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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) MDL 2592 "L"
PRODUCTS LIABILITY LITIGATION

OCTOBER 25, 2016

THIS DOCUMENT RELATES TO
ALL CASES

JUDGE ELDON E. FALLON

MAG. JUDGE MICHAEL NORTH

TRANSCRIPT OF STATUS CONFERENCE
HEARD BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT 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: Good morning, ladies and gentlemen. Call
4 the case, please.

09:06AM 5 THE COURTROOM MANAGER: MDL Number 2592, *In Re:*
6 *Xarelto Products Liability Litigation.*

7 THE COURT: Counsel, make your appearances for the
8 record, please.

9 MR. DAVIS: Good morning, Your Honor. I'm
09:06AM 10 Leonard Davis from the law firm Herman, Herman & Katz,
11 co-plaintiffs' liaison counsel.

12 MR. IRWIN: Good morning. I'm Jim Irwin for
13 defendants.

14 THE COURT: All right. We're here today for our
09:07AM 15 monthly status conference, except for people on the phone.
16 I'll take the motions after this conference; and we'll give
17 them an opportunity, if they need to, to call in.

18 I met with the counsel for the lead liaison and
19 discussed the proposed agenda. We take it in the order
09:07AM 20 proposed.

21 Anything on pretrial orders?

22 MR. DAVIS: Your Honor, the joint report lays out a
23 number of issues specifically with respect to the first section
24 on pretrial orders. There's a new pretrial order in the 10
09:07AM 25 series, in 10A and 10B. It's actually not a pretrial order

1 that's new, but there's an order that was issued by the Court
2 and we specifically reference that in section 7, which deals
3 with service of process on certain Bayer defendants. There's
4 an order that was issued by the Court which extends the time
09:08AM 5 for service of a summons and complaint pursuant to Rule 4(m) of
6 the Federal Rules of Civil Procedure and it's now -- for the
7 benefit of those who are on the phone and who have not yet
8 checked the Court's website to see orders, it extends the time
9 to run from the issuance of the summons by the clerk of court
09:08AM 10 for the filing of the complaint; and I make that announcement
11 so that folks are aware. My office and Jerry Meunier's office
12 have received a number of phone calls with respect to service
13 issues and I remind people that matters are posted to the
14 Court's website and that with respect to service this issue
09:09AM 15 arose as a result of problems in the clerk's office in getting
16 summons out and I make that known to folks who may be listening
17 on the call.

18 THE COURT: Right. But we had a problem because of the
19 influx of cases, but I'm told by the clerk's office that
09:09AM 20 they're current now and, so, we will be able to move it along
21 quite well. We have about 14,000 cases that have been filed,
22 individual cases; but they're coming in now just regularly as
23 opposed to groups, as we've seen early on.

24 MR. DAVIS: And, Your Honor, the order that was issued
09:09AM 25 wasn't posted in the series of a pretrial order.

1 THE COURT: Right.

2 MR. DAVIS: And, so, those who need access to it, it's
3 Rec Doc. Number 4217 and I may ask if that can be posted to the
4 Court's website. That might be helpful.

09:09AM

5 THE COURT: We'll do that. Anything on the Case
6 Management Orders?

7 MR. DAVIS: Yes. The only other one that's new is
8 Pretrial Order 12B, which applied specifically to a third party
9 production by Portola; and that one is posted.

09:10AM

10 The second item on the agenda is Case Management
11 Order Numbers 2, 3, 4 and 5. Pretrial Order 2A -- I'm sorry.
12 CMO, Case Management Order 2A was entered by the Court on
13 September 21st, 2016. That order sets the four trials, the
14 four bellwether trials. Specifically it gives the dates of the
15 first trial, which is March 13th which is in the Eastern
16 District of Louisiana, the April 24th which is another Eastern
17 District of Louisiana, the May 30th which is in Mississippi and
18 the other yet to be determined, the Texas; and it also provides
19 cutoff dates and that's in a case management order.

09:10AM

09:11AM

20 Your Honor, I have nothing further to report on
21 bellwether selection.

22 Counsel Contact Information Forms, we continue to
23 receive those and remind people that if they're new to
24 litigation, to please send those in.

09:11AM

25 With respect to Plaintiff and Defendant Fact

1 Sheets, there are various motions that are set after the status
2 conference on alleged deficiencies, and I know that BrownGreer
3 is present to make a report.

4 THE COURT: Right. Yes, let's get a report. The fact
09:11AM 5 sheets are very important both for those in court as well as
6 those outside of court on the phone. The information that's
7 provided is really not that difficult of information to obtain.
8 I have to enforce those. I want to give time to do so; but if
9 I get the impression that there's no interest in supplying the
09:12AM 10 information, then I'm going to have to dismiss the case because
11 you have to show initially that you're taking the medication.
12 That's part of the fact sheets. And some of the other aspects
13 of the fact sheets, it's really easy to fill out; and if you
14 need some help, there's opportunities to get help. Call
09:12AM 15 liaison counsel and they'll put you in touch with someone who
16 can give you help, but we've got to get those fact sheets
17 filled out.

18 Jake, what's the report?

19 MR. WOODY: Good morning, Your Honor. My name is
09:12AM 20 Jake Woody from BrownGreer. I have a brief report on Plaintiff
21 Fact Sheets.

22 So far we've received 12,599 Plaintiff Fact
23 Sheets. We have another 1,375 in progress, which brings our
24 total to 13,974, and I think that's in line with what the
09:12AM 25 clerk's office reports on the number of cases.

1 This is our sort of submission timeline, as you
2 can see. Up until July of this year, we received about 500
3 fact sheets a month. In July that number jumped to 1500 and in
4 August it jumped to 3500 and that was not unexpected. As you
09:13AM 5 recall, the bundled complaint deadline was in May, which put --
6 the Court received a large number of new complaints which, in
7 turn, leads to new fact sheets. But as can you see, the
8 numbers returned down to normal in September; and in October we
9 received 375 so far with just a few days left in the month.

09:13AM 10 Despite that spike in submissions, our
11 demographics have remained largely stable, 51 percent male,
12 49 percent female. As you can see from the age chart there in
13 Rows 4 and 5, 53 percent of all plaintiffs are between the age
14 of 60 and 79.

09:13AM 15 THE COURT: How does that square with our discovery
16 pool?

17 MR. WOODY: I'm glad you asked that. I have that
18 information here. This is our comparison with the discovery
19 pool.

09:14AM 20 51 percent of the MDL is male.

21 52 percent of the discovery pool is male.

22 53 percent, as I just mentioned, is between 60
23 and 79; and 77 percent of the discovery pool is that same age.

24 59 percent of the MDL allege a GI bleed.

09:14AM 25 72 percent of the discovery pool allege that injury.

1 And 52 percent of the MDL took Xarelto for the
2 reduction of risk of stroke and 72 percent of the MDL, of the
3 discovery pool, took it for that.

4 I do want to mention that the discovery pool was
09:14AM 5 weighted a bit to try to find people with these
6 characteristics. So, that's why the numbers in the discovery
7 pool are a little bit higher than the MDL; but the
8 characteristics that were weighted are the ones that are most
9 prevalent in the MDL. So, the cases that are eligible for
09:14AM 10 bellwether are representative of the MDL as a whole.

11 THE COURT: Yes, I think that's one of the advantages
12 of the centrality is that it gives you an opportunity to at
13 least capture the census of the litigation in a smaller group,
14 which we call the discovery pool; and then from that discovery
09:15AM 15 pool after those cases have been discovered, then bellwether
16 cases are selected. And when you select them from the
17 discovery pool that mirrors the census of the litigation, you
18 get a better shot, a better opportunity to at least get some
19 information for your clients and for you also with the
09:15AM 20 bellwether cases.

21 MR. WOODY: Yes, sir.

22 I do want to touch briefly on PT0 27 which the
23 Court entered on April 22nd of 2016. PT0 27 changed the fact
24 sheet obligations a bit. It required that plaintiffs only
09:15AM 25 submit Section 1 of the Plaintiff Fact Sheet, produce proof of

1 use records and proof of injury records and also medical
2 records and pharmacy records. It lessened the number of
3 questions and the number of documents that plaintiffs had to
4 submit.

09:15AM

5 It's been six months; so, I can give a little
6 analysis of what that's done to the fact sheet process. Before
7 PT0 27, only 20 percent of plaintiffs were able to start and
8 submit a fact sheet within two days. After PT0 27, that number
9 went up to 26 percent. So people are able to start and

09:16AM

10 complete the fact sheet a little bit faster, which is
11 intuitive, because it's shorter and it's less information to
12 provide. But it did, in fact, make it faster for people to
13 submit.

09:16AM

14 Before PT0 27, 49 percent of plaintiffs received
15 a deficiency notice from the defendant. After PT0 27, that
16 number dropped down to 22 percent. So, it looks like the
17 quality of the information that people were able to provide
18 improved, they received fewer deficiencies and were able to
19 move through the fact sheet process faster.

09:16AM

20 Finally before PT0 27, 56 percent of everyone who
21 got a deficiency notice got more than one. They got a
22 deficiency notice, they amended their fact sheet and then they
23 got another deficiency notice after that.

09:17AM

24 After PT0 27, the percentage of people who got
25 multiple dropped down to 10 percent. So, again, another

1 indication that PT0 27 made it faster to do the fact sheet and
2 also improved the quality of the answers on the fact sheets
3 themselves.

4 THE COURT: Yes. And I think we've learned from the
09:17AM 5 fact sheets that there is some information that is critical
6 information to at least allow someone to participate in the
7 litigation. That's the type of information that we ought to
8 get immediately and then the other information may be a little
9 more problematic in the sense that it takes a little more time
09:17AM 10 to gather the information called for.

11 So, the fact sheets now are somewhat divided in
12 the sense that there's some opportunity to get the information
13 quickly that is critical and then give time for the information
14 that's takes a little more time to collect.

09:17AM 15 MR. WOODY: Yes, sir.

16 Finally just some brief statistics on MDL
17 Centrality. We have 426 firms using the system, over 1600
18 individual people. We've been able to identify 117 duplicate
19 plaintiffs. Just based on the Social Security number, we can
09:18AM 20 tell it's the same person represented by different firms. We
21 notify each firm and let them work that out. We have over
22 155,000 documents uploaded and stored in the system. The
23 largest file is one gigabyte, which is a very large file. I
24 mention that only because we expect large files, medical
09:18AM 25 records and that sort of thing.

1 And finally we have served 5,876 pleadings that
2 we received through the ECF system. We send an e-mail to all
3 counsel notifying them that something new has been filed and
4 actually attach the document and store those in our system and
09:18AM 5 they're always searchable and available if anyone ever needs to
6 go look for a motion or an order.

7 THE COURT: Good.

8 MR. WOODY: Thank you, Your Honor.

9 THE COURT: Thank you, Jake. I appreciate it.

09:18AM 10 MR. DAVIS: Your Honor, my office and Jerry's office
11 continue to get calls from individuals with respect to fact
12 sheet issues and we continue to encourage plaintiffs' counsel
13 to fill out their fact sheets and submit what they can and
14 recognize that if it's incomplete that they can always
09:19AM 15 supplement and they have an obligation under the order to
16 supplement; but we do encourage all plaintiffs' counsel to
17 timely submit that profile form.

18 THE COURT: Yes. And I reinforce that. If you have
19 information, don't wait until you get the last question
09:19AM 20 answered until you submit. If you've got some information,
21 submit it. I'll give you an opportunity to supplement; but if
22 you don't do it at all, then that's an indication to me that
23 you're not interested in participating. So, if you have some
24 information, give it. I'll give you an opportunity to
09:19AM 25 supplement, but at least get that information in.

1 MR. DAVIS: With respect to Item 8 on the status
2 report, the Court is well aware and I believe counsel should be
3 aware that the clerk's office no longer accepts bundled
4 complaints; but you still have your obligation on profile forms
09:20AM 5 and to continue the process in the litigation.

6 With respect to Number 9, there's nothing to
7 report on Preservation Order. It's on there so that folks are
8 aware of that. We encourage you to look at Pretrial Order 15.

9 With respect to Number 10, there's nothing to
09:20AM 10 report.

11 On Number 11 there are a number of ongoing
12 discovery items. The parties continue to meet for biweekly
13 discovery conferences with the Court which are very helpful and
14 we'll take those issues up as needed in those conferences and
09:20AM 15 folks are welcome to look at the Joint Report if they want to
16 see what discovery is ongoing because they're laid out in the
17 report, but I don't think that there's a need for me to burden
18 the Court with each of those items.

19 THE COURT: Just for everyone's information, I have
09:21AM 20 meetings every two weeks with liaison lead counsel to talk
21 about any discovery issues; and we resolve those discovery
22 issues at that time.

23 MR. DAVIS: With respect to Item 12, third-party
24 discovery is ongoing.

09:21AM 25 I'll point out two items that just need to be

1 updated to the Court. With respect to PhRMA, documents did, in
2 fact, come in and they've been provided to the defendants and,
3 so, that production is ongoing and I know Your Honor was
4 involved in PhRMA issues previously; so, you have an update on
5 that.

09:21AM

6 With respect to Portola, they also have made
7 productions and those documents are in the process of being
8 reviewed. And if there are any other issues with respect to
9 third parties, we will let you know in the discovery biweekly
10 conference.

09:22AM

11 There are a few other items that are reported in
12 the Joint Report as to third parties, but there's nothing that
13 needs to be further addressed with those matters unless
14 defendants may have something that they want to add to that.

09:22AM

15 MR. IRWIN: No.

16 MR. DAVIS: Your Honor, with respect to the
17 state/federal coordination matter, I've been advised that in
18 Pennsylvania the bellwether picks are due on October the 31st
19 and they have categories that are both plaintiff and defendant
20 picks and they have ten trials that are set beginning
21 September 2017. I also have been told that they go by *Frye* as
22 opposed to *Daubert* and that Judge New will be dealing with his
23 issues is what I've been told.

09:22AM

24 And I know Ms. Barrios is present to give a
25 report, but I was asked yesterday in our PSC meeting where we

09:23AM

1 had some coordination on that issue to report that.

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

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

09:23AM 5 I'm going to just tag onto things that Lenny said
6 because I got an e-mail asking me to specifically read things
7 to Your Honor; so, I always do what people ask me to do. So,
8 I'm going to read it.

9 Judge New entered the bellwether CMO 11 last
09:23AM 10 week. The bellwether plan was heavily negotiated for a month
11 by the parties.

12 The parties are in the process of picking a core
13 discovery pool of 24 cases by October 31st. Pennsylvania would
14 like to thank PSC members Ellen Relkin and Sindhu Daniel for
09:23AM 15 their assistance in the bellwether case selection process.

16 The first trial in Pennsylvania is
17 September 29, 2017. There will be two cases tried every month
18 beginning September. Judge New was advised that the MDL trial
19 had moved its bellwether trial dates by a month. Judge New was
09:24AM 20 very clear that while he was pleased the MDL was ahead of
21 Pennsylvania, he would not move his trial date now that they
22 are all set in case the MDL moves the trials again.

23 And, lastly, the defendants opposed the
24 plaintiffs' request for a coordinated generic expert schedule
09:24AM 25 with the MDL. Judge New agreed with the defendants and opted

1 not to coordinate at this time. The parties in Pennsylvania
2 are to meet and confer to propose a staggered schedule
3 including generic expert report disclosures and briefing.

4 That's the end of what I was requested to read.

09:24AM 5 Your Honor, I had given your law clerk and
6 provided to the parties the state court stats as of
7 October 24th. Again, I'd like to thank the defense for their
8 help in providing it to me. I would also like to thank
9 Pennsylvania's co-lead counsel because they provide
09:25AM 10 information, as does Mindy Nokes in Ellen Relkin's office.

11 The largest things that have happened is that the
12 JCCP has now been effectuated and all the cases now are before
13 Judge Kenneth Freeman. California currently has 50 Xarelto
14 users. And I would like to count users as opposed to cases,
09:25AM 15 because so many cases have multiple users. That is 2 percent
16 of all the state court stats. California will have its first
17 status conference mid-December.

18 Delaware has a large number of cases as well
19 Your Honor. There's 195 Xarelto users in Delaware court, and
09:25AM 20 that is 11 percent of the state courts' cases.

21 In Florida a new judge has been appointed and
22 I've highlighted that on your copy and on everyone's copy,
23 Your Honor, because that would mean if you wanted to reach out
24 to that judge, that judge would be the one to reach out to.

09:26AM 25 THE COURT: Okay.

1 MS. BARRIOS: Missouri was a total of 153 Xarelto
2 users. That's 9 percent of the cases outside the MDL.

3 And by far Pennsylvania has the most. They have
4 1285 users, and that is 75 percent of all the state court
5 cases.

09:26AM

6 In total there are 1285 cases filed outside the
7 MDL, and the number of Xarelto users is 1694.

8 Thank you, Your Honor.

9 THE COURT: Thank you very much; and again, if I can be
10 of any help or service to any of the judges on any of those
11 cases, I would be happy to do so. We've got a number of forms.
12 Everything is on my website and if you need any information
13 that's not on the website, please call me and I'll make sure
14 you have it.

09:26AM

15 MR. DAVIS: Your Honor, there are two matters that I'm
16 aware of that are set for hearing after the status conference.
17 One is the alleged deficiencies and Ms. Daniel is here to help
18 us with that. Those are rollovers from last month.

09:27AM

19 THE COURT: Right.

20 MR. DAVIS: Then there's a motion to dismiss without
21 prejudice the matter of Shayne Potter, and I don't know if
22 counsel is on the line for that.

09:27AM

23 THE COURT: Okay. Well, we'll take a break at this
24 time.

09:27AM

25 Let me give you the next dates. November the

1 29th is the next date and December 20th, both at 9:00 A.M.
2 I'll meet with liaison counsel at 8:30 as I always do.

3 Okay. Anything else before we go into the
4 motions?

09:27AM

5 MR. DAVIS: Thank you, Your Honor.

6 THE COURT: I'll be back in about 5, 10 minutes.

7 THE COURTROOM MANAGER: All rise.

8 (Court is in recess.)

9 THE COURT: Be seated, please.

09:41AM

10 We have a number of motions, and people are on
11 the phone. I'll take the motions one at a time; and if anybody
12 on the phone has to speak to that motion, they can do so.
13 Otherwise, let's everybody listen. Let's take the first
14 motion.

09:41AM

15 MS. DANIEL: Good morning, Your Honor. Sindhu Daniel
16 for the plaintiffs.

17 MS. MILLER: Good morning, Your Honor. Chanda Miller
18 for the Janssen defendants.

09:41AM

19 MS. DANIEL: Your Honor, there were 14 cases that were
20 discussed at the order to show cause hearing held on
21 September 20th; and it was decided that they would be continued
22 until today. There are attorneys on the phone who are aware of
23 the circumstances, and they would like to address their cases
24 specifically.

09:42AM

25 Three of those cases have fallen off of this

1 list, Your Honor. Leslie Jones, Tamisha Verner and
2 Ericka Williams are no longer on this list.

3 There are six cases where plaintiffs are
4 represented by counsel; so, there are three firms representing
09:42AM 5 those six cases and I believe they should be all on the line.

6 If we want to take the first case, which is
7 Robin Arnoth, I know Mr. Pinedo is on the line representing
8 those plaintiffs.

9 MR. PINEDO: Yes, Your Honor. Chris Pinedo on behalf
09:42AM 10 of the plaintiffs.

11 THE COURT: Okay.

12 MR. PINEDO: We had originally filed this lawsuit and
13 were retained by Gerard Arnoth, the husband of Robin Arnoth,
14 deceased; and we started going down the road to get the probate
09:42AM 15 proceedings, whereupon we found out a fact our client did not
16 tell us and that was that he and Ms. Arnoth were divorced. So,
17 he no longer has standing to appear in a representative
18 capacity for the estate. We have made multiple calls to the
19 heirs to find somebody responsible to be able to represent the
09:43AM 20 estate. We have talked to at least one heir who does not have
21 mental capacity and, therefore, we would request that this case
22 be dismissed without prejudice and plaintiffs would agree that
23 if it was re-filed, that it be re-filed in the MDL.

24 THE COURT: What's your input there?

09:43AM 25 MS. MILLER: Your Honor, we wouldn't agree with that.

1 The complaint was filed in December of 2015. So, at this point
2 they've had since December 2015. We sent them overdue notices
3 beginning in January. They received five; so, they've had
4 ample opportunity to try to work this out.

09:43AM 5 THE COURT: What I will do is let me pass this one
6 again for 30 days, give you another opportunity to tell them to
7 do something or the case is going to be dismissed. Blame it on
8 me because it is my fault, if there is any fault. It's a
9 question of getting the material. I want to give you enough
09:44AM 10 time. I don't want to dismiss any case in which a person is
11 interested in proceeding. But there are individuals -- and we
12 all have to recognize that -- who initially want to be in a
13 litigation, but they change their mind halfway through or
14 partway through and they don't want to deal with it anymore.
09:44AM 15 They get on with their lives, and I have to respect that too.
16 But if you want to be in the litigation, you've got to follow
17 the rules of the litigation. We need the material that's
18 called for; and if you can't get it all, get what you can and
19 send it to the Court. I'll understand that. But if you don't
09:44AM 20 do anything, that's an indication that you're not interested in
21 participating. So, let's tell them that; and I'll give you
22 another 30 days to emphasize to them that the case is going to
23 be dismissed.

24 What's the next one?

09:45AM 25 MR. PINEDO: Yes, Your Honor. I have told them unless

1 a representative comes forward, it will be dismissed. We will
2 reach out again. I will represent to the Court we have made
3 multiple, multiple attempts; but I will reach out one more
4 time. We have not been able to have anybody step up to the
09:45AM 5 plate who is qualified to take out an administration. But we
6 will attempt again, Your Honor.

7 THE COURT: All right. Next time detail all of the
8 things that you've done so that's in the record. I know you're
9 doing your best, and it's not any reflection on you. You're
09:45AM 10 doing your very best to get your client to cooperate; so, be
11 prepared to detail into the record all of the material, all
12 that you've done, all the information you have regarding how
13 you've tried to contact them and so forth.

14 Okay. Thank you --

09:45AM 15 MR. PINEDO: Your Honor --

16 THE COURT: -- very much.

17 MR. PINEDO: (Inaudible) as opposed to verbal, because
18 it might take --

19 THE COURT: No, verbal is fine. No, you can do it
09:46AM 20 verbally.

21 MR. PINEDO: Thank you, Your Honor.

22 THE COURT: Yes. Okay.

23 MS. DANIEL: Chris, if you want to go into the next
24 case, it's Barbara Dunlap.

09:46AM 25 MR. PINEDO: On the Barbara Dunlap case, we have made

1 multiple attempts to the client to get the information. She
2 did not respond and then finally we sent her a form to sign
3 asking for permission to dismiss the case without prejudice.
4 She signed that form, sent it back to us and that's why we're
09:46AM 5 asking this Court to have the case dismissed without prejudice,
6 because the client has consented to it and we would ask that --
7 we are willing to agree to any condition that if she does
8 re-file, it will be within the MDL.

9 MS. MILLER: This is another case, Your Honor, that was
09:46AM 10 filed in December of 2015. We've sent them four notices since
11 that time notifying them that the PFS was deficient and overdue
12 and would not agree to a dismissal without prejudice or --

13 THE COURT: Chris, let me do the same thing. I'll give
14 you another 30 days to tell the lady that it's going to be
09:47AM 15 dismissed with prejudice and then just be prepared orally to
16 tell me what you've done and how you've done it and what
17 response, if any, you've gotten. We'll pass it for 30 days to
18 give you another opportunity.

19 MR. PINEDO: Yes, Your Honor. I will contact this
09:47AM 20 client again.

21 THE COURT: All right. Thank you, Chris.

22 MS. DANIEL: Chris, your last case is Louise Sells.

23 MR. PINEDO: Louise Sells. We have reached out to him
24 multiple times. He says he has sent back the information, and
09:47AM 25 we haven't got it. We've sent it to him again. We even sent

1 him, since he had not responded to us, a form asking him to
2 give us permission to dismiss his lawsuit. This is the son,
3 because Louise Sells has passed away and, so, we had sent
4 information to Cory Sells, who had retained us. And then we
09:48AM 5 also sent him a disclosure asking for permission to dismiss the
6 lawsuit, and he did not send that back. I'll represent to the
7 Court that we have attempted to call him somewhere between 10
8 and 15 times; and we have written letters to him probably 7 to
9 10 times. And when we get him on the phone, he says, "I will
09:48AM 10 send it" or "I have sent it," we don't get it and then we turn
11 around and call him again.

12 But the crucial fact for the Court to know is
13 that we sent him a waiver giving us permission to dismiss the
14 lawsuit and he did not sign that either; so, I'm not in a
09:48AM 15 position to agree to dismissal with prejudice for this
16 particular client because I have not gotten that back from him.
17 I would request that the Court dismiss it without prejudice and
18 that if it is re-filed, that it be re-filed within the MDL.

19 THE COURT: Well, the response is going to be the same,
09:48AM 20 I'm afraid; so, I'll give you one last time to contact that
21 lawyer -- or that client and then be prepared to tell me all of
22 the things that you've done and the fact that they haven't
23 responded and then I will dismiss it.

24 MS. DANIEL: The next case, Your Honor, is
09:49AM 25 Isabella Copes and Ryan Bradley from the Bradley Law Firm, I

1 believe, is on the line.

2 MR. BRADLEY: Good morning, Your Honor. I do have
3 Isabella Copes and also Roberta Usher, which is line item 12;
4 and they both kind of suffered the same kind of analysis here.
09:49AM 5 Both are cases we got hired right before we chalked up the
6 statute of limitations and did everything we could to
7 investigate the case and thought we had a good-faith basis to
8 file the case based upon the client's representation that a
9 hemorrhagic stroke had occurred. We ordered medical records
09:49AM 10 immediately. Unfortunately, you know, we couldn't get the
11 records within time. So, it was better to be safe than sorry.
12 We filed in anticipation that the medical records would flesh
13 out that, yes, there was a hemorrhagic stroke. It turns out
14 that there was not a hemorrhagic stroke in both of these cases;
09:50AM 15 so, it does not fit the pattern of the form complaint in this
16 case for the MDL.

17 So, we are seeking to dismiss both of these cases
18 without prejudice and we've notified both clients here that the
19 Court may dismiss with prejudice, but we would ask for it to be
09:50AM 20 dismissed without so they could proceed if they wished in a
21 different forum on a different type of claim.

22 THE COURT: All right.

23 MS. MILLER: Your Honor, the Copes case was filed in
24 November of 2015, and they've been on notice for -- the first
09:50AM 25 notice was sent in May of 2016. They have had more than enough

1 time. It's the same with Roberta Usher's case. The complaint
2 was filed on January 2016, received the first notice of
3 deficiency in May of this year; so, in both cases they've had
4 plenty of time to provide proof of injury.

09:51AM

5 THE COURT: I think you've done all you can for the
6 client; but this case, they have been aware that it's going to
7 be dismissed with prejudice. There's an opportunity for them
8 to have responded; they didn't, other than the way that you
9 said it. It seems that this case ought not to be in this
10 proceeding; so, I'll dismiss it with prejudice.

09:51AM

11 MS. MILLER: Thank you, Your Honor.

12 MS. DANIEL: For Gloria Robinson, Your Honor, is
13 anybody on from Kennedy Hodges.

09:51AM

14 MR. GREEN: Yes. This is Donald Green representing
15 Gloria Robinson.

09:51AM

16 So, Your Honor, we have a pending amended motion
17 to withdraw as counsel; and I think it's also subject to the
18 show cause order as well. We were asking that the motion to
19 withdraw as counsel be addressed first before any action is
20 taken to dismiss the case.

09:52AM

21 THE COURT: Donald, this is what I'm going to do. I'm
22 not going to dismiss the case at this point. I'll give you
23 another 30 days to get to the client and tell them that I'm
24 serious about it. If they have any information at all, they
25 can give it to you; and you submit that. If they don't do

1 anything at all, then I'm going to interpret that as their
2 indication that they don't want to proceed in this case; and
3 I'll just dismiss it with prejudice.

4 Advise them of that and if you can't get their
09:52AM 5 cooperation, then next 30 days, the next time we have a
6 conference, be prepared to tell me all that you've done and
7 whatever their response is; and I'll have to take that into
8 consideration.

9 MR. GREEN: Your Honor, we have been able to -- we did
09:52AM 10 reach her back on October 12th. We had tried multiple times to
11 call her, sent letters, all of that, of course. And we finally
12 did talk to her, and she was very abrupt on the phone. I mean,
13 this goes back to the motion to withdraw as counsel. She has
14 been very uncooperative. We've left a lot of messages. We've
09:53AM 15 actually talked to her on the phone, and she's hung up on us
16 before. That's why we're intending to withdraw as counsel.
17 Now, do you want to address that pending motion?

18 THE COURT: Well, what I'm telling you is that if you
19 want to withdraw from counsel, let's have another counsel
09:53AM 20 substitute for you so that I don't -- so that I'm not dealing
21 with someone pro se. They hired you originally. They must
22 have wanted a lawyer. If they want another lawyer, let's get
23 another lawyer involved in it.

24 But if they're not going to participate, then I
09:53AM 25 don't want to be in a position of having somebody -- you're

1 representing her now. I'd like you to tell her that if she
2 wants another lawyer or if she wants to speak to the Court, she
3 can do so; but I can't have somebody not even respond to their
4 own lawyer and still be in the case. That's not fair to her;
09:54AM 5 it's not fair to the Court; it's not fair to anyone, including
6 the defendant. So, I'd like to give her an opportunity.

7 I don't like to dismiss these cases with
8 prejudice before I give them enough opportunity to respond. If
9 they want another lawyer, let them get another lawyer. If they
09:54AM 10 have some information, let them give the information that they
11 have and we'll take it piecemeal; but if they don't want to
12 participate at all, if they don't respond to their own lawyer,
13 but they don't want to get another lawyer, but they don't want
14 to respond to the Court's -- to give the information to their
09:54AM 15 own lawyer, then I have to interpret that as somebody who is no
16 longer interested in proceeding with the case.

17 MR. GREEN: That's understandable, Your Honor. We have
18 mentioned to her before -- we have requested in voicemail
19 messages and in letters that she -- that we've announced our
09:55AM 20 intention to withdraw and we have advised her to find other
21 counsel and, of course, we haven't received a response on that
22 either. But we'll continue to try. We will continue to try to
23 get ahold of her and let her know what's going on and hopefully
24 we can get a response from her one way or the other.

09:55AM 25 THE COURT: All right. Thank you, Donald.

1 MR. GREEN: Thank you.

2 MS. DANIEL: Your Honor, the remaining five cases are
3 all pro se. I will read them off. If anyone is on the phone
4 after I am done reading the list, you can speak to the Judge.

09:55AM

5 Arin Cunningham, Clifford Howard, John Lynn,
6 Wayne Muldrow and Lukesha Terrell.

7 Are any of you on the call?

8 MR. MULDROW: Wayne Muldrow.

9 THE COURT: Okay. Why don't you tell us about it, sir.

09:55AM

10 MR. MULDROW: The last time we spoke, you gave me some
11 extra time to try to find some evidence; but I spoke with, like
12 I told you, some people in town here, my lawyer. My doctor has
13 retired since the Xarelto was issued. He has dementia, so I
14 heard, and a lot of his records were destroyed in several
15 floods that we've had here; so, there's nothing I can do, sir.
16 I don't -- I can't have any proof or anything on anything. I
17 don't know what to do.

09:56AM

18 THE COURT: Could you get an affidavit or something
19 from him saying that he prescribed it, that he gave it to you
20 or prescribed it for you?

09:56AM

21 MR. MULDROW: Well, I was trying; but they said since
22 he has dementia, he's not capable of doing that now. If I
23 could have gotten to him before that, he could have done it,
24 they said; but he's not allowed. He's not going to sign
25 anything now because he has been diagnosed with dementia.

09:56AM

1 THE COURT: I see.

2 MR. MULDROW: Yes, sir.

3 THE COURT: Yes. Well, you're not going to be able to
4 prove it. If you stay in the case, you're going to be
09:56AM 5 dismissed eventually because you're not going to be able to
6 prove that you've even taken the drug or that it was even
7 prescribed for you.

8 MR. MULDROW: Yes, sir. Yeah, I understand. I
9 understand. I was just following through because I did get
09:57AM 10 something in the mail to be on the conference call this
11 morning. I was following through so you can do whatever you
12 need to do for me.

13 THE COURT: Thank you very much for all of your help.
14 I'm going to have to dismiss your case with prejudice, but
09:57AM 15 you've done a good job in trying and you need to know that.

16 MR. MULDROW: Yes, sir. All right. Thank you.

17 MS. DANIEL: Thank you, Your Honor. The list is
18 complete.

19 THE COURT: Anything else? Any other cases?

09:57AM 20 MS. DANIEL: No, that's it, Your Honor.

21 THE COURT: What's the other case?

22 MR. DAVIS: Your Honor, I think that's it on the cases
23 that we've been handling. I want to thank defendants and
24 Sindhu for all their efforts in minimizing the Court's
09:57AM 25 involvement in these matters, and I think it's been helpful as

1 we've gone through this.

2 THE COURT: Right. Prepare an order for me to sign
3 dismissing the cases with prejudice so that we --

4 MS. MILLER: Yes, we will, Your Honor.

09:57AM 5 MR. RUSSELL: Your Honor?

6 THE COURT: Go ahead.

7 MR. RUSSELL: My name is Bill Russell, and I'm with the
8 firm of Sommerman, McCaffity. I was told that we had three
9 cases that were pending on here too.

09:58AM 10 THE COURT: Hold on a moment.

11 MS. DANIEL: You don't have any cases on this order
12 today.

13 MR. RUSSELL: Okay. Borlandelli, Cho and Thorpe?

14 THE COURT: Sindhu, do you know what he's saying?

09:58AM 15 MS. DANIEL: No, we can't hear him.

16 MS. MILLER: Can you repeat the names again, please?

17 MR. RUSSELL: Yes. One was Shelley Borlandelli and --

18 MS. DANIEL: No. No. Your cases are not on this list.

19 You can call my office, Sindhu Daniel at Baron & Budd; and I'll
20 be happy to discuss it with you.

09:58AM 21 MR. RUSSELL: All right.

22 MS. QUINLIVAN: Your Honor, this is Meghan Quinlivan on
23 behalf of Shayne Potter. I believe our motion to dismiss is
24 also pending for today.

09:58AM 25 MR. DAVIS: On the prior matter, I believe they're on

1 the motion to withdraw as counsel list; and if they would call
2 my office -- this is Leonard Davis, plaintiffs' liaison
3 counsel. If you would call my office, I'll address that.

4 My appreciation is that the Court intends on
09:59AM 5 addressing the motions to withdraw as counsel at the next
6 status conference.

7 MR. RUSSELL: Okay.

8 MS. HEACOX: Your Honor, this is Catherine Heacox from
9 Lanier Law Firm. Just like the other gentleman, I have two
09:59AM 10 cases that I thought we were going to discuss today and that
11 was Smith and Payne. Ruby Smith and Bonita Payne.

12 MS. MILLER: Those were subject to a separate order
13 where they had until October 20th to submit a PFS or be
14 dismissed, and we did receive a PFS for Ruby Smith. So, that
09:59AM 15 would be removed.

16 We did not receive a PFS for Bonita Payne.

17 MS. HEACOX: Right. So, what's going to happen with
18 Bonita Payne?

19 THE COURT: We've passed that until October -- what is
09:59AM 20 it?

21 MS. MILLER: Back in September you had given them 30
22 extra days and that was passed until today.

23 THE COURT: What about that one? What about the
24 information on that one, Catherine?

10:00AM 25 MS. HEACOX: The client is a lot like some of the

1 others that were described here in that we sent multiple,
2 multiple letters. We've called multiple times. I personally
3 talked to the -- the last time we spoke or that I spoke to the
4 Court about this, the daughter had agreed to try to help and
10:00AM 5 then I spoke to her on the phone and she said, you know, "Now
6 is not a good time."

7 So, we set up another time and then she wasn't
8 there; so, we sent a letter to ask them to agree to dismiss.
9 They wouldn't sign it. I do believe we've uploaded some
10:00AM 10 information at this point, but the client will not sign the
11 papers; so, I --

12 THE COURT: Do you want another chance to do that,
13 Catherine? Do you want me to pass it for another 30 days? I
14 don't want to dismiss these cases if the individuals have a
10:00AM 15 reason or if they're upset about somebody passing or something
16 of that sort. I want to give them time; but they have to
17 understand that if they are in the litigation, they have to
18 participate in the litigation. They can't just join it and
19 then say, "Call me when the case is over." I mean, they have
10:01AM 20 to actively participate. It's not fair to you. It's not fair
21 to the defendants or the Court, for that matter.

22 MS. HEACOX: I agree with you a hundred percent. And
23 if you're willing to give me another 30 days, I'll pull out all
24 the stops and see whether that makes a difference.

10:01AM 25 THE COURT: Okay. I'll do that.

1 MS. HEACOX: Thank you.

2 THE COURT: Let's pass it for 30 days. Thank you,
3 Catherine.

4 Anything else?

10:01AM 5 MS. MILLER: Nothing else, Your Honor.

6 MR. DAVIS: Shayne Potter is the other matter that's
7 set for hearing. There's a motion on that, a motion to dismiss
8 without prejudice.

9 MS. MILLER: Is counsel on the phone?

10:01AM 10 MS. QUINLIVAN: Yes. Good morning. This is
11 Meghan Quinlivan on behalf of the plaintiffs in the Potter
12 matter.

13 THE COURT: Okay.

14 MS. QUINLIVAN: We filed our motion to dismiss this
10:02AM 15 case without prejudice. There is no dispute that dismissal is
16 appropriate. The question is just whether it's with or without
17 prejudice. Our firm filed the complaint on Mr. Potter's behalf
18 on December 31st of last year; and a few days later on
19 January 4th, we learned that Mr. Potter had passed away several

10:02AM 20 days before the complaint was filed. He passed away on
21 December 19th. After we learned that, we attempted to
22 communicate with family members to notify them of the potential
23 claim; but we have not been retained to pursue a claim on
24 behalf of any potential beneficiaries; so, our request is to

10:02AM 25 dismiss the case without prejudice simply to preserve the

1 status quo with respect to the rights of any of those potential
2 plaintiffs whom we do not represent.

3 THE COURT: I understand the issue. What I'd like to
4 do with this one, I'll pass this for 60 days because it seems
10:03AM 5 that 30 days may be too soon because of the death in the
6 family. But you have to advise the people that they have to
7 either hire you or hire another lawyer and proceed with the
8 case. If they don't do that within 60 days, I'm going to
9 interpret that as an indication that they just do not want to
10:03AM 10 proceed with the case and I'll have to act accordingly and I'll
11 be dismissing it with prejudice. So, I'll give you an
12 opportunity to talk to them. Tell them that in 60 days I'll
13 need to hear from them or you, one way or the other.

14 MS. QUINLIVAN: Okay. Understood. Thank you,
10:03AM 15 Your Honor.

16 THE COURT: Thank you very much.

17 Anything else?

18 Okay. All right, folks. I'll see you-all next
19 time.

10:03AM 20 THE COURTROOM MANAGER: All rise.

21 (WHEREUPON, the proceedings were adjourned.)
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REPORTER'S CERTIFICATE

I, Lanie M. Smith, CRR, RPR, 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.

 /s/ Lanie M. Smith
Official Court Reporter