff in the newly filed or transferred case a copy of this Order; and
- d. Upon the first appearance of any new defendant, mail to the attorneys for the defendant in such newly filed or transferred cases a copy of this Order.

15. Counsel who appear in a transferor court prior to transfer need not enter an additional appearance before this Court.

16. In the event that a case is remanded from this Court, the parties shall furnish to the Clerk of the Court a stipulation or designation of the contents of the record and furnish all necessary copies

of any pleadings filed so as to enable the Clerk of the Court to which it is remanded to comply with the order of remand.

17. Each party shall take reasonable steps to preserve documents and other records containing information potentially relevant to the subject matter of this litigation.

18. In accordance with Rule 5(d), Fed. R. Civ. P., discovery requests and responses are not to be filed with the Clerk or sent to chambers except when specifically ordered by the Court to the extent needed in connection with a motion.

19. Unless otherwise ordered by this Court, all substantive communications with the Court shall be in writing, with copies to opposing counsel. Inquiries to the Court concerning scheduling and related matters shall be directed to Sherry Bernhardt, courtroom deputy for Judge Kathryn H. Vratil, at **(913) 735-2300**, or to the chambers email account, which is [ksd\\_vratil\\_chambers@ksd.uscourts.gov](mailto:ksd_vratil_chambers@ksd.uscourts.gov). Inquiries concerning matters assigned to the magistrate judge shall be directed to Amy Henson, law clerk for Magistrate Judge James P. O'Hara, at **(913) 735-2280**, or to the chambers email account, which is [ksd\\_ohara\\_chambers@ksd.uscourts.gov](mailto:ksd_ohara_chambers@ksd.uscourts.gov).

20. The Court recognizes that cooperation by and among plaintiffs' counsel and by and among defense counsel is essential for the orderly and expeditious resolution of this litigation. The communication of information among and between plaintiffs' counsel and among and between defense counsel shall not be deemed a waiver of attorney-client privilege or the protection afforded attorney work product, and cooperative efforts contemplated above shall not in any way be used against any party. Nothing contained in this provision shall be construed to limit the rights of any party or counsel to assert the attorney-client privilege or attorney work product doctrine.

Dated this 16th day of October, 2015 in Kansas City, Kansas.

s/ Kathryn H. Vratil  
KATHRYN H. VRATIL  
United States District Judge



**IN RE: POWER MORCELLATOR  
PRODUCTS LIABILITY LITIGATION**

MDL No. 2652

**SCHEDULE A**

District of Colorado

MINIHAN v. ETHICON, INC., ET AL., C.A. No. 1:15-00695

Southern District of Florida

KOTIS v. ETHICON, INC., ET AL., C.A. No. 0:15-60566

Northern District of Georgia

GALAMBOS, ET AL. v. ETHICON, INC., ET AL., C.A. No. 1:15-01046

District of Kansas

SHAFER, ET AL. v. ETHICON, INC., ET AL., C.A. No. 2:14-02633

Eastern District of Louisiana

PHILLIPS v. ETHICON ENDO-SURGERY, INC., ET AL., C.A. No. 2:15-01310

District of Maryland

CARADORI, ET AL. v. ETHICON-ENDO SURGERY, INC., ET AL., C.A. No. 8:14-03198

District of New Jersey

WHITEHEAD, ET AL. v. ETHICON, INC., ET AL., C.A. No. 3:15-03980

SMITH, ET AL. v. ETHICON, INC., ET AL., C.A. No. 3:15-03988

Western District of New York

LEUZZI, ET AL. v. ETHICON ENDO SURGERY, INC., ET AL., C.A. No. 6:14-06218

Eastern District of Pennsylvania

JOHNSON v. ETHICON, INC., ET AL., C.A. No. 2:15-00553

**MDL No. 2652 Schedule A (Continued)**

Middle District of Pennsylvania

SANDERS, ET AL. v. ETHICON, INC., ET AL., C.A. No. 1:15-00782

District of South Carolina

OSTRANDER v. ETHICON, INC., ET AL., C.A. No. 6:15-00516

PHILLIPS, ET AL. v. ETHICON, INC., ET AL., C.A. No. 7:15-02114

Middle District of Tennessee

SCHROEDER v. ETHICON ENDO SURGERY, INC., C.A. No. 3:14-02389

Western District of Wisconsin

BARNETT v. KARL STORZ ENDOSCOPY-AMERICA, INC., ET AL.,  
C.A. No. 3:15-00242