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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: XARELTO (RIVAROXABAN)  
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NO. 14-MD-2592 "L"  
NEW ORLEANS, LOUISIANA  
TUESDAY, NOVEMBER 29, 2016, 9:00 A.M.

08:46:57

THIS DOCUMENT RELATES TO  
ALL CASES

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

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M O R N I N G   S E S S I O N

TUESDAY, NOVEMBER 29, 2016

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: All rise.

THE COURT: Be seated please. Good morning, ladies and gentlemen.

VOICES: Good morning, Judge. Good morning, Your Honor.

THE COURT: Let's call the case.

THE DEPUTY CLERK: MDL 2592. In Re: Xarelto Products Liability Litigation.

THE COURT: Would liaison counsel please make their appearance for the record, please.

MR. MEUNIER: Jerry Meunier of Gainsburgh Benjamin, coliaison counsel for plaintiffs.

MR. IRWIN: Good morning, Your Honor. Jim Irwin for defendants.

THE COURT: Okay. We're here today for our monthly status conference. I met a moment ago with lead liaison counsel to discuss the agenda. We'll take it in the order that was suggested.

MR. MEUNIER: Thank you, Your Honor. May it please the

09:07:39 1 Court, Jerry Meunier for plaintiffs. The joint report first  
09:07:43 2 lists the pretrial orders which have been entered during the  
09:07:46 3 pendency of the MDL.

09:07:48 4 There is one new pretrial order entered since the  
09:07:51 5 last status conference, and that is PTO 23A,  
09:07:55 6 Record Document 4455. In effect, it supplements the earlier  
09:08:01 7 provisions in PTO 23 regarding deposition guidelines and makes  
09:08:06 8 specific reference to expert deposition guidelines.

09:08:09 9 In Section 2, under the case management orders  
09:08:14 10 that have been entered, we note that since the last conference,  
09:08:17 11 the Court has entered CMO 2B, which sets forth new deadlines  
09:08:24 12 with respect to the third and fourth bellwether trial, the  
09:08:27 13 Mingo and Henry trials.

09:08:29 14 We also mentioned to Your Honor in chambers an  
09:08:34 15 issue that has come up with respect to deadlines that are set  
09:08:37 16 forth in CMO 2A, specifically insofar as the deadlines for  
09:08:43 17 *Daubert* motion practice are concerned.

09:08:45 18 The parties are dealing with having to schedule  
09:08:49 19 depositions to make sure that they don't conflict or cause  
09:08:52 20 problems with respect to the existing *Daubert* deadlines, and we  
09:08:57 21 will continue to work on that and present to the Court an  
09:09:01 22 amended set of deadlines that will address that problem.

09:09:07 23 THE COURT: Okay. I anticipate the *Daubert* hearings  
09:09:09 24 will be mainly on paper. I'll take the opportunity to have  
09:09:13 25 oral presentations, but there won't be any witnesses' testimony

09:09:18 1 as sometimes we have, so that will shorten the matter a little  
09:09:23 2 bit.

09:09:24 3 MR. MEUNIER: Nothing new to report on Section 3,  
09:09:29 4 bellwether selections.

09:09:31 5 Four, counsel contact information forms, that  
09:09:35 6 just, as always, Lenny Davis and I emphasize to all plaintiffs'  
09:09:39 7 counsel the importance of keeping us current on your contact  
09:09:43 8 information pursuant to PTO 4A.

09:09:47 9 On plaintiff fact sheets, which are discussed in  
09:09:51 10 Section 5, Judge, we have, as you know, a system in place with  
09:09:57 11 respect to deficiencies and fact sheets. The defendants will  
09:10:01 12 identify either fact sheets that have not been filed on a  
09:10:05 13 timely basis or fact sheets which have been filed but which  
09:10:09 14 contain inadequate information particularly concerning product  
09:10:11 15 use.

09:10:11 16 Under the system that we've had, the PSC assists  
09:10:15 17 in those matters by the defendants first furnishing us a list  
09:10:18 18 of those cases in which those problems are said to exist. This  
09:10:23 19 gives us an opportunity to contact plaintiffs' counsel, gives  
09:10:26 20 us an opportunity to try to work those problems out, and we  
09:10:29 21 have been successful in many cases.

09:10:31 22 In those cases where no problem -- the problems  
09:10:34 23 cannot be solved and defendants bring a motion for dismissal,  
09:10:38 24 which, of course, is a serious matter, and we make sure that  
09:10:40 25 plaintiffs' counsel are available by phone or in person when

09:10:43 1 the day comes to argue those motions.

09:10:47 2 What the parties are now doing is working on a  
09:10:49 3 PTO -- a new PTO that will set forth the protocol that I've  
09:10:53 4 just described in a more formal way with appropriate deadlines  
09:10:57 5 and spacing of the events. We hope to have that to the Court  
09:11:01 6 in a short while.

09:11:02 7 THE COURT: Okay. We have several motions later after  
09:11:05 8 this conference, and I'll take those motions, but the fact  
09:11:10 9 sheets in cases of this sort, they are the substitute for  
09:11:13 10 interrogatories. We can't have interrogatories in a matter of  
09:11:16 11 this sort. So far I have 16,000 individual cases, and it's  
09:11:20 12 growing, so interrogatories just is not a good vehicle for this  
09:11:24 13 type of case.

09:11:25 14 Instead of interrogatories, we have fact sheets.  
09:11:30 15 Each side gets together and decides what information they need.  
09:11:33 16 They prepare it in the form of a fact sheet after discussing it  
09:11:38 17 with opposing counsel, and then they submit the fact sheets.

09:11:42 18 The fact sheets are very important for the  
09:11:45 19 plaintiffs to fill out, just as they are very important for the  
09:11:48 20 defendants to fill out. I need the plaintiffs to take them  
09:11:52 21 seriously and to fill them out. I give you an opportunity to  
09:11:55 22 fill them out. I give you an opportunity to fill them out  
09:11:58 23 partially if you don't have all of the information.

09:12:00 24 But if I get to the point where you're not  
09:12:03 25 filling them out and you haven't filled them out, and there is

09:12:07 1 no reason for not filling them out other than I didn't get  
09:12:11 2 around to it or I don't have the information or I don't want to  
09:12:15 3 give you the information, then the case is going to have to be  
09:12:19 4 dismissed.

09:12:19 5 Maybe there is an indication that the individual  
09:12:23 6 wants to be in another litigation. That's their prerogative,  
09:12:25 7 but if they are in this litigation, they have to comply with  
09:12:30 8 the rules. They are, in effect, not answering interrogatories,  
09:12:33 9 and that's a defective discovery failing and I take it  
09:12:40 10 seriously.

09:12:42 11 MR. MEUNIER: Nothing further or new to report, Judge,  
09:12:45 12 on Section 6 dealing with defendant fact sheets; Section 7,  
09:12:48 13 dealing with service of process on certain Bayer defendants;  
09:12:51 14 Section 8 dealing with the bundling of complaints, except to  
09:12:55 15 note, again, that the deadline for filing bundled complaints  
09:12:59 16 was May 20, 2016.

09:13:01 17 Nothing further to report on Section 9 dealing  
09:13:03 18 with the preservation order.

09:13:05 19 Section 10 refers to the Court's earlier order by  
09:13:09 20 Pretrial Order 28 setting forth the limits and guidelines for  
09:13:16 21 interactions between counsel and treating physicians.

09:13:19 22 As we mentioned in chambers, the terms of that  
09:13:22 23 order dealt with discovery related contact. We now are in a  
09:13:26 24 phase of the case where contact might be made with physicians  
09:13:33 25 for purposes of their trial testimony, so the parties will be

09:13:35 1 working on an update revision or supplement to PTO 28 which  
09:13:44 2 specifically addresses contact with physicians for trial  
09:13:45 3 purposes.

09:13:47 4 In discovery, Your Honor, we continue to have our  
09:13:49 5 biweekly calls with you. They are very helpful to us in  
09:13:52 6 resolving things, and the last call we had with you, in fact,  
09:13:57 7 led to the resolution of many of the discovery issues which are  
09:13:59 8 identified briefly in Section 11 of the report dealing with  
09:14:03 9 discovery.

09:14:03 10 There are, however, a couple of discovery matters  
09:14:07 11 which, unlike others, are not either in the process of being  
09:14:11 12 resolved or have been resolved, and those will be the subject  
09:14:15 13 of some further meet and confer and/or motion practice.

09:14:19 14 One, in fact, is the subject of a motion that is  
09:14:22 15 set for hearing following the conference, which is the PSC's  
09:14:27 16 motion to compel sufficient responses by defendants to our  
09:14:31 17 request for admissions.

09:14:33 18 This deals with the status of the voluminous  
09:14:36 19 amount of documents that have been produced, and we would like  
09:14:39 20 to be briefly heard on that; although, we understand from our  
09:14:43 21 discussion in chambers that there is, perhaps, more meet and  
09:14:46 22 confer work to be done on resolving that area, but it is time  
09:14:49 23 critical, and Fred Longer for the PSC will briefly state what  
09:14:55 24 the PSC's concerns are in presenting that motion today.

09:14:59 25 The other matter in the discovery area which has

09:15:03 1 not been resolved has to do with material to be produced by  
09:15:07 2 experts at depositions. Plaintiff experts in particular. We  
09:15:11 3 have an earlier pretrial order which defines and describes what  
09:15:15 4 experts are to produce in connection with giving their expert  
09:15:19 5 reports. The defendants have sought additional material from  
09:15:21 6 certain experts in deposition. We've had some meet and confer  
09:15:25 7 discussions about this, and the defendants yesterday have filed  
09:15:28 8 a motion to bring that matter to court for your input and  
09:15:33 9 assistance.

09:15:33 10 We will work with the defendants on getting an  
09:15:37 11 appropriate time for the hearing -- the further briefing and  
09:15:40 12 hearing on that motion. It currently is set, I believe, for  
09:15:45 13 mid-December, which is just a regular hearing date, but we'll  
09:15:49 14 try to coordinate with the defendants and get that date fixed  
09:15:52 15 in a time that's convenient to the parties.

09:15:54 16 Nothing new to report on Section 12 dealing with  
09:15:59 17 discovery to third parties.

09:16:05 18 That brings us to Section 13, state/federal  
09:16:09 19 coordination, and I think Ms. Barrios is here to make a report  
09:16:12 20 for the PSC.

09:16:14 21 MS. BARRIOS: Thank you, Mr. Meunier.

09:16:15 22 Good morning, Your Honor. Dawn Barrios for the  
09:16:18 23 federal/state committee.

09:16:19 24 I have given your law clerk two different charts,  
09:16:22 25 and they are a little different than what I usually do.

09:16:25 1 Because Philadelphia now has trial dates that begin in  
09:16:33 2 September 2017, and it will be every two weeks, I gave  
09:16:36 3 Your Honor and the defendants a chart with the different  
09:16:38 4 plaintiffs that will go forward, their indication, and how they  
09:16:44 5 were selected. Judge New did use some random selections. He  
09:16:48 6 had BrownGreer do six random selections.

09:16:50 7 Ms. Sharko advised me today that two of the  
09:16:53 8 plaintiffs have to be substituted out, so I will -- when I  
09:16:57 9 learn those names of those plaintiffs, I'll substitute that for  
09:17:00 10 Your Honor.

09:17:01 11 Mr. Weinkowitz had asked me to please make sure  
09:17:06 12 that I report to the Court the cooperation between the MDL and  
09:17:10 13 Philadelphia. About two weeks ago, Mr. Roger Denton hosted a  
09:17:15 14 meeting between MDL attorneys and all the Philadelphia  
09:17:21 15 attorneys who had cases.

09:17:22 16 I want to thank him, Kurt Goza, and  
09:17:26 17 Emma Kingsdorf from my office, and I went and we did  
09:17:29 18 presentations of all the issues that we thought would be  
09:17:32 19 pertinent for the counsel for Philadelphia since we were so far  
09:17:36 20 in front of them.

09:17:36 21 It was well attended and there was about 25  
09:17:40 22 different Philadelphia attorneys. We gave them access to  
09:17:45 23 special databases with information in it, so Mr. Weinkowitz  
09:17:48 24 wanted to thank the MDL and to make sure that you're aware of  
09:17:53 25 that level of cooperation.

09:17:55 1 The second chart, Your Honor, it looks like the  
09:17:59 2 usual chart. It's state court stats. As usual, the  
09:18:05 3 highlighted judges are the new judges; however, if you'll note,  
09:18:09 4 California now has the JCCP, so those cases that are now in  
09:18:14 5 front of other California judges will ultimately be  
09:18:17 6 transferred.

09:18:17 7 California has a status conference on  
09:18:22 8 December 12th, and I'll be able to give you a report as soon as  
09:18:25 9 that is over.

09:18:27 10 There is a large number of cases in Delaware that  
09:18:30 11 have been filed basically by one firm, and I understand that  
09:18:34 12 the majority of that firm's filings, the defendants have filed  
09:18:39 13 dispositive motions, so I'm to follow up with that firm and get  
09:18:43 14 further information on the Delaware cases.

09:18:45 15 In St. Louis, the city of St. Louis, there is a  
09:18:51 16 trial date set, Ms. Sharko advised today, of January 2017.  
09:18:55 17 I'll try to get some further information on that for  
09:18:58 18 Your Honor.

09:18:58 19 Your Honor, I know that in that court the motions  
09:19:02 20 judge is not necessarily the trial judge, so I'm going to try  
09:19:05 21 to find out who the trial judge will be for that trial and get  
09:19:09 22 that information to you.

09:19:11 23 THE COURT: Okay. Ms. Sharko, do you want to say  
09:19:15 24 something?

09:19:15 25 MS. SHARKO: 2018.

09:19:20 1 MS. BARRIOS: 2018.

09:19:22 2 So, of all of the stats that we have, the number  
09:19:24 3 of state court cases filed is 1373, and the number of current  
09:19:31 4 Xarelto users in suit is 1588, and the vast, vast majority of  
09:19:37 5 that is in Pennsylvania with 1093 cases.

09:19:41 6 THE COURT: Okay. I've been trying to coordinate with  
09:19:44 7 my state colleagues, and they have been helpful to me, and I  
09:19:48 8 appreciate all of the work that they've done and their help to  
09:19:51 9 the MDL.

09:19:52 10 I'm going to make sure that they know about the  
09:19:57 11 *Daubert* hearing, any oral presentations that we have. I'll  
09:20:01 12 make arrangements for them to either participate in person or  
09:20:04 13 to participate by phone or video or whatever means they would  
09:20:09 14 like to participate in.

09:20:11 15 Some of the issues may be a Frye issue for them,  
09:20:14 16 some of them maybe be *Daubert* issues, but at least they'll have  
09:20:18 17 the benefit of hearing the presentation, and I'll give them  
09:20:22 18 copies of all of the documents that's filed with me so that  
09:20:25 19 they can have access to them.

09:20:30 20 MS. BARRIOS: Your Honor, I'll get together with  
09:20:33 21 Ms. Sharko and give you the judges' names of the cases that are  
09:20:35 22 most developed that may be ready for *Daubert* when you are.

09:20:38 23 THE COURT: Okay. So, no cases are set before the MDL  
09:20:42 24 trials are set?

09:20:43 25 MS. BARRIOS: No, Your Honor. You're first.

09:20:45 1 MS. SHARKO: That's correct. The MDL first.

09:20:48 2 THE COURT: All right. Okay. We'll make sure that  
09:20:49 3 they have the advantage of knowing what's happened and how we  
09:20:54 4 are doing it.

09:20:55 5 MS. BARRIOS: Thank you, Your Honor.

09:20:57 6 THE COURT: Thank you very much, Dawn.

09:20:57 7 MR. MEUNIER: Your Honor, would you like to hear a  
09:20:59 8 report now from BrownGreer on MDL Centrality?

09:21:03 9 THE COURT: Yes.

09:21:07 10 MR. WOODY: My name is Jake Woody from BrownGreer. I  
09:21:38 11 have just a brief report for you on the fact sheets which we  
09:21:40 12 talked about a few minutes ago, and I can flesh out some  
09:21:44 13 details for you on that.

09:21:45 14 So far we have 13,335 fact sheets submitted.  
09:21:51 15 That's an increase of 736 since the last status conference.  
09:21:53 16 Another 1,268 fact sheets in progress. They haven't been filed  
09:21:59 17 yet, which gives us a total of 14,264 plaintiffs in our system.  
09:22:06 18 Of the 13,000 fact sheets that have been submitted, 3,166 have  
09:22:12 19 been amended at least once.

09:22:13 20 I believe that that total of 14,200 roughly  
09:22:19 21 aligns with the number of cases. There is a lag time between  
09:22:22 22 when a case is filed and when they register with our system, so  
09:22:25 23 that might explain any gap between the two numbers.

09:22:28 24 This is our monthly submission timeline. As you  
09:22:33 25 know, we received a significant number of fact sheets in August

09:22:36 1 of 2016, 3,515 in that month, but since then the numbers have  
09:22:42 2 returned to normal -- 641 in September, 618 in October, and 513  
09:22:48 3 so far in November.

09:22:50 4 Those numbers align with our typical average of  
09:22:53 5 between five and 600 fact sheets every month, and I don't see  
09:22:56 6 any reason why that number will change in any way going forward  
09:23:00 7 for the next -- for the foreseeable future.

09:23:03 8 Our demographics are stable despite the increase  
09:23:07 9 in fact sheets -- 51 percent male, 49 percent female. Our  
09:23:12 10 largest age group is between 60 and 79, which are rows four and  
09:23:18 11 five on the age chart. As you can see, 53 percent of all of  
09:23:21 12 our plaintiffs are between 60 and 79, so that makes up our  
09:23:26 13 largest age group there.

09:23:27 14 When we look at our demographics and compare them  
09:23:30 15 to the discovery pool, we've done this over the last few status  
09:23:34 16 conferences, these numbers are stable and aren't changing much.  
09:23:38 17 As I mentioned, 51 percent male in the MDL, and 52 percent of  
09:23:42 18 the discovery pool is male, so it it's aligned well.

09:23:46 19 60 to 79 age group is 53 percent of the MDL,  
09:23:51 20 77 percent of the discovery pool. I believe when the discovery  
09:23:55 21 pool was created, the most prevalent factors were weighted to  
09:24:00 22 try to get the discovery pool to be as representative of the  
09:24:03 23 MDL as possible, so this is a little bit higher percentage in  
09:24:08 24 the discovery pool, but that's intentional for most of these  
09:24:08 25 factors.

09:24:12 1                   The alleged injury, gastrointestinal bleed, is  
09:24:18 2                   54 percent of the MDL, 72 percent of the discovery pool, and  
09:24:20 3                   the indication -- the largest indication is reduction of stroke  
09:24:25 4                   risk. That's 52 percent of the MDL and 72 percent of the  
09:24:29 5                   discovery pool.

09:24:30 6                   Finally, hospitalization, 92 percent of the MDL  
09:24:32 7                   alleges some hospitalization, and 97 percent of the discovery  
09:24:36 8                   pool does the same.

09:24:37 9                   So the MDL and the discovery pool match up well.  
09:24:42 10                  Obviously, there is some weighting to try to get the discovery  
09:24:45 11                  pool to find the most representative cases, which is why the  
09:24:48 12                  discovery pool is, in some cases, a little bit higher  
09:24:52 13                  percentage than the MDL as a whole.

09:24:53 14                  THE COURT: You see, that's the importance of the fact  
09:24:55 15                  sheets, folks. When we get the fact sheets in digitally, we  
09:25:00 16                  are able to massage them and make some sense out of them  
09:25:03 17                  insofar as various categories -- male, age, GI bleeds, stroke  
09:25:08 18                  risks, and hospitalization. Then we try to create a discovery  
09:25:15 19                  pool that mimics the census of the litigation.

09:25:21 20                  The discovery pool then is discovered in detail,  
09:25:25 21                  and both sides, after they are finished with the discovery  
09:25:28 22                  pool, has the opportunity to participate in selecting the  
09:25:31 23                  bellwether cases which we select from the discovery pool.

09:25:34 24                  That gives us an opportunity to pick  
09:25:39 25                  representative cases that mimic the census of the whole

09:25:44 1 litigation to give the attorneys and give the litigants an  
09:25:49 2 opportunity to see how juries act under various matters that  
09:25:54 3 are presented in those cases. That's part of the whole  
09:25:58 4 litigation, and that's why it's so critical that we get fact  
09:26:02 5 sheets.

09:26:04 6 MR. WOODY: Finally, Your Honor, just some brief  
09:26:06 7 numbers on our system. We had 436 firms using the system.  
09:26:13 8 1651 individual users. We've identified 117 duplicate  
09:26:16 9 plaintiffs by using Social Security numbers so that we can  
09:26:20 10 resolve those issues earlier rather than later.

09:26:22 11 We have 163,000 documents that have been uploaded  
09:26:25 12 into the system -- medical records, HIPAA authorization, things  
09:26:29 13 of that nature.

09:26:30 14 Finally, we have distributed 6,260 of the Court's  
09:26:34 15 pleadings and orders to plaintiffs' counsel.

09:26:38 16 That's all I have, Your Honor. I appreciate your  
09:26:40 17 time. Thank you.

09:26:41 18 THE COURT: Okay. Thank you very much. I appreciate  
09:26:42 19 it.

09:26:44 20 Anything more, Jerry?

09:26:45 21 MR. MEUNIER: No, Your Honor. The next conference  
09:26:46 22 is --

09:26:46 23 THE COURT: Okay. The next conference is  
09:26:48 24 December 20th, and the following after that is January 20th,  
09:26:53 25 both at nine o'clock.

09:26:55 1 Okay. Steve, you have something?

09:26:58 2 MR. GLICKSTEIN: Yes, Your Honor, one question about  
09:27:00 3 what Jerry had said. My understanding from our chambers  
09:27:04 4 discussion is that the issue on request for admission  
09:27:08 5 concerning admissibility of documents was to be the subject of  
09:27:12 6 a further meet and confer between the plaintiffs and defendants  
09:27:17 7 in light of Your Honor's guidance.

09:27:19 8 I'm certainly prepared to argue the motion, if  
09:27:21 9 that's what plaintiffs want to do and what the Court wants to  
09:27:24 10 hear. It seems to me, Your Honor told us what you wanted to  
09:27:26 11 happen, which is that there would be a smaller number of  
09:27:31 12 exhibits, and we work out a scheduling. I think it's probably  
09:27:34 13 most productive.

09:27:35 14 THE COURT: Okay. That was my understanding.

09:27:36 15 Fred, where are you on this point?

09:27:38 16 MR. LONGER: Your Honor, it was my understanding that  
09:27:40 17 was Mr. Glickstein's position. Our thought was that we would  
09:27:44 18 at least make our presentation, and hopefully we could narrow  
09:27:46 19 some of the issues.

09:27:47 20 I do think that the motion -- well, let me put it  
09:27:51 21 differently. I do think that the objections that they raised  
09:27:54 22 are simply placeholders and that it's important for us to get  
09:27:59 23 deadlines in place fast so that we can get to a point where our  
09:28:08 24 exhibit list is due on February 10th, and we need to have the  
09:28:12 25 information in advance of that February 10th deadline.

09:28:15 1 I understand that's their position, which is,  
09:28:18 2 well, we're trying to basically hop-skip over the February 10th  
09:28:24 3 deadline, but we need this information to prepare for the  
09:28:28 4 February 10th deadline.

09:28:30 5 That's why I think it's important for us to at  
09:28:33 6 least nail that down. Whether it's done by motion or whether  
09:28:36 7 it's done by agreement, that's one thing, but we haven't gotten  
09:28:41 8 the cooperation on this end, which is what got us to a motion.

09:28:45 9 THE COURT: Okay. Let's do it this way: Let's split  
09:28:48 10 the difference, and I'll give you all an opportunity to confer,  
09:28:52 11 but I'll take this up on our next Wednesday conference, which  
09:28:56 12 is, what, this Wednesday or next Wednesday? Next Wednesday?

09:29:03 13 MR. IRWIN: December 8th, I believe, Your Honor.

09:29:06 14 MR. MEUNIER: Next week.

09:29:06 15 THE COURT: Yes, December 8th.

09:29:08 16 THE DEPUTY CLERK: At 3:30.

09:29:09 17 THE COURT: December 8th at 3:30. We'll do it on the  
09:29:12 18 telephone, and I'll hear from you all at that time.

09:29:14 19 Get together, Steve, with Fred and see whether or  
09:29:17 20 not you all can narrow the issue.

09:29:20 21 My thinking there is that we're dealing with  
09:29:24 22 about 1,600 documents, and some of the objections are in the  
09:29:29 23 800 category of the Federal Rules. Some of that can be dealt  
09:29:36 24 with a little more easily than others, and it takes some  
09:29:41 25 scrutinizing of some of the issues; therefore, time presents a

09:29:45 1 problem.

09:29:45 2 So from the plaintiffs' standpoint, you ought to  
09:29:48 3 try to shrink the number, and then the defendant can answer on  
09:29:52 4 those numbers, and then I'll deal with it, but 1,600 is too  
09:29:57 5 many for this period of time. See if you can refine it a  
09:30:01 6 little bit.

09:30:01 7 Then some of the decisions that were made, there  
09:30:07 8 may be a need for presentation for some of the others, but at  
09:30:11 9 least it ought to be streamlined a little bit. I think the  
09:30:17 10 plaintiffs are asking for too many at this time.

09:30:20 11 I do think you ought to know, just as I said in  
09:30:24 12 chambers, I would like you all to know long before which  
09:30:30 13 documents are admissible, which are not admissible so that you  
09:30:34 14 don't have to deal with that. You deal strictly with the trial  
09:30:38 15 and not worry about evidence issues.

09:30:43 16 I'll have those streamlined for you and ruled on  
09:30:46 17 immediately. You'll be able to deal with the trial issues and  
09:30:52 18 know what's getting in and not getting in.

09:30:55 19 I hear you on the time. I agree with that. Both  
09:30:58 20 sides, I think, profit from having decisions made prior to the  
09:31:01 21 trial, but in order to make it doable, I think you have to have  
09:31:07 22 a smaller number of issues.

09:31:09 23 MR. LONGER: Thank you, Your Honor.

09:31:11 24 THE COURT: Okay.

09:31:12 25 MR. MEUNIER: Your Honor, since that will be heard next

09:31:15 1 Thursday, the 8th, perhaps we could have an agreement that by  
09:31:18 2 Monday we'll report to the Court on the further discussions so  
09:31:22 3 it will narrow and the Court will know what is actually still  
09:31:25 4 at issue for purposes of the (speaking simultaneously) --

09:31:27 5 THE COURT: Yeah, I don't have problems with that.

09:31:29 6 MR. MEUNIER: Thank you, Judge.

09:31:29 7 THE COURT: Okay. Let's see. We'll take a break at  
09:31:33 8 this time and come back for the motions. We have a couple of  
09:31:34 9 motions.

09:31:35 10 MR. MEUNIER: Yes, we have a motion to withdraw.

09:31:37 11 THE COURT: All right. The Court will stand in recess  
09:31:39 12 five minutes.

09:31:40 13 THE DEPUTY CLERK: All rise.

14 (WHEREUPON, at 9:31 a.m., the proceedings were  
15 concluded.)

16 \* \* \*

17 REPORTER'S CERTIFICATE

18 I, Cathy Pepper, Certified Realtime Reporter, Registered  
19 Merit Reporter, Certified Court Reporter in and for the State  
20 of Louisiana, Official Court Reporter for the United States  
21 District Court, Eastern District of Louisiana, do hereby  
22 certify that the foregoing is a true and correct transcript to  
23 the best of my ability and understanding from the record of the  
24 proceedings in the above-entitled and numbered matter.

09:40:36 25 *s/Cathy Pepper*  
Cathy Pepper, CRR, RMR, CCR  
Official Court Reporter  
United States District Court  
Cathy\_Pepper@laed.uscourts.gov

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