

MINUTE ENTRY  
FALLON, J.  
FEBRUARY 27, 2018

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

IN RE: XARELTO (RIVAROXABAN) \* MDL 2592  
PRODUCTS LIABILITY LITIGATION \*  
\* SECTION L  
THIS DOCUMENT RELATES TO \*  
ALL CASES \* JUDGE ELDON E. FALLON  
\*  
\* MAG. JUDGE NORTH

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**THIS DOCUMENT RELATES TO ALL CASES**

A status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. At the conference, a representative from Plaintiffs’ Liaison Counsel (“PLC”), Gerald Meunier, reported to the Court on the topics set forth in the Proposed Agenda. (R. Doc. 8504-1). This status conference was transcribed by Ms. Mary Thompson, Official Court Reporter. Counsel may contact Ms. Thompson at (504) 589-7783 to request a copy of the transcript. A summary of the status conference follows.

**1. PRE-TRIAL ORDERS**

Since the filing of Joint Report No. 25 on January 26, 2018, the Court has issued the following Pre-Trial Orders:

**Pre-Trial Order No. 13B [Rec. Doc. 8519]** entered January 29, 2018 – Amending Case Management Orders No. 13 and 13A with respect to Authorizations provided to Defendants and their record copy vendor, The Marker Group, Inc. dated prior to November 30, 2018.

**2. CASE MANAGEMENT ORDERS:**

Since the filing of Joint Report No. 25 on January 26, 2018, the Court has not issued any new Case Management Orders.

On January 16, 2018, Defendants' filed a Joint Brief in Support of Proposed Case Management Order No. 6 [Rec. Doc. 8346], and the PSC filed a Brief in Support of Plaintiffs' Proposed Case Workup and Remand Plan [Rec. Doc. 8348]. On January 25, 2018, Defendants filed a Joint Response (1) In Opposition to Plaintiffs' Proposed Work-Up Plan and (2) in Support of Proposed CMO 6 [Rec. Doc. 8494]; and the PSC filed a Reply Brief in Support of Plaintiffs' Proposed Case Workup and Remand Plan [Rec. Doc. 8493]. The parties discussed this issue with the Court at the January 30, 2018 status conference. Following that conference, the Court issued an Order setting a telephone status conference on the progress of the MDL for February 16, 2018 [Rec. Doc. 8524]. The Court issued a subsequent Order resetting the conference for February 21, 2018 [Rec. Doc. 8618]. The parties further discussed this issue today during the status conference.

**3. COUNSEL CONTACT INFORMATION FORM**

All counsel in the MDL are required to complete the Counsel Contact Information Form attached to PTO No. 4A, and forward it to the appropriate Liaison Counsel. This information must be kept current by counsel providing the information, and will be relied upon throughout the litigation.

**4. PLAINTIFF FACT SHEETS**

On May 4, 2015, the Court issued Pre-Trial Order No. 13 [Rec. Doc. 895], which governs the form and schedule for service of Plaintiff Fact Sheets ("PFSs"), as well as executed Authorizations for the release of records to be completed by plaintiffs in all individual cases. Pre-Trial Order No. 13A and 14A [Rec. Doc. 1040] provides the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System.

Prior to filing a Motion for Extension of PFS Deadlines, plaintiff's counsel should contact Defendants' Liaison Counsel to determine whether there is any opposition.

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Plaintiffs' counsel in any filed cases as to which the PFS would be due after March 30, 2016 should consult Pre-Trial Order No. 27.

On January 25, 2017, the Court entered Pre-trial Order No. 31, a Protocol to Assist in Addressing Plaintiff Fact Sheets Which Defendants Contend Are Not in Compliance with Court Orders. [Rec. Doc. 5183].

##### **5. DEFENDANT FACT SHEETS**

On May 4, 2015, the Court issued Pre-Trial Order No. 14 [Rec. Doc. 896], which governs the form and schedule for service of Defendant Fact Sheets to be completed by defendant in all individual cases. Pre-Trial Orders No. 13A, 14A, and 14B [Rec. Docs. 1040, 1221, & 1847] provide the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System, as well as for the release of information and data from IMS Health, Inc.. Pursuant to paragraph 3 of PTO 14 [Rec. Doc. 896], it is the responsibility of the Plaintiffs' Liaison Counsel to send written notices of DFS deficiencies to counsel for Defendants. However, any needed follow-up addressing such deficiencies remains the responsibility of individual counsel for plaintiff (a responsibility which the PSC is coordinating with individual plaintiffs' counsel only as to the 40 selected discovery pool plaintiffs).

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Defendants will complete a DFS for completed PFSs served as of March 30, 2016 and Defendants have no obligation to serve a DFS for any PFS served after March 30, 2016.

**6. SERVICE OF PROCESS ON CERTAIN BAYER DEFENDANTS**

On March 24, 2015, the Court issued Pre-Trial Order No. 10 which addressed streamlined service of process for certain Bayer Defendants. The Court issued an Order on September 20, 2016 [Rec. Doc. 4217] regarding service of complaints that were filed on or before December 31, 2016 which extends for those complaints the time period provided for the service of the summons and complaint in Rule 4(m) of the Federal Rules of Civil Procedure so as to run from the issuance of the summons by the Clerk of the Court rather than from the filing of the complaint. The parties will be prepared to discuss this matter at the February 27, 2018 status conference.

On February 15, 2018, the Court entered an Order which addresses a filing backlog in the MDL over the last three months [Rec. Doc. 8628] and which extends the deadline for service of process on all defendants, allowing plaintiffs sixty (60) days from the date on which the Court issues the summons to serve defendants. The Order also stated that the issue would be discussed further at the February 27, 2018 status conference. The parties discussed this issue and will submit a proposed revision of this Order for purposes of clarification.

**7. PRESERVATION ORDER**

On May 4, 2015, the Court issued Pre-Trial Order No. 15 [Rec. Doc. 897], a Consent Order Regarding the Preservation of Documents and Electronically Stored Information. Pre-Trial Order No. 15 modifies paragraph 13 of Pre-Trial Order No. 1 relating to preservation of evidence. Further, the Court issued Pre-Trial Order No. 15B on October 21, 2015 [Rec. Doc. 1477] regarding the obligation of all parties to preserve voicemail, instant messages sent or received on an instant messaging system, or text messages sent or received on a cellular phone, smartphone, tablet or other mobile device. Pre-Trial Order 15B vacated previously entered Pre-Trial Order 15A. [Rec. Doc. 1301].

**8. ORDER GOVERNING THE PARTIES' INTERACTIONS WITH MDL PLAINTIFFS' PRESCRIBING AND TREATING PHYSICIANS**

On April 28, 2016, the Court entered Pre-Trial Order No. 28 [Rec. Doc. 3156] Regarding Contact with Physicians. On January 10, 2017, the Court entered Pre-Trial Order No. 28A [Rec. Doc. 5018] regarding the parties' interactions with MDL Plaintiff's prescribing and treating physicians for the four bellwether cases through end of trial and regarding the maintaining of a record by Plaintiffs' counsel of their contacts *ex parte* with physicians for each of the other 36 discovery pool cases.

**9. BELLWETHER CASES**

The following bellwether trials took place in the MDL:

a. ***Joseph J. Boudreaux, Jr., et al. v. Janssen et al., Case No. 2:14-cv-02720***, which commenced in the Eastern District of Louisiana on April 24, 2017 and concluded on May 3, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7830). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7911).

b. ***Joseph Orr, Jr., et al. v. Janssen et al., Case No. 2:15-cv-03708***, which commenced in the Eastern District of Louisiana on May 30, 2017 and concluded on June 9, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7829). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7912).

c. ***Mingo v. Janssen Research & Development, LLC, et al., Case No. 2:15-cv-03367***, which commenced in the Southern District of Mississippi on August 7, 2017 and concluded on August 18, 2017, resulted in a verdict for the Defendants. Plaintiff's Motion for New Trial was denied on December 14, 2017 (Rec. Doc. 8145). Plaintiff filed

a Notice of Appeal on January 12, 2018 (Rec. Doc. 8307). A Notice of Conditional Cross Appeal was filed by the Defendants on January 26, 2018 (Rec. Doc.8502).

The following bellwether case was voluntarily dismissed with prejudice:

*Henry v. Janssen Research & Development, LLC et al., Case No. 2:15-cv-00224*, Order signed on November 2, 2017 (Rec. Doc. 7943).

**10. STATE/FEDERAL COORDINATION**

In accordance with Pre-Trial Orders No. 7 and 7A, as well as Case Management Order No. 1, PLC and DLC have had, and will continue to have, communications regarding the State Liaison Committee, as well as the status of coordination of MDL and state court actions. The parties will report to the Court on recent developments in state court cases.

PLC and DLC will report to the Court on this matter at the February 27, 2018 Status Conference, as well as the trial status of matters in the Pennsylvania consolidated proceedings.

**11. MATTERS SET FOR HEARING FOLLOWING STATUS CONFERENCE**

None

**12. NEXT STATUS CONFERENCE**

The next monthly status conference is scheduled for March 21, 2018 at 9:00 a.m. Additionally, a monthly status conference has been scheduled for April 24, 2018 at 9:00 a.m.