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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO *
(RIVAROXABAN) PRODUCTS *
LIABILITY LITIGATION * Docket No.: 14-MD-2592
* Section "L"
THIS DOCUMENT RELATES TO: * New Orleans, Louisiana
* April 24, 2018
A77 cases *
* * * * *

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

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19 Proceedings recorded by mechanical stenography, transcript
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1 additional 200 cases on April 30th. We discussed in chambers
2 that counsel for both sides will confer about presenting to you
3 some guidelines and factors to help shape that random selection
4 process.

5 **THE COURT:** Okay. When can you all get that to me?
6 Because my selection is due Monday, isn't it, Andy?

7 **MR. BIRCHFIELD:** Yes. We anticipate by the end of
8 the day on Friday, we should be able to meet and get with Jake
9 and with the Court to make sure that the criteria are
10 acceptable.

11 **THE COURT:** Okay.

12 **MR. MEUNIER:** Your Honor, there are some important
13 fact sheet deadlines I want to mention pursuant to CMO 6 and
14 those cases that have been selected for remand.

15 Specifically, for those cases which were
16 selected by the parties on April 16th, a complete plaintiff
17 fact sheet is due for each of those plaintiffs no later than
18 May 16th of 2018. And for those cases which the Court will
19 select randomly on April 30th, a complete fact sheet in those
20 cases for plaintiffs will be due no later than May 30th.

21 Otherwise, Pretrial Order 27, which shortened
22 the obligation of fact sheets to a core section, remains
23 applicable to all other plaintiffs. But for those selected for
24 remand, complete fact sheets are to be done by those dates.

25 **THE COURT:** Okay. I might say, just to put it in

1 perspective, we're at the point where the MDL transferee court,
2 we've tried three cases now, and we've done a considerable
3 amount of discovery. It's time for me to begin the process of
4 taking another step, and that is to send the cases back to the
5 transferor courts so they can begin trial in those particular
6 cases.

7 There are some cases, of course, and we'll visit
8 in a moment, in state court, but these are cases that have been
9 transferred to the federal court under the MDL 1407 concept,
10 and we've got to watch that it doesn't become a black hole and
11 it just stays here and festers and nothing gets done.

12 So once the transferee court does what they can
13 do to give the parties an opportunity to learn about the case,
14 common discovery, and then some trials so that they can see how
15 their cases proceed in trial, it then becomes the job to send
16 them back.

17 I'm trying to do it in sections. We have about
18 22,000 cases presently with the court, and they're coming in
19 maybe about 50 to 100 a month still. So we haven't exhausted
20 the supply yet. But rather than send all 23,000 or 22,000 of
21 them back, we're trying to do it in sections. This will give
22 me an opportunity to keep a hand in, and also to kind of have
23 some kind of orderly send back, so to speak.

24 We picked 400 each -- 400 from the plaintiffs,
25 400 from the defendants, 400 from the Court, but we divided

1 that into two sections, 200 each. So we're starting with the
2 200. Plaintiffs get to pick 200; defendants get to pick 200;
3 the Court picks 200 randomly from a select group. Then the
4 parties discover those particular cases, some fact-specific
5 discovery in those cases.

6 As I understand it, they agreed that this Court
7 will continue with supervising the discovery in those
8 particular cases. I'll be in touch with the parties as we get
9 through that discovery when they discuss the next wave or
10 potential wave of discovery or whether or not transferor courts
11 should do that or whether the transferee court should do it,
12 but we're in the process of doing it now.

13 **MR. MEUNIER:** That's correct, Your Honor. Just to
14 put a calendar time frame -- a further calendar time frame on
15 the process, the fact sheets are viewed really as a written
16 discovery predicate for the deposition discovery which will
17 follow in these cases. So I mention the deadlines for the
18 plaintiff fact sheets under CMO 6.

19 For the defendant fact sheets, those must be
20 completed no later than 60 days after the selection of a case.
21 So for purposes of those cases which are selected by the
22 parties on April 16th, the defendant fact sheets must be
23 completed by June 15th of this year. Then for those to be
24 randomly selected April 30th, the defendant fact sheets would
25 have to be completed by June 29th.

1 The importance of that is that last date
2 triggers a seven-month period for the discovery. So this
3 court, as you mentioned, will be looked to as the presiding and
4 overseeing court for purposes of discovery, which should begin
5 after the end of June and take seven months, concluding
6 sometime in January of 2019.

7 **THE COURT:** Okay. When we get to that, we probably
8 ought to meet and confer and talk about setting up Thursdays
9 every two weeks like we've done the last time. That has been
10 helpful to keep the cases moving.

11 **MR. MEUNIER:** I think that would be helpful, Judge.

12 **THE COURT:** We'll do it that way.

13 One thing to keep in mind from the plaintiff's
14 standpoint, you're going to have to be working on a trial
15 package so that when those cases go back, you give the trial
16 package to the other parties.

17 **MR. BIRCHFIELD:** Your Honor, we're in the process of
18 doing that now. We have a good portion of the trial package
19 ready. A key part is going to be the preservation depositions
20 of experts, and we're having discussions with the defendants
21 about working out that schedule. We know it will come later in
22 the discovery period for this wave 1, but we are in discussions
23 with the defendants about the timing of those depositions.

24 **THE COURT:** Okay. Susan?

25 **MS. SHARKO:** And just to supplement something

1 Mr. Meunier said about the defense fact sheet. The defense
2 fact sheet is predicated on the completion of the PFS, a
3 complete PFS. So we urge people to do a thorough PFS as soon
4 as they can so we can dive right into the DFS.

5 **MR. MEUNIER:** That's correct, Your Honor. It is a
6 predicate for the defendant fact sheets that the plaintiff fact
7 sheets be done timely. But it all builds up to that discovery
8 period I mentioned.

9 **THE COURT:** All right.

10 **MR. MEUNIER:** Your Honor, I want to mention in
11 Section 7 of the report, the reference to the preservation
12 order. Because under PTO 15B, there was a specific obligation
13 set forth with respect to voice mails and text messaging and
14 those sorts of social media things that deal with the use of
15 Xarelto in a given case. I just want to mention that that
16 order does pertain now to the plaintiff cases selected for the
17 discovery workup and remand process.

18 **THE COURT:** Okay.

19 **MR. MEUNIER:** Likewise, in Section 8, we talk about
20 the earlier order entered by the Court governing interactions
21 between plaintiffs in the MDL and treating and prescribing
22 physicians. CMO 6 did modify Pretrial Order 28 on that subject
23 to allow for the joint scheduling of physician depositions,
24 that is, both parties will contact the physician's office
25 together for the purpose of scheduling depositions. We think

1 it will greatly facilitate the process and keep us on schedule.

2 Section 9 refers to the three MDL bellwether
3 cases that were tried, the *Boudreaux*, *Orr* and *Mingo* cases.
4 Those cases have been consolidated for appeal purposes in the
5 Fifth Circuit. The plaintiff-appellant's consolidated briefs
6 in those three cases was filed yesterday, April 23rd. The
7 defendant-appellee's brief will be due in 30 days, that is, by
8 May 23rd.

9 This might be a good time for Jake to make a
10 report from BrownGreer --

11 **THE COURT:** Okay.

12 **MR. MEUNIER:** -- on MDL centrality.

13 **MR. WOODY:** Good morning, Your Honor. Jake Woody
14 from BrownGreer. I have a quick update for you on the
15 plaintiff fact sheets in this case.

16 So far we have 21,131 fact sheets submitted.
17 That's an increase of 506 since I last reported to you on this.
18 We have another 1,639 in progress, which gives us a total of
19 22,770 plaintiffs registered in our system. So that is -- as
20 you mentioned, this is a pretty steady case. The numbers
21 continue at a pretty standard pace.

22 Our average that we receive a month is 475,
23 although, in March of 2018, we did receive 551. And so far in
24 April, we have 305. So the pace of fact sheet filings is
25 steady and I think mirrors the pace of case filings.

1 **THE COURT:** Do you know where they came from? There
2 you go.

3 **MR. WOODY:** Yes, Your Honor. I do know where they
4 came from. We have plaintiffs from all 50 states. We have
5 five states with over a thousand. Texas is our highest
6 population with 1,753, followed closely by Florida with 1,734.
7 Then California, New York, and North Carolina all have over
8 1,000. Alabama has 991, so I suspect at the next report,
9 they'll be over 1,000 as well. And then we have all the way
10 down to the Virgin Islands, which has two plaintiffs, and all
11 the other states are somewhere in between those.

12 **THE COURT:** Okay. One thing, in most MDLs when you
13 get to this stage, the cases all go back at the same time. I'm
14 trying it a little different in this case for various reasons,
15 but, primarily, I don't think it's helpful to the system for me
16 to dump 23,000 cases into the federal system all at one time.
17 I don't think it's good for the parties either.

18 So when you all begin looking at the next wave,
19 you probably at least ought to give some thought to whether you
20 can kind of regionalize, as well as deal with the various
21 categories so that you're dealing with a section of the country
22 where witnesses can get to and you know what witnesses that
23 you're going to be using. That may be helpful to you. At
24 least talk about it. I'll get involved in it if need be.

25 As I understand it from Jake, we can do that

1 because he's got the ZIP codes on all of the people so we know
2 where they're from.

3 **MR. WOODY:** We do know where they're from and can
4 help with that, Your Honor.

5 **THE COURT:** Okay.

6 **MR. WOODY:** A few slides about our plaintiff
7 demographics and injuries. The largest age range we have is 70
8 to 79. 30 percent of the plaintiffs are in that age range. In
9 fact, 86 percent of all plaintiffs are over the age of 60.
10 These numbers are fairly steady. They do change as the case
11 continues, but this is an older population.

12 As usual, the largest injury is gastrointestinal
13 bleeding. 47 percent of all plaintiffs indicated that on their
14 fact sheet. That has been, I think, the largest category for
15 some years now, and I don't expect it to change. The
16 percentages might change slightly, but the large categories do
17 not.

18 And then, most common indication or reason for
19 taking Xarelto is reduction of the risk of stroke. 54 percent
20 of all plaintiffs list that as the reason that they took
21 Xarelto. Again, these are -- these have been the same for some
22 time, and I don't expect them to change despite the fact that
23 we receive a pretty large number of fact sheets every month.

24 That's my report. I have our Web site in here
25 for people who need to go on there and either have a new case

1 or they need to fill out the complete fact sheet. They can do
2 that at mdlcentrality.com. And if anybody needs help, they can
3 always e-mail us at mdlcentrality@browngreer.com.

4 **THE COURT:** Thank you, Jake.

5 **MR. WOODY:** Thank you.

6 **MR. MEUNIER:** Your Honor, I asked Jake if in future
7 reports, particularly after the April 30th selections are done,
8 he could include in his monthly report a subset profile of the
9 remanded cases, give that same information on the age and
10 state. That might be helpful for the parties and the Court.

11 **THE COURT:** Sure. Okay.

12 **MR. MEUNIER:** Your Honor, Section 10 of the joint
13 report on state/federal coordination just needs to be
14 referenced in order to alert the Court that the second
15 Philadelphia trial, the *Russel* case, is actually being argued
16 to the jury, we believe, today. So that case is concluding.

17 The next trial in Philadelphia will begin on
18 June 11th. It's the *Rush* case. And then the trial after that
19 in Philadelphia is the *Cooney* case, which begins on August 6th.

20 **THE COURT:** Okay. I've been in touch with Judge New,
21 and he's kept me advised of those cases. Hopefully, we'll see
22 what happens in that. Maybe I can help in some way.

23 **MR. MEUNIER:** Your Honor, after this status
24 conference, you'll hear oral argument on the discovery issues
25 arising out of your April 2nd, 2018 minute entry, which is

1 Record Doc. 9038, dealing with the *Ibanez* preemption motions
2 and the extent to which additional discovery is needed for the
3 Court to address those motions.

4 I believe the only other matter is for the
5 scheduling of the June status conference. The next status
6 conference is May 25th.

7 **THE COURT:** May 25th, and the June one is June 25th,
8 both at 9:00, and 8:30 for liaison counsel.

9 **MR. MEUNIER:** Thank you, Your Honor.

10 Anything further? Jim, do you have anything?

11 **MR. IRWIN:** No. Thank you, Your Honor.

12 **THE COURT:** Okay.

13 (WHEREUPON, the proceedings were concluded.)

14 *****

15 **CERTIFICATE**

16 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
17 for the United States District Court, Eastern District of
18 Louisiana, do hereby certify that the foregoing is a true and
19 correct transcript, to the best of my ability and
20 understanding, from the record of the proceedings in the
21 above-entitled and numbered matter.

22
23 s/Jodi Simcox, RMR, FCRR
24 Jodi Simcox, RMR, FCRR
25 Official Court Reporter