

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. 15-md-2652

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

**JOINT STIPULATED MOTION FOR SUGGESTION OF
REMAND AND TO DISSOLVE MDL NO. 2652**

Pursuant to 28 U.S.C. § 1407 and Judicial Panel on Multidistrict Litigation (“JPML”) Rule 10.1, Plaintiffs and Defendants (collectively “the Parties”), by and through undersigned counsel, hereby submit this Joint Stipulated Motion for Suggestion of Remand and to Dissolve MDL 2652. The Parties’ Joint Motion is based upon the following representation of facts:

1. On October 15, 2015, the JPML issued a Transfer Order establishing *In re Ethicon, Inc. Power Morcellator Products Liability Litigation*, 2:15-md-02652 (D. Kan.), Dkt. No. 1 (Oct. 15, 2015).
2. In creating MDL No. 2652, the JPML transferred and consolidated 14 actions from federal district courts around the country to the District of Kansas. *See* Transfer Order, Dkt. No. 1. The plaintiffs in each of the transferred and consolidated actions alleged injury following a surgery in which an Ethicon Power Morcellator was used. *See id.* The JPML specifically noted in its Transfer Order that it was aware of “at least 28 actions [subject to potential transfer] naming Ethicon as a defendant,” which the JPML deemed a “sufficient number of pending actions to warrant centralization, given the complexity of anticipated overlapping fact and expert discovery.” *See id.*

3. Pursuant to the initial Transfer Order and 13 subsequent Conditional Transfer Orders, 42 cases were transferred to the MDL between October 15, 2015 and April 29, 2016.¹
4. Following consolidation, the Parties, with this Court's guidance, worked efficiently and cooperatively to conduct significant pre-trial discovery and early evaluation of the merits of the individual actions. Due to the joint efforts of the Parties and the Court, the Parties have successfully resolved the vast majority of cases filed in the MDL.
5. To date, only four cases remain in the MDL, only three of which name Ethicon as a defendant. All remaining actions have been resolved and/or dismissed.² The remaining cases are:

a. *Evanthia Kotis v. Ethicon, Inc., et al.*, D. Kan. No. 15-cv-9325;

b. *Sam LaMargo et al. v. Johnson & Johnson*, D. Kan. No. 15-cv-9712;

¹ See October 15, 2015 Transfer Order, Dkt. 1 (transferring 14 actions to MDL); see also Conditional Transfer Order ("CTO") No. 1, Dkt. 3 (Oct. 26, 2015) (transferring 12 actions, with opposed transfer of one additional action); CTO No. 2, Dkt. 13 (Nov. 25, 2015) (transferring one action); CTO No. 3, Dkt. 60 (Dec. 8, 2015) (transferring two actions); CTO No. 4, Dkt. 74 (Dec. 18, 2015) (transferring two actions); CTO No. 6, Dkt. No. 85, (Jan. 4, 2016) (transferring one action, with opposed transfer of one additional action); CTO No. 7, Dkt. No. 114, (Jan. 12, 2016) (transferring one action); CTO No. 8, Dkt. 129 (Jan. 21, 2016) (transferring 1 action); CTO No. 9, Dkt. No. 184 (Mar. 1, 2016) (transferring one action); CTO No. 10, Dkt. No. 168 (Feb. 17, 2016) (transferring one action); CTO No. 11, Dkt. No. 179 (Feb. 26, 2016) (transferring two actions); CTO No. 12, Dkt. No. 194 (Mar. 7, 2016) (transferring one action); CTO No. 13, Dkt. No. 249 (Apr. 19, 2016) (transferring one action); CTO No. 14, Dkt. No. 226 (Apr. 29, 2016) (transferring one action).

² Dismissals in the following 24 actions are filed concurrently with this Joint Motion, leaving only four active cases in the MDL: *Arama v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2135; *Barnett v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9326; *Galambos v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9328; *Guglielmino v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2150; *Hamilton v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9896; *Johns v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2002; *Johnson v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9339; *Leary v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9355; *Leuzzi v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9322; *Losee v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9349; *M. Martin v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9364; *Mendoza v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9356; *Musselwhite v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2257; *Ophoven v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9925; *Peterson v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2053; *Sankowski v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9354; *Schroeder v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9334; *Shafer v. Ethicon, Inc. et al.*, D. Kan. No. 14-cv-2633; *Smith v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9332; *Valverde v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9351; *Ward v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2009; *Whitehead v. Ethicon, Inc. et al.*, D. Kan. No. 15-cv-9331; *Williams v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2278; and *Withey v. Ethicon, Inc. et al.*, D. Kan. No. 16-cv-2121.

- c. *Preston O. Martin et al. v. Ethicon, Inc., et al.*, D. Kan. No. 16-cv-2232;³ and
 - d. *Andrea Phillips et al. v. Ethicon, Inc., et al.*, D. Kan. No. 15-cv-9319.
6. The Parties are not aware of any pending cases appropriate for transfer to the MDL; there are no cases on any Conditional Transfer Order that are subject to transfer to the MDL; and the PSC members do not now represent additional Ethicon claimants who expect to file in the future.
 7. The Parties, including all co-lead and liaison counsel for the Plaintiffs' Steering Committee, agree that because so few cases remain in the MDL, the MDL has fulfilled the objectives set forth by 28 U.S.C. § 1407 and the Rules & Procedures of the JPML in the view of the Parties, and the justifications for coordination no longer exist. The Parties agree further that remaining case-specific discovery can be carried out just as efficiently and expeditiously in the few remaining transferor courts.
 8. Moreover, each of the plaintiffs' counsel in the four remaining actions has been contacted by one of the counsel listed below, and they have indicated they have no present opposition to the remand of their claims or dissolution of the MDL.
 9. Wherefore, the Parties respectfully request that this Honorable Court file a Suggestion of Remand with the Judicial Panel on Multidistrict Litigation to remand the following actions to their respective home courts, as follows:
 - a. *Evanthia Kotis v. Ethicon, Inc., et al.*, D. Kan. No. 15-cv-9325, S.D. Fla. No. 15-cv-60566, to the United States District Court for the Southern District of Florida;

³ The manufacturer defendants are being dismissed concurrently in the *Martin* action, leaving only malpractice defendants. The case therefore is appropriate for remand on these additional grounds.

- b. *Sam LaMargo et al. v. Johnson & Johnson*, D. Kan. No. 15-cv-9712, N.D. Ill. No. 15-cv-10101, to the United States District Court for the Northern District of Illinois;
 - c. *Preston O. Martin et al. v. Ethicon, Inc.*, et al., D. Kan. No. 16-cv-2232, D. Md. No. 15-cv-03787, to the United States District Court for the District of Maryland; and
 - d. *Andrea Phillips et al. v. Ethicon, Inc.*, et al., D. Kan. No. 15-cv-9319, D.S.C. No. 15-cv-2114, to the United States District Court for the District of South Carolina.
10. The remand and transfer of the aforementioned actions will leave no remaining actions in the MDL. Accordingly, the Parties, including all co-lead and liaison counsel for the Plaintiffs' Steering Committee, likewise respectfully request that this Court issue an Order dissolving MDL 2652 within seven (7) days of remand by the JPML of the aforementioned remaining actions.
11. The Parties agree that upon dissolution of the MDL, this Court should retain jurisdiction to adjudicate any disputes which may arise in connection with the resolution of actions previously pending in the MDL, including (1) any disputes regarding settlement and dismissal of actions resolved while pending in the MDL, and (2) any issues related to the administration of the Common Benefit Fund established by this Court's Order at Docket No. 228.

Respectfully submitted,

Dated: May 27, 2016

/s/ Deborah A. Moeller

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CERTIFICATE OF SERVICE

I hereby certify the foregoing was served via ECF to all counsel of record on this 27th day of May, 2016.

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