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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) \* 14-MD-2592  
PRODUCTS LIABILITY LITIGATION \*  
\* Section L  
\*  
Relates to: All Cases \* August 1, 2019  
\*  
\* \* \* \* \*

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

Appearances:

For the Plaintiffs: Herman Herman & Katz, LLC  
BY: LEONARD A. DAVIS, ESQ.  
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New Orleans, Louisiana 70113

For the Defendants: Irwin Fritchie Urquhart &  
Moore, LLC  
BY: KIM E. MOORE, ESQ.  
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For the Defendants: Chaffe McCall, LLP  
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Also Participating: Andy Birchfield, Esq.

1 Official Court Reporter: Toni Doyle Tusa, CCR, FCRR  
2 500 Poydras Street, Room B-275  
3 New Orleans, Louisiana 70130  
4 (504) 589-7778

5 Proceedings recorded by mechanical stenography using  
6 computer-aided transcription software.  
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1 PROCEEDINGS

2 (August 1, 2019)

3 **THE COURT:** Be seated, please.

4 Liaison counsel make their appearance.

5 First, call the case, Dean. I'm sorry.

6 **THE DEPUTY CLERK:** MDL 2592, *In re Xarelto Products*  
7 *Liability Litigation*.

8 **MR. DAVIS:** Good morning, Your Honor. Leonard Davis  
9 from the law firm of Herman, Herman & Katz, co-plaintiffs'  
10 liaison counsel.

11 **MS. MOORE:** Good morning, Your Honor. Kim Moore here  
12 for the Janssen defendants.

13 **MR. OLINDE:** Good morning, Your Honor. John Olinde  
14 for Bayer.

15 **THE COURT:** We have lead counsel on the phone also.  
16 What's the agenda, Lenny? A report on the  
17 settlement.

18 **MR. DAVIS:** Your Honor, there is a report on the  
19 settlement. Andy Birchfield is on the phone.

20 Just in brief, I want to remind people of CMO 10  
21 and CMO 12 and the August 5 election form deadline, which is  
22 just a few days away. I know Mr. Birchfield wants to speak  
23 about that.

24 **THE COURT:** Andy, why don't you give us a report.

25 **MR. BIRCHFIELD:** Thank you, Your Honor. We are very

09:04

1 pleased with the progress that is being made in the enrollment  
2 program so far. I want to compliment and thank the firms for  
3 the tremendous effort of getting claimants informed of the  
4 terms of the settlement and their participation in this  
5 settlement program. We are encouraged by the response and the  
6 effort. As Mr. Davis mentioned, the deadline for submitting  
7 enrollment packages is August 5, so that is Monday. We have  
8 seen the number of enrollment packages being submitted  
9 escalating as that deadline nears.

10 One of the things that is at play in this  
11 settlement program particularly, Your Honor, is this is an  
12 elderly population. The plaintiffs, by and large, are elderly  
13 and are battling a number of health issues. That makes it all  
14 the more imperative that we move the settlement program forward  
15 as expeditiously as possible. We are putting a full-court  
16 press to do that so that claimants can receive compensation at  
17 the earliest time possible.

18 **THE COURT:** Andy, why don't you talk about what  
19 efforts the PSC has made to communicate with the individuals or  
20 with their attorneys, seminars or anything of that sort.

21 **MR. BIRCHFIELD:** Yes, sir. We have hosted in  
22 different cities throughout the country conferences where we  
23 walk through with plaintiffs' counsel the terms of the  
24 settlement and what's necessary to participate in the  
25 settlement program. Usually every other week we have hosted

09:06

1 national phone conferences where we have received questions  
2 from plaintiffs' counsel or from their staff, and then we have  
3 walked through those questions dealing with the issues that are  
4 confronting plaintiffs' counsel. Those calls typically are  
5 about 45 minutes to an hour. We have done those throughout  
6 this enrollment period.

7 We are sending emails to plaintiffs' counsel  
8 addressing frequently asked questions that we are receiving  
9 pertaining to the settlement program. We are also working with  
10 BrownGreer, the claims administrator, to post responses to  
11 frequently asked questions on the plaintiffs' portal so lawyers  
12 have access to that.

13 Members of the PSC firms are staying in close  
14 contact with plaintiffs' counsel, addressing questions, working  
15 through any issues that they may be facing. BrownGreer, the  
16 claims administrator, also has a firm contact for each firm  
17 that has claimants registered in this program.

18 It has been an enormous effort. I'm really  
19 proud to be a part of the effort that has been undertaken here  
20 to communicate, facilitate, and just help in any way that we  
21 can the plaintiffs that are involved in this program and  
22 plaintiffs' counsel. We have received a tremendous response  
23 from the plaintiffs' firms that are involved here. I've been  
24 impressed with the way that firms have engaged and given  
25 serious attention to this effort.

09:09

1 August 5 is Monday. It's a critical, critical  
2 deadline. It's important that we hold that deadline so that we  
3 can have this program completed in the most expeditious way  
4 possible.

5 Your Honor, with this client population being  
6 elderly, we also note that that can be challenging. There are  
7 situations -- we have been informed of a few already. There  
8 may be some isolated situations where additional time may be  
9 needed for a specific claimant. The settlement program allows  
10 for a possible extension. If the parties agree, it can be  
11 extended.

12 We are willing to entertain requests for a  
13 specific claimant if the plaintiffs' firm will submit the  
14 reasons that it is needed for a specific claimant. If they  
15 will submit that request to BrownGreer, then the parties will  
16 look at that and they will entertain that. It is a matter  
17 where the granting of an extension for any individual has to be  
18 carefully considered and weighed because an extension will slow  
19 down the process. We are open to entertaining those, but it  
20 must be made on behalf of a specific claimant and submitted to  
21 BrownGreer in writing through their portal, and the parties  
22 will entertain that.

23 **THE COURT:** The Court is aware of it and has  
24 monitored a lot of this communication. The Court is satisfied  
25 with the efforts of the PSC as well as the attorneys that they

09:11

1 have given full notice both to the attorneys representing the  
2 census of the litigation as well as the individual claimants  
3 who make up this census. It's been fair. We have been down  
4 the road a long time now. We have tried a number of cases in  
5 both Louisiana as well as in Mississippi and everybody has full  
6 notice of this.

7 The Court is going to enforce deadlines. If you  
8 are interested in participating, August 5 is the date. If you  
9 are not interested in participating, I understand that, but  
10 your case will be dismissed for failure to comply with the  
11 Court's orders.

12 Everyone, if you take a look at it, if you are  
13 interested in participating, fine, participate. If you don't  
14 want to mess with the case at all, you want to give up on it,  
15 I'll entertain that also. I will dismiss the case and you will  
16 have no further recourse in this particular matter. August 5  
17 is the deadline, so everybody ought to do whatever they need to  
18 do to make that deadline work.

19 Anything else?

20 **MR. DAVIS:** Your Honor, there are a couple of other  
21 matters. One is the issue of filing of dismissals that have  
22 recently been done. I want to remind individuals that if they  
23 are not pursuing a case and they desire to dismiss a case, then  
24 they must comply with the Federal Rules and file that motion to  
25 dismiss here in this Court.

09:12

1                   However, separate and apart from that, there are  
2                   dismissals that are in connection with the settlement program  
3                   and those are not -- and I repeat -- not to be filed in the  
4                   Court. Those go to BrownGreer in connection with the  
5                   settlement program. I want individuals to be clear on that so  
6                   that we don't tie up the Court's system with the filing of  
7                   those matters.

8                   **THE COURT:** If anybody has any questions about that,  
9                   contact liaison counsel, and they will discuss it with you and  
10                  resolve any conflicts you have.

11                  **MR. BIRCHFIELD:** Your Honor, if I may speak to that  
12                  for just a second.

13                  **THE COURT:** Go ahead, Andy.

14                  **MR. BIRCHFIELD:** We have been notified that several  
15                  firms inadvertently or mistakenly filed those stipulations of  
16                  dismissal on behalf of claimants that are choosing to  
17                  participate in the settlement program. With the defendants'  
18                  cooperation, we have encouraged that they seek to withdraw  
19                  those stipulations of dismissal because for a claimant that is  
20                  participating in the settlement program, those stipulations of  
21                  dismissal should be submitted to BrownGreer and held in escrow  
22                  until the settlement program becomes effective.

23                  One reason that that is so important is for us  
24                  to be able to have an accurate accounting. Stipulations of  
25                  dismissal that have been filed since the announcement of the

09:14

1 settlement fall into two groups. There is a significant number  
2 of claimants, as the Court referenced a minute ago, that just  
3 choose no longer to participate. There may be many different  
4 reasons for that, but they choose no longer to pursue their  
5 claim. For those claimants, a stipulation of dismissal with  
6 prejudice should be filed with the Court so that those cases  
7 are cleared from the docket. But the claims where the  
8 plaintiff is choosing to participate in the settlement program,  
9 those do not need to be filed at this point. Those need to be  
10 submitted to BrownGreer.

11 We have addressed that issue recently in one of  
12 the plaintiffs' conference calls available to all plaintiffs'  
13 lawyers across the country and through email. We wanted to  
14 reiterate that at the status conference this morning,  
15 Your Honor, as well.

16 We are sending another email asking lawyers to  
17 let us know if they filed stipulations of dismissal for  
18 claimants that are participating in the settlement program so  
19 we can have an accounting and we can work with the defendants  
20 and BrownGreer to get that cleared up. It's important that we  
21 get a response for claimants that did mistakenly submit a  
22 stipulation of dismissal with the Court.

23 **MR. DAVIS:** I remind individuals on this call that if  
24 there are any questions whatsoever with respect to the election  
25 form deadline, the August 5, or dismissals, they can reach out

09:16

1 and call any of the members of the plaintiff executive  
2 committee. We are all available and we can be reached either  
3 by email or by phone to answer questions.

4 The final matter that I have, Your Honor, is one  
5 that was brought to our attention by the clerk of court, who  
6 has advised us that there are still some individuals that  
7 haven't paid filing fees in a number of cases, in particular  
8 some of those cases that were in the bundled cases early on.

9 I remind individuals that there is a pretrial  
10 order specifically that addresses the filing fee and the fact  
11 that that is due. If that fee has not yet been paid, I  
12 encourage those individuals to address that immediately and pay  
13 that filing fee promptly. Remember that cases can't go through  
14 the settlement program and be finalized or dismissed without  
15 the payment of that fee to the Court.

16 **THE COURT:** We have given people an opportunity to  
17 delay the fee, but not to avoid the fee. I've done everything  
18 possible to make it easier for the plaintiffs to get into this  
19 litigation and participate. But if they are out of the  
20 litigation, either by way of settlement or by way of dismissal  
21 of their claims, they still owe a filing fee. I'm looking to  
22 the lawyers who represented those individuals as the party  
23 responsible for paying the filing fee. If you want to  
24 participate, continue to participate as an attorney in this  
25 Court, then you need to follow the rules and pay the

09:18

1 appropriate amount.

2 **MR. DAVIS:** Your Honor, that's all that I have on the  
3 agenda. I don't know if defense counsel has something.

4 **THE COURT:** John, anything?

5 **MR. OLINDE:** The next status conference.

6 **THE COURT:** The next status conference is  
7 September 12 at 9:00 a.m. The liaison counsel I look to be  
8 present in the court. The PSC and other members who wish to  
9 participate can participate on the phone unless there's some  
10 problem that requires their presence. We will set it as a  
11 phone conference at this time for everyone other than the  
12 liaison counsel.

13 **MR. DAVIS:** Thank you, Your Honor.

14 **MR. OLINDE:** Thank you, Your Honor.

15 **THE COURT:** Thank you, folks. Thank you on the  
16 phone.

17 **MR. BIRCHFIELD:** Thank you, Your Honor.

18 **THE COURT:** I appreciate it, Andy.

19 Court will stand in recess.

20 (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