

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) \* 14-MD-2592  
PRODUCTS LIABILITY LITIGATION \*  
\* Section L  
\*  
Relates to: All Cases \* December 21, 2015  
\*  
\* \* \* \* \*

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

Appearances:

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1 entered by the Court. This section, Your Honor, deals with  
2 Case Management Order No. 3 and No. 4, and they are  
3 interrelated.

4 Case Management Order No. 4 we are working on  
5 right now. It identifies categories agreed upon and sets  
6 deadlines for making selections in the bellwether process. The  
7 next deadline under CMO 4 is December 23.

8 **THE COURT:** Take a look at that, folks, if you  
9 haven't seen it. This is the next step in getting a discovery  
10 pool. We are now zeroed in on it. BrownGreer is working  
11 closely with liaison lead counsel to get together the cases  
12 that they have set aside in the discovery pool population  
13 selection. It's important that we do that.

14 As you all know, the concept is to get a  
15 discovery pool that's representative of the census of the  
16 litigation. It's a larger pool. From that larger pool, then  
17 the parties will be able to discover those particular cases.  
18 They won't discover any cases outside of that pool or put all  
19 their energy and resources on those cases. Those cases then  
20 will be the fodder for selecting bellwether cases. It's an  
21 important process.

22 **MR. DAVIS:** The next item, Your Honor, is the  
23 Counsel Contact Information Form. There's nothing new on that.  
24 We encourage counsel to continue to complete and submit the  
25 information form. Again, PTO 4 and 4A can be found on the

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1 Court's website.

2 The next item is MDL Centrality. As the Court  
3 is well aware, it's up and running. It's going to be utilized  
4 in connection with CMO 4 and the selection process of the pool,  
5 as Your Honor recently mentioned.

6 Item 5 is Plaintiff Fact Sheets. As the Court  
7 is aware, there have been a number of plaintiffs' counsel who  
8 have reached out and addressed the issue of submitting  
9 Plaintiff Fact Sheets. The PSC has encouraged all plaintiffs'  
10 counsel to timely submit a Plaintiff Fact Sheet.

11 What we have told people and we continue to  
12 reiterate is that the Court believes that the submission of a  
13 Fact Sheet is very important in this litigation, and the Court  
14 set up Fact Sheets; and that if individuals have any concern or  
15 have some issue with a Fact Sheet, they should submit what they  
16 have in the Fact Sheet with the information that they have.  
17 They can always supplement and amend a Fact Sheet going  
18 forward, but it is very important to submit a Fact Sheet, to  
19 send in the verifications, have the core information, and  
20 provide the information timely.

21 Pretrial Order No. 13 deals directly with  
22 Plaintiff Fact Sheets if there are any questions. Again,  
23 plaintiff liaison counsel, Mr. Meunier's office or my office,  
24 is available to assist people if they need some help in  
25 understanding what needs to be done with a Fact Sheet.

09:06

1           **THE COURT:** Yes. I reinforce that. I think the  
2 Fact Sheets are important for the plaintiffs to fill out.  
3 Defendants are filling out their Fact Sheets. It's important  
4 for the plaintiffs to fill out the Fact Sheets. If you don't  
5 know all of the answers, answer what you can and submit the  
6 Fact Sheet. If you have any difficulty with it, contact  
7 liaison counsel.

8           If we don't hear from you, if you don't do  
9 anything, then I assume you are not really interested in  
10 pursuing a case in this litigation. Maybe there's other  
11 litigation you should be involved in. If I don't hear from  
12 you, if you are given an opportunity to do it and you don't do  
13 anything at all, then I'm going to assume that you do not wish  
14 to be in this litigation. I will have a rule to show cause why  
15 you shouldn't be dismissed.

16           **MR. DAVIS:** Your Honor, defendants have, in fact,  
17 provided to the PSC -- as we discussed, I believe, at the last  
18 status conference -- proposed orders to show cause and rules to  
19 show cause for failure to timely submit Profile Forms and  
20 failure to provide use of the drug.

21           We have had a number of meet-and-confers.  
22 Sindhu Daniel has been involved in these, and we have spoken to  
23 the defendants about these rules. What we have received is  
24 lists of the various individuals and counsel who would be  
25 subject to these rules. We have reached out and facilitated so

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1 the individuals who may be delinquent can cure these issues and  
2 get them addressed.

3 We have spoken to the defendants about the  
4 process going forward. I believe that we are about to have an  
5 understanding. We are very close to that and we'll have  
6 something in place. Again, the idea is to get the  
7 Profile Forms completed, and we encourage people to do that.

8 The next item that we dealt with -- and, again,  
9 Ms. Daniel has helped on this -- is a deadline for submission  
10 of Defendant Fact Sheets when amended Plaintiff Fact Sheets are  
11 submitted. We are working on that process. Again, core  
12 deficiency issues need to be addressed, and we will hopefully  
13 have something to the Court relatively soon on that.

14 The other item that's on this list is that we  
15 are well aware of recent deficiency notices that were sent out  
16 throughout to plaintiffs' counsel by the defendants. We have  
17 addressed that with defense counsel. We understand that they  
18 worked to try to get deficiencies and Profile Forms reviewed  
19 prior to a deadline. We also understand that there is a  
20 December 23 deadline under CMO 4, and those issues will be  
21 addressed with counsel between here and there in compliance  
22 with CMO 4.

23 With respect to medical records being available  
24 to plaintiffs' counsel, we are still addressing that issue. We  
25 will have further discussions with defendants on that.

09:09  
1           **THE COURT:** Anything on bundling?

2           **MR. DAVIS:** On bundling, we have reached out to  
3 Bayer. We understand that Bayer has had relatively recently a  
4 corporate reorganization or structure change. As a result,  
5 some of the jurisdictions and locations of the defendants have  
6 been changed in that corporate organizational change. We have  
7 gotten information from Bayer on that.

8                       We will be providing to the Court just after the  
9 first of the year an updated and revised bundled complaint so  
10 that the location of Bayer, in particular, will be revised. We  
11 will have that to the Court, and we would ask that the Court  
12 post it on its website so that counsel can see that form.

13           **THE COURT:** How about the Preservation Order?

14           **MR. DAVIS:** There's nothing new on that. Obviously,  
15 we encourage counsel to be aware of the order that's out there.

16                       On No. 9, the proposed order governing the  
17 parties' interaction with MDL plaintiffs' prescribing and  
18 treating physicians, which the defendants have called a  
19 woodshed order, we will be addressing that issue and will be  
20 briefing that matter to the Court.

21           **THE COURT:** Take a look at what I have done in other  
22 cases, particularly *Vioxx*. If this is different from *Vioxx*,  
23 then tell me why it's different.

24                       These types of cases present a little bit more  
25 of a complicated issue because the doctors are potential

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1 defendants in these types of cases. Talking with a potential  
2 defendant presents some problems, ethical and otherwise, so  
3 that's always present. There's also a question of whether or  
4 not it helps anyone by having a separate communication.

5 I get concerned about that oftentimes when, in  
6 depositions, those treaters then are asked questions. They may  
7 appear reliable and good witnesses, but then it's interjected  
8 into the discussion the fact that they talked to the other  
9 side. A big deal is made over that, and sometimes credibility  
10 is introduced where it really has no place. It's present  
11 because that's what happened. To avoid that is something that  
12 I'm conscious of too. I will listen to both sides and will  
13 hear you.

14 **MR. DAVIS:** We will address that, Your Honor, in a  
15 briefing schedule.

16 **THE COURT:** Anything on discovery?

17 **MR. DAVIS:** Your Honor, I report that the 30(b)(6)  
18 corporate depositions took place. J&J's took place on  
19 December 11, and Bayer's took place on December 15. Those  
20 depositions were left open due to some issues that are being  
21 further addressed.

22 The PSC recently provided 10 deposition notices  
23 to the defendants. We are in the process of scheduling dates  
24 in January and February. We intend that those depositions will  
25 be going forward.

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1           On December 4 the PSC sent a third request for  
2 production of documents primarily relating to the reanalysis of  
3 the ROCKET AF trial study. We understand that those results  
4 were sent by Duke to the defendants, and it dealt with the  
5 reassessment of the trial reliability.

6           We have made a request for that information, and  
7 we are hopeful to get that very soon. If there is some issue,  
8 we will be addressing that further with the Court. We will  
9 reach out to defendants and Duke, and hopefully they will  
10 provide that information very, very shortly. I wanted the  
11 Court to be aware that that is an issue that's out there and  
12 may be brought to the attention of the Court.

13           On December 15 the PSC provided a number of  
14 challenges to defendants' privilege log. We have a  
15 meet-and-confer scheduled this week. We are mindful of  
16 Pretrial Order No. 19, and we will be addressing privilege  
17 issues, Your Honor. We also are aware that the Court has  
18 biweekly discovery conferences and these issues, if necessary,  
19 will be brought up in those conferences so that they can be  
20 addressed.

21           On deposition guidelines, the parties are  
22 conferring on drafting a proposed order. There are about four  
23 or so issues that remain open. We will be submitting those to  
24 the Court so that the Court can address those in early January  
25 before these upcoming depositions, and we will have a

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1 deposition protocol or deposition guidelines in place.

2           **THE COURT:** That's important in a case of this sort.  
3 You don't need that in a normal case, where the same people  
4 take the depositions, because they form this sort of approach  
5 just *sub silentio*. They know what to do, how to do it, what  
6 they can do, and what they can't do. The deposition protocol  
7 in a case of this sort is important because you have a lot of  
8 people taking depositions. It's very helpful that depositions  
9 be organized in some uniform way.

10           Also, I will be making this available to my  
11 colleagues in state courts so that the depositions hopefully  
12 can be taken in the same manner and with the same procedural  
13 rules, guidelines, and so forth.

14           Just be aware of the fact that oftentimes when  
15 you begin the protocol, you think you're going to have problems  
16 and you think this is the answer to the problems. You get into  
17 the depositions and find that you didn't cover this or you  
18 didn't cover that, or you don't need this or you don't need  
19 that. So don't write it in stone, but get something that you  
20 can have some guidance, with the understanding that you may  
21 have to have some flexibility to change it as you go on.

22           **MR. DAVIS:** Your Honor, the Philadelphia folks were  
23 participants in the most recent depositions. We are  
24 coordinating with them. I don't know what their thoughts are  
25 on protocols. We told them that if they have some issue, they

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1 will address that in their venue, but we certainly will  
2 continue to attempt to cooperate and coordinate.

3 **THE COURT:** It's helpful for the plaintiff committee  
4 to reach out to some of the people that are pursuing the case  
5 in state courts so you have some of their input that you can  
6 make it known to the defendants and see if you can resolve it.

7 **MR. DAVIS:** With respect to discovery issued to third  
8 parties, I have already talked about the Duke issue,  
9 Your Honor. We have also, on December 16, issued a subpoena to  
10 Bernard "Bud" W. Chalecki. So that's a new item that's on the  
11 agenda.

12 Ms. Barrios is here to talk about state/federal  
13 coordination.

14 **THE COURT:** Dawn, I wrote all of the judges that you  
15 gave me a list of. Some of them have indicated that their  
16 cases have been transferred to the complex litigation judge in  
17 their particular district, so I didn't talk to them.

18 **MS. BARRIOS:** Yes, Your Honor. I had spoken with  
19 Toni because she called with the issue of some judges saying  
20 they didn't have *Xarelto* cases. With your permission and with  
21 the defendant's consent, I just want to talk to Toni again to  
22 give her an update on the names of the cases.

23 **THE COURT:** Good.

24 **MS. BARRIOS:** Your Honor, since we have been here  
25 last time, there's been a change in the number of state court

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1 cases. There were 51 additional state court cases filed. In  
2 those 51, there are 68 plaintiffs that have been added on.

3 For the record, there are four cases in  
4 California; 33 cases in Delaware; two cases in Illinois; only  
5 one case in Missouri, but that's in the county of St. Louis,  
6 which allows very liberal joinders, so there's 24 plaintiffs  
7 there; New Jersey has 5; Pennsylvania has 491 in the  
8 consolidated action and one that is not yet consolidated.

9 Since we last met, Judge New has addressed an  
10 issue that was raised by the defendants on a case involving an  
11 ischemic stroke. The defendants wanted to move the ischemic  
12 stroke case into the consolidated actions. The plaintiff  
13 opposed it. Judge New ruled and put it in with the  
14 consolidated actions, so they have ischemic stroke there. The  
15 next status conference with Judge New is on January 14.

16 I would like to suggest, Your Honor, that in  
17 advance of the next status conference that perhaps your law  
18 clerk send a reminder letter to the judges in state court,  
19 giving them the phone number and the date again, so that they  
20 can participate should they see fit.

21 **THE COURT:** Okay. I will do so. Thank you very  
22 much.

23 Anything from the defendants?

24 **MR. IRWIN:** Your Honor, did you want to hear about  
25 the disposition of the five motions?

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1           **THE COURT:** Let's get to that pretty soon, Jim, but  
2 not right now.

3           **MR. IRWIN:** All is well, Your Honor.

4           **THE COURT:** What about matters set for hearing?

5           **MR. DAVIS:** That's the one Jim was talking about. Do  
6 you want to do it now?

7           **THE COURT:** We will do it now, Jim. Do you want to  
8 give us a report on that?

9           **MR. IRWIN:** Yes, Your Honor.

10          **THE COURT:** Just by way of background, we tried to  
11 encourage plaintiffs to file Fact Sheets. Notice went out.  
12 Contacts were made. Most individuals filed Fact Sheets or at  
13 least some portion of the Fact Sheets. We didn't hear from  
14 four or five individuals, so I set a rule to show cause why  
15 those cases should not be dismissed. That's what I'm hearing a  
16 response on from the defendants at this time.

17          **MR. IRWIN:** Thank you, Your Honor. I will just give  
18 you a quick overview, and then I will provide some numbers for  
19 the record.

20                   Of the five cases, three of them motions to  
21 withdraw were filed by plaintiff counsel because they, in the  
22 interim, did file a PFS. In one case, the PFS was uploaded  
23 this week. We would suggest that motion is now moot. In the  
24 fifth case, we discovered that a particular plaintiff, Fahy,  
25 was, in fact, a New Jersey resident. It was in a bundled case.

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1 So we do not have subject matter. We do not have diversity.  
2 We filed a notice of lack of subject matter jurisdiction.

3 Here are the particulars:

4 The *Ferrington* case is Civil Action 15-3230.  
5 That case is represented by Amy Carter from Dallas. That case,  
6 the PFS was filed, and they filed a motion to withdraw.

7 *Overshown* is Civil Action 15-3232, also  
8 represented by Amy Carter, and likewise she filed a motion to  
9 withdraw the motion for extension on the grounds that they did,  
10 in fact, file their PFS.

11 Thirdly, the *McWilliams* case, represented by  
12 Morris Bart -- and Laura Voght is from Atlanta -- they also  
13 filed a motion to withdraw their motion for an extension of  
14 time on the grounds they, in fact, did file their PFS.

15 In the *Lowe* case, which is Civil Action 15-3893,  
16 that was filed by Clinton Kelly of The Kelly Firm from  
17 Henderson, Tennessee. This week we checked and they, in fact,  
18 did file their PFS. They have not filed a motion to withdraw  
19 their PFS extension motion, but we would suggest it's now moot.  
20 If there are any deficiencies, we will take that up in due  
21 course.

22 Finally, the *Fahy* case, as I mentioned earlier,  
23 Civil Action 15-4534, that is the one we discovered in the  
24 bundled complaint was a New Jersey resident. We have  
25 New Jersey defendants and, therefore, no diversity

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1 jurisdiction.

2 We think this process was helpful to raising  
3 awareness about the importance of these PFSs.

4 **THE COURT:** I'm happy that all the motions have been  
5 rendered moot and the Court need not take any action on it.

6 The next conference is in January.

7 **MR. DAVIS:** January 23, Your Honor.

8 **THE COURT:** January 23. The following month is  
9 February 23.

10 **MR. DAVIS:** That's at 9:00 in the morning; is that  
11 correct?

12 **THE COURT:** Yes, 9:00 in the morning.

13 **MR. IRWIN:** I think it's January 22.

14 **THE COURT:** January 22 is the next one. February 23  
15 is the following one.

16 Everybody have a happy holiday. Thank you for  
17 your work in the past year. I look forward to working with you  
18 next year.

19 **MR. DAVIS:** Thank you, Your Honor. We wish you a  
20 happy holiday, your staff, and counsel.

21 (Proceedings adjourned.)

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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

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