

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

* MDL 2592 "L"

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March 15, 2017

Judge Eldon E. Fallon

THIS DOCUMENT RELATES TO
ALL CASES

Mag. Judge Michael North

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

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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, folks.

5 Call the case, Dean.

6 THE CASE MANAGER: MDL 2592, *In Re: Xarelto Products*
7 *Liability Litigation*.8 THE COURT: Counsel, make your appearance for the
9 record.10 MR. MEUNIER: Jerry Meunier of Gainsburgh Benjamin,
11 co-liaison for plaintiffs.12 MR. IRWIN: Good morning, Your Honor. Jim Irwin for
13 defendants.14 THE COURT: This is our monthly status conference. We
15 have this followed by a rule to show cause in a number of cases.

16 I'll take the status conference first.

17 MR. MEUNIER: Thank you, Your Honor. I think we can
18 move rather quickly through today's joint report.19 There are no new pretrial orders to report since the
20 last meeting with Your Honor.21 In the case management order listing, there is a case
22 management order that was entered on February 6, 2017, but it
23 simply corrected a hearing date on the various pending
24 dispositive and *Daubert* motions, and made it clear that those
25 would be heard on March 23rd.

1 In Section 3 of the report, we went through the
2 bellwether cases that are set for trial.

3 The Boudreaux case is set for trial April 24th.

4 The Orr case, May 30th.

5 The Mingo case has now been set for August 7, 2017.

6 That will take place in Mississippi, in Natchez, Mississippi.

7 And the fourth bellwether trial, the Henry case, has
8 not been set.

9 THE COURT: When you say Jackson, it's really Gulfport.

10 MR. MEUNIER: It's Natchez, Your Honor.

11 THE COURT: Natchez?

12 MR. MEUNIER: Mississippi.

13 THE COURT: I had it set for Gulfport, Mississippi.
14 They've given me a place there.

15 MR. MEUNIER: I believe that's inaccurate.

16 MR. IRWIN: I don't believe we've discussed it as yet,
17 is my appreciation.

18 THE COURT: Well, I thought it was in the Eastern
19 District.

20 MR. MEUNIER: The plaintiffs -- it was filed in Natchez
21 and that's where the plaintiff is.

22 THE COURT: I thought it was Gulfport. I have the
23 court set up for that date.

24 MR. IRWIN: We probably need to talk about that,
25 Your Honor.

1 THE COURT: Why don't y'all talk about it because
2 that's a little more -- I'm able to handle the -- they have a
3 newer courthouse and newer facilities and the technology is a
4 little bit better in some of those areas than others.

10:46:05 5 MR. MEUNIER: I think there's a newly renovated
6 courthouse in Natchez, Your Honor, but we can discuss it. That
7 is where the plaintiffs are.

8 MR. IRWIN: We'll talk about it, Judge. Thank you.

9 MR. MEUNIER: Well, I'm glad I mentioned that.
10:46:17 10 Then the Henry case, Your Honor, is the fourth that has
11 not yet been set for trial.

12 We continue to appreciate counsel providing Mr. Davis
13 and me with the contact information forms required per Section 4
14 of the report.

10:46:38 15 On plaintiff fact sheets in Section 5, as the Court has
16 mentioned, there's a series of motions, deficiency motions,
17 related to fact sheets which will be heard following today's
18 status conference.

19 The Pretrial Order 31, though, which set up the
10:46:54 20 protocol by which both sides get together and go through the
21 alleged deficiencies and try to winnow down the number of those
22 that have to result in a motion that comes before you, I think is
23 a protocol that's working and will continue to work going
24 forward. And we believe that the number of those deficiency
10:47:13 25 motions will be more spread out as time goes by.

1 Before I move on, I think on fact sheets Jake Woody is
2 here for BrownGreer and can make a brief report.

3 THE COURT: Okay. We'll hear from Jake.

4 MR. WOODY: Good morning, Your Honor. Jake Woody from
5 BrownGreer. I have just a brief report on the status of the
6 submission of plaintiff fact sheets.

7 We have to date 15,015 plaintiff fact sheets submitted,
8 Your Honor. That's an increase of 822 since the last status
9 conference, which was in January, so that's two months of fact
10 sheet submissions.

11 According to what I could find, we have just under
12 16,000 cases filed which -- so there's about 1,000 fact sheets
13 out there ready to be submitted.

14 We actually have 1,241 in progress. That number isn't
15 changing much. You can see that it has only gone down by five
16 since the last status conference, which means there are as many
17 fact sheets being started as there are being submitted. So the
18 submission progress is pretty stable, and we expect to see the
19 same number of fact sheets coming in as going out every month.

20 We have 3,908 fact sheets amended, which is about
21 26 percent of the total fact sheets, so people are amending them
22 either in response to deficiencies or because they come upon new
23 information that they need to update.

24 And the total number of plaintiffs we have in the
25 system is 16,257, which is an increase of 817 since the last

1 status conference.

2 We are keeping track of dismissals. That's becoming
3 more and more of an issue as the MDL goes on. And we're marking
4 them as dismissed in our system so we have it up to date and
10:49:19 5 we're reporting on active plaintiffs in these reports and other
6 reports.

7 Our monthly submission timeline is actually going down
8 a bit. Up until January of this year, the average was about 560
9 fact sheets a month. You can see that in January we had 452. In
10:49:40 10 February we had 377. And then 220 so far in March. Obviously we
11 have a couple weeks left in March.

12 But the number is trending down just slightly. I don't
13 know if that's indicative of a new trend or if it's just an
14 outlier, but it's going down just a little bit.

10:49:56 15 This is our top ten states of residence based on what
16 people have filled out on the fact sheet.

17 The most common state is Texas. We have 1,278
18 plaintiffs from Texas.

19 1,209 from Florida.

10:50:12 20 758 from California.

21 736 from North Carolina, and Ohio.

22 705 from Alabama.

23 And then 689 from New York.

24 667 from Georgia.

10:50:25 25 And 554 from Louisiana.

1 I don't want to go through every state, but those are
2 the top ten states in terms of plaintiff fact sheet submissions.

3 Finally this is our analysis of the discovery pool to
4 the MDL as a whole. You can see that it is really not changing
10:50:43 5 much. At the last status conference we discussed this was a
6 fairly stable analysis, meaning that the bellwether pool, the
7 demographics, the ages, the indication, and the injuries are
8 largely -- they largely parallel the MDL as a whole.

9 The only change that we have seen over the last couple
10:51:04 10 of months is that the primary indication, which is reduction of
11 stroke, has gone down by 1 percent in the MDL. I don't think
12 that's significant. That's not a huge change.

13 So the demographics are stable, despite the fact that
14 we continue to get a fairly significant number of fact sheets,
10:51:21 15 which I think indicates that the demographics are largely set.

16 THE COURT: And your percentages -- or the percentage
17 of cases, that is to say 77 percent of cases, are between 60 and
18 79 years old?

19 MR. WOODY: Yes, sir. That's the -- the red is the
10:51:39 20 discovery pool percentage. So 77 percent of the discovery pool
21 cases are between 60 and 79, while 56 percent of the MDL are
22 between that age.

23 Now, you recall the discovery pool was weighted a bit
24 to try to get the most common traits. So it is a little bit
10:51:57 25 higher than the MDL as a whole, but that is intentional. And I

1 think that one of the reasons that we keep track of all this
2 information is so that we can make selections that way.

3 THE COURT: Uh-huh.

4 MR. WOODY: So that's my monthly report, Your Honor,
5 unless you have any questions.

6 THE COURT: All right. Thank you.

7 MR. WOODY: Thank you.

8 MR. MEUNIER: Your Honor, the next section of the
9 report dealing with defendant fact sheets, there's no further
10 need to report on it.

11 Same with Section 7 on service as to Bayer defendants.

12 We keep that kind of language in, Your Honor, for the
13 purpose of those who may be looking in on the joint report for
14 the first time.

15 Same with Section 8 on preservation order. We keep it
16 in for that purpose, but there's nothing further to report.

17 Section 9 on interactions with plaintiffs' physicians
18 is one that we may remove in an ongoing effort to keep these
19 reports less voluminous.

20 Section 10 on discovery, we have already eliminated a
21 bunch of the language from the last joint report to keep that
22 section more current, but there's nothing further to comment on
23 beyond what's there.

24 And then Section 11 addresses the dispositive motions,
25 including *Daubert* motions, that are currently pending as to the

1 bellwether trials, and all of those are enumerated and described
2 in this section of the joint report. The motions will be argued
3 before Your Honor on March 23, 2017, a day I believe you set
4 aside in its entirety for the purpose of that argument.

10:53:30 5 As you know, counsel are working on a proposed schedule
6 for the order of the motions to be presented that day as well as
7 the time allotted for argument.

8 A March 7th the PSC filed a motion to unseal certain
9 material that's been stamped as confidential by defendants. That
10:53:51 10 motion, we understand now, will be heard by the Court on the day
11 of the final pretrial conference and the day of the argument of
12 motions *in limine* in Boudreaux, which is Tuesday, April 18, at
13 9:00 a.m.

14 I assume we will have the final pretrial conference in
10:54:12 15 Boudreaux starting at 9:00 a.m. that morning, and following the
16 conference the argument on motions *in limine* as well as the PSC
17 motion on confidentiality.

18 There's a briefing schedule still to be worked out,
19 Judge, on the PSC motion on confidentiality. I believe there's
10:54:33 20 been discussion about when the defendants' opposition brief will
21 be due and then a reply brief if necessary thereafter.

22 In Section 12, there's a discussion about third-party
23 discovery. Nothing new to report or take up beyond what's in the
24 report.

10:54:53 25 Section 13 is state/federal coordination. Ms. Barrios

1 is here to make that report to the Court.

2 MS. BARRIOS: Thank you, Mr. Meunier.

3 Good morning, Your Honor. Dawn Barrios for the
4 state/federal committee.

10:55:07 5 I provided to your law clerk our usual documents. I
6 just wanted to go over them with you.

7 THE COURT: Okay.

8 MS. BARRIOS: There's a total 1,597 state court cases.
9 79.6 percent are in Pennsylvania.

10:55:23 10 The other states that have a large number of cases are
11 California with 35 and Delaware with 279.

12 If you'll note in the footnote with the Delaware cases,
13 there are dispositive motions, I think, filed to all those cases.

14 Any new jurist is highlighted in yellow, for
10:55:42 15 Your Honor, in case there's a matter that you want to discuss
16 with them.

17 But everything is going -- everything is going along
18 smoothly. We have a total of 138 additional plaintiffs since the
19 last status conference.

10:55:56 20 With regard to the trial settings, which is the second
21 document I have, all the trial dates, you will note, are after
22 your trial dates.

23 Pennsylvania starts out on November 3rd. And I
24 understand that members of the plaintiff steering committee in
10:56:15 25 the MDL went to assist and talk to the plaintiffs' counsel in

1 Pennsylvania again about the bellwether trial as we had done
2 earlier.

3 And then there is a trial date in Missouri and one in
4 Texas. That will be on May 8, 2018.

10:56:31 5 So from our vantage point, everything is going very
6 well. Mr. Weinkowitz keeps me in the loop and everything is
7 status quo.

8 THE COURT: Good. Thank you.

9 MS. BARRIOS: Thank you, Your Honor.

10:56:46 10 THE COURT: Okay. Thank you.

11 MR. MEUNIER: Section 14 of the report, Judge, just
12 lists the matters that are set for hearing following the status
13 conference today, and those are, as we talked about, the motions
14 related to plaintiff fact sheet deficiencies.

10:56:58 15 And the final section of the report is the next status
16 conference. We have talked with you in chambers about the fact
17 that April and May are going to be busy months with the two
18 bellwether trials and motions related to those trials, and so we
19 proposed to Your Honor that it would not be necessary to have
10:57:17 20 monthly status conferences in either April or May. And if the
21 Court agrees, we would appreciate the entry of an order so that
22 is made clear.

23 And certainly Mr. Davis and I will communicate with all
24 plaintiffs' counsel to that effect and let them know that we're
10:57:33 25 available to discuss any matters that they have, absent them

1 coming to court.

2 MR. IRWIN: Your Honor, I think -- Susan just reminded
3 me. I think we forgot to mention that the Court may want to give
4 consideration to inviting or including some of the state court
10:57:49 5 judges at the *Daubert* hearing. So we wanted to present that to
6 the Court.

7 THE COURT: Right. I'll be doing that.

8 MR. MEUNIER: Your Honor, as we also talked about in
9 chambers, the biweekly discovery calls we believe can also be
10:58:04 10 suspended during the months of April and May because of the
11 trials, but obviously if we have discovery issues we'll be in
12 contact.

13 THE COURT: Right. Bring them up at that time. I'll
14 be talking to everybody.

10:58:15 15 MR. MEUNIER: So that concludes the joint report,
16 Judge. And some counsel who are seated here will now be stepping
17 out to talk about the trial team meeting with you that follows
18 the argument on the deficiency motions so that will explain why
19 some might not be here for that.

10:58:30 20 THE COURT: Okay. Thank you.

21 (Proceedings adjourned.)

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CERTIFICATE

I hereby certify this 20th day of March, 2017, that the foregoing is, to the best of my ability and understanding, a true and correct transcript of the proceedings in the above-entitled matter.

/s/ Mary V. Thompson

Official Court Reporter

OFFICIAL TRANSCRIPT