

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) \* 14-MD-2592  
PRODUCTS LIABILITY LITIGATION \*  
\* Section L  
\*  
Relates to: All Cases \* September 20, 2016  
\*  
\* \* \* \* \*

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

Appearances:

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& Warshauer, LLC  
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computer-aided transcription software.



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1           **THE COURT:** Yes. We have several bellwether trials  
2 set already. We have two in New Orleans, one in Mississippi,  
3 and one will be set in Texas. We have had to move them back a  
4 bit because of the circumstances, but we are hopefully on  
5 schedule.

6           **MR. MEUNIER:** Section 4 of the joint report  
7 reiterates the information on counsel contact information  
8 forms, Judge. We put that in every report because Mr. Davis  
9 and I consider it extremely helpful and important in the case  
10 that counsel continue to submit those forms so that we have  
11 current information on counsel.

12           On plaintiff fact sheets, which is in Section 5,  
13 we understand that Mr. Woody will not be present today to make  
14 a report. He has submitted to counsel the information on  
15 plaintiff fact sheets. I will just give those numbers for the  
16 record.

17           As of September 19, 2016, a total of 12,010  
18 plaintiff fact sheets have been submitted. 1,371 fact sheets  
19 are in progress. The total registered plaintiff count is  
20 13,381; 13,381 total registered plaintiffs in the MDL.

21           **THE COURT:** The fact sheets play an important role in  
22 the litigation. This type of case is so vast that instead of  
23 having interrogatories sent to the parties and the time that it  
24 takes for interrogatories, the Court gets both sides to prepare  
25 a fact sheet containing information that each side needs and

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1 feels is important to at least preliminarily deal with the  
2 issues in the case.

3 So the fact sheets go out, and I give the  
4 parties an opportunity to answer the fact sheets. That is a  
5 way of getting early discovery so that depositions can proceed  
6 timely. The fact sheets are very important, and they call for  
7 the plaintiffs and the defendants to submit certain  
8 information.

9 From the standpoint of the plaintiffs, they have  
10 a period of time to get the information. If they cannot get  
11 the information, there's also an opportunity for the liaison  
12 counsel to get involved, assist, and do what they can to help  
13 them get information. If they still can't get information,  
14 then I have to get involved in it and provide for dismissal of  
15 the case if the information is not forthcoming.

16 I don't do that in a willy-nilly matter. I give  
17 everybody an opportunity to get the information. If you can't  
18 get the information or won't get the information or are not  
19 interested in getting the information, then you need to be in  
20 another lawsuit and not in this one. That's important for  
21 everybody to know.

22 We have presently in this Court about 13,000  
23 individual cases. I have at least 500 lawyers that are  
24 handling this case. It just needs to be handled in some  
25 efficient, effective way to get through this type of

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1 litigation. If not, it goes on interminably, and we will be  
2 here for 20 or 30 or 40 years dealing with this. It's  
3 important for everybody to try to cooperate and get this  
4 information.

5 **MR. MEUNIER:** Your Honor, we mentioned in the same  
6 section on plaintiff fact sheets the system we have in place  
7 with defendants on those fact sheets which are either deficient  
8 or which are not timely provided. Following this conference,  
9 in fact, there will be further discussion and some motions to  
10 be addressed by the Court on those matters.

11 It is a successful protocol. We think it's  
12 working to help narrow it down before we bring to Your Honor's  
13 attention those issues that involve plaintiffs with fact sheet  
14 difficulties.

15 Nothing new on defendant fact sheets or bundling  
16 or the preservation order or the order governing interaction  
17 with physicians.

18 Section 10 deals with discovery as between the  
19 parties. There are deadlines approaching for the completion of  
20 general discovery. Counsel are working hard and diligently to  
21 get those depositions taken and that discovery completed.

22 The biweekly discovery conferences that we have  
23 on the calendar with Your Honor are proving to be extremely  
24 helpful to expedite the handling of issues and not delay  
25 resolution based on motion practice.

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1           **THE COURT:** Let me speak on that. As everybody knows  
2 on the phone as well as in the courtroom, I have monthly  
3 meetings that everybody is invited to. I notice them on my  
4 website so that there's no secret. Everybody knows the time  
5 and the place for the meeting. If they can't make the meeting  
6 in person, they have an opportunity to call in. I have  
7 hundreds of people on the phone generally, just as I do today,  
8 listening to the presentation at the monthly meetings.  
9 Oftentimes those monthly meetings are transcribed; and if they  
10 are transcribed, I put that on the website.

11           In addition, the discovery is fast going on. We  
12 have bellwether trials set for early next year, and the parties  
13 are vigorously pursuing discovery. They present to me material  
14 that they have some objection to. I review the material and  
15 make a decision on it.

16           In addition, every two weeks I have a date that  
17 I consult with the parties if they have any discovery issues.  
18 This hopefully moves matters along, but it also depends on  
19 cooperation from the people who may not be on the committees to  
20 supply the information necessary.

21           **MR. MEUNIER:** Your Honor, in Section 11 we do address  
22 the pending discovery issued to third parties. With respect to  
23 the Duke Clinical Research Institute (DCRI), we have had a  
24 further recent production of documents which have been shared  
25 with the defendants. That matter is proceeding efficiently.

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1 With respect to the requested discovery from  
2 Pharmaceutical Research and Manufacturers of America (PhRMA),  
3 Your Honor issued a minute entry in July (Rec. Doc. 3730) which  
4 directed us to confer with counsel for that entity and come up  
5 with appropriate search terms to narrow the scope of what we  
6 were requesting by subpoena. Search terms have now been agreed  
7 upon. There is going to be a discussion soon that will address  
8 the appropriate timetable to complete that production now that  
9 the search terms are decided.

10 Then with respect to Portola Pharmaceuticals,  
11 Judge, we discussed this with you in chambers. We have heard  
12 from counsel for that entity. We have followed the Court's  
13 directive from your order (Rec. Doc. 3796) to have further  
14 meet-and-confer discussions on the issue specifically of how to  
15 handle "Attorneys' Eyes Only" (AEO) documents that are  
16 designated in the production by Portola and who should have  
17 access to those documents. The timetable for that was  
18 addressed with the Court. It's helpful that you have offered  
19 us a solution going forward.

20 **THE COURT:** I talked to Portola's attorney today in  
21 the presence of counsel for both sides of this litigation.  
22 What I instructed the Portola attorney to do is to begin  
23 sending the information immediately, with the understanding  
24 that each side will receive the information, but it will be  
25 received for the attorneys' eyes only.

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1 Now, all of us know that it's going to be  
2 necessary for outside experts to look at it and maybe even  
3 inside experts to look at it, but the first step is to get the  
4 material. The material will be forthcoming hopefully by the  
5 end of the week or the end of next week. The attorneys then  
6 will go into the next step and file a motion for outside  
7 experts or inside experts or whoever else they want to look at  
8 the case. I will take a look at their motions, and I will make  
9 a decision on that. I want to make sure that Portola gives the  
10 information so that we can get it out of their possession into  
11 the possession of the parties. That's what we are going to do,  
12 a step-by-step process.

13 **MR. MEUNIER:** Thank you, Judge. Section 12 of the  
14 record addresses state/federal coordination. Our state/federal  
15 liaison in the MDL, Ms. Barrios, is here to make a report.

16 **MS. BARRIOS:** Thank you, Mr. Meunier.

17 Good morning, Your Honor. Dawn Barrios for the  
18 state/federal committee. I would like to thank the defense,  
19 Weitz & Luxenberg, and also Mr. Weinkowitz for providing me  
20 with the information to put on the chart that I have given your  
21 law clerk and the parties.

22 There are two items different on this chart. We  
23 have highlighted the names of the new judges so that you would  
24 know they are new from last time. If you will notice, there  
25 are a couple of them in California.

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1 California has formed the JCCP, which is their  
2 coordinating proceedings. Leadership has not been put into  
3 place. They have had a conference recently. Judge Freeman has  
4 decided that he would like the parties to coordinate with the  
5 MDL, that they want to use the MDL's protective order, but they  
6 have to make sure that it comports with California law. He  
7 will probably be appointing a liaison counsel to the MDL. In  
8 California, the 13 cases that we have listed, not all of them  
9 have yet been transferred over to Judge Freeman.

10 There is also a different item that I want to  
11 bring to the Court's attention and that is a scratch-out. That  
12 means that the case is no longer in existence. If you will  
13 note, in New Jersey the case has been dismissed. Then again in  
14 South Carolina, that case has been removed to the MDL.

15 So totally this month, Your Honor, there are  
16 1,193 cases filed. It's been an increase of 116 since last  
17 status conference. The current number of Xarelto users in  
18 those cases is 1,564, and that's 58 more than last time.

19 Your Honor, Mr. Weinkowitz is here, and I think  
20 he will make a presentation on Pennsylvania.

21 **THE COURT:** What's the state that's the most --

22 **MS. BARRIOS:** Pennsylvania.

23 **THE COURT:** Pennsylvania.

24 **MS. BARRIOS:** Thank you, Your Honor.

25 **THE COURT:** Thank you, Dawn.

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1           **MR. WEINKOWITZ:** Good morning, Your Honor. Not much  
2 really to report. We have about --

3           **THE COURT:** Spell your name for the record, please.

4           **MR. WEINKOWITZ:** Mike Weinkowitz,  
5 W-E-I-N-K-O-W-I-T-Z. We are close to 1,000 cases in  
6 Pennsylvania. We have a status conference with Judge New  
7 tomorrow. On the agenda is our bellwether process, which we  
8 have been meeting and conferring on for about two weeks. I  
9 think we are close. There are some issues that Judge New needs  
10 to decide, discovery issues, going into the bellwether program,  
11 but I think we will be able to successfully meet.

12           **THE COURT:** Mike, I will be talking to Judge New too,  
13 I'm sure. My interest is to be of assistance whenever I can.  
14 If I can coordinate matters with him, I will make every effort  
15 to coordinate matters. It's going to be really his call as to  
16 his schedule, of course, but we will see what we can do to  
17 hopefully help both sides as well as the courts coordinate  
18 matters.

19           **MR. WEINKOWITZ:** Thank you, Your Honor. One of the  
20 case management orders we are going to present to him tomorrow  
21 is a coordinated generic expert schedule, which would include  
22 depositions, expert reports. We'll see what the judge wants to  
23 do on that.

24           **THE COURT:** Well, I know that the defendants will  
25 have some input on that, and hopefully we can resolve any

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1 coordination issues that may or may not be present.

2 **MR. WEINKOWITZ:** Thank you, Your Honor.

3 **THE COURT:** Thank you, Mike, for being here.

4 **MR. MEUNIER:** Your Honor, I just may add that the  
5 coordination with Pennsylvania is particularly important when  
6 you look at Ms. Barrios' report. Of approximately 1,200 state  
7 court cases filed, about 800 or about two-thirds are in  
8 Pennsylvania.

9 Your Honor, following the conference there will  
10 be some matters and motions presented on the plaintiff fact  
11 sheet deficiency question and requested dismissals of those  
12 cases. The only other thing to decide in this conference would  
13 be the date of the November conference.

14 **THE COURT:** The next meetings will be on October 25  
15 and November 29.

16 **MR. MEUNIER:** Both at 9:00 a.m.

17 **THE COURT:** Both at 9:00 a.m., right. So that's  
18 October 25 and November 29.

19 **MR. MEUNIER:** Thank you, Judge. Sindu Daniel will  
20 handle the PSC aspect of the next part.

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CERTIFICATE

I, Toni Doyle Tusa, CCR, FCRR, Official Court Reporter for the United States District Court, Eastern District of Louisiana, certify that the foregoing is a true and correct transcript, to the best of my ability and understanding, from the record of proceedings in the above-entitled matter.

s/ Toni Doyle Tusa  
Toni Doyle Tusa, CCR, FCRR  
Official Court Reporter

MR. IRWIN: [1] 2/11  
 MR. MEUNIER: [9] 2/9 2/17 3/5 5/4  
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 MS. BARRIOS: [3] 8/15 9/21 9/23  
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 THE DEPUTY CLERK: [1] 2/5

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<p>S</p> <p>sides [3] 3/24 7/21 10/17</p> <p>since [2] 2/21 9/16</p> <p>Sindu [1] 11/19</p> <p>so [9] 3/10 3/22 4/3 4/5 6/4 8/10 8/23 9/15 11/17</p> <p>software [1] 1/25</p> <p>solution [1] 7/19</p> <p>some [6] 4/24 5/9 6/14 10/9 10/25 11/10</p> <p>soon [2] 2/23 7/7</p> <p>South [1] 9/14</p> <p>South Carolina [1] 9/14</p> <p>speak [1] 6/1</p> <p>specifically [1] 7/14</p> <p>Spell [1] 10/3</p> <p>standpoint [1] 4/9</p> <p>state [5] 8/14 8/14 8/18 9/21 11/6</p> <p>state/federal [3] 8/14 8/14 8/18</p> <p>STATES [3] 1/1 1/10 12/3</p> <p>status [6] 1/9 2/15 2/16 2/16 9/17 10/6</p> <p>stenography [1] 1/24</p> <p>step [4] 8/3 8/6 8/12 8/12</p> <p>step-by-step [1] 8/12</p> <p>still [1] 4/13</p> <p>Street [3] 1/15 1/19 1/21</p> <p>submit [2] 3/10 4/7</p> <p>submitted [3] 2/24 3/14 3/18</p> <p>subpoena [1] 7/6</p> <p>successful [1] 5/11</p> <p>successfully [1] 10/11</p> <p>Suite [2] 1/15 1/19</p> <p>supply [1] 6/20</p> <p>sure [3] 8/9 9/6 10/13</p> <p>system [1] 5/6</p>	<p>Toni [4] 1/21 12/2 12/9 12/9</p> <p>total [3] 3/17 3/19 3/20</p> <p>totally [1] 9/15</p> <p>transcribed [2] 6/9 6/10</p> <p>transcript [1] 12/5</p> <p>transcription [1] 1/25</p> <p>transferred [1] 9/9</p> <p>trial [1] 2/24</p> <p>trials [3] 2/25 3/1 6/12</p> <p>true [1] 12/4</p> <p>try [1] 5/3</p> <p>Tusa [4] 1/21 12/2 12/9 12/9</p> <p>two [5] 3/2 6/16 8/22 10/8 11/7</p> <p>two-thirds [1] 11/7</p> <p>type [2] 3/22 4/25</p> <hr/> <p>U</p> <p>understand [2] 2/23 3/13</p> <p>understanding [2] 7/23 12/5</p> <p>UNITED [3] 1/1 1/10 12/3</p> <p>up [1] 7/4</p> <p>upon [1] 7/7</p> <p>Urquhart [1] 1/17</p> <p>us [3] 7/4 7/19 8/1</p> <p>use [1] 9/5</p> <p>users [1] 9/17</p> <p>using [1] 1/24</p> <hr/> <p>V</p> <p>vast [1] 3/22</p> <p>very [1] 4/6</p> <p>vigorously [1] 6/13</p> <hr/> <p>W</p> <p>W-E-I-N-K-O-W-I-T-Z [1] 10/5</p> <p>want [4] 8/7 8/9 9/5 9/10</p> <p>wants [1] 10/22</p> <p>Warshauer [1] 1/14</p> <p>was [1] 7/17</p> <p>way [2] 4/5 4/25</p> <p>we [38]</p> <p>We'll [1] 10/22</p> <p>website [2] 6/4 6/10</p> <p>week [2] 8/5 8/5</p> <p>weeks [2] 6/16 10/8</p> <p>Weinkowitz [3] 8/19 9/19 10/4</p> <p>Weitz [1] 8/19</p> <p>well [3] 6/2 10/17 10/24</p> <p>were [1] 7/6</p> <p>what [6] 4/12 7/5 7/22 8/11 10/16 10/22</p> <p>What's [1] 9/21</p> <p>when [1] 11/5</p> <p>whenever [1] 10/13</p> <p>which [9] 2/23 3/12 5/7 5/8 6/24 7/3 9/1 10/7 10/21</p> <p>who [2] 6/19 7/16</p> <p>whoever [1] 8/7</p> <p>will [26]</p> <p>willy [1] 4/16</p> <p>willy-nilly [1] 4/16</p> <p>won't [1] 4/18</p> <p>Woody [1] 3/13</p> <p>working [2] 5/12 5/20</p> <p>would [5] 8/18 8/23 9/4 10/21 11/12</p> <hr/> <p>X</p> <p>XARELTO [3] 1/4 2/6 9/17</p>	<p>Y</p> <p>year [2] 2/25 6/12</p> <p>years [1] 5/2</p> <p>Yes [1] 3/1</p> <p>yet [1] 9/9</p> <p>you [16]</p> <p>your [19]</p> <p>Your Honor [12] 2/13 2/19 5/5 5/23 6/21 8/17 9/15 9/19 9/24 10/1 11/2 11/9</p> <p>Your Honor's [1] 5/12</p>
<p>T</p> <p>take [2] 2/16 8/8</p> <p>taken [1] 5/21</p> <p>takes [1] 3/24</p> <p>talked [1] 7/20</p> <p>talking [1] 10/12</p> <p>terms [3] 7/5 7/6 7/9</p> <p>Texas [1] 3/3</p> <p>than [1] 9/18</p> <p>thank [9] 8/13 8/16 8/18 9/24 9/25 10/19 11/2 11/3 11/19</p> <p>that [53]</p> <p>that's [5] 4/20 8/11 9/18 9/21 11/17</p> <p>their [4] 2/8 8/8 8/10 9/1</p> <p>them [5] 3/3 4/13 6/3 8/25 9/8</p> <p>then [5] 4/14 4/19 7/10 8/5 9/13</p> <p>there [9] 5/9 5/19 7/7 8/22 8/24 9/10 9/15 10/9 11/9</p> <p>there's [2] 4/11 6/4</p> <p>they [16]</p> <p>thing [1] 11/12</p> <p>think [4] 5/11 9/19 10/9 10/11</p> <p>third [1] 6/22</p> <p>thirds [1] 11/7</p> <p>this [14]</p> <p>those [10] 3/10 3/15 5/7 5/10 5/13 5/21 6/9 7/17 9/18 11/11</p> <p>through [1] 4/25</p> <p>time [5] 3/23 4/10 6/4 8/24 9/18</p> <p>timely [2] 4/6 5/8</p> <p>timetable [2] 7/8 7/17</p> <p>today [4] 2/14 3/13 6/7 7/20</p> <p>tomorrow [2] 10/7 10/20</p>	<p>U</p> <p>understand [2] 2/23 3/13</p> <p>understanding [2] 7/23 12/5</p> <p>UNITED [3] 1/1 1/10 12/3</p> <p>up [1] 7/4</p> <p>upon [1] 7/7</p> <p>Urquhart [1] 1/17</p> <p>us [3] 7/4 7/19 8/1</p> <p>use [1] 9/5</p> <p>users [1] 9/17</p> <p>using [1] 1/24</p> <hr/> <p>V</p> <p>vast [1] 3/22</p> <p>very [1] 4/6</p> <p>vigorously [1] 6/13</p> <hr/> <p>W</p> <p>W-E-I-N-K-O-W-I-T-Z [1] 10/5</p> <p>want [4] 8/7 8/9 9/5 9/10</p> <p>wants [1] 10/22</p> <p>Warshauer [1] 1/14</p> <p>was [1] 7/17</p> <p>way [2] 4/5 4/25</p> <p>we [38]</p> <p>We'll [1] 10/22</p> <p>website [2] 6/4 6/10</p> <p>week [2] 8/5 8/5</p> <p>weeks [2] 6/16 10/8</p> <p>Weinkowitz [3] 8/19 9/19 10/4</p> <p>Weitz [1] 8/19</p> <p>well [3] 6/2 10/17 10/24</p> <p>were [1] 7/6</p> <p>what [6] 4/12 7/5 7/22 8/11 10/16 10/22</p> <p>What's [1] 9/21</p> <p>when [1] 11/5</p> <p>whenever [1] 10/13</p> <p>which [9] 2/23 3/12 5/7 5/8 6/24 7/3 9/1 10/7 10/21</p> <p>who [2] 6/19 7/16</p> <p>whoever [1] 8/7</p> <p>will [26]</p> <p>willy [1] 4/16</p> <p>willy-nilly [1] 4/16</p> <p>won't [1] 4/18</p> <p>Woody [1] 3/13</p> <p>working [2] 5/12 5/20</p> <p>would [5] 8/18 8/23 9/4 10/21 11/12</p> <hr/> <p>X</p> <p>XARELTO [3] 1/4 2/6 9/17</p>	