

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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**CASE MANAGEMENT ORDER NO. 5**  
(Bellwether Trial Selection Protocol)

The Court entered Case Management Order No. 3 which addressed the process for selecting discovery pool cases. *See* R. 1632, 1680-1. The parties did meet and confer but were unable to resolve differences concerning the method of selecting bellwether trial cases from among the discovery pool cases. Having considered the parties’ positions regarding selection of bellwether trial cases, the Court hereby orders as follows:

1. The trial of the first bellwether case will be for a plaintiff where venue is proper in the United States District Court, Eastern District of Louisiana and meets the description of Category 2a from CMO 4 (“Plaintiff took Xarelto® in order to reduce the risk of stroke and systemic embolism due to nonvalvular atrial fibrillation and alleges a gastrointestinal bleed or death due to a gastrointestinal bleed and was between the ages of 50 and 90 at the date of the alleged event.”).
  - a. On Monday, August 1, 2016, at 11 a.m. CST, the PSC and defendants shall exchange via email a list of any cases that either side will argue on August 4,

2016 that should be removed from the pool. The parties shall exchange the name of the case and the basis for the argument for removal.

- b. On Thursday, August 4, 2016, the Court will hear argument from the parties as to whether any cases in this category should be removed from the pool.
  - c. On Monday, August 8, 2016, at 5 p.m. CST, the PSC and defendants shall each nominate three candidates for this category on a telephone call between the PSC's and defendants' designated counsel.
  - d. Each side will then be afforded one strike which shall be communicated to the other side by 5 p.m. CST on August 9, 2016 on a telephone call between the PSC's and defendants' designated counsel.
  - e. The parties will notify the Court of the remaining pool and the Court shall then randomly select the first trial case from this pool and notify the parties of same.
2. The trial of the second bellwether case will be for a plaintiff where venue is proper in the United States District Court, Eastern District of Louisiana and meets the description of Category 2e from CMO 4 ("Plaintiff took Xarelto<sup>®</sup> in order to reduce the risk of stroke and systemic embolism due to nonvalvular atrial fibrillation and alleges a Brain bleed/hemorrhagic stroke or death due to a brain bleed/hemorrhagic stroke and was between the ages of 50 and 90 at the date of the alleged event.").

There are four cases in this category in the bellwether discovery pool.

- a. On Monday, August 1, 2016, at 11 a.m. CST, the PSC and defendants shall exchange via email a list of any cases that either side will argue on August 4,

2016 that should be removed from the pool. The parties shall exchange the name of the case and the basis for the argument for removal.

- b. On Thursday, August 4, 2016, the Court will hear argument from the parties as to whether any cases in this category should be removed from the pool.
  - c. Each side will then be afforded one strike which shall be communicated to the other side by 5 p.m. CST on August 9, 2016 on a telephone call between the PSC's and defendants' designated counsel.
  - d. The parties will notify the Court of the remaining pool and the Court shall then randomly select the second trial case from this pool and notify the parties of same.
3. The trial of the third bellwether case will be for a plaintiff where venue is proper in a federal court in Mississippi and meets the description of Category 2b from CMO 4 ("Plaintiff took Xarelto<sup>®</sup> to treat deep vein thrombosis (DVT), to treat pulmonary embolism (PE) and/or to reduce the risk of recurrence of DVT or PE and alleges a gastrointestinal bleed or death due to a gastrointestinal bleed and was between the ages of 40 and 80 at the date of the alleged event."). There are two cases in the discovery pool meeting this profile.
- a. On Monday, August 1, 2016, at 11 a.m. CST, the PSC and defendants shall exchange via email a list of any cases that either side will argue on August 4, 2016 that should be removed from the pool. The parties shall exchange the name of the case and the basis for the argument for removal.
  - b. On August 4, the Court will hear argument from the parties as to whether any cases in this category should be removed from the pool. At the conclusion of

that argument, if both cases remain in the pool, the Court will then randomly select the third trial case from these two cases.

4. The trial of the fourth bellwether case shall be for a plaintiff where venue is proper in a federal district in the State of Texas and meets the description of Category 2a from CMO 4 (“Plaintiff took Xarelto® in order to reduce the risk of stroke and systemic embolism due to nonvalvular atrial fibrillation and alleges a gastrointestinal bleed or death due to a gastrointestinal bleed and was between the ages of 50 and 90 at the date of the alleged event.”). There are two cases meeting this profile in the discovery pool.
  - a. On Monday, August 1, 2016, at 11 a.m. CST, the PSC and defendants shall exchange via email a list of any cases that either side will argue on August 4, 2016 that should be removed from the pool. The parties shall exchange the name of the case and the basis for the argument for removal.
  - b. On August 4, the Court will hear argument from the parties as to whether any cases in this category should be removed from the pool. At the conclusion of that argument, if both cases remain in the pool, the Court will then randomly select the fourth trial case from these two cases.
5. The deposition deadline for the initial bellwether discovery pool is extended as follows:
  - For plaintiffs and prescribing and treating doctors, the deadline shall be August 8, 2016.
  - For the Detail Representative for each of the four bellwether trial cases, the deadline shall be September 23, 2016.

New Orleans, Louisiana, on this 1st day of August, 2016.

A handwritten signature in black ink that reads "Eldon E. Fallon". The signature is written in a cursive style with a horizontal line underneath it.

Judge Eldon E. Fallon  
United States District Court Judge