

MINUTE ENTRY  
FALLON, J.  
JUNE 10, 2015

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, Co-Plaintiffs’ Liaison Counsel (“PLC”), Gerald Meunier and Leonard Davis, and Defendants’ Liaison Counsel (“DLC”), James Irwin, reported to the Court on the topics set forth in the Proposed Agenda. (Rec. Doc. 380). This status conference was transcribed by Ms. Karen Anderson Ibos, Official Court Reporter. Counsel may contact Ms. Ibos at (504) 589-7776 to request a copy of the transcript. A summary of the status conference follows.

1. **PRE-TRIAL ORDERS**

The Court has issued the following Pre-Trial Orders:

**Pre-Trial Order No. 1 [Rec. Doc. 2]** entered December 17, 2014 – Setting initial conference;

**Pre-Trial Order No. 2 [Rec. Doc. 38]** entered January 16, 2015 – Appointing Plaintiffs’ Liaison Counsel;

**Pre-Trial Order No. 3 [Rec. Doc. 39]** entered January 16, 2015 – Appointing Defendants’ Liaison Counsel;

**Pre-Trial Order No. 4 [Rec. Doc. 61]** entered January 26, 2015 – Requiring Counsel to provide contact information to Liaison Counsel, and amending PTO No. 1 regarding docketing procedure;

**Pre-Trial Order No. 4A [Rec. Doc. 62]** entered January 26, 2015 – Approving and attaching Counsel Contact Information Form;

**Pre-Trial Order No. 5 [Rec. Doc. 63]** entered January 26, 2015 – Clarifying duties of transferor court under MDL Rule 1.6;

**Pre-Trial Order No. 5A [Rec. Doc. 149]** entered February 3, 2015 – Amending PTO No. 5 to allow transferor court to retain original file;

**Pre-Trial Order No. 6 [Rec. Doc. 150]** entered February 3, 2015 – Appointing Defendants’ Co-Lead Counsel;

**Pre-Trial Order No. 7 [Rec. Doc. 169]** entered February 9, 2015 – Appointing Plaintiffs’ Steering Committee (PSC); Appointing Plaintiffs’ Co-Lead Counsel; Ordering that PLC and Plaintiffs’ Co-Lead Counsel shall comprise PSC Executive Committee; Appointing Chair of the State Liaison Committee, to be *ex-officio* member of PSC; and Listing responsibilities of PSC;

**Pre-Trial Order No. 7A [Rec. Doc. 830]** entered April 29, 2015 – Appointing Michael Weinkowitz, Daniel Galluci, and Gibson Vance to serve on the State Liaison Committee;

**Pre-Trial Order No. 8 [Rec. Doc. 183]** entered February 13, 2015 – Establishing standards and procedures for counsel seeking reimbursement for common benefit fees and costs;

**Pre-Trial Order No. 9 [Rec. Doc. 356]** entered March 24, 2015 – Providing for the Direct Filing of Complaints in the MDL;

**Pre-Trial Order No. 10 [Rec. Doc. 357]** entered March 24, 2015 – Providing for the Streamlined Service on Certain Bayer Defendants;

**Pre-Trial Order No. 11 [Rec. Doc. 893]** entered May 4, 2015 – Providing for Bundling of Complaints, Answers and Responsive Pleadings, with attached Attorney Instructions for Filing Individual Severed Xarelto Cases [Rec. Doc. 893-1];

**Pre-Trial Order No. 11A [Rec. Doc. 923]** entered May 20, 2015 – Providing exemplar Joint Complaint and exemplar Short Form Complaint.

**Pre-Trial Order No. 12 [Rec. Doc. 894]** entered May 4, 2015 – Stipulated Protective Order;

**Pre-Trial Order No. 13 [Rec. Doc. 895]** entered May 4, 2015 – Governing the Form and Schedule for Service of Plaintiff Fact Sheets and Executed Authorizations for Release of Records;

**Pre-Trial Order No. 14 [Rec. Doc. 896]** entered May 4, 2015 – Governing the Form and Schedule for Service of Defendant Fact Sheets;

**Pre-Trial Order No. 15 [Rec. Doc. 897]** entered May 4, 2015 – Consent Order Regarding the Preservation of Documents and Electronically Stored Information;

**Pre-Trial Order No. 16 [Rec. Doc. 898]** entered May 4, 2015 – Filing Requests for Summons and Summons Returns.

**Pre-Trial Order No. 17 [Rec. Doc. 924]** entered May 20, 2015 – Electronic Service/MDL Centrality for Plaintiffs Only.

**Pre-Trial Order No. 18 [Rec. Doc. 925]** entered May 20, 2015 – Science Day.

**Pre-Trial Order No. 19 [Rec. Doc. 951]** entered June 4, 2015 – Protocol for Treatment of Privileged and Work Product Materials.

2. **CASE MANAGEMENT ORDERS**

The Court has issued the following Case Management Orders:

**Case Management Order No. 1 [Rec. Doc. 891]** entered May 4, 2015 – Addressing Voluntary Disclosure and Production by Defendants, Plaintiffs’ Master Set of Requests for Production, Depositions and Subpoenas to Non-Parties, Plaintiff Fact Sheet and Defendants Fact Sheet, Science Day, State and Federal Liaison, Proposed Case Management Order No. 2, and Bundling of Complaints and Answers and Responsive Pleadings.

3. **PROPOSED CASE MANAGEMENT ORDER NO. 2**

Per Case Management Order No. 1, the parties will meet and confer before June 15, 2015 to propose a Case Management Order to address issues of Discovery Plaintiffs, Bellwether Selection, Other General Discovery, Expert Discovery (including *Daubert* Motions) and Dispositive Motions. Plaintiffs and Defendants have exchanged proposals for scheduling and continue to meet and confer. The Parties will submit a proposed Case Management Order No. 2 to the Court by June 30, 2015.

4. **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.

5. **“MDL CENTRALITY”**

On May 20, 2015, the Court issued Pre-Trial Order 17 [Rec. Doc. 924], which governs the procedures for utilizing the BrownGreer MDL Centrality system to distribute pleadings and discovery documents to plaintiffs’ counsel in *In re: Xarelto (Rivaroxaban) Products Liability Litigation*, MDL No. 2592 (“MDL 2592”). Defendants have not agreed to use the MDL Centrality system for pleadings or discovery documents. The BrownGreer MDL Centrality system is in place, and fully operative. Plaintiffs’ Co-Liaison Counsel acknowledge that pursuant to Pre-Trial Order No. 17, the BrownGreer MDL Centrality system will distribute all pleadings, Orders, motions, and discovery; and, therefore, all plaintiff counsel should properly register and comply with the requirements of Pre-Trial Order No. 17.

6. **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, as well as executed Authorizations for the release of records to be completed by plaintiffs in all individual cases. A copy of the Plaintiff Fact Sheet is attached as Exhibit “A” to the Order and is to be completed and served using the BrownGreer MDL Centrality system. The BrownGreer MDL Centrality system is a secure web-based platform that provides for the electronic completion, storage and transmission of Fact

Sheets and related documents. All Plaintiff Fact Sheets shall be located on the BrownGreer MDL Centrality system.

PLC and DLC have met and conferred to address an amendment to Pre-Trial Order No. 13 to further address issues involving the submission of Plaintiff Fact Sheets.

7. **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 defendants in all individual cases. A copy of the Defendant Fact Sheet is attached as Exhibit "A" to the Order is to be completed and served using the BrownGreer MDL Centrality system. The BrownGreer MDL Centrality system is a secure web-based platform that provides for the electronic completion, storage and transmission of Fact Sheets and related documents. All Defendant Fact Sheets shall be located on the BrownGreer MDL Centrality system.

PLC and DLC have met and conferred to address an amendment to Pre-Trial Order No. 14 to further address issues involving the submission of Defendant Fact Sheets.

8. **BUNDLING OF COMPLAINTS/ANSWERS/RESPONSIVE PLEADINGS**

On May 4, 2015, the Court issued Pre-Trial Order No. 11 [Rec. Doc. 893], which addresses Bundling of Complaints, Answers, and Responsive Pleadings and on May 20, 2015, the Court issued Pre-Trial Order 11A [Rec. Doc. 923], which provided an exemplar Joint Complaint and an exemplar Short Form Complaint. PLC and DLC continue to meet and confer regarding a proposal for handling filing fee collections, post-initial filing of a Joint Complaint

9. **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. Per paragraph I(B) of Pre-Trial Order No. 15, the parties continue to meet and confer 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; and the parties intend to propose to the Court a briefing scheduling regarding these issues. The PSC provided a draft 30(b)(6) Notice relating to the ESI/Preservation, and the parties continue to discuss this draft Notice.

10. **DOCUMENT PRODUCTION PROTOCOL**

The parties have reached an agreement on a Document Production Protocol Order and a proposed Pre-Trial Order is being prepared.

11. **DISCOVERY**

Pursuant to CMO 1, on April 30, 2015, Defendants provided voluntarily disclosures to Plaintiffs. On May 7, 2015, the Plaintiffs' Steering Committee propounded Plaintiffs' First Request for the Production of Documents to Defendants and by agreement, Defendants are to provide by June 8, 2015 their written objections and use best efforts to begin a rolling production of documents in response.

The Plaintiffs' Steering Committee ("PSC") provided to Defendants draft 30(b)(6) Notices relating to corporate structure of Bayer and J&J, and additionally of Bayer insurance and the PSC and Defendants continue to discuss these draft Notices. The PSC received from Bayer an overview of insurance coverage, and the PSC and Bayer continue to meet and confer to discuss the matter further.

12. **DEPOSITION GUIDELINES**

The Plaintiffs' Steering Committee and Defendants are negotiating and preparing a proposed Pre-Trial Order governing the conduct of depositions in the Multidistrict Litigation.

13. **DISCOVERY ISSUED TO THIRD PARTIES**

On April 22, 2015, the Plaintiffs' Steering Committee ("PSC") issued a Subpoena Duces Tecum to the United States Food and Drug Administration ("FDA"). On May 11, 2015, the FDA responded to the subpoena and provided publicly available records. On June 1, 2015, the PSC wrote the FDA to request a meet and confer regarding the incomplete responses to the Subpoena Duces Tecum, and proposed that this meeting take place on June 8, 2015, at 1:00 p.m. (eastern), to discuss with the FDA full compliance with the subpoena.

14. **SCIENCE DAY**

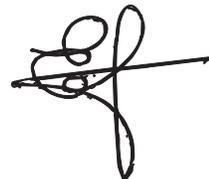
The Court has scheduled Science Day in the courtroom at 9:00 a.m. on June 11, 2015. On April 30, 2015, both Plaintiffs and Defendants provided the Court with their respective selections of relevant scientific publications for review in advance of Science Day.

15. **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.

16. **NEXT STATUS CONFERENCE**

The Court has announced that the next status conference will be on Thursday, July 9, 2015 at 9:00 a.m. The Court has set up a conference line for auditing the conference. To audit, call (866) 216-6835 and enter access code 362537.

A handwritten signature in black ink, appearing to be the initials 'JF' or similar, with a long horizontal stroke extending to the right.