

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: XARELTO (RIVAROXABAN)  
PRODUCTS LIABILITY LITIGATION

MDL No. 2592  
Section "L"  
Thursday, September 12, 2019  
New Orleans, Louisiana

THIS DOCUMENT RELATES TO ALL CASES

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TRANSCRIPT OF STATUS CONFERENCE  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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

(Call to order of the court.)

09:01:22AM 3 THE COURT: Good morning, ladies and gentlemen.

09:01:27AM 4 Call the case.

09:01:27AM 5 THE DEPUTY CLERK: MDL No. 2952, *In Re: Xarelto*  
09:01:30AM 6 *Products Liability Litigation.*

09:01:32AM 7 THE COURT: Counsel, make the appearance for the  
09:01:33AM 8 record.

09:01:34AM 9 MR. MEUNIER: Jerry Meunier, co-liaison counsel for  
09:01:37AM 10 plaintiffs.

09:01:41AM 11 MR. OLINDE: Your Honor, John Olinde, liaison for the  
09:01:55AM 12 Bayer defendants. Kim Moore is not here today --

09:01:55AM 13 THE COURT: Okay.

09:01:55AM 14 Dean, we're getting some feedback.

09:01:55AM 15 Okay. Let's hear from you.

09:01:57AM 16 MR. MEUNIER: Good morning, Jerry Meunier for  
09:02:00AM 17 plaintiffs.

09:02:00AM 18 We have filed Joint Report No. 40, and I'll just  
09:02:04AM 19 summarize some of the key provisions in it. Of course,  
09:02:09AM 20 Section 1 references the settlement that was entered on  
09:02:12AM 21 May 6, 2019, and the parties continue to monitor and  
09:02:16AM 22 facilitate the settlement process under that agreement.  
09:02:19AM 23 Enrollment is made through the BrownGreer Centrality website  
09:02:26AM 24 and the Master Settlement Agreement is reviewable in its  
09:02:28AM 25 entirety on that website.

09:02:30AM 1 Since the last Joint Report, Judge, there's only been  
09:02:31AM 2 one pretrial order entered. That was Pretrial Order 32A  
09:02:34AM 3 dealing with service of process, and counsel are encouraged  
09:02:38AM 4 to review that. It sets important deadlines both for those  
09:02:42AM 5 in and not in settlement.

09:02:45AM 6 Section 3 of the report, Your Honor, organizes the  
09:02:50AM 7 case management orders that you had entered into four  
09:02:54AM 8 different categories. CMOs 9 and 9A dealt with the stay of  
09:02:59AM 9 the litigation proceedings for those enrolling in the  
09:03:01AM 10 settlement. And, importantly, 9A listed the orders, that  
09:03:05AM 11 those who do not enroll in the settlement are subject to in  
09:03:09AM 12 going forward with the litigation and that's Docket No.  
09:03:15AM 13 14875, CMO 9A.

09:03:16AM 14 CMOs 10 and 10A deal with the registration of claims  
09:03:20AM 15 information. Importantly, that was for both the settlement  
09:03:23AM 16 and for case management inventory accuracy purposes, and the  
09:03:27AM 17 registration requirement applies to both those enrolling and  
09:03:31AM 18 not enrolling in the settlement. And the failure to timely  
09:03:36AM 19 provide registration information is the basis for the  
09:03:37AM 20 dismissal of the case with prejudice.

09:03:40AM 21 CMOs 11 and 11A deal with the obligations of those  
09:03:44AM 22 plaintiffs not participating in the settlement, and I won't  
09:03:48AM 23 go through all of the deadlines that apply to those  
09:03:50AM 24 plaintiffs that are set forth in detail on Pages 3 through 5  
09:03:57AM 25 of the Joint Report. But certainly any counsel who are

09:04:00AM 1 monitoring today's proceedings need to pay close attention to  
09:04:03AM 2 those important deadlines if they are going forward in  
09:04:06AM 3 litigation and not enrolling in the settlement.

09:04:09AM 4 And the final category on page 6 of the report are  
09:04:13AM 5 CMOs 12, 12A, and 12B. CMO 12, Your Honor, which was docket  
09:04:19AM 6 --- Record Docket No. 13608, set forth an Election Form and  
09:04:25AM 7 Notice of Intent to Proceed. The Notice of Intent to Proceed  
09:04:29AM 8 is important. It offers basically three options in the case.  
09:04:33AM 9 The first is to enroll in settlement. The second is to  
09:04:37AM 10 decide not to participate, but to dismiss the case with  
09:04:40AM 11 prejudice, and the third is to -- the decision not to  
09:04:42AM 12 participate, but to proceed with litigation. And it's  
09:04:46AM 13 important that counsel and plaintiffs take seriously their  
09:04:52AM 14 obligation to exercise the decision as to one of those three  
09:04:55AM 15 options in the Notice of Intent to Proceed.

09:04:57AM 16 CMO 12A, which is Record Doc 14877, did make it clear  
09:05:04AM 17 that even -- that the August 19 deadline for filing the  
09:05:08AM 18 Notice of Intent to Proceed, which was set forth in CMO 12,  
09:05:11AM 19 was not extended even though the enrollment deadline was  
09:05:17AM 20 extended to September 4th. So that August 19 deadline  
09:05:21AM 21 remained in place for those to file a Notice of Intent to  
09:05:23AM 22 Proceed and, again, the order makes clear that the failure to  
09:05:27AM 23 execute that Notice of Intent to Proceed on a timely basis,  
09:05:34AM 24 that is a valid grounds for dismissal of a case with  
09:05:37AM 25 prejudice.

09:05:38AM 1 Under CMO 12B, Judge, you entered yesterday September

09:05:44AM 2 --

09:05:44AM 3 THE COURT: 10th.

09:05:45AM 4 MR. MEUNIER: -- 10th an Order to Show Cause, which  
09:05:48AM 5 is Record Doc 15416, which has an Exhibit A list of cases  
09:05:55AM 6 attached to it, and these are cases which as far as we know  
09:05:57AM 7 and understand have not either enrolled in the settlement or  
09:06:02AM 8 filed a timely Notice of Intent to Proceed. And those cases  
09:06:06AM 9 then are made subject by your Order to Show Cause to a  
09:06:10AM 10 hearing on September 25, 2019, to demonstrate why those cases  
09:06:14AM 11 should not be dismissed with prejudice.

09:06:17AM 12 And so, again, it's important that counsel who are on  
09:06:22AM 13 that list take all necessary steps to assure that the list is  
09:06:25AM 14 accurate as to their cases, take any needed steps to correct  
09:06:30AM 15 errors on the list, but certainly, to the extent the case is  
09:06:33AM 16 validly put on that list, counsel need to be tentative to the  
09:06:33AM 17 provisions of the CMO Order to Show Cause which makes it  
09:06:41AM 18 necessary for counsel to appear in person. It precludes  
09:06:45AM 19 telephone participation by counsel and only in limited  
09:06:50AM 20 circumstances, Judge, does it allow the plaintiff, himself or  
09:06:52AM 21 herself, not to personally appear.

09:06:57AM 22 The balance of the Joint Report, Judge, we don't have  
09:07:01AM 23 much new information to report on the various sections  
09:07:04AM 24 starting with 4 on page 7. I will mention that with respect  
09:07:10AM 25 to the bellwether appeals in the Fifth Circuit as indicated

09:07:14AM 1 at page 10 of the report, the Fifth Circuit has placed all of  
09:07:18AM 2 those consolidated appeals into bands pending further  
09:07:23AM 3 information from the parties, and the parties are  
09:07:26AM 4 periodically making a joint report to the Fifth Circuit on  
09:07:29AM 5 the status of the settlement as that affects those cases.

09:07:33AM 6 Section 10 refers to state/federal coordination. I  
09:07:40AM 7 just think it bears mentioning that because the settlement  
09:07:42AM 8 does embrace obviously the state court proceedings, the  
09:07:44AM 9 needed orders and steps that are being taken in those  
09:07:48AM 10 proceedings as well to coordinate with Your Honor's oversight  
09:07:51AM 11 of the settlement.

09:07:52AM 12 And, finally, Judge, Section 12, again, references  
09:07:55AM 13 the Show Cause Hearing which is scheduled for September 25,  
09:08:00AM 14 2019. And counsel are urged to look at the list of cases  
09:08:06AM 15 that are subject to the dismissal with prejudice under that  
09:08:10AM 16 order that you entered yesterday.

09:08:12AM 17 I believe that is all that I have, Judge. I don't  
09:08:16AM 18 know if counsel for defendants or Mr. Birchfield would like  
09:08:20AM 19 to add something.

09:08:21AM 20 MR. BIRCHFIELD: Yes, Your Honor. If I could, I just  
09:08:24AM 21 want to touch on the settlement program overall. As  
09:08:27AM 22 Mr. Meunier mentioned, the response has been overwhelming,  
09:08:30AM 23 overwhelmingly favorable. We have over 29,000 claimants that  
09:08:36AM 24 have responded with an Election Form. We are -- we're right  
09:08:41AM 25 at 99 percent of claimants choosing to participate in the

09:08:45AM 1 settlement program, so we're -- it's response to the  
09:08:51AM 2 excellent settlement program as we see it. So we're  
09:08:56AM 3 encouraged by that response.

09:08:57AM 4 The CMO 12B that the Court entered has a list of  
09:09:02AM 5 claimants that have not responded, and we know that there are  
09:09:05AM 6 a number of -- a number of situations that would give rise to  
09:09:09AM 7 claimants not responding. A number of the claimants have  
09:09:13AM 8 deceased and their next of kin are not interested in  
09:09:18AM 9 pursuing. There's a variety of reasons why, you know,  
09:09:20AM 10 claimants would not respond, but it is essential, you know,  
09:09:25AM 11 to the settlement program that we address -- we address these  
09:09:30AM 12 claimants and also for the court's docket.

09:09:34AM 13 Since the Court entered CMO 12B in the -- in the  
09:09:42AM 14 Order to Show Cause Hearing, the list of claimants that are  
09:09:45AM 15 required to appear on September the 25th, we received -- we  
09:09:48AM 16 have received, the defendants have received, BrownGreer has  
09:09:51AM 17 been contacted by claimants saying that they believe they  
09:09:55AM 18 have corrected the enrollment issue or they have responded in  
09:10:01AM 19 letting us know that they have filed or will soon file a  
09:10:06AM 20 stipulation of dismissal with prejudice to address -- to  
09:10:10AM 21 address that issue and they're wanting to know whether or not  
09:10:13AM 22 they can be excused from the Order to Show Cause Hearing on  
09:10:21AM 23 September 25th.

09:10:22AM 24 And, Your Honor, if it pleases the Court, what we  
09:10:26AM 25 would propose is that by the end of next week that the

09:10:29AM 1 parties, the plaintiffs and the defendants, submit to the  
09:10:35AM 2 Court, we will submit to the Court, an updated list for those  
09:10:37AM 3 that have been resolved for the Court to determine whether or  
09:10:41AM 4 not they need to appear in court or not or whether they can  
09:10:45AM 5 be excused.

09:10:46AM 6 So what we would encourage all the plaintiffs'  
09:10:49AM 7 counsel for the claimants that are on the list, on the list  
09:10:55AM 8 of the show cause, on the 25th, to contact their  
09:11:01AM 9 representative at BrownGreer and let BrownGreer know if they  
09:11:07AM 10 have filed a Stipulation of Dismissal or if they have taken  
09:11:12AM 11 the necessary steps they believe to resolve the issue. And  
09:11:15AM 12 then once BrownGreer has that list, plaintiffs' counsel and  
09:11:19AM 13 the defense lawyers will meet and we will see if we can agree  
09:11:27AM 14 that a certain portion of these cases -- we recommend would  
09:11:30AM 15 be excused. And then we would submit that list to the Court  
09:11:33AM 16 next -- by the end of next week if that pleases the Court.

09:11:39AM 17 THE COURT: Yeah, that's fine. If they're resolved,  
09:11:40AM 18 then they can be excused, but if they're not resolved, then  
09:11:46AM 19 I'm looking for them to come before the court.

09:11:50AM 20 MR. BIRCHFIELD: One thing that we would -- we want  
09:11:52AM 21 to make perfectly clear, you know, to all counsel is that --  
09:11:56AM 22 that the plaintiffs' counsel, the executive committee  
09:12:02AM 23 unilaterally or the defendants unilaterally nor BrownGreer  
09:12:07AM 24 unilaterally can excuse attendance at the hearing. That  
09:12:11AM 25 would be to the Court. But we would propose -- we'll submit

09:12:14AM 1 a list to you where we all -- where we agree that certain  
09:12:17AM 2 cases have been resolved.

09:12:19AM 3 Your Honor, there will also be a supplemental list  
09:12:23AM 4 that we will submit by the end of next week for new cases  
09:12:28AM 5 that we believe should appear in show cause and that is a  
09:12:35AM 6 result of a large number of enrollment forms being submitted  
09:12:40AM 7 at the last hour to BrownGreer. And so there was a group of  
09:12:45AM 8 cases that they were unable to review in time for us to  
09:12:51AM 9 submit to the Court on September the 10th. So there will be  
09:12:54AM 10 -- we anticipate a much smaller list, but there will be a  
09:12:59AM 11 supplemental list that we would propose to submit by the end  
09:13:02AM 12 of next week.

09:13:03AM 13 THE COURT: Okay.

09:13:03AM 14 MR. BIRCHFIELD: So, Your Honor, the schedule, the  
09:13:06AM 15 enrollment deadline, the official enrollment deadline of  
09:13:11AM 16 September the 4th, when it was extended from August 5th to  
09:13:15AM 17 September the 4th, under the Master Settlement Agreement, the  
09:13:17AM 18 enrollment deadline triggers a 60-day period for BrownGreer  
09:13:22AM 19 to prepare a report to the parties, to the plaintiffs'  
09:13:26AM 20 leadership and the defendants of the cases that have enrolled  
09:13:30AM 21 in the program with all the demographics. They have 60 days  
09:13:34AM 22 to prepare that report, and at the end of that 60-day period,  
09:13:39AM 23 once that report is provided to the parties, the defendants  
09:13:42AM 24 have 60 days to evaluate to see if the participation  
09:13:48AM 25 thresholds have been met and whether or not to exercise their

09:13:52AM 1 walkaway rights. So it's essential that we work diligently  
09:14:00AM 2 to give BrownGreer time to adequately prepare this report and  
09:14:04AM 3 for the defendants to exercise their evaluation for walkaway  
09:14:08AM 4 rights.

09:14:08AM 5 THE COURT: Okay. Well, file what you need to file  
09:14:11AM 6 with me when you get the new report, you know, the new list.

09:14:15AM 7 MR. BIRCHFIELD: We will work to supply the Court  
09:14:18AM 8 that new list, the supplemental list, and the revised list by  
09:14:22AM 9 next Friday, September the 20th.

09:14:28AM 10 THE COURT: Okay.

09:14:28AM 11 MR. BIRCHFIELD: Jerry's telling me I misspoke. So  
09:14:35AM 12 Brown -- I'm sorry --

09:14:35AM 13 MR. MEUNIER: Defendants have --

09:14:35AM 14 MR. BIRCHFIELD: 30 days to --

09:14:36AM 15 MR. MEUNIER: -- 30 days --

09:14:36AM 16 MR. BIRCHFIELD: -- exercise --

09:14:37AM 17 MR. MEUNIER: -- for the BrownGreer report.

09:14:37AM 18 MR. BIRCHFIELD: Yes.

09:14:40AM 19 MR. MEUNIER: BrownGreer report within 60 days and  
09:14:43AM 20 within 30 days the defendants can exercise their walkaway  
09:14:43AM 21 right.

09:14:43AM 22 MR. BIRCHFIELD: That's right. I thought that was --  
09:14:46AM 23 I misspoke.

09:14:46AM 24 THE COURT: Okay. Susan, you have anything?

09:14:49AM 25 MS. SHARKO: Yes. Thank you.

09:14:51AM 1 We're very pleased with the overwhelmingly positive  
09:14:55AM 2 response to the settlement program and we look forward to  
09:14:58AM 3 working with the plaintiffs through the next weeks to get to  
09:15:02AM 4 the end, but I would add and remind the very small number of  
09:15:08AM 5 people who have chosen to affirmatively litigate their cases,  
09:15:12AM 6 starting at page 2 in the Joint Report, there's a summary of  
09:15:16AM 7 upcoming deadlines as set forth in CMOs 11 and 11A. And we  
09:15:22AM 8 would urge this small number of people who intend to litigate  
09:15:25AM 9 they say to pay attention to those deadlines because we will  
09:15:30AM 10 seek to enforce those strictly.

09:15:32AM 11 THE COURT: Okay.

09:15:34AM 12 MS. SHARKO: And then, finally, Pennsylvania's next  
09:15:38AM 13 Case Management Conference with Judge New is tomorrow, and I  
09:15:42AM 14 think the main topic on the agenda will be discussing  
09:15:47AM 15 implementation of an order to show cause process there,  
09:15:50AM 16 similar to what Your Honor has. And the next Case Management  
09:15:53AM 17 Conference with Judge Freeman in San Francisco is  
09:15:58AM 18 September 18th, and it will be the same topic on the agenda.

09:16:01AM 19 THE COURT: Yeah. Let's supply them with the orders  
09:16:04AM 20 that we issued so they'll have access to those.

09:16:07AM 21 MS. SHARKO: We will and we have.

09:16:09AM 22 THE COURT: Okay.

09:16:10AM 23 MS. SHARKO: Okay. Thank you.

09:16:10AM 24 THE COURT: Thank you, Susan.

09:16:11AM 25 Okay. Anything, Steve?

09:16:13AM 1 MR. GLICKSTEIN: No, nothing extra.

09:16:15AM 2 THE COURT: All right. The next status conference,  
09:16:16AM 3 we're going to pass up October. The next one is November  
09:16:21AM 4 the 7th, November 7th, at 9:30. I'll meet with liaison lead  
09:16:29AM 5 counsel at 9:00, and we'll start the meeting at 9:30.

09:16:32AM 6 Okay. We have rule to show cause in some of the  
09:16:37AM 7 cases. You want to take that up now?

09:16:40AM 8 THE DEPUTY CLERK: Judge, we have to get a different  
09:16:42AM 9 call-in, so we have to --

09:16:49AM 10 THE COURT: All right. We need a different call-in?

09:16:49AM 11 MR. DAVIS: I don't believe there is.

09:16:51AM 12 THE COURT: I think there are two of them resolved  
09:16:53AM 13 and one of them still outstanding, but that looks like it  
09:16:55AM 14 will be?

09:16:55AM 15 MS. MILLER: That's correct, Your Honor, two cases  
09:16:58AM 16 have addressed the issues and defendants are withdrawing the  
09:17:01AM 17 motions to them. And the third I think Mr. Davis will speak  
09:17:04AM 18 on their behalf.

09:17:04AM 19 THE COURT: Do we need anything --

09:17:06AM 20 THE DEPUTY CLERK: It's scheduled for 9:30. I don't  
09:17:09AM 21 know if there's one person --

09:17:11AM 22 MR. DAVIS: There might be one.

09:17:14AM 23 THE COURT: We better do it?

09:17:17AM 24 THE DEPUTY CLERK: Yeah.

09:17:18AM 25 THE COURT: We'll adjourn here and come back at 9:30.

09:17:21AM

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MS. MILLER: Thank you, Your Honor.

09:20:59AM

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(WHEREUPON, the proceedings were adjourned.)

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REPORTER'S CERTIFICATE

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I, Nichelle N. Drake, RPR, CRR, Official Court Reporter, United States District Court, Eastern District of Louisiana, do hereby certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of the proceedings in the above-entitled and numbered matter.

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          /s/ Nichelle N. Drake            
Official Court Reporter

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