

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

* MDL 2592 "L"

*

*

* June 27, 2018

*

*

THIS DOCUMENT RELATES TO
ALL CASES

* Judge Eldon E. Fallon

*

*

* Mag. Judge Michael North

REPORTER'S OFFICIAL TRANSCRIPT OF THE STATUS CONFERENCE
BEFORE THE HONORABLE ELDON E. FALLON,
UNITED STATES JUDGE.

APPEARANCES:

FOR THE PLAINTIFFS:

GAINSBURGH BENJAMIN DAVID
MEUNIER & WARSHAUER
BY: GERALD MEUNIER
1100 POYDRAS ST., STE 2800
NEW ORLEANS, LA 70163

FOR THE DEFENDANTS:

DRINKER BIDDLE & REATH
BY: SUSAN SHARKO, ESQ.
600 CAMPUS DRIVE
FLORHAM, NJ 70130

REPORTED BY:

Mary V. Thompson, RMR, FCRR
Official Court Reporter
500 Poydras, Room B-275
New Orleans, LA 70130
(504)589-7783
mary_v_thompson@laed.uscourts.gov

I N D E X

PAGE NO.

Pretrial Orders..... 3

Case Management Orders..... 4

Plaintiff Fact Sheet..... 6

Defendant Fact Sheet..... 6

Order Governing the Parties' Interactions with MDL
Plaintiffs' Prescribing and Treating Physicians.... 9

Bellwether Cases..... 9

CMO 6 Cases..... 10

State/Federal Coordination..... 12

Matters Set for Hearing Following the Status
Conference..... 13

Next Status Conference..... 13

1 P R O C E E D I N G S

2 (Call to order of the court.)

3 THE COURT: Be seated, please.

4 Good morning, ladies and gentlemen.

5 Call the case, please.

08:58:44

6 THE CASE MANAGER: MDL No. 2592, *In Re: Xarelto*
7 *Products Liability Litigation.*8 THE COURT: Liaison counsel, make your appearances for
9 the record, please.

08:58:53

10 MR. MEUNIER: Jerry Meunier, co-liaison counsel for
11 plaintiffs.

12 MS. SHARKO: Susan Sharko for the defendants.

13 THE COURT: We're here today for our monthly meeting.
14 I met recently with the parties. They've given me the proposed
15 agenda. We'll take it in the order presented.

08:59:06

16 MR. MEUNIER: May it please the Court. Jerry Meunier
17 for the plaintiffs.18 Your Honor, in Section 1 of the joint report, there's
19 reference to the pretrial order which has been entered since the
20 last joint report, which is Pretrial Order 14C, having to do with
21 plaintiffs' counsel obtaining the prescribing history and
22 information on physicians involved with their case.

08:59:23

23 There is an agreement that plaintiffs' counsel have to
24 sign now in order to get that material when the defendants
25 furnish their fact sheets, and I do urge plaintiffs' counsel to

08:59:46

OFFICIAL TRANSCRIPT

1 read that agreement, which is attached to 14C, and call liaison
2 counsel if they have any questions about it.

3 There are no new case management orders although the
4 parties have submitted CMO 7 to the Court for consideration which
5 deals with further discovery in the case.

6 But the process under CMO 6 is continuing. We've had
7 Wave 1 cases now selected. Wave 2 cases will be picked by the
8 end of August.

9 It's important, I think, to note that in the framework
10 of CMO 6, the period for discovery is commenced upon the
11 completion of a full plaintiff fact sheet by the selected
12 plaintiff, and that fact sheet needs to be executed within
13 30 days of plaintiff being selected. It has to be executed.

14 And the question arose about plaintiffs who had
15 previously completed a fact sheet, got selected, and then how did
16 they communicate to the defendants that the previously completed
17 fact sheet was up-to-date and didn't need any further editing or
18 updating.

19 And there's been an agreement now reached where counsel
20 for that plaintiff will get the plaintiff to sign a verification
21 that the previous fact sheet is complete. And when that
22 verification is given to the defendants, that will trigger the
23 period of time for discovery.

24 And there may be an amended order submitted to the
25 Court to clarify this arrangement, but it certainly applies not

1 just to Wave 1 but to the Wave 2 cases going forward.

2 THE COURT: Do I understand that if there are changes,
3 then the fact sheet will be amended to reflect those changes?

4 MR. MEUNIER: Yes.

09:01:29 5 There is a motion for -- a show cause motion that has
6 been filed by the defendants dealing with deficiencies in fact
7 sheets or failure to complete fact sheets, and that motion, as I
8 appreciate it, is now to be heard by the Court on July 17th.

9 We do still have the process in this case whereby the
09:01:50 10 defendants' and plaintiffs' counsel can confer before any motion
11 practice to see if some of the deficiency issues can be worked
12 out through communications with individual counsel.

13 Your Honor --

14 THE COURT: It's important in those matters that -- I'm
09:02:08 15 not -- I'm interested in trying to get the fact sheets completed
16 as opposed to dismissing cases. When they are not completed, I
17 give them enough time. But after a period of time that they're
18 not completed, particularly indicating that there is use of the
19 drug -- if that's not in, then they shouldn't be in this
09:02:34 20 litigation. They should be in other litigation.

21 Susan.

22 MS. SHARKO: Yes. So this order to show cause, which
23 will be heard on July 17th, is for the CMO 6 cases as distinct
24 from the rest of the pool.

09:02:48 25 I gave Your Honor's law clerk an amended set of

1 exhibits this morning, because, since filing it, we've had a fair
2 amount of compliance, which is a good thing.

3 THE COURT: Yeah.

4 MS. SHARKO: So there are now 21 cases in CMO 6 where
5 we don't have a PFS at all; 29 where the plaintiffs will either
6 amend their old fact sheet or submit the verification that
7 Mr. Meunier talked about; and then 40 cases that can come off
8 because they've submitted; 3 where they solved the old PFS
9 problem; 13 will come off because they're going to be dismissed;
10 and 2 will come off because those cases will be dismissed.

11 So we're making progress there. But that's that order
12 to show cause.

13 THE COURT: Okay. Good.

14 MR. DAVIS: Your Honor, we're attempting to keep track
15 of these also, and I just ask that Susan give us a copy of
16 whatever she provided the law clerk so we can check our records
17 as well.

18 MS. SHARKO: And I will. I always do.

19 THE COURT: Thank you, Susan.

20 MR. MEUNIER: Your Honor, I think Jake Woody is here
21 for BrownGreer to make a presentation to the Court.

22 THE COURT: Okay.

23 MR. WOODY: Good morning, Your Honor. Jake Woody from
24 BrownGreer. I have a quick update on the status of fact sheets
25 in this case generally.

1 So far we have 21,778 fact sheets submitted. That's an
2 increase of 300 since my last report to you last month.

3 The total of plaintiffs in our system is 23,158, which
4 is an increase of 155.

09:04:36 5 We are keeping track of dismissals in our system as
6 well, so the total plaintiffs includes, to the extent we can
7 tell, plaintiffs who have not been dismissed. So we keep those
8 up-to-date in our system so that we can report on accurate
9 numbers.

09:04:51 10 And we have 1,380 fact sheets that are in progress that
11 haven't been submitted yet, which is pretty much par for the
12 course.

13 In May of 2018 we received 400 fact sheets.

14 So far in June we have 399.

09:05:08 15 The average that we receive a month is about 469. The
16 last three months have been a little bit lower than that so we'll
17 keep an eye on it and see if that number is changing, but it does
18 seem to be fairly steady over the life of this case so far.

09:05:26 19 The age information of all the plaintiffs who submitted
20 fact sheets is this slide (indicating).

21 The biggest group is the age group 70 to 79 with
22 30 percent of all plaintiffs in that age group.

23 As you can tell, most plaintiffs are over the age of
24 60. 82 percent are over the age of 60. And that number is
09:05:43 25 steady and not really changing other than over the course of the

1 MDL people, obviously, get older so it changes. But the ages
2 that are coming in are normal for the life of the MDL.

3 THE COURT: Okay.

4 MR. WOODY: The most common injury is gastrointestinal
5 bleeding. 49 percent of plaintiffs allege that injury, which is
6 by far the greatest category.

7 The next category is the "other" category, which is a
8 variety of different things. And that's only 21 percent.

9 So most people do allege a GI bleed, about half of
10 them, actually; and people do allege multiple injuries and we
11 count them all on this slide. But that number is steady and not
12 really changing despite the fact that we're getting 4- or 500
13 fact sheets a month.

14 Finally, the indication information, which is the
15 reason that people took Xarelto.

16 The most common indication is reduction of risk of
17 stroke. 53 percent of all plaintiffs took it for that reason.

18 The next size category is treatment of DVT, which is
19 only 16 percent.

20 So we have some very common themes in this case between
21 age and injury and indication, and those numbers are steady and
22 not really changing.

23 I last month did this analysis on the CMO 6 population,
24 and it matched up fairly well. And that number isn't changing
25 too much here.

1 So that is my report for this month.

2 THE COURT: All right. Thank you, Jake.

3 MR. WOODY: Thank you, Your Honor.

4 MR. MEUNIER: Your Honor, I want to make mention of
09:07:15 5 Section 8 of the report, the joint report, and just remind
6 counsel who are representing Wave 1, or who will be representing
7 Wave 2 plaintiffs, that there was a pretrial order entered
8 earlier this year. It's PT0 28.

9 It sets forth a new requirement dealing with
09:07:32 10 communications between plaintiffs' counsel and treating or
11 prescribing doctors, and that is that for the purpose of
12 scheduling the doctors' depositions and the discovery under
13 CMO 6, that has to be done jointly with the defense. Otherwise,
14 the provisions of PT0 28 dealing with recordkeeping and
09:07:52 15 disclosures apply to interactions with physicians.

16 In Section 9 of the report, we reference the pending
17 Fifth Circuit consolidated appeal on the three MDL bellwether
18 trials, *Boudreaux*, *Orr* and *Mingo*. The briefing schedule set by
19 the Fifth Circuit is still being unfolded, and the next brief due
09:08:16 20 will be the plaintiffs' reply brief due on July 9th in response
21 to the defendants' cross appeal.

22 As the Court knows, the defendants in those cases have
23 cross appealed on matters like preemption.

24 So our reply brief to their cross appeal is due July 9.

09:08:32 25 And then the defendants' response to that is due

1 July 23rd.

2 So by the end of July, the briefing, unless extended,
3 will be complete, and that matter will then be ripe for argument
4 and disposition.

09:08:48 5 In Section 10 there is reference, again, to the CMO 6
6 cases, and reference to the fact that the defendants have advised
7 us that -- and I believe I heard this morning the number is
8 114 cases, not 113, which is stated in the report, but 114 of the
9 600 Wave 1 cases have now been dismissed.

09:09:12 10 MS. SHARKO: Yes. 114 have been dismissed. 70 of
11 those were defense-picked.

12 That's up from last month. When we were here, 41 had
13 been dismissed.

14 There have been 12 cases removed from the pool by
09:09:27 15 agreement of the parties and they'll go back on the docket.

16 There are 25 cases that have not yet submitted a PFS.
17 Last month there were 91 so we're making progress there.

18 There are 29 cases where the plaintiffs have to either
19 update the PFS or verify that it's complete.

09:09:48 20 There are now 23 cases where the plaintiff died after
21 filing the complaint, and discovery is owed to bring those cases
22 up to par. We're working with the plaintiffs on that. We'll
23 probably have to file an order to show cause on them shortly.

24 There are now eight cases that have subject matter
09:10:07 25 jurisdiction issues, and three of those eight are fatal. And so

1 we continue to talk with the plaintiffs and urge them to fix that
2 so the cases can go forward in the proper court.

3 There are six cases where the key defendant hasn't been
4 served in those cases. It's Janssen. And we emphasize to the
5 plaintiffs that they have to serve us. You can serve by mail.
6 It's not that hard. But we have to comply with that.

7 We still have three duplicate-filed cases in the pool.
8 We're trying to work with the plaintiffs on those. We find that
9 if it doesn't get resolved, we'll have to file an order to show
10 cause.

11 And lastly we're down to one case that does not have
12 authorization, and it's been long enough. We'll file an order to
13 show cause on that particular case.

14 THE COURT: Okay. Yeah. The plaintiffs' committee
15 ought to get with the plaintiffs, particularly on the ones on
16 service. I mean, I don't know why that's delayed so long.

17 MR. DAVIS: If we can get the list from Susan, we'll do
18 that. We'll go through it and we'll work with that as it was
19 done in the past. And we'll continue to work and reach out to
20 the plaintiffs' lawyers. We've had ongoing communications with
21 them.

22 We also would appreciate getting that information so we
23 can --

24 MS. SHARKO: Yes. Andy Birchfield has that list.
25 We've been talking to him regularly and sending him lists and he

1 has been helpful in moving the process along.

2 THE COURT: All right. We ought to get somebody on
3 that, Andy.

4 MR. BIRCHFIELD: Your Honor, we have. And we've been
5 working all of those lists diligently and those numbers are
6 coming down. We're very close to --

7 THE COURT: Okay. Good.

8 MS. SHARKO: Lastly, I would ask, we haven't really
9 started the motion practice on PFS deficiencies, but I would urge
10 the plaintiffs to make sure their PFSs are accurate and complete.

11 Because we're seeing an increasing number of PFSs --
12 for example, ones that have a question, Have you ever used
13 Pradaxa, and the answer is "no" and we have pharmacy records now
14 showing the guy was on Pradaxa for over a year before he signed
15 the certification.

16 That's just one of many examples. So it's in
17 everybody's interest to have an up-to-date and complete PFS.

18 MR. MEUNIER: Your Honor, Section 11 of the report
19 references state/federal court coordination. I'll make just a
20 brief report to the Court on the Pennsylvania state court
21 proceedings.

22 The next trial set in Pennsylvania, in Philadelphia, is
23 the Clooney trial August 6th.

24 The next trial after that is the Rush trial, which is
25 set for December 3rd.

1 And then on June 15th Judge New entered a CMO providing
2 for the trials of additional cases starting in June of 2019.
3 Those cases will be tried every 60 days starting in June of 2019.

4 THE COURT: Okay.

09:13:20 5 MR. MEUNIER: Your Honor, after the status conference,
6 there will be oral argument before the Court on the 1292(b)
7 motion filed by the defendants regarding their *Ibanez* preemption
8 motions.

09:13:37 9 I think other than setting the date for the next status
10 conference, that's it.

11 THE COURT: All right. The next one is August 6th.
12 And following that, September 5th. They will be at 8:30 with the
13 leadership of the committees and 9:00 for the general meeting.

14 MR. MEUNIER: Thank you, Your Honor.

09:13:58 15 THE COURT: Anything else from anyone?

16 (No response.)

17 THE COURT: All right, folks. Thank you very much.
18 Let's move in to the motion at this time.

19 (Proceedings adjourned.)

20 * * * *

CERTIFICATE

21 I hereby certify this 2nd day of July, 2018, that the
22 foregoing is, to the best of my ability and understanding, a true
23 and correct transcript of the proceedings in the above-entitled
matter.

24 /s/ Mary V. Thompson

25 _____
Official Court Reporter

OFFICIAL TRANSCRIPT