

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

<b>CAROLYN M. KIEFFABER and</b>	)	
<b>THOMAS M. KIEFFABER,</b>	)	
	)	
	)	
<b>Plaintiffs,</b>	)	<b>CIVIL ACTION</b>
	)	
<b>v.</b>	)	<b>No. 20-1177-KHV</b>
	)	
<b>ETHICON, INC. and</b>	)	
<b>JOHNSON &amp; JOHNSON,</b>	)	
	)	
	)	
<b>Defendants.</b>	)	
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**MEMORANDUM AND ORDER**

This matter comes before the Court on Defendants’ Motion In Limine No. 13 To Preclude Plaintiffs From Questioning Ethicon Employee Scott Ciarrocca About Documents For Which No Foundation Has Been Laid (Attachment 13, Exhibit M attached to Defendants’ Omnibus Motions In Limine (Doc. #206)) filed March 8, 2021.

Defendants seek to prevent plaintiff from questioning Ciarrocca about documents that he has never seen, with which he could not reasonably have been familiar, and for which no foundation has been laid. Under Rule 602, Fed. R. Evid., they argue, this type of “tactic” is plainly prohibited. Plaintiff responds that without providing specifics about what evidence they are seeking to exclude, defendants are not entitled to a global ruling that an unknown number of unspecified documents should be excluded.

Plaintiff is correct in noting that this issue cannot be resolved on a global scale in advance of trial. Accordingly, defendants must file a renewed motion which lists each exhibit which Ciarrocca has never seen, with which he could not reasonably have been familiar, or for which no

foundation has been laid. At that point, they must present argument why Ciarrocca is not a competent witness as to that exhibit and plaintiff can meaningfully respond. To jump start this process, no later than March 29, 2021, plaintiff shall provide to defendants a written list of all exhibits which she will use in questioning Ciarrocca. Any renewed motion in limine shall be filed no later than April 5, 2021. Prior to that time, the parties must negotiate in good faith in an effort to dispose of this issue without further attention from the Court.

**IT IS SO ORDERED.**

**IT IS FURTHER ORDERED** that Defendants' Motion In Limine No. 13 To Preclude Plaintiffs From Questioning Ethicon Employee Scott Ciarrocca About Documents For Which No Foundation Has Been Laid (Attachment 13, Exhibit M attached to Defendants' Omnibus Motions In Limine (Doc. #206)) filed March 8, 2021, be and hereby is **OVERRULED**.

Dated this 22nd day of March, 2021 at Kansas City, Kansas.

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