

MINUTE ENTRY

FALLON, J.

DECEMBER 12, 2019

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: XARELTO (RIVAROXABAN) * MDL 2592
PRODUCTS LIABILITY LITIGATION *
* SECTION L
THIS DOCUMENT RELATES TO *
ALL CASES * JUDGE ELDON E. FALLON
*
* MAG. JUDGE NORTH

THIS DOCUMENT RELATES TO ALL CASES

A status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. At the conference, a representative from Plaintiffs’ Lead Counsel, Andrew Birchfield, Plaintiffs’ Liaison Counsel, Leonard Davis, and Defendants’ Lead Counsel, Susan Sharko, reported to the Court on the topics set forth in the Proposed Agenda. Other counsel present and participating in the status conference were Gerald Meunier and Brian Barr for Plaintiffs, and Chanda Miller, Steven Glickstein, Andrew Solow, and John Olinde for Defendants. Other Plaintiffs’ counsel who spoke during the conference are as follows: Benjamin McCorkle, Clint McGuire, Don Medley, Mike Love, Thomas Smith, Julie Raphael, Ken Stern, and Timothy Farris. This status conference was transcribed by Ms. Nichelle Wheeler, Official Court Reporter. Counsel may contact Ms. Wheeler at (504) 589-7775 to request a copy of the transcript.

A summary of the status conference follows.

JS10: 01:05

1. SETTLEMENT

On May 6, 2019, Plaintiffs' Leadership and Defendants entered into a final Master Settlement Agreement for resolution of Xarelto product liability claims covered by the agreement. The Master Settlement Agreement establishes the deadline for Plaintiffs to enroll in the Settlement Program on or before August 5, 2019. Enrollment in the program shall be done via BrownGreer MDL Centrality website at <https://www.mdlcentrality.com/mdl2592/>, and a copy of the Master Settlement Agreement is available on that website. Additional information regarding the Master Settlement Agreement will be available on the BrownGreer MDL Centrality website.

2. PRE-TRIAL ORDERS

Since the filing of Joint Report No. 41 on November 4, 2019, Rec. Doc. 17432, the Court issued Pretrial Order No. 33, a Qualified Protective Order Regarding Transmission and Receipt of Personal Health Information by the Lien Resolution Administrator in the *Xarelto* Settlement Agreement, Rec. Doc. 17494.

3. CASE MANAGEMENT ORDERS:

Since the filing of Joint Report No. 41 on November 4, 2019, Rec. Doc. 17432, the Court has not issued any new Case Management Orders. Defendants have submitted a proposed Case Management Order 13, which lays out a proposed scheduling order in compliance with the Order Regarding December 12, 2019 Monthly Status Conference. Rec. Doc. 17444. Parties are instructed to provide feedback, if any, by January 15, 2020.

4. COUNSEL CONTACT INFORMATION FORM

All counsel in the MDL are required to complete the Counsel Contact Information Form attached to PTO No. 4A, and forward it to the appropriate Liaison Counsel. This information must be kept current by counsel providing the information, and will be relied upon throughout the litigation.

5. PLAINTIFF AND DEFENDANT FACT SHEETS

On March 25, 2019, the Court issued Case Management Order No. 9 (Stay of Proceedings) [Rec. Doc. 12900]; Case Management Order No. 10 (Registration) [Rec. Doc. 12901] and 10(A) (Registration Forms) [Rec. Doc. 12905; and Case Management Order No. 11 (Docket Control Order) [Rec. Doc. 12902]. Section 2C of CMO 10 requires that all specific supplemental registration information must be submitted by June 8, 2019. Registration on the BrownGreer MDL Centrality website is required of all plaintiffs and not just plaintiffs who decide to enroll in the settlement program. Failure to timely provide the registration information may result in dismissal of the action with prejudice.

On May 24, 2019, the Court issued Case Management Order No. 12 [Rec. Doc. 13608]. The Stay in Case Management Order No. 9 is lifted as to all Plaintiffs who fail to submit a complete and fully executed Enrollment Election Form by August 5, 2019. These Plaintiffs must file and serve a completed Notice of Intent to Proceed through MDL Centrality on or before August 19, 2019. Failure to comply with the Order may result in dismissal of the action with prejudice.

On August 8, 2019, the Court issued Case Management Order No. 9A (Supplemental Stay of Proceedings) [Rec. Doc. 14875]; No. 11A (Supplemental Docket Control Order) [Rec. Doc. 14876] and 12A (Superseding Order on Notice of Intent to Proceed) [Rec. Doc. 14877]. CMO No. 12A excused from compliance only those plaintiffs who in good faith intended to enroll in the settlement by September 4, 2019, provided that they had requested from the Claims Administrator an extension until September 4, 2019 to complete their settlement paperwork.

On August 29, 2019, the Court issued Case Management Order No. 12B (Proceedings to Enforce CMOs 12 and 12A) [Rec. Doc. 15257] for plaintiffs who have not complied with CMO 12A to show cause on September 25, 2019 as to why their cases should not be dismissed with

prejudice for failure to comply. The Court subsequently updated the show cause date to October 7, 2019 [Rec. Doc. 16218].

6. SERVICE OF PROCESS ON DEFENDANTS

On March 16, 2018, the Court entered an Order [Rec. Doc. 8926] vacating and replacing the March 24, 2015 Order [Rec. Doc. 4217] and the February 15, 2018 Order [Rec. Doc. 8628] and relates to service of process, and addresses a filing backlog in the MDL over the last three months. For these backlogged cases, the March 16, 2018 Order extends the deadline for service of process, allowing the plaintiff-s, for that defendant to whom the summons was addressed, sixty (60) days from the date on which the Court issues the summons to serve that defendant. This extension only applies when the plaintiff presents or has presented the properly addressed summons to the clerk for signature and seal at the time of the filing of the complaint.

On May 7, 2019, the Court entered an Order [Rec. Doc. 13472] to address a backlog in the entry of Summons for recently filed cases. Cases that were already docketed in the MDL as of May 7, 2019 will have 75 days from that date to serve the Complaint with a Summons.

On June 20, 2019, the Court issued Pre-Trial Order No. 32 regarding service of process on Defendants [Rec. Doc. 14268]. On August 8, 2019, the Court issued Pre-Trial Order No. 32A, a superseding order on service of process on Defendants [Rec. Doc. 14878].

7. PRESERVATION ORDER

On May 4, 2015, the Court issued Pre-Trial Order No. 15 [Rec. Doc. 897], a Consent Order Regarding the Preservation of Documents and Electronically Stored Information. Pre-Trial Order No. 15 modifies paragraph 13 of Pre-Trial Order No. 1 relating to preservation of evidence. Further, the Court issued Pre-Trial Order No. 15B on October 21, 2015 [Rec. Doc. 1477] regarding the obligation of all parties to preserve voicemail, instant messages sent or received on an instant

messaging system, or text messages sent or received on a cellular phone, smartphone, tablet or other mobile device. Pre-Trial Order 15B vacated previously entered Pre-Trial Order 15A. [Rec. Doc. 1301]. On March 25, 2019, the Court issued Case Management Order 11 [Rec. Doc. 12902] which in Section II addresses the obligation of plaintiffs to preserve records relevant to their claims.

8. ORDER GOVERNING THE PARTIES' INTERACTIONS WITH MDL PLAINTIFFS' PRESCRIBING AND TREATING PHYSICIANS

On April 28, 2016, the Court entered Pre-Trial Order No. 28 [Rec. Doc. 3156] Regarding Contact with Physicians. On January 10, 2017, the Court entered Pre-Trial Order No. 28A [Rec. Doc. 5018] regarding the parties' interactions with MDL Plaintiff's prescribing and treating physicians for the four bellwether cases through end of trial and regarding the maintaining of a record by Plaintiffs' counsel of their contacts *ex parte* with physicians for each of the other 36 discovery pool cases.

On February 27, 2018, the Court entered CMO No. 6, which modifies Pre-Trial Order No. 28 to require, for those Plaintiffs selected in Wave 1 and Wave 2, joint scheduling of physician depositions, i.e. both parties will contact physician's office together for purpose of scheduling a date for deposition. Pre-Trial Order No. 28's record-keeping and disclosure provisions are extended to all Wave 1 and Wave 2 selected cases. On September 13, 2018, the Court entered the Joint Stipulated Order Addressing Order of Examination for Certain Prescribing and Treating Physician Depositions Pursuant to Case Management Orders Nos. 6 and 6A. [Rec. Doc. 10882].

On October 9, 2018, the Court entered Pretrial Order 28B, addressing the application of Pretrial Orders 28 and 28A regarding *ex parte* physician communication and retention of experts to the cases selected pursuant to Case Management Order 6.

9. **BELLWETHER CASES**

The following bellwether trials took place in the MDL:

- a. ***Joseph J. Boudreaux, Jr., et al. v. Janssen et al.*, Case No. 2:14-cv-02720**, which commenced in the Eastern District of Louisiana on April 24, 2017 and concluded on May 3, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7830). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7911).
- b. ***Joseph Orr, Jr., et al. v. Janssen et al.*, Case No. 2:15-cv-03708**, which commenced in the Eastern District of Louisiana on May 30, 2017 and concluded on June 9, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7829). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7912).
- c. ***Mingo v. Janssen Research & Development, LLC, et al.*, Case No. 2:15-cv-03367**, which commenced in the Southern District of Mississippi on August 7, 2017 and concluded on August 18, 2017, resulted in a verdict for the Defendants. Plaintiff's Motion for New Trial was denied on December 14, 2017 (Rec. Doc. 8145). Plaintiff filed a Notice of Appeal on January 12, 2018 (Rec. Doc. 8307). A Notice of Conditional Cross Appeal was filed by the Defendants on January 26, 2018 (Rec. Doc.8502).

On March 14, 2018, the United States Court of Appeals for the Fifth Circuit issued a Briefing Notice. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo filed their brief on April 23, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc. filed their brief on June 7, 2018. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo's Reply briefing and Response to the contingent Cross-Appeal is due July 9, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc.'s Reply briefing to the Appellants Cross-Appellees' Response to the contingent Cross-Appeal is due July 23, 2018. Appellants/Cross-Appellees filed a Motion

to Suspend Briefing, which was granted by the United States Fifth Circuit Court of Appeals on July 2, 2018 [Document: 00514537474], which directed the parties to notify the court immediately upon completion of the record. On September 19, 2018, the United States Fifth Circuit Court of Appeals directed the parties to file a motion to supplement the record on appeal and include all documents purported to be missing from the record. [Document 00514647196]. On January 11, 2019, the Fifth Circuit Court of Appeals advised that briefing is resumed and the Appellants/Cross-Appellees' brief is due on or before January 25, 2019 [Document: 00514792684].

The following bellwether case was voluntarily dismissed with prejudice:

Henry v. Janssen Research & Development, LLC et al., Case No. 2:15-cv-00224, Order signed on November 2, 2017 (Rec. Doc. 7943).

10. STATE/FEDERAL COORDINATION

Plaintiffs have appealed the judgments in favor of Defendants in *Hartman v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 160503416); *Russell et al. v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 150500362); and *Cooney et al. v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 160602012). All appeals have been stayed.

In accordance with Pre-Trial Orders No. 7 and 7A, as well as Case Management Order No. 1, PLC and DLC have had, and will continue to have, communications regarding the State Liaison Committee, as well as the status of coordination of MDL and state court actions. The parties will report to the Court on recent developments in state court cases.

11. NEXT STATUS CONFERENCE

The next monthly status conference is set for February 6, 2020 at 9:00 a.m. This status conference will be a telephone status conference for everyone except Plaintiffs' and Defendants' Lead and Liaison Counsel, and any Plaintiffs' counsel whose clients are opting out of the

settlement and wish to speak during the conference, who will appear in the Courtroom of Judge Eldon E. Fallon.

12. CMO 10 REGISTRATION

CMO 10 set forth the requirements and deadlines for registration for the settlement program. The Parties will update the Court on the status of registration and the need for any motion practice to enforce compliance with the Court Orders.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.