

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
	*	
	*	MAGISTRATE JUDGE NORTH

CASE MANAGEMENT ORDER NO. 6

This Order shall govern the selection and discovery for 1200 cases to comprise Wave 1 and Wave 2 cases.

Wave 1 Case Selection

Wave 1 shall consist of 600 cases: 200 cases selected by PSC, 200 cases selected by Defendants, and 200 cases selected by the Court by random selection.

1. **Selection Dates.** On **April 16, 2018**, the Plaintiffs and Defendants shall each select 200 cases for inclusion in the first wave of individual case discovery. After an opportunity to review the party-selected cases, the parties shall meet and confer to determine the criteria for eligibility to be included in the random selection pool. These criteria shall take into consideration the age of the plaintiff, the injury alleged by the plaintiff, the indication for which the plaintiff was prescribed Xarelto, the venue of the plaintiff and any appropriate other criteria. The meet-and-confer shall be conducted such that the Court can make its random selections on **April 30, 2018**. There will be reasonable variety and balance regarding the types of cases selected by the parties. Each party reserves the right to challenge the opposing party's selections on this basis. Any challenges shall be submitted to this Court and the Court's decision shall be final and not subject to appeal.

2. Eligibility. Plaintiffs who have met the core requirements for the Plaintiff Fact Sheet on or before January 31, 2018, are eligible for Wave 1 selection.
 - a. On March 16, 2018, MDL Centrality data will be assessed to determine the percentage of cases alleging an Intracranial Hemorrhage as an injury. No more than double this percentage shall be eligible for PSC-selected cases in Wave 1.
 - b. On March 16, 2018, MDL Centrality data will be assessed to determine the percentage of cases where plaintiff's alleged injury involves less than one-day hospitalization. No more than double this percentage shall be eligible for Defendants-selected cases in Wave 1.

Wave 2 Case Selection

Wave 2 shall consist of 600 cases: 200 cases selected by PSC, 200 cases selected by Defendants, and 200 cases selected by the Court by random selection.

3. Selection Dates. On **August 16, 2018**, the Plaintiffs and Defendants shall each select 200 cases for inclusion in the second wave of individual case discovery. After an opportunity to review the party selected cases, the parties shall meet and confer to determine the criteria for eligibility to be included in the random selection pool. These criteria shall take into consideration the age of the plaintiff, the injury alleged by the plaintiff, the indication for which the plaintiff was prescribed Xarelto, the venue of the plaintiff and any appropriate other criteria. The meet and confer shall be conducted such that the Court can make its random selections on **August 30, 2018**. There will be reasonable variety and balance regarding the types of cases selected by the parties. Each party reserves the

right to challenge the opposing party's selections on this basis. Any challenges shall be submitted to this Court and the Court's decision shall be final and not subject to appeal.

4. Eligibility. Plaintiffs who have met the core requirements for the Plaintiff Fact Sheet on or before March 30, 2018, are eligible for Wave 2 selection.
 - a. On July 16, 2018, MDL Centrality data will be assessed to determine the percentage of cases alleging an Intracranial Hemorrhage as an injury. No more than double this percentage shall be eligible for PSC selected cases in Wave 2.
 - b. On July 16, 2018, MDL Centrality data will be assessed to determine the percentage of cases where plaintiff's alleged injury involves less than one-day hospitalization. No more than double this percentage shall be eligible for Defendants selected cases in Wave 2.

Wave 1 and Wave 2 Discovery

5. Discovery in the selected Wave 1 and Wave 2 individual cases shall consist of:
 - a. An updated Plaintiff Fact Sheet. Selected plaintiffs must complete all sections of the Plaintiff Fact Sheet pursuant to Pretrial Order 13 within 30 days of selection.
 - b. An updated Defendant Fact Sheet. Subject to paragraph 6, Defendants must serve a completed Defendant Fact Sheet pursuant to Pretrial Order 14 within 60 days of selection.
 - c. Revision of Pretrial Order 27. Pretrial Order 27 revising the scope of the Plaintiff Fact Sheet and suspending the Defendant Fact Sheet shall no longer apply to

cases selected in Wave 1 and Wave 2. Cases not selected in Wave 1 or Wave 2 shall continue to be governed by Pretrial Order 27.

- d. Depositions. Four depositions in each case shall be allowed – Plaintiff or Plaintiff representative, Plaintiff’s prescribing physician, Plaintiff’s treating physician and one detail representative from the Defendants who called on the Plaintiff’s prescribing physician.
 - e. Order of examination. The plaintiff shall be allowed to examine half the doctors first and the Defendants shall be allowed to examine half the doctors first as was the protocol for the original discovery pool cases.
 - f. Physician Depositions: Pretrial Order 28 regarding *ex parte* physician communications is hereby modified to require joint scheduling of physician depositions, i.e. both parties will contact physician’s office together for purpose of scheduling a date for deposition. Unilateral contact by defendants’ counsel remains prohibited. Unilateral contact by plaintiffs’ counsel remains permissible. Pretrial Order 28’s record-keeping and disclosure provisions are extended to all Wave 1 and Wave 2 selected cases. All parties’ prior objections to Pretrial Order 28 are expressly preserved.
6. Deadlines: Provided the plaintiff timely completes all sections of the Plaintiff Fact Sheet in compliance with Pretrial Order 13 within 30 days of selection, the deposition discovery set forth in paragraph 5(d) must be completed no later than seven months after the due date for the Defendant Fact Sheet. An individual plaintiff’s failure to timely complete all sections of the Plaintiff Fact Sheet in compliance with Pretrial Order 13 within 30 days of selection shall toll all

deadlines in this Case Management Order with respect to that plaintiffs' case until the plaintiff has complied or the case is dismissed. The deadlines in this order may be extended in a particular plaintiffs' case by agreement of the parties or by the Court due to circumstances beyond the parties' control such as the failure of a third party medical provider to timely produce medical records or the failure of a third party physician to timely appear for deposition.

Filing Fees and Dismissals

7. For Wave 1 and Wave 2 selected cases, any unpaid filing fee must be paid within 45 days from selection.
8. If the plaintiff moves to dismiss with prejudice within 45 days from the date of selection, an unpaid filing fee is waived.
9. All dismissals of Wave 1 and Wave 2 selected cases shall be with prejudice. For party-selected cases that are dismissed, each party reserves the right to request or oppose a replacement case being selected. For random selection cases that may be dismissed, there will be no replacement selection.

Scope of the Order

10. This order governs only those cases selected in Wave 1 and Wave 2, and is neither binding nor precedential with respect to how the Court will proceed with respect to cases that are not selected in Wave 1 or Wave 2.

NEW ORLEANS, LOUISIANA this 27th day of February 2018.


UNITED STATES DISTRICT JUDGE