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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

CIVIL ACTION NO. 14-MD-2592 "L"
NEW ORLEANS, LOUISIANA
WEDNESDAY, MAY 13, 2015, 9:00 A.M.

THIS DOCUMENT RELATES TO
ALL CASES

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

APPEARANCES:

FOR THE PLAINTIFFS'
LIAISON COUNSEL:

HERMAN HERMAN & KATZ
BY: LEONARD A. DAVIS, ESQUIRE
820 O'KEEFE AVENUE
NEW ORLEANS, LA 70113

GAINSBURGH BENJAMIN DAVID
MEUNIER AND WARSHAUER
BY: GERALD E. MEUNIER, ESQUIRE
2800 ENERGY CENTRE
1100 POYDRAS STREET, SUITE 2800
NEW ORLEANS, LA 70163

FOR THE PLAINTIFFS:

LEVIN PAPANTONIO THOMAS MITCHELL
RAFFERTY & PROCTOR
BY: BRIAN H. BARR, ESQUIRE
316 SOUTH BAYLEN STREET, SUITE 600
PENSACOLA, FL 32502

1 APPEARANCES CONTINUED:

2

3

BEASLEY ALLEN CROW METHVIN
PORTIS & MILES
4 BY: ANTHONY BIRCHFIELD JR., ESQUIRE
POST OFFICE BOX 4160
5 MONTGOMERY, AL 36103

6

7 FOR THE DEFENDANTS'
LIAISON COUNSEL:

8

IRWIN FRITCHIE URQUHART & MOORE
BY: JAMES B. IRWIN, V, ESQUIRE
TEXACO CENTER
9 400 POYDRAS STREET, SUITE 2700
NEW ORLEANS, LA 70130

10

11

FOR THE DEFENDANTS:

12

CHAFFE MCCALL
BY: JOHN F. OLINDE, ESQUIRE
1100 POYDRAS STREET
13 NEW ORLEANS, LA 70163

14

15

DRINKER BIDDLE & REATH
BY: SUSAN M. SHARKO, ESQUIRE
500 CAMPUS DRIVE
16 FLORHAM PARK, NJ 07932

17

18

19

KAYE SCHOLER
BY: STEVEN GLICKSTEIN, ESQUIRE
250 WEST 55TH STREET
20 NEW YORK, NY 10019

21

22 ALSO PRESENT:

23

ORRAN L. BROWN, SR.
JACOB S. WOODY

24

25

1 APPEARANCES CONTINUED:

2

3 OFFICIAL COURT REPORTER: CATHY PEPPER, CRR, RMR, CCR
4 CERTIFIED REALTIME REPORTER
5 REGISTERED MERIT REPORTER
6 500 POYDRAS STREET, ROOM HB406
7 NEW ORLEANS, LA 70130
8 (504) 589-7779
9 Cathy_Pepper@laed.uscourts.gov

7

8 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
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M O R N I N G S E S S I O N

WEDNESDAY, MAY 13, 2015

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: All rise.

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

VOICES: Good morning, Judge.

THE COURT: Call the case, please.

THE DEPUTY CLERK: MDL Number 2592, In re: Xarelto Products Liability Litigation.

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

MR. DAVIS: Good morning, Your Honor. Leonard Davis, from Herman Herman & Katz, on behalf of the Plaintiffs' Steering Committee.

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

THE COURT: I met a moment ago with our lead liaison counsel to discuss the agenda with them. I'll take it in the order that it's given.

Pretrial orders. Anything?

MR. DAVIS: Your Honor, there are a number of new pretrial orders that have been issued.

09:04:54 1 So that individuals who are on the phone get the
09:04:57 2 benefit, I will advise them that the Court has a website that's
09:05:03 3 located at www.laed.USCourts.gov, and there is a Xarelto tag,
09:05:13 4 which they should go to. The Court posts all of its pretrial
09:05:17 5 orders and other information, including joint reports and
09:05:21 6 ongoing materials.

09:05:23 7 THE COURT: I do that for the purpose of individuals,
09:05:26 8 particularly individuals who are not able to attend, or if they
09:05:32 9 are able to participate on the phone and they need something in
09:05:35 10 writing.

09:05:36 11 I put everything on my website, all the forms,
09:05:41 12 all of the things, the calendar and all of the transcripts of
09:05:51 13 even these hearings go on the website, so that they'll have
09:05:54 14 access to it.

09:05:55 15 I also think that it's helpful to scholars in the
09:05:59 16 field to have these websites for MDL cases. They are able to
09:06:04 17 follow them or, at the end of the case, at least, have a
09:06:07 18 package to see how they've developed and make whatever they
09:06:12 19 will out of it.

09:06:13 20 Case Management Order, anything?

09:06:15 21 MR. DAVIS: Yes, Your Honor. I'll go through some of
09:06:17 22 these, if you would like me to, the new Pretrial Orders, and
09:06:23 23 explain very, very briefly some of them, if I may.

09:06:23 24 THE COURT: Okay.

09:06:26 25 MR. DAVIS: Pretrial Order Number 11 was issued May the

09:06:29 1 11th. That provides for the bundling of complaints. I'll
09:06:34 2 discuss that later, but it allows for up to a hundred claimants
09:06:38 3 to be put together in what's called a joint complaint, which is
09:06:42 4 later followed by a short form complaint.

09:06:48 5 That allows for a number of cases to be filed
09:06:53 6 into the Court. Those who are looking at it need to look at
09:06:57 7 the direct filing order, as well as the service order that's
09:07:01 8 out there.

09:07:02 9 Pretrial Order Number 12 is new, which is a
09:07:07 10 stipulated protective order.

09:07:09 11 Pretrial Order Number 13 and 14 deal with fact
09:07:16 12 sheets. Specifically, I just want to remind plaintiffs in
09:07:19 13 particular that it's approximately 60 days in which they have
09:07:23 14 to file a fact sheet.

09:07:26 15 Again, that's on MDL centrality, which we'll talk
09:07:34 16 about as we get into this conference further.

09:07:37 17 Pretrial Order 15 deals with preservation of
09:07:41 18 documents and electronically stored evidence. All people are
09:07:41 19 reminded to look at that. It supplements or modifies PTO
09:07:46 20 Number 1.

09:07:47 21 Pretrial Order 16 deals with summonses.

09:07:50 22 So those are the new Pretrial Orders.

09:07:54 23 THE COURT: My thinking on the MDL, particularly in the
09:07:58 24 start of the MDL, I think the first thing, before depositions
09:08:02 25 are taken and before the documents are exchanged, I think it's

09:08:07 1 helpful to put down infrastructure.

09:08:11 2 It's kind of like building a subdivision. You
09:08:13 3 put in the sewer lines and the light lines and things of that
09:08:17 4 sort before you start building the houses. It makes a lot more
09:08:21 5 sense because after the houses start, then it becomes more
09:08:24 6 complicated.

09:08:24 7 So I directed the parties to focus on
09:08:29 8 infrastructure. They are about there now, and so we'll be able
09:08:34 9 to now move forward and, I think, more efficiently, because
09:08:38 10 we've got protocols in place and various other documents.
09:08:43 11 Various other Pretrial Orders set forth certain infrastructure
09:08:49 12 that hopefully will make it easier for the parties.

09:08:52 13 MR. DAVIS: The second item is Case Management Orders.

09:08:56 14 Case Management Order Number 1 was issued by the
09:08:58 15 court on May 4th. Folks should go to the website to look at
09:09:03 16 that. But there have been some activities that have been
09:09:06 17 undertaken since then, for instance, initial productions by
09:09:10 18 defendants were provided, and they are being reviewed.

09:09:16 19 Counsel contact information -- I'm sorry --

09:09:18 20 MR. IRWIN: May I say something?

09:09:19 21 MR. DAVIS: I'm sorry.

09:09:20 22 MR. IRWIN: Thank you, Mr. Davis.

09:09:21 23 Your Honor, with respect to the paragraph 2 of
09:09:23 24 Case Management Order Number 1, there is a deadline in there
09:09:26 25 that the defendants will respond to the request for production

09:09:30 1 on May 31.

09:09:31 2 The plaintiffs very courteously provided us early
09:09:34 3 on with a draft request for production. We were served with
09:09:38 4 the formal request, and there were some changes in it.

09:09:41 5 They agreed that we could have until June 8 to
09:09:46 6 respond to that. We wanted your blessing on that, please.

09:09:49 7 THE COURT: Sure. That's fine. If you all agree on
09:09:51 8 that, I don't have any problem with it.

09:09:53 9 MR. DAVIS: That's correct.

09:09:53 10 Thank you, Jim.

09:09:54 11 Counsel contact information form, I'd just remind
09:09:58 12 individuals that those forms need to be provided. It's very
09:10:02 13 helpful so that communications can take place between liaison
09:10:07 14 counsel and individuals, as well as with MDL centrality.
09:10:11 15 Please look at Pretrial Order 4A and make sure that the counsel
09:10:14 16 contact information form is turned in.

09:10:17 17 MDL centrality. BrownGreer --

09:10:22 18 THE COURT: Yes, I've asked Orran Brown to come today
09:10:26 19 and to give us a slide presentation of what it is. I think
09:10:31 20 it's helpful for the lawyers to at least hear what it's about,
09:10:38 21 and if they have any questions, they are who to contact.

09:10:42 22 MR. DAVIS: On the plaintiffs' side, with respect to
09:10:45 23 what I'll call the file and serve module, the plaintiffs have
09:10:50 24 agreed that that system will be utilized for the distribution
09:10:53 25 of pleadings and discovery documents, and that is ready to be

09:10:59 1 up and running.

09:11:01 2 Plaintiffs are encouraged to get their
09:11:04 3 information from BrownGreer. I know that BrownGreer will go
09:11:07 4 through that.

09:11:08 5 MR. IRWIN: Might I add this morning, Your Honor, as we
09:11:11 6 discussed in chambers, that, like with interrogatories and
09:11:14 7 document requests, notices of deposition will not be filed in
09:11:14 8 the record --

09:11:14 9 THE COURT: Right.

09:11:17 10 MR. IRWIN: -- but they will be served through
09:11:19 11 centrality.

09:11:20 12 THE COURT: Yes.

09:11:20 13 Orran, do you want to present at this point?

09:11:24 14 Let me hear from Orran Brown at this point on MDL
09:11:31 15 centrality.

09:11:41 16 MR. BROWN: Good morning, Your Honor. I'm Orran Brown,
09:11:43 17 from BrownGreer. With me is Jake Woody, from BrownGreer.
09:11:48 18 We're going to show today -- Jake is going to show very briefly
09:11:52 19 how the MDL centrality system works.

09:11:56 20 The day the Court entered the three orders that
09:11:59 21 Mr. Davis mentioned on May the 4th was a trilogy of orders,
09:12:03 22 PTO 13, PTO 14 and Case Management Order Number 1, that
09:12:07 23 directed the parties to use a plaintiff fact sheet and
09:12:11 24 defendant fact sheet and set the deadline for doing it.

09:12:13 25 We opened the online system that day, May 4, so

09:12:17 1 that people could fill out plaintiff fact sheets online, and we
09:12:20 2 have an automated system that records that data in live data.

09:12:25 3 That system is up and running. Jake is going to
09:12:28 4 show us quickly basically how it works. We're here to answer
09:12:32 5 any questions the Court may have about it.

09:12:34 6 Obviously, if any of the counsel who are using
09:12:37 7 this for the first time need help with it, we're here to help.
09:12:40 8 We have e-mail addresses and phone number that Jake will show
09:12:45 9 that we want to help everybody use this system and make it easy
09:12:49 10 for them.

09:12:51 11 THE COURT: Jake.

09:12:52 12 MR. WOODY: Good morning, Your Honor. My name is Jake
09:12:57 13 Woody from BrownGreer. I'll go through the MDL centrality
09:12:59 14 system very briefly here.

09:13:01 15 It is simply an online portal for electronic
09:13:03 16 submission of plaintiff and defendant fact sheets. The web
09:13:06 17 address for MDL centrality is www.MDLcentrality.com/MDL2592.

09:13:16 18 THE COURT: I'll put that on our website, too, so that
09:13:18 19 people have access to it.

09:13:20 20 MR. WOODY: When you go to that website, you'll see
09:13:22 21 essentially a login screen that allows you to log in if you
09:13:24 22 have credentials.

09:13:24 23 If you don't have credentials, you can contact
09:13:28 24 us. You can use the Register as a Law Firm button that you can
09:13:32 25 see on this login screen. We also preregistered about 225

09:13:37 1 people when the system went live based on submissions to
09:13:43 2 plaintiffs' liaison counsel. We preregistered people and
09:13:46 3 e-mailed them temporary logins and user names.

09:13:50 4 THE COURT: Now, what is the login ID? Is that your
09:13:52 5 name?

09:13:53 6 MR. WOODY: It's a variation of your name. Everybody
09:13:55 7 has a different one. Everybody has a different login and
09:13:58 8 password.

09:13:59 9 THE COURT: Do you assign the login ID and password, or
09:14:03 10 do they pick it?

09:14:04 11 MR. WOODY: We assign you a login and password. Once
09:14:07 12 you're in the system, you can change it if you need to. The
09:14:10 13 password we assign you is temporary, and you'll be prompted to
09:14:13 14 change it as soon as you log in.

09:14:15 15 Nobody has the password. Once you change it,
09:14:18 16 it's private. It's yours. We don't have it. You can always
09:14:20 17 go change it and manage it through the system.

09:14:22 18 THE COURT: So if somebody pulls this up today, and
09:14:24 19 they want to log in, what do they do?

09:14:26 20 MR. WOODY: They can click the Register as a Law Firm
09:14:29 21 button that's at the bottom left side of the screen there, or
09:14:34 22 they can e-mail us at MDLCentrality@BrownGreer.com, tell us who
09:14:34 23 at your firm needs access. We need their name and their e-mail
09:14:42 24 address. We will create the access, the credentials for them,
09:14:44 25 and e-mail it to them.

09:14:46 1 I do want to stress that because we use e-mail to
09:14:49 2 communicate login and passwords, it's very important that you
09:14:52 3 be able to receive e-mails from us.

09:14:53 4 We have found that, at times, e-mails that come
09:14:57 5 from us may go to your spam folder or your junk folder. The
09:15:00 6 way to solve that problem is to add BrownGreer.com as a trusted
09:15:06 7 sender, so that we can communicate with you by e-mail.

09:15:08 8 If you have requested access and haven't heard
09:15:11 9 from us within 24 hours, check your spam folder or your junk
09:15:15 10 folder. If there is nothing there, you can e-mail us at
09:15:17 11 MDLCentrality@BrownGreer.com. We'll handle it outside of this
09:15:23 12 automatic e-mail system. We'll call you and set it up that
09:15:26 13 way.

09:15:26 14 Once you log in, the navigation all takes place
09:15:31 15 at the top of the screen, with these tool bars at the top. We
09:15:34 16 also have this home page where we'll share important
09:15:37 17 information about the MDL.

09:15:39 18 You can see here, we've listed some generic
09:15:43 19 information about the deadlines to submit a plaintiff fact
09:15:45 20 sheet, we have our terms of use, and we have our e-mail address
09:15:49 21 and contact information here for people who need to contact us.

09:15:52 22 The navigation bars at the top of the screen are
09:15:56 23 fairly self-explanatory. You click on the navigation bar or
09:16:00 24 hover over it, and you get a dropdown menu of all your options.

09:16:00 25 If you click on the home option, you'll see you

09:16:05 1 have a firm administration tab, which allows you to manage
09:16:08 2 access within the firm. You can add users, delete users if
09:16:12 3 they leave the firm. You can change who has rights to submit a
09:16:16 4 fact sheet and who has rights simply to work on it, so that no
09:16:20 5 one can accidentally submit a fact sheet.

09:16:23 6 We also have posted online tutorials here.
09:16:25 7 They're video, short videos of different functions within the
09:16:26 8 system. You can click on those and watch them.

09:16:29 9 We're also happy to, if people would like, to do
09:16:32 10 a one-on-one WebEx tutorial that's live. We can go through any
09:16:37 11 questions people have about the system. The way to set that
09:16:40 12 up --

09:16:40 13 THE COURT: What does My Account mean on that bar?

09:16:43 14 MR. WOODY: That's where you would manage -- if you
09:16:45 15 need to change your password, change your e-mail, if your
09:16:48 16 e-mail changes, you can do that there, and you can log out of
09:16:51 17 the system there.

09:16:52 18 The Fact Sheets tab we think is the most
09:16:58 19 important tab that will get the most use. This is where you go
09:16:59 20 to start a new fact sheet, to search for existing fact sheets
09:17:02 21 and plaintiffs, to find the authorization forms, the HIPAA
09:17:05 22 forms, etcetera, that are associated with the fact sheets.

09:17:08 23 To start a new fact sheet, you click on the Start
09:17:13 24 New button. It's pretty self-explanatory.

09:17:13 25 You can also use our bulk upload system, which is

09:17:16 1 a way that you can import some basic information by
09:17:20 2 spreadsheet, so that you don't have to data enter it
09:17:22 3 individually.

09:17:22 4 Right now, we have very basic information there,
09:17:25 5 name, date of birth and Social Security number. Those are the
09:17:28 6 three data points that we need to start the process. We'll
09:17:32 7 assign them a unique number based on the Social.

09:17:34 8 That is all we ask for in the upload template.
09:17:38 9 If there are other things people would like to upload, contact
09:17:40 10 us, and we'll see if we can accommodate that. I think that we
09:17:43 11 probably can.

09:17:44 12 We've actually talked to a few people about
09:17:46 13 expanding that already, and that is something that I think will
09:17:49 14 grow as we work through the program.

09:17:51 15 We also have here what we call Plaintiff
09:17:55 16 Management. It's the bottom tab here. If you want to allow
09:17:58 17 your clients to fill out a draft of the fact sheet on their own
09:18:02 18 computer, you can use this to send them an e-mail that will
09:18:05 19 have their own temporary login and password with their own
09:18:08 20 credentials.

09:18:10 21 All they can do is fill it out. They can't see
09:18:12 22 anybody else's fact sheet. They cannot submit it to the
09:18:16 23 defendants. They can simply do basic data entry on their own
09:18:19 24 computer and submit it to the plaintiffs' firm, who then has
09:18:22 25 ultimate authority to manage the fact sheet at that point.

09:18:25 1 To start a new fact sheet, as I mentioned, we do
09:18:28 2 need some very basic information. When you click the Start New
09:18:31 3 Fact Sheet, you'll see this screen. We ask for the name, the
09:18:34 4 date of birth and the taxpayer ID or Social Security number.

09:18:37 5 Once you give us that, the process is started.
09:18:39 6 We'll assign a unique number to that plaintiff, to
09:18:43 7 differentiate people with the same name, so that we can tell
09:18:44 8 them apart.

09:18:45 9 We do ask for e-mail here. It's not required
09:18:47 10 that you give it. It doesn't go on the fact sheet. We use
09:18:51 11 that for the plaintiff management tool I just talked about a
09:18:54 12 minute ago.

09:18:54 13 THE COURT: Now, when you say primary e-mail, you're
09:18:56 14 talking about the plaintiff, or you're talking about the
09:18:59 15 attorney?

09:19:00 16 MR. WOODY: This is the plaintiff's e-mail, and we can
09:19:02 17 change that to clarify that this is for the plaintiff.

09:19:04 18 We already have the plaintiff's e-mail from the
09:19:07 19 registration process. You don't have to give us any more
09:19:09 20 information about your firm or who you are. We know who you
09:19:12 21 are from your login. We know who is filling these out.

09:19:15 22 Once you fill this out and click continue, you'll
09:19:20 23 be taken essentially to a table of contents for the plaintiff
09:19:22 24 fact sheet. These questions are exact copies of the questions
09:19:27 25 within the paper fact sheet that was attached to the

09:19:30 1 Pretrial Order.

09:19:31 2 We have sort of condensed it into sections. The
09:19:34 3 Roman numerals you see in this section correspond to the Roman
09:19:39 4 numerals in the paper version. These are the main sections.

09:19:42 5 So that you can jump around, you can fill out in
09:19:46 6 any order that you want, you can start it, save it, come back
09:19:50 7 to it later, you can see that we, next to each title, are able
09:19:54 8 to tell you the status of your completion.

09:19:56 9 If you started it, it will say In Progress. If
09:19:59 10 you haven't started it, for example, Number 7 here, there is no
09:20:02 11 information entered there, it says, Not Yet Started. So that's
09:20:06 12 a cue to you that you need to start that if you want to submit
09:20:08 13 the fact sheet.

09:20:09 14 You can access these by using these blue buttons
09:20:14 15 on the right side. Once you start it, it will say Edit. You
09:20:18 16 edit the information or add to the information you've already
09:20:20 17 entered. If you haven't started it, it simply says Start.

09:20:24 18 You can also, from this screen, generate a draft
09:20:27 19 of the fact sheet that you have started. If you need to save
09:20:32 20 it, e-mail it to somebody, or just want to print it out, you
09:20:36 21 can click the Generate New Draft. It takes a snapshot of all
09:20:41 22 the data that you've entered.

09:20:44 23 You can then print it, save it to your computer,
09:20:44 24 e-mail it, whatever you need to do with it. Any time you
09:20:46 25 change information, you can update that to show the newest

09:20:49 1 information.

09:20:50 2 I'm not going to go through every fact sheet
09:20:56 3 screen, it would take more time than we have this morning, but
09:20:58 4 I did want to show an example of what these screens look like
09:21:01 5 when you start the process.

09:21:02 6 This is a screen from section 2 of the personal
09:21:06 7 information. Again, the Roman numerals and the headings match
09:21:12 8 those in the paper fact sheet.

09:21:14 9 We are able to prefill information in certain
09:21:18 10 instances based on information you've already provided. Here
09:21:23 11 we've prefilled the name. You've already given that to us.
09:21:24 12 You don't need to give it to us again. So we put it in there
09:21:28 13 for you.

09:21:29 14 The answer types vary depending on the question.
09:21:31 15 In some cases, it's simply a free text. You can type whatever
09:21:33 16 you want. In other cases, it's a date range. You pick from a
09:21:37 17 dropdown of rates or a radio button when there is only one of
09:21:42 18 two answers allowed, for instance, male and female, use radio
09:21:47 19 buttons there.

09:21:48 20 The answer types and the questions vary
09:21:51 21 throughout the fact sheet. This is just an example of what
09:21:55 22 these questions look like and how you can answer them.

09:21:57 23 We've talked to a number of people who wanted to
09:21:59 24 ask questions about maybe they are unable to provide the answer
09:22:02 25 they want. If you have questions like that, you can always

09:22:05 1 contact us. We can work with people to change the system.

09:22:09 2 We can't change the fact sheet, of course, and we
09:22:11 3 can't necessarily provide information about how you should
09:22:14 4 answer a question, but we can provide technical assistance
09:22:19 5 with, if you wanted to be able to type free text, we can give
09:22:23 6 you a box to do that, things like that.

09:22:25 7 If you have questions like that, you can always
09:22:27 8 e-mail us at the e-mail address I provided and will provide
09:22:30 9 later, or call us at the number that I'll provide in a minute.

09:22:34 10 You can always upload documents at any time in
09:22:38 11 this process. A number of documents are required to be
09:22:41 12 submitted along with the fact sheet. You can use the upload
09:22:45 13 feature. Then, to view the documents you've uploaded, you
09:22:49 14 simply click on the View Documents button that you see on every
09:22:52 15 screen.

09:22:52 16 I've given a couple of examples of documents
09:22:55 17 here. Prescription records and medical records, that's an
09:22:58 18 example of a document that a user would upload. You have that
09:23:01 19 on your computer somewhere in a PDF. Say, you want to upload
09:23:05 20 it. You give it a name, and you upload it, and it's there.

09:23:08 21 The top document there, it says, Plaintiff Fact
09:23:12 22 Sheet. That's an example of a document that we would generate.
09:23:15 23 When you submit a fact sheet and complete it, we will generate
09:23:19 24 a PDF copy of that fact sheet for your records. It will be in
09:23:22 25 the file whenever you need it.

09:23:22 1 If you revise the fact sheet at any point and
09:23:25 2 resubmit it, there will be a revised fact sheet in the
09:23:29 3 documents.

09:23:29 4 These documents, once you submit them, are
09:23:32 5 available to both sides. You can upload it at any time. The
09:23:36 6 defendants can upload documents as part of the defendant fact
09:23:39 7 sheet process.

09:23:40 8 So this is basically a document repository for
09:23:45 9 each client.

09:23:46 10 THE COURT: How about the security of this information?

09:23:48 11 MR. WOODY: It's all secure. That's why we're so
09:23:50 12 secure with the login credentials. We don't want anybody to
09:23:54 13 get access to this that shouldn't have it. It's obviously
09:23:58 14 sensitive.

09:23:59 15 We, at the start of this process, had a number of
09:23:59 16 conversations with both the plaintiffs and defendants about our
09:24:01 17 security procedures. We answered all their questions I think
09:24:04 18 satisfactorily.

09:24:05 19 Our security is the best it can be. It's the top
09:24:09 20 of the line for this sort of thing. That's why we don't let
09:24:11 21 you share login credentials. If you forget your login
09:24:15 22 credentials, we make you reset it with a computer-generated
09:24:19 23 password, which is inconvenient in the short-term, but the
09:24:22 24 reason for that is, because these documents are sensitive, we
09:24:25 25 don't want them to be accessed by anybody who shouldn't have

09:24:28 1 access to them.

09:24:29 2 You can also search for plaintiffs and
09:24:34 3 plaintiffs' facts sheets by using the search dropdown menu, and
09:24:34 4 that's in that fact sheets menu we talked about earlier.

09:24:41 5 You can search for specific plaintiffs by
09:24:43 6 entering their name, a part of their name, their date of birth
09:24:46 7 or their Social Security number. The search results are
09:24:51 8 displayed here at the bottom. You can see, we show you their
09:24:53 9 results and their name and their date of birth. We also show a
09:24:56 10 status of the fact sheet, whether you have submitted it or not.

09:24:59 11 So if you want a quick way to figure out which
09:25:02 12 fact sheets you've submitted and which you haven't, you can use
09:25:07 13 the search feature and look at the status. You can click on
09:25:11 14 these header rows here to sort, so that you can quickly see
09:25:13 15 who's submitted and who's not.

09:25:15 16 If you want to see your entire inventory, you can
09:25:17 17 use the See Inventory tab on this screen, and it shows you a
09:25:20 18 list of everybody you've entered into the system, whether
09:25:22 19 you've submitted them or not.

09:25:23 20 Finally, we do have -- Mr. Davis talked earlier
09:25:29 21 about pleadings and discovery. We are, I think, now added to
09:25:34 22 do the ECF notifications that the Court -- that come through
09:25:37 23 the Court with pleadings and orders. We will use that to
09:25:42 24 download the pleadings and orders, create a virtual repository
09:25:47 25 for all of those. It will automatically download.

09:25:50 1 Only the plaintiffs will have access to this, but
09:25:54 2 you'll able to search for pleadings by the name, the docket
09:25:57 3 number, who filed it, when they filed it. You'll also be able
09:26:01 4 to search for specific text within a pleading, if you would
09:26:04 5 like to do that, by using the keyword search.

09:26:07 6 As we start to get those ECF notifications, the
09:26:11 7 number of pleadings will grow. Eventually, it will be
09:26:14 8 essentially a mirror of the documents available in PACER.

09:26:17 9 THE COURT: So the plaintiffs, the litigants, will file
09:26:21 10 in court, and you will download from the Court filing. They
09:26:27 11 won't have to file with you either?

09:26:29 12 MR. WOODY: No. The only place you need to file is
09:26:32 13 with the Court.

09:26:33 14 THE COURT: With the Court.

09:26:34 15 MR. WOODY: You don't have to file it again with us to
09:26:36 16 make it available. We will automatically download it, save it.
09:26:40 17 There is no second step.

09:26:44 18 MR. DAVIS: Except for discovery pleadings. That does
09:26:49 19 not get filed with the Court.

09:26:50 20 THE COURT: Right.

09:26:51 21 MR. WOODY: The discovery part works very similarly to
09:26:56 22 this, with the addition to what Lennie just said. Someone has
09:26:59 23 to upload those documents because they are not filed.

09:27:01 24 But the system works the same, there's just an
09:27:04 25 extra step where you have to upload those discovery documents.

09:27:07 1 Once they are uploaded, they are available to all of the
09:27:09 2 plaintiffs to view, to save, to print, whatever they need to do
09:27:12 3 with them.

09:27:13 4 Finally, Your Honor, if people need to contact
09:27:17 5 us, our contact information is here. Again, the website is
09:27:23 6 www.MDLCentrality.com/MDL2592. We do have video tutorials
09:27:31 7 available there for people to view.

09:27:32 8 You can always e-mail us at
09:27:36 9 MDLCentrality@BrownGreer.com, or call us at 804-521-7200. We
09:27:41 10 will answer any questions you have. You can also set up
09:27:45 11 individual tutorials for anybody who needs them.

09:27:48 12 THE COURT: Okay. I've asked Orran and Jake to remain
09:27:53 13 afterwards. In the event anybody has any questions, they'll be
09:27:57 14 able to contact them today and talk with them about it.

09:28:02 15 MR. BROWN: Yes, Your Honor. We're happy to do that at
09:28:05 16 any time, stay around and give help and answer questions.

09:28:06 17 The last comment I wanted to make is, is because
09:28:08 18 we built this system, then the luxury is we can change the
09:28:12 19 system. We want it, obviously, to be something all the parties
09:28:16 20 agree to before it's changed.

09:28:17 21 There are certain things we cannot do anything
09:28:19 22 about. We can't change the questions in the fact sheet. There
09:28:21 23 are about 130 lawyers already using this system, and we've
09:28:25 24 gotten one request that we cannot accommodate.

09:28:28 25 We had one firm, one lawyer, who does not want to

09:28:32 1 fill it out online. They want to send us a PDF of a filled-out
09:28:38 2 fact sheet, which defeats the purpose of having the information
09:28:41 3 all live and central.

09:28:42 4 What we're going to tell that firm is we want to
09:28:45 5 work with you. If you send us that PDF, we will enter the data
09:28:49 6 for you; we just have to be paid for our time to do it, on top
09:28:52 7 of the system fee.

09:28:53 8 So we'll help them, but if we're going to have to
09:28:57 9 do their typing for them, we'll have to work out with them
09:29:01 10 getting paid for the time.

09:29:01 11 THE COURT: Right.

09:29:02 12 MR. BROWN: We'd rather people not do that. We want
09:29:04 13 people to use it online. We think it's easy to use. It's just
09:29:08 14 like ordering something online. But we're trying to make
09:29:11 15 accommodations to meet anybody's particular needs.

09:29:14 16 THE COURT: Okay, fine.

09:29:15 17 The problem with cases of this sort, meaning
09:29:18 18 MDL's, is that it is very difficult to get your hands around
09:29:23 19 the whole litigation. That's important to be able to do
09:29:28 20 because you have to pick bellwether cases, you have to pick
09:29:32 21 discovery pools and things of that sort, which represent the
09:29:35 22 whole litigation.

09:29:36 23 So if you don't know what the litigation is, what
09:29:39 24 the status is in the litigation, what it entails, it's very
09:29:44 25 hard to pick discovery pools, and it's very hard then to pick

09:29:49 1 bellwether cases from those discovery pools.

09:29:52 2 So I've been working with Orran on this for a
09:29:55 3 while. This is the first MDL that is using it. We may have to
09:30:03 4 change it in some instances. But the thing that this allows us
09:30:07 5 to do is it allows some searchability so that we are able,
09:30:13 6 after the case solidifies, and we know who's in the case, I'm
09:30:18 7 able to then use search terms to find out how many cases are
09:30:25 8 death cases, how many cases are stroke cases, how many cases
09:30:28 9 are other types of incidents, so that we can begin to figure
09:30:34 10 out a way of putting them in categories so that we can select
09:30:40 11 the discovery pool that represents the census of that
09:30:46 12 litigation, and then from that discovery pool pick the
09:30:50 13 bellwethers that represent the census of the litigation,
09:30:53 14 because at that point we'll know what the census of the
09:30:55 15 litigation is. This is a big tool for us and a big advance in
09:31:05 16 the MDL process.

09:31:06 17 I like the concept, also, of being able to simply
09:31:12 18 file it in court, and then the centrality takes it up, as
09:31:18 19 opposed to having to file in both places, because in the past
09:31:25 20 I've had that situation, and some people felt they just needed
09:31:30 21 to file one place, but they filed with the -- in the wrong
09:31:37 22 place. They didn't file it in court, they filed with the other
09:31:41 23 party, and sometimes we had prescription problems.

09:31:43 24 So you don't need to do that in this situation.
09:31:46 25 You just need to file in court, and then they get it from

09:31:49 1 court, and it goes to everyone.

09:31:52 2 Okay. Thank you very much. I appreciate it.

09:31:57 3 MR. BROWN: Thank you, Your Honor.

09:31:58 4 THE COURT: How about the fact sheets?

09:31:59 5 MR. DAVIS: I've already addressed fact sheets,
09:32:03 6 Your Honor. I won't repeat it. Obviously, just that they're
09:32:06 7 due in 60 days.

09:32:08 8 I will say that we spent a lot of time, both
09:32:11 9 parties have spent a lot of time talking with Orran, Jake and
09:32:14 10 BrownGreer, and we appreciate their efforts. We know that it's
09:32:18 11 a new system, and if there are questions or issues, hopefully
09:32:21 12 they will be brought to their attention, and they can be
09:32:23 13 addressed quickly.

09:32:24 14 THE COURT: Yes, that's the important thing, Orran.
09:32:27 15 We've got to keep an eye out and keep an ear to the ground. If
09:32:31 16 something develops, we've got to get together and talk about it
09:32:34 17 and resolve that issue.

09:32:35 18 MR. DAVIS: On defendant fact sheets, I have nothing to
09:32:38 19 report other than they will be due following the submission of
09:32:41 20 plaintiff fact sheets.

09:32:42 21 THE COURT: Now, Jim, you all said something about in
09:32:45 22 conference that you need to fine tune some aspects of it.

09:32:48 23 MR. IRWIN: Yes. Thank you, Your Honor.

09:32:50 24 Your Honor did issue, I think, Pretrial Orders 13
09:32:53 25 and 14 approving the PFS and the DFS.

09:32:59 1 We were in discussions preparing a joint proposed
09:33:01 2 order. We're continuing discussions. There are several
09:33:05 3 paragraphs that we may be submitting to you to complement or
09:33:09 4 supplement your approval orders that might deal with HIPAA
09:33:13 5 protections, work product protections, that sort of thing. So
09:33:15 6 we're working on that, Your Honor.

09:33:16 7 MR. DAVIS: We will be discussing that and will jointly
09:33:19 8 submit something.

09:33:19 9 THE COURT: Orran, I'll read you in on this. When I
09:33:22 10 get them, I'll talk with you about it, see how we can tweak it.

09:33:26 11 MR. DAVIS: Number 7, bundling of complaints. As I
09:33:30 12 mentioned, the Court issued Pretrial Order 11, and we are
09:33:30 13 encouraging --

09:33:30 14 THE COURT: Thank you.

09:33:35 15 MR. DAVIS: -- folks that if they have -- to take
09:33:37 16 advantage of the bundling complaint, that they do so.

09:33:40 17 THE COURT: All right.

09:33:40 18 MR. IRWIN: I may just add to that, Your Honor, that we
09:33:44 19 are having discussions with the PLC about managing the costs
09:33:52 20 that might be associated with dismissals early or later on --

09:33:52 21 THE COURT: Right.

09:33:56 22 MR. IRWIN: -- and we'll be talking back with the Court
09:33:58 23 about that.

09:33:58 24 THE COURT: Yes, it's a work in progress, and I'll be
09:34:01 25 working with you all on that. I recognize the issues.

09:34:04 1 MR. IRWIN: The PSC is also working on some forms --

09:34:04 2 THE COURT: Right.

09:34:06 3 MR. IRWIN: -- in connection with bundled complaints,
09:34:09 4 and encourage people that if they have questions, that they
09:34:12 5 contact liaison counsel at this time.

09:34:16 6 THE COURT: I'm trying to make it as easy as possible
09:34:19 7 to get into this litigation by individuals, so that we have the
09:34:23 8 gravity of the ligation in the MDL, as opposed to spreading it
09:34:25 9 throughout the Court systems. This is one method of doing
09:34:28 10 that.

09:34:30 11 Preservation order.

09:34:31 12 MR. DAVIS: I've already addressed that, Your Honor,
09:34:37 13 preservation order, the modification, earlier, in
09:34:42 14 Pretrial Order 15.

09:34:42 15 THE COURT: Right.

09:34:44 16 MR. DAVIS: Furthermore, a depo notice was sent to
09:34:48 17 defendants in connection with preservation issues, and we are
09:34:54 18 in the process of discussing that with defendants with respect
09:34:58 19 to an issue regarding preservation.

09:35:02 20 THE COURT: Document production protocols.

09:35:06 21 MR. DAVIS: Briefs were filed in connection with that
09:35:09 22 in relation to the production that defendants will be making in
09:35:14 23 June, starting that production, in response to the initial
09:35:19 24 Request for Production of Documents.

09:35:22 25 THE COURT: Right. I got the briefs from the parties.

09:35:24 1 Basically, the plaintiffs would like the information in native
09:35:29 2 format.

09:35:29 3 Native format, of course, as we know, shows the
09:35:32 4 metadata and shows who started the document, what changes, and
09:35:37 5 various things. It's really a history of that particular
09:35:41 6 document.

09:35:41 7 The defendant suggests that it be produced in
09:35:46 8 TIFF Plus, which allows the document to be more accurately
09:35:52 9 Bates stamped. Also, it's in a PDF format, so it stops the
09:35:58 10 opportunity to change it and makes it a lot easier to use
09:36:03 11 during depositions and during presentation in the bellwether
09:36:10 12 process.

09:36:10 13 I've heard from both sides. Frankly, I find
09:36:14 14 myself agreeing with both of them. I understand the feeling
09:36:19 15 that the plaintiffs expressed that, under the Federal Rules,
09:36:24 16 they do have an opportunity to designate which type of format
09:36:28 17 the document should be presented in. They feel that they
09:36:32 18 should have the document in the same form that the defendants
09:36:37 19 have the document.

09:36:41 20 But I also understand the ease of marking the
09:36:46 21 documents. We're dealing with millions of documents here, and
09:36:49 22 so marking is very important; also, the significance of it not
09:36:58 23 being able to be changed during the process of its use.

09:37:01 24 So I do agree with both of them. I would like to
09:37:08 25 come up with a solution that satisfies both of their needs. It

09:37:11 1 seems to me that one way of doing that is to have the
09:37:14 2 defendants produce the documents in native format and have the
09:37:18 3 plaintiffs change it to the TIFF Plus format.

09:37:23 4 Then, both will have what they need. The
09:37:26 5 plaintiffs will have the native format material; the defendants
09:37:31 6 will have the opportunity to facilitate the use of it during
09:37:37 7 depositions and during trial.

09:37:38 8 With that information, they want to go back to
09:37:41 9 the drawing board and talk about it and see how they can come
09:37:44 10 up with something that satisfies both of their needs. That's
09:37:47 11 where we are with that issue.

09:37:50 12 MR. DAVIS: We are planning on having some discussions
09:37:53 13 further, and we'll report back to the Court. We understand
09:37:55 14 that the Court wants to make sure that documents are Bates
09:37:58 15 numbered is one of the big concerns.

09:38:01 16 THE COURT: Right.

09:38:01 17 MR. DAVIS: With respect to discovery, I've mentioned
09:38:04 18 that we've issued a first set of discovery requests for
09:38:08 19 production. That's outstanding.

09:38:09 20 We also provided to defendants some draft
09:38:14 21 30(b)(6) notices on corporate structure and insurance, and
09:38:18 22 we'll have further discussions with defendants on that.

09:38:21 23 With respect to Item 11, there is an outstanding
09:38:26 24 subpoena to the FDA. We have not received response from the
09:38:32 25 FDA yet, but we will report as time goes on and as more

09:38:37 1 develops.

09:38:37 2 With respect to Number 12, science day, science
09:38:43 3 day has been scheduled by the Court to take place here in the
09:38:47 4 courtroom on June the 11th. This will be, as I call it,
09:38:53 5 Science Day 101, the basics.

09:38:56 6 THE COURT: Right. It's really for my benefit, so that
09:38:58 7 I'm able to get up to speed with the science of this particular
09:39:06 8 drug.

09:39:07 9 The parties have given to me a bibliography. I'm
09:39:13 10 working my way through it at this time. Science day, they will
09:39:19 11 bring in their experts, and the expert will, as Lennie says,
09:39:23 12 give me a 101, or even less than a 101, course in it.

09:39:28 13 They'll talk about it, use PowerPoints. They'll
09:39:31 14 have an opportunity for me to ask questions and get a better
09:39:38 15 feel for the science involved in this matter.

09:39:40 16 It's helpful to me because I'm going to be
09:39:42 17 dealing with *Daubert* motions, I'm going to be dealing with
09:39:47 18 motions to produce. Some background information, some basic
09:39:51 19 science will at least educate me as to the significance of the
09:39:55 20 material that I'll be dealing with.

09:40:03 21 It's more informal. I don't feel the need to
09:40:05 22 have a court reporter. I don't feel a need to swear in the
09:40:08 23 people. I'm not planning on having this in a telephone
09:40:19 24 presentation, with the exception of Judge New. I've talked
09:40:25 25 with Judge New. He's got an issue he was going to try to

09:40:29 1 resolve and be here, but if he can't be here, he may be able to
09:40:33 2 participate by phone. I will open the phone lines for him, so
09:40:38 3 that he also has access.

09:40:40 4 We're going to be working together on this. I
09:40:42 5 look forward to working with him. I know he'll be a great help
09:40:46 6 to me, and perhaps I can be of some modest help in his
09:40:49 7 situation. But that's what we have planned to do on science
09:40:54 8 day.

09:40:54 9 MR. DAVIS: The parties look forward to being able to
09:40:58 10 educate both Your Honor and Judge New. We hope that we'll put
09:41:02 11 on Science 101, that is, the basics. If the Court has
09:41:05 12 questions, we'll be prepared to answer any of the questions.

09:41:12 13 State/federal coordination. Dawn.

09:41:22 14 MS. BARRIOS: Good morning, Your Honor. Dawn Barrios
09:41:30 15 for the federal/state committee.

09:41:32 16 I'd like to report to those on the phone that
09:41:34 17 since our last status conference, you have appointed additional
09:41:39 18 members of the committee: Gibson Vance from Beasley Allen,
09:41:41 19 Mike Weinkowitz and Dan Gallucci. Both Mike and Dan are colead
09:41:43 20 in Philadelphia litigation.

09:41:47 21 I'd like to start out by thanking the defendants
09:41:50 22 for accommodating our request to put the information they are
09:41:53 23 giving us on an Excel spreadsheet, and they've very courteously
09:42:00 24 cooperated with that.

09:42:01 25 I also have received copies of all the

09:42:05 1 complaints. I'm going to put them in a Dropbox. If Your Honor
09:42:07 2 would like access to that, I would be happy to give it to you.
09:42:10 3 The federal/state committee is going to work on it to try to
09:42:13 4 find out who the attorneys are who have most of the cases.

09:42:23 5 Your Honor, what I've provided is just the Court
09:42:24 6 facts as of yesterday. There are basically six states that
09:42:27 7 have all of the cases outside of the MDL. You can see, the
09:42:31 8 bulk, obviously, are in Pennsylvania.

09:42:33 9 The number of cases filed outside the MDL are
09:42:37 10 202. The number of Xarelto users on those cases are 231, but
09:42:44 11 the total number of plaintiffs named are 339, because we did
09:42:48 12 find some bundled complaints in other jurisdictions.

09:42:52 13 I look forward to working with the members of the
09:42:55 14 committee and will be happy to answer any questions or do
09:42:59 15 anything that you would like.

09:43:00 16 Your Honor, I know Judge New is going to provide
09:43:02 17 his telephone number, and I will provide it to you, for the
09:43:06 18 science day. His next status conference is the 20th of this
09:43:11 19 month. BrownGreer is going to go make the presentation because
09:43:14 20 he's interested in the centrality as well.

09:43:14 21 THE COURT: Great.

09:43:14 22 MS. BARRIOS: Thank you.

09:43:20 23 MR. IRWIN: I was just going to add that California,
09:43:23 24 Illinois, and Missouri cases will be removed.

09:43:27 25 MS. BARRIOS: Okay. Thank you.

09:43:31 1 THE COURT: So there is just one case in California?

09:43:36 2 MS. BARRIOS: Yes, Your Honor.

09:43:37 3 THE COURT: That's going to be removed?

09:43:39 4 MR. IRWIN: Yes, sir.

09:43:40 5 THE COURT: Indiana, you said?

09:43:41 6 MR. IRWIN: Illinois, Your Honor.

09:43:44 7 THE COURT: Illinois, okay, and Missouri.

09:43:45 8 MS. BARRIOS: And Missouri.

09:43:47 9 MR. DAVIS: Just to follow up on some of those
09:43:49 10 statistics, yesterday when I checked with the Clerk's Office
09:43:53 11 here, I understand there are 586 open cases and about a dozen
09:44:00 12 transfers that were in process, just so the Court is aware.

09:44:04 13 THE COURT: All right.

09:44:05 14 MR. DAVIS: Proposed Case Management Order Number 2 is
09:44:11 15 Item 14 on the agenda. The parties will be in discussions and
09:44:14 16 have started discussions regarding Case Management Order
09:44:18 17 Number 2. It's just on the agenda, and that will be worked on.

09:44:22 18 I believe that's it for the report, Your Honor.

09:44:25 19 THE COURT: One thing that I do want to mention, I
09:44:28 20 mention it each time, if any lawyer who is not on a committee
09:44:32 21 wants to be on a subcommittee, they should contact liaison
09:44:38 22 counsel, and I expect them to be on a subcommittee. If they
09:44:43 23 want to do work, I want them to be able to do work.

09:44:48 24 So contact liaison counsel. If, somehow or
09:44:55 25 another, they seem to be busy or can't get to you, get to the

09:44:58 1 Court, and I'll make sure that they hear your interest in
09:45:01 2 participating in the case.

09:45:04 3 One thing that I'm conscious of in a case of this
09:45:07 4 sort, you have to have some structure. You have to have some
09:45:10 5 order in it. We have too many lawyers involved in the case.

09:45:13 6 One case that I'm handling now had 1,400 lawyers
09:45:17 7 involved in the case. This case is not that many lawyers, but
09:45:24 8 there are a lot of lawyers involved in the case. You can't
09:45:26 9 have everybody going in different directions. It doesn't work.

09:45:31 10 So you have to have some structure in it. I have
09:45:34 11 to appoint committees, but I don't want it to be a closed shop.
09:45:38 12 I don't think that's good for the process. I don't think
09:45:40 13 that's good for the institution. But it has to be coordinated
09:45:46 14 through liaison counsel.

09:45:49 15 This is mainly from the plaintiffs' standpoint.
09:45:51 16 The defendants have their own selected lawyers to handle the
09:45:59 17 case; but, the plaintiffs, any plaintiff lawyer who wants to
09:46:01 18 participate should feel that they're able to participate in
09:46:03 19 some form or fashion, as long as they work through the
09:46:05 20 committee system.

09:46:06 21 MR. DAVIS: The PSC met yesterday. In that meeting, we
09:46:13 22 specifically addressed committee structures. We are in the
09:46:15 23 process of honing in to finalize those lists and will be
09:46:18 24 reporting to Your Honor on that in due course.

09:46:21 25 THE COURT: My thought is that the PSC works through

09:46:29 1 subcommittees. We have a PSC member on a committee or is chair
09:46:31 2 of the committee, but subcommittees are formed with people who
09:46:33 3 are not on the PSC. They're formed with people who are
09:46:38 4 interested in working and are not on the PSC. They're able to
09:46:41 5 do that.

09:46:42 6 In the *Vioxx* case that I handled a while back, I
09:46:46 7 had only nine people on the steering committee, but I had 106
09:46:51 8 people doing work on it, so that they were able to do work,
09:46:55 9 make contribution and, of course, earn some fee on it also.

09:46:58 10 So I think that's important in the process.
09:47:01 11 Otherwise, this process just dies from problems.

09:47:01 12 MR. DAVIS: I think the only item remaining, Your
09:47:12 13 Honor, is the next status --

09:47:12 14 THE COURT: The next status conference is June 10th,
09:47:14 15 and the following status conference is July 9th.

09:47:25 16 MR. DAVIS: Thank you, Your Honor.

09:47:25 17 THE COURT: Let me see Lennie.

09:47:27 18 THE DEPUTY CLERK: All rise.

19 (WHEREUPON, the status conference was concluded at
20 9:47 a.m.)

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REPORTER'S CERTIFICATE

I, Cathy Pepper, Certified Realtime Reporter, Registered Merit Reporter, Certified Court Reporter in and for the State of Louisiana, Official Court Reporter for the 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/Cathy Pepper

Cathy Pepper, CRR, RMR, CCR
Certified Realtime Reporter
Registered Merit Reporter
Official Court Reporter
United States District Court
Cathy_Pepper@laed.uscourts.gov

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