

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

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IN RE: XARELTO (RIVAROXABAN)  
PRODUCTS LIABILITY LITIGATION

Civil Action No. 14-MD-2592  
Section "L"  
New Orleans, Louisiana  
December 12, 2019

THIS DOCUMENT RELATES TO VARIOUS CASES  
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TRANSCRIPT OF STATUS CONFERENCE  
HEARD BEFORE THE HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

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**P R O C E E D I N G S**

(Call to order of the court.)

09:00:57AM 3 THE COURT: Good morning, ladies and gentlemen. Let's call  
09:00:59AM 4 the case.

09:01:00AM 5 THE CASE MANAGER: MDL No. 2952, *In Re: Xarelto*  
09:01:03AM 6 *Products Liability Litigation.*

09:01:05AM 7 THE COURT: Liaison counsel, make their appearance  
09:01:09AM 8 for the record, please.

09:01:12AM 9 MR. DAVIS: Good morning, Your Honor, Leonard Davis  
09:01:14AM 10 from the law firm of Herman, Herman & Katz, plaintiffs'  
09:01:18AM 11 co-liaison counsel.

09:01:20AM 12 MR. OLINDE: Your Honor, John Olinde for liaison  
09:01:24AM 13 counsel for the Bayer defendants. Kim Moore gives her  
09:01:27AM 14 apologizes for not being here today.

09:01:29AM 15 THE COURT: This is our monthly status conference.  
09:01:31AM 16 What I do in these status conferences, is that three days  
09:01:36AM 17 before the status -- every month, I have a status conference.  
09:01:40AM 18 I open the status conference to telephone individuals who  
09:01:45AM 19 wish to be on to monitor this. Oftentimes, state judges  
09:01:53AM 20 monitor it so they know what's happening in my court so it  
09:01:57AM 21 can be of assistance to their court. We work very closely  
09:02:01AM 22 together, and that's one of the things we do with the status  
09:02:04AM 23 conferences.

09:02:04AM 24 I also create a web page. I put everything on the  
09:02:08AM 25 web page, including the transcript of this conference in the

09:02:12AM 1 event people cannot be here, they know what's happening. But  
09:02:16AM 2 two days before the conference is set, I receive from the  
09:02:20AM 3 parties a proposed agenda. Half an hour before the status  
09:02:26AM 4 conference, I meet with the liaison counsel and lead counsel  
09:02:33AM 5 for both sides to discuss the proposed agenda. Sometimes I  
09:02:37AM 6 reshape it and things that are No. 1, I put No. 3, other  
09:02:42AM 7 things I add to the agenda. I've had that meeting today with  
09:02:49AM 8 liaison and lead for both sides and discussed with them the  
09:02:54AM 9 proposed agenda.

09:02:55AM 10 We'll take it in the order presented with the  
09:02:59AM 11 exception that I will be hearing the motions after the  
09:03:04AM 12 proposed agenda and we'll take it from the top in the  
09:03:09AM 13 beginning. Let me hear from liaison counsel.

09:03:15AM 14 MR. DAVIS: Thank you, Your Honor. This is Joint  
09:03:16AM 15 Report No. 42, and it is the last report of the year and I  
09:03:21AM 16 begin by wishing you and your entire staff and everyone here  
09:03:25AM 17 a happy holiday season.

09:03:27AM 18 THE COURT: Same from us.

09:03:29AM 19 MR. DAVIS: I hope it's a good new year for everyone.

09:03:32AM 20 Your Honor, there are a number of items on the Joint  
09:03:38AM 21 Report and there are also several items that will occur after  
09:03:40AM 22 the Joint Report. There are three particular items that will  
09:03:45AM 23 be dealt with following the status conference. One is a  
09:03:48AM 24 motion by Mr. Love. The other is CMO 12 issues, and the  
09:03:55AM 25 third is an individual motion to reinstate. So all of those

09:04:01AM 1 will occur after the status conference is over as I  
09:04:05AM 2 appreciate.

09:04:06AM 3 With respect to the number of items in the joint  
09:04:09AM 4 report, the first item for discussion is the settlement, and  
09:04:13AM 5 Mr. Birchfield and Ms. Sharko are here to address issues if  
09:04:19AM 6 there are anything that the Court specifically wants with  
09:04:24AM 7 respect to settlement.

09:04:25AM 8 MR. BIRCHFIELD: All right. Good morning, Your  
09:04:27AM 9 Honor. Just a brief update on where we stand with the  
09:04:29AM 10 settlement program. The settlement, the settlement program,  
09:04:31AM 11 that offer was announced on March 25th, and we had an  
09:04:36AM 12 enrollment period that was initially August the 5th and that  
09:04:39AM 13 was extended per terms of the agreement to September the 4th.  
09:04:44AM 14 That enrollment, that enrollment period expired there.  
09:04:49AM 15 There's a 60-day window for BrownGreer, the claims  
09:04:54AM 16 administrator, to review the data and prepare a report to the  
09:04:59AM 17 defendants and the defendants now have until December  
09:05:02AM 18 the 18th to -- to determine whether there's an opportunity  
09:05:06AM 19 for them to exercise their walkaway rights.

09:05:10AM 20 The terms of the settlement agreement require certain  
09:05:14AM 21 participation thresholds be met, and so while we're not in a  
09:05:18AM 22 position to say officially, because I can only see the data  
09:05:23AM 23 from my -- my vantage point, the defendants have the  
09:05:26AM 24 opportunity to vet all of the data up until December  
09:05:30AM 25 the 18th. But the overwhelming response of the plaintiffs is

09:05:34AM 1 in favor of this settlement agreement. We're at  
09:05:37AM 2 approximately 99 percent participation of the 20 -- nearly  
09:05:44AM 3 29,000 eligible -- eligible claimants. There are different  
09:05:48AM 4 categories, and I'm confident that -- that by December  
09:05:52AM 5 the 18th, we will -- we'll be in a place where it is shown  
09:05:56AM 6 that we have met all of the thresholds here.

09:05:59AM 7 So I'm very pleased to report to the Court that the  
09:06:05AM 8 settlement program is advancing favorably and efficiently,  
09:06:09AM 9 Your Honor.

09:06:10AM 10 THE COURT: All right. This is an opt-in program.  
09:06:12AM 11 People have an opportunity to opt in. If they wish to opt  
09:06:15AM 12 in, they can do so. If they don't wish to opt in, they need  
09:06:20AM 13 not opt in, and 99 percent of the census has agreed to now  
09:06:26AM 14 opt in. Is that what you're telling me?

09:06:28AM 15 MR. BIRCHFIELD: Yes, Your Honor.

09:06:29AM 16 THE COURT: Anything from the defendants?

09:06:31AM 17 MS. SHARKO: No, Your Honor.

09:06:32AM 18 THE COURT: All right. Let's go to the next item.

09:06:35AM 19 MR. DAVIS: Your Honor, Item No. 2 is a little  
09:06:38AM 20 overlap with Item No. 4, specifically with respect to CMO 11.  
09:06:47AM 21 There's a report with respect to compliance and documents  
09:06:54AM 22 that are to be served under CMO 11, which are obligations  
09:07:00AM 23 pursuant to the Court's order, and I remind individuals, when  
09:07:03AM 24 they do that, the Court has used MDL Centrality, which is  
09:07:10AM 25 where those documents are.

09:07:11AM

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I think Ms. Miller is prepared -- Ms. Sharko is

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prepared to address to CMO 11.

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THE COURT: Let me mention that. In these cases, I

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found over the years that the traditional discovery devices

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have to be tweaked a bit. One of the discovery devices is

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interrogatories. They simply do not work in an MDL

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proceeding. The reason they don't work is that -- generally

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questions asked by a lawyer and questions answered by a

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lawyer, and in that type situation, the lawyer who is asking

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the questions wants everything from the beginning of time and

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the person answering the question, the lawyer answering the

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question, doesn't want to answer anything. So it generates a

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lot of motions and that slows up matters in MDL proceedings.

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So we don't do interrogatories. Instead, we have fact

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questions and we have other devices requiring both sides to

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answer certain questions and that goes out and the parties

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have an opportunity to answer the questions. And if they

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don't answer the questions, then I rule them into the court

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to ask why they haven't answered the question. If they don't

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have any reason or the reason is not appropriate, I dismiss

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the case. And we've dismissed approximately 12,000 -- about

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2,000 cases thus far, and I'll continue to dismiss it.

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I want to give people an opportunity to answer the

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questions, but they have a duty to answer. And if they don't

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answer the questions, don't do anything to move the

09:09:01AM 1 litigation, then I have no alternative but to dismiss the  
09:09:09AM 2 case.

09:09:09AM 3 Let me hear from the parties on CMO 11.

09:09:12AM 4 MS. SHARKO: Thank you, Judge.

09:09:13AM 5 CMO 11 for those who are relatively new to this  
09:09:17AM 6 spells out we think clearly and unequivocally what the  
09:09:23AM 7 requirements are for people to prepare their cases because  
09:09:26AM 8 that's the next phase of the litigation is preparation of the  
09:09:29AM 9 individual cases that are left. And so there's a summary of  
09:09:32AM 10 CMO 11 on Page 4 of the agenda.

09:09:35AM 11 In addition, the parties jointly put together what I  
09:09:40AM 12 think is a really easy and clear summary of the CMO 11  
09:09:45AM 13 deadlines and obligations which Your Honor has posted on the  
09:09:50AM 14 court's website. So I won't take the time to go through all  
09:09:56AM 15 of the requirements here, but those are several good  
09:09:59AM 16 resources to see hear what's required under CMO 11.

09:10:04AM 17 THE COURT: Why don't you just summarize what type of  
09:10:06AM 18 information it is first we're talking about.

09:10:09AM 19 MS. SHARKO: Sure. So people have to pay their  
09:10:11AM 20 filing fees. People have to serve document preservation  
09:10:17AM 21 notices by certified mail to healthcare providers. Virtually  
09:10:22AM 22 no one has done that. And I'll go through the law firms in a  
09:10:25AM 23 minute.

09:10:26AM 24 And that requirement, I have to say, is as important  
09:10:30AM 25 for the plaintiffs as it is for the defendants. Because



09:10:33AM 1 hospitals don't -- hospitals have strict and doctors have  
09:10:37AM 2 strict record retention policies. And what I'm seeing in  
09:10:40AM 3 another MDL now where the plaintiffs didn't want to do the  
09:10:45AM 4 preservation notice, people in 2019 who want to litigate  
09:10:49AM 5 their cases have no medical records. So it really behooves  
09:10:54AM 6 the plaintiffs to get those notices out.

09:10:58AM 7 THE COURT: Yeah. And the same way with the paying.  
09:10:59AM 8 I recognize at the outset that sometimes parties have  
09:11:02AM 9 difficulty initially getting into the lawsuit, paying \$400.  
09:11:09AM 10 That sometimes is a problem, and I want to make sure that  
09:11:12AM 11 people have an opportunity to get into the lawsuit. And so I  
09:11:16AM 12 cut some slack there and allow for that to be delayed, but it  
09:11:25AM 13 comes a time when I can't delay it any longer. And the  
09:11:29AM 14 parties are in the lawsuit, they have monitored it over the  
09:11:34AM 15 years, they know what the lawsuit is about, and it's now time  
09:11:38AM 16 for them to pay their fees. So I have to insist at that  
09:11:43AM 17 point that the fee be paid. If it's not paid, then I have no  
09:11:48AM 18 choice but to dismiss the case.

09:11:50AM 19 MS. SHARKO: CMO 11 further provides that the  
09:11:53AM 20 defendants be given a list of healthcare providers with names  
09:11:58AM 21 and addresses that's described in the order. They have to  
09:12:01AM 22 serve an affidavit of compliance that's described in the  
09:12:05AM 23 order. The plaintiffs have to give the defendants the  
09:12:07AM 24 medical records they've collected and pay for the cost of  
09:12:12AM 25 additional medical records as set forth in the order.

09:12:18AM 1 And then in lieu of interrogatories, the plaintiffs  
09:12:20AM 2 have to serve a fully complete and verified short form  
09:12:24AM 3 plaintiff fact sheet, produce all the documents and medical  
09:12:30AM 4 records requested, serve a complete and verified patient  
09:12:33AM 5 profile consent form, and produce those medical records.

09:12:39AM 6 And then given where we are in the litigation, the  
09:12:44AM 7 Court has ordered the plaintiffs to serve a case-specific  
09:12:48AM 8 Rule 26(a)(2) report from a licensed physician qualified to  
09:12:54AM 9 render a specific causation opinion and who offers a specific  
09:12:58AM 10 causation opinion to a reasonable degree of medical  
09:13:01AM 11 probability that the event was caused by taking Xarelto as  
09:13:05AM 12 directed.

09:13:06AM 13 So far, we've only gotten one such report. It wasn't  
09:13:12AM 14 signed. It wasn't dated. And it was written by a doctor who  
09:13:16AM 15 apparently practices medicine in India. And we'll get to  
09:13:20AM 16 that case later this morning, but that's to me is a good  
09:13:24AM 17 example of a report that does not meet the requirements of  
09:13:27AM 18 the order.

09:13:27AM 19 THE COURT: As an MDL court, my job is to deal with  
09:13:33AM 20 the preliminaries of the litigation, to deal with discovery.  
09:13:38AM 21 I also attempt to give the litigants on both sides of the V  
09:13:46AM 22 the opportunity to see and know their case. One way,  
09:13:49AM 23 obviously, they begin to know their case and know the other  
09:13:53AM 24 side is by discovery. We deal with that. And then after the  
09:14:00AM 25 discovery process has gone along, it's time for me then to

09:14:05AM 1 give the parties an opportunity to further view their case,  
09:14:10AM 2 view the case, view the issues outstanding, view each side by  
09:14:16AM 3 trials.

09:14:17AM 4 We had about six trials in this particular case. The  
09:14:20AM 5 parties who participated in the trials and those who have not  
09:14:27AM 6 participated in the trials will have an opportunity to look  
09:14:30AM 7 at the records and see what has transpired. Those who have  
09:14:36AM 8 participated in the trials know what has happened, know what  
09:14:41AM 9 witnesses have testified, know the basis of the litigation,  
09:14:45AM 10 and that gives the parties from each side an opportunity to  
09:14:49AM 11 view and know their case so that they can make some reasoned  
09:14:54AM 12 decision as to whether or not to globally resolve the case.  
09:15:00AM 13 That's where we've been for the last number of years.

09:15:03AM 14 I've tried cases here. I've even moved one of the  
09:15:06AM 15 cases to Mississippi to give the opportunity -- give the  
09:15:09AM 16 parties an opportunity to see what different juries do and  
09:15:13AM 17 how different juries handle the matters. This has been  
09:15:17AM 18 helpful, I think, for everybody. As a result of that, there  
09:15:24AM 19 has been some discussions about global resolution, global --  
09:15:27AM 20 a program has been put into effect. But it's an opt-in  
09:15:32AM 21 program. This is not a class action. There cannot be a  
09:15:36AM 22 class action in the Fifth Circuit for personal injury cases  
09:15:39AM 23 because there's no predominance. Rule 23 does not work for  
09:15:45AM 24 personal injury cases. There's too much difference. There's  
09:15:51AM 25 pre-existing conditions, there's the reaction to things,

09:15:55AM 1 there's too many separate issues that stop class actions. So  
09:16:02AM 2 these cases are handled as an MDL. But once the case is  
09:16:10AM 3 arrived at the point of where it is, I've done thousands of  
09:16:18AM 4 documents, hundreds and hundreds of depositions, six trials,  
09:16:23AM 5 about a thousand discovery motions. It's at the point now  
09:16:29AM 6 where those individuals who have not opted in to the  
09:16:33AM 7 settlement have an opportunity and a right to try their case.  
09:16:37AM 8 So I'm going to get ready to send them back to the many  
09:16:42AM 9 districts from which they have come. I've talked to the  
09:16:46AM 10 judges in those districts. They're ready to try the cases,  
09:16:50AM 11 hopefully in a matter of months.

09:16:52AM 12 The cases that are here, I will then try them, and  
09:17:00AM 13 they'll get preference because they've been waiting for a  
09:17:04AM 14 long period of time. So we're ready to go with those trials.  
09:17:07AM 15 I'll be sending them back. But in order to send them back, I  
09:17:10AM 16 have to get them to a point where they're trial ready, where  
09:17:18AM 17 they have the documents that they need, the documents that  
09:17:21AM 18 defendants need, the documents that plaintiffs need, to try  
09:17:26AM 19 their cases because they're going to be tried in a matter of  
09:17:29AM 20 months. And this is my last opportunity to get information  
09:17:33AM 21 from the individuals who will be trying the case. And that's  
09:17:41AM 22 what this is about, and that's what I owe my brothers and  
09:17:46AM 23 sisters in the courts that I will sending them back too.  
09:17:52AM 24 They get a package and it's ready for trial and they then  
09:17:57AM 25 proceed to trials, and hopefully it can be done in a matter

09:18:01AM 1 of months.

09:18:03AM 2 MR. DAVIS: Your Honor, on behalf of PSC, the PSC has  
09:18:08AM 3 spent a number of years and an expensive amount of time  
09:18:12AM 4 putting together a trial package. And I will report to Your  
09:18:16AM 5 Honor that several individuals have requested the trial  
09:18:19AM 6 package, and it has been made available to them. And as Your  
09:18:25AM 7 Honor would expect and just as a report, that trial package  
09:18:31AM 8 has extensive depositions/trial transcripts, motions, trial  
09:18:35AM 9 exhibits, discovery documents, and other things. And I  
09:18:38AM 10 expect that as we get into the motion later, Mr. Birchfield  
09:18:43AM 11 will expand upon that when he talks about some of the efforts  
09:18:48AM 12 that's been undertaken by the PSC, but that is available.

09:18:52AM 13 THE COURT: Okay.

09:18:52AM 14 MS. SHARKO: So on CMO 11, just wrapping up, there  
09:18:58AM 15 are roughly 290 plaintiffs who have chosen the litigation  
09:19:06AM 16 route and are subject to the requirements of CMO 11. None of  
09:19:10AM 17 those 290-some plaintiffs have complied with CMO 11. There's  
09:19:17AM 18 only a small number of law firms. If it's okay, I'll tell  
09:19:21AM 19 Your Honor who the law firms are --

09:19:21AM 20 THE COURT: Sure.

09:19:23AM 21 MS. SHARKO: -- and where they are. I don't know if  
09:19:24AM 22 the lawyers are in the courtroom or not. I think they were  
09:19:27AM 23 supposed to be here.

09:19:28AM 24 Bailey & Greer Firm.

09:19:34AM 25 MR. BIRCHFIELD: Your Honor, I think that Bailey &

09:19:37AM 1 Greer has now effectively entered all of their settlement --  
09:19:40AM 2 all of their cases into the settlement program. I think they  
09:19:43AM 3 are in compliance.

09:19:44AM 4 MS. SHARKO: Good.

09:19:46AM 5 Beacon Law Group, Beacon Legal Group.

09:19:50AM 6 THE COURT: Anybody from Beacon? Would you announce  
09:19:55AM 7 -- who are you, sir?

09:19:55AM 8 MR. MCCORKLE: Benjamin McCorkle.

09:19:59AM 9 THE COURT: Okay. Thank you very much, Benjamin.

09:19:59AM 10 MS. SHARKO: So Beacon Law Group has 12 opt-out  
09:20:03AM 11 plaintiffs. None of them are in compliance with CMO 11.  
09:20:05AM 12 None of them have served the preservation notice. None of  
09:20:10AM 13 them have served the required affidavits of compliance. 12  
09:20:13AM 14 have submitted the short form plaintiff fact sheets and we're  
09:20:18AM 15 reviewing those now and we'll let them know if we see  
09:20:21AM 16 deficiencies.

09:20:21AM 17 THE COURT: I want to give the parties an opportunity  
09:20:27AM 18 to do that, take a look at it, see if there's any problem.  
09:20:31AM 19 Bring it to me. I'll deal with it. But I need to get these  
09:20:34AM 20 cases trial-ready so that you're ready to try the case when  
09:20:37AM 21 you go back. I will instruct the liaison counsel for the  
09:20:43AM 22 MDL, the plaintiff liaison, the plaintiff lead, to make sure  
09:20:47AM 23 that you have the trial package or any material that you need  
09:20:51AM 24 that has been collected so far. I mean, we've taken a number  
09:20:55AM 25 of hundreds of depositions, there's trial transcripts. They

09:21:00AM 1 should be available to you. You haven't been a member, but I  
09:21:03AM 2 want to make sure that you have that available. But I want  
09:21:05AM 3 to get these matters in a packaged area so that when I send  
09:21:11AM 4 them back to the judge they're ready to go. So help me out  
09:21:17AM 5 on that.

09:21:19AM 6 MR. MCCORKLE: Just in terms of the compliance with  
09:21:22AM 7 CMO 11, they -- the preservation letters are now being -- my  
09:21:27AM 8 assistant is --

09:21:27AM 9 THE COURT: Good.

09:21:28AM 10 MR. MCCORKLE: -- today filing those.

09:21:30AM 11 THE COURT: That's one thing that's very important.  
09:21:32AM 12 I've found over the years -- and it's different in different  
09:21:39AM 13 states, but because it's different in each state, I'm very  
09:21:44AM 14 conscious of it. And they destroy those records. And when I  
09:21:46AM 15 talk to them, they have a reason. One of them told me,  
09:21:50AM 16 Judge, we've got 50,000 records a year. We can't store them  
09:21:55AM 17 anymore. So they just destroy them. So I try to get that  
09:22:00AM 18 done as quickly as possible so that you have the records that  
09:22:03AM 19 you're going to need to try the case.

09:22:05AM 20 MR. MCCORKLE: They have all been submitted to the  
09:22:09AM 21 doctors, and, in fact, one of the doctors got confused and  
09:22:12AM 22 sent us the records again. He had already gathered all the  
09:22:16AM 23 records and provided those.

09:22:17AM 24 THE COURT: Great.

09:22:17AM 25 MR. MCCORKLE: The causation letters are coming in

09:22:19AM 1 now, just got the first causation letter in a couple of days  
09:22:24AM 2 before this meeting.

09:22:26AM 3 THE COURT: And with the causation letter, let me  
09:22:28AM 4 make clear that I'm not Daubertizing the person. At this  
09:22:34AM 5 point, they just need to -- a doctor simply says it's  
09:22:37AM 6 connected so that you don't go to try the case and find out  
09:22:41AM 7 that it's not even connected by the lawsuit and you spend a  
09:22:44AM 8 ton of money doing this. These cases, we've tried six of  
09:22:48AM 9 them. Each of them I think the plaintiffs have -- it costs  
09:22:51AM 10 the plaintiffs \$1,000,000 to try the case. The defendants  
09:22:55AM 11 about \$2,000,000 to try the case. So that's important for  
09:22:59AM 12 you to know, that there's some basis for it.

09:23:05AM 13 MR. MCCORKLE: As far as any of the certifications, I  
09:23:09AM 14 thought I filed them all but if I missed one --

09:23:12AM 15 THE COURT: Well, get with defense counsel and work  
09:23:15AM 16 it out. I'm not going to -- just do the best you can and  
09:23:19AM 17 let's get this material to the defense counsel.

09:23:21AM 18 Thank you very much for being here. I appreciate it.

09:23:25AM 19 MR. MCCORKLE: Yes, Your Honor.

09:23:25AM 20 MS. SHARKO: Leonard Gaba, they have 18 opt out  
09:23:33AM 21 still. None of the plaintiffs have done anything required by  
09:23:36AM 22 CMO 11.

09:23:36AM 23 THE COURT: Anything, Andy, on that?

09:23:38AM 24 MR. BIRCHFIELD: Your Honor, based on our discussions  
09:23:40AM 25 with Mr. Gaba, his claimants, the claimants that he has been



09:23:45AM 1 able to communicate with are all in the settlement program.  
09:23:48AM 2 He advised us, I didn't know if he would be here today, but  
09:23:52AM 3 he advised us that the remaining -- the remaining claimants  
09:23:55AM 4 he has not been able to get to respond and he anticipates  
09:24:00AM 5 that those will be addressed in an upcoming order to show  
09:24:03AM 6 cause hearing because he can't get a response.

09:24:05AM 7 THE COURT: And I find that over the years. In this  
09:24:09AM 8 particular case we've had 30,000 claimants. But oftentimes a  
09:24:14AM 9 claimant will file and talk to their lawyer and sign the  
09:24:20AM 10 document of retainer, but somehow or another, they get on  
09:24:26AM 11 with their lives. And the lawyer either loses track of them  
09:24:31AM 12 or they lose track of the lawyer. You know, the lawyer, the  
09:24:35AM 13 responsibility of the lawyer is to keep in touch with the  
09:24:38AM 14 client, but the client also has a responsibility to keep in  
09:24:42AM 15 touch with the lawyer. They can't move without telling the  
09:24:44AM 16 lawyer and expect the lawyer to hire an investigator to go  
09:24:48AM 17 find them. They have a responsibility. But I've found over  
09:24:51AM 18 the years that sometimes people simply want to move on with  
09:24:55AM 19 their lives. It's not as bad as they thought, or it didn't  
09:25:01AM 20 work out or something else happened, and they just -- they  
09:25:03AM 21 don't want to do it anymore. And it's really not fair to the  
09:25:07AM 22 lawyer to do that without telling the lawyer, but somehow or  
09:25:11AM 23 another, that happens. And when it happens, I try to get  
09:25:15AM 24 notice to them, I do everything I possibly can to post it, to  
09:25:20AM 25 tell them to get with their lawyer, but when they don't do

09:25:24AM 1 it, I just -- they have a right to dismiss their case and so  
09:25:28AM 2 I dismiss their case.

09:25:30AM 3 MS. SHARKO: The MacArthur Heder Law Firm.

09:25:39AM 4 THE COURT REPORTER: I'm sorry, can you repeat that?

09:25:42AM 5 MS. SHARKO: The MacArthur Heder Law Firm.

09:25:42AM 6 MR. LOVE: We can't hear you back here, ma'am.

09:25:46AM 7 MacArthur Heder has 23 opt-outs.

09:25:49AM 8 MR. BIRCHFIELD: Your Honor, the report from

09:25:51AM 9 MacArthur Heder is that all of their claimants -- all of

09:25:54AM 10 their claimants are now into the settlement program have

09:25:56AM 11 submitted a valid stipulation of dismissal and the firm has

09:26:03AM 12 submitted the election forms.

09:26:03AM 13 THE COURT: Okay.

09:26:04AM 14 MR. BIRCHFIELD: They do not have any claimants

09:26:06AM 15 remaining to be litigated.

09:26:07AM 16 MS. SHARKO: Excellent.

09:26:09AM 17 Martinez & McGuire have 58 opt-out plaintiffs, none

09:26:14AM 18 of whom are in compliance with CMO 11. They owe preservation

09:26:20AM 19 notice statements; affidavits of compliance are due next

09:26:24AM 20 week; 57 of the 58 have submitted a short form PFS; and the

09:26:29AM 21 other document, they don't look compliant, and we will get in

09:26:34AM 22 touch with the plaintiffs with regard to deficiencies. We're

09:26:34AM 23 still going through those.

09:26:38AM 24 THE COURT: Okay.

09:26:38AM 25 MR. MCGUIRE: Yes, Your Honor, Clint McGuire, and we

09:26:42AM 1 got the letters actually sent out a couple of days ago, and I  
09:26:44AM 2 will be happy to sit down and discuss --

09:26:47AM 3 THE COURT: Meet with defense counsel. If you have  
09:26:50AM 4 any issues, I'll work with you on them, but let's do what we  
09:26:55AM 5 can to get in compliance.

09:26:56AM 6 MR. MCGUIRE: All right. Thank you, Your Honor.

09:26:59AM 7 THE COURT: Thank you for being here.

09:27:01AM 8 MS. SHARKO: The Medley Law Group has 20 people, none  
09:27:05AM 9 of whom are in compliance. They have submitted fact sheets,  
09:27:10AM 10 which we're going throughout now. The other requirements  
09:27:12AM 11 remain outstanding.

09:27:12AM 12 MR. MEDLEY: Yes, Your Honor, the same thing he said.  
09:27:15AM 13 We have sent out letters.

09:27:19AM 14 THE COURT: Would you give us your name for the  
09:27:22AM 15 record?

09:27:22AM 16 MR. MEDLEY: Don Medley.

09:27:22AM 17 THE COURT: John Medley, okay. All right, John.  
09:27:29AM 18 Thank you for being here.

09:27:29AM 19 MR. MEDLEY: It's Don.

09:27:30AM 20 THE COURT: Don, yeah. Okay. And if you need  
09:27:33AM 21 anything, get with defense counsel, clarify it and if you  
09:27:35AM 22 have any problems, get it to me and I'll deal with it. Thank  
09:27:39AM 23 you, Don.

09:27:39AM 24 MS. SHARKO: Mike Love & Associates has 27 people who  
09:27:43AM 25 want to litigate. All 20 have overdue preservation notices,

09:27:48AM 1 five owe fact sheets, 15 have submitted fact sheets, and  
09:27:54AM 2 we're reviewing them.

09:27:56AM 3 THE COURT: Okay.

09:27:56AM 4 MR. LOVE: Mike Love on behalf of Mike Love &  
09:28:00AM 5 Associates, Your Honor. It was my understanding from talking  
09:28:02AM 6 to my staff that we are not late on anything. It's certainly  
09:28:05AM 7 possible. There's been a lot of efforts. All my clients are  
09:28:10AM 8 new to the litigation. So it's a process to get the original  
09:28:12AM 9 records and then find out there's more records to continue  
09:28:15AM 10 that process. So we'll certainly work with defense counsel  
09:28:19AM 11 on that.

09:28:19AM 12 I would tell you, defense counsel and the court,  
09:28:22AM 13 there's probably I think six or so. Your number is higher  
09:28:26AM 14 than mine, because there's six or seven or so that at least  
09:28:30AM 15 we've been through the process of what you just described,  
09:28:32AM 16 Your Honor, they're gone. And some of them we identified,  
09:28:36AM 17 they didn't even take Xarelto. But I'm stuck because I filed  
09:28:41AM 18 a case at the very beginning, so we'll go through the  
09:28:43AM 19 process.

09:28:44AM 20 THE COURT: Make sure you've got some preservation  
09:28:48AM 21 because when you get into it sometimes late, they don't tell  
09:28:51AM 22 you the documents that you need and then when you try to go  
09:28:57AM 23 to them to get it, they've been just, you know, destroyed so  
09:29:01AM 24 to speak. And we all thought that when things went  
09:29:06AM 25 electronic they would be forever, but we're finding more and

09:29:10AM 1 more that they don't -- they don't keep them forever. They  
09:29:14AM 2 just wipe them out.

09:29:16AM 3 MR. LOVE: And if I can, because it's directly on  
09:29:19AM 4 that point, Judge, one of the problems we got with the  
09:29:22AM 5 affidavit, everybody on this side of the bar, is the  
09:29:25AM 6 affidavits -- it's drafted and we're required to sign, says  
09:29:30AM 7 the client is swearing that they know they've got all the  
09:29:34AM 8 records. Well, as the court knows, nobody knows that and  
09:29:37AM 9 these clients we're ordering the first and we find more and  
09:29:40AM 10 more and more. And we're in that process right now. So we  
09:29:43AM 11 can give the affidavit, but I'm alternating affidavit to say  
09:29:46AM 12 to the best --

09:29:46AM 13 THE COURT: To the best of my knowledge.

09:29:48AM 14 MR. LOVE: -- of my knowledge, that's all I know  
09:29:49AM 15 about.

09:29:49AM 16 THE COURT: Yeah, that's fair. I think that's fair.  
09:29:52AM 17 It's to the best of your knowledge, but the point is, we need  
09:29:56AM 18 the material.

09:29:57AM 19 MR. LOVE: Absolutely.

09:29:58AM 20 THE COURT: Okay.

09:30:00AM 21 MS. SHARKO: The Pierce Skrabanek Law Firm has one  
09:30:05AM 22 opt-out client. I don't know if they're here. This  
09:30:08AM 23 particular client had been represented by two or three  
09:30:11AM 24 additional law firms. Those other law firms have now  
09:30:16AM 25 dismissed the cases for this particular plaintiff leaving the

09:30:22AM 1 Pierce -- the Pierce Law Firm as the lawyer as the client.

09:30:24AM 2 MR. SMITH: Your Honor, Thomas Smith. I've been  
09:30:27AM 3 speaking with Sophia Bruera as part of the firm. That's the  
09:30:32AM 4 client I believe you're talking about and I've been in  
09:30:34AM 5 communication with them about that.

09:30:36AM 6 THE COURT: All right. Thank you, Tom.

09:30:40AM 7 MS. SHARKO: So hopefully they'll get in compliance  
09:30:43AM 8 promptly.

09:30:44AM 9 Next, we have the Seaton & Bates Law Firm. They have  
09:30:48AM 10 42 plaintiffs, none of whom are compliant, although they have  
09:30:52AM 11 submitted fact sheets which we're now going through.

09:30:56AM 12 THE COURT: Okay.

09:30:57AM 13 MR. SMITH: Thomas Smith, again, Your Honor. And  
09:31:01AM 14 like everyone else has said, we'll get with defense and work  
09:31:05AM 15 on it.

09:31:05AM 16 THE COURT: All right. Fine.

09:31:07AM 17 MS. SHARKO: And I would just note for this  
09:31:08AM 18 particular law firm, there are large sections of the fact  
09:31:12AM 19 sheet where the questions just weren't answered, and all the  
09:31:16AM 20 questions need to be answered. We've litigated these forms,  
09:31:20AM 21 presented them to the court, and so we do need answers.

09:31:22AM 22 THE COURT: Let's meet -- meet with Tom at some time  
09:31:26AM 23 and get some clarification on it. If you have any issues,  
09:31:29AM 24 I'll deal with them.

09:31:30AM 25 MS. SHARKO: Thank you.

09:31:31AM 1 The Sobo & Sobo Law Firm has 19 opt-out plaintiffs  
09:31:39AM 2 who are not in compliance. They have submitted fact sheets,  
09:31:42AM 3 which we're reviewing.

09:31:44AM 4 MS. RAPHAEL: Julie Raphael --

09:31:44AM 5 THE COURT REPORTER: Repeat your name.

09:31:47AM 6 MS. RAPHAEL: Julie Raphael, R-a-p-h-a-e-l. And we  
09:31:51AM 7 will do what we need to get in compliance.

09:31:56AM 8 THE COURT: Okay. Fine. Thank you for being here.

09:32:01AM 9 MS. SHARKO: The Spiros Law Firm has three plaintiffs  
09:32:05AM 10 who have submitted nothing.

09:32:08AM 11 MR. BIRCHFIELD: Your Honor, the latest report that  
09:32:10AM 12 we have is that the Spiros, those three claimants have now  
09:32:15AM 13 been entered into the settlement program and have cured the  
09:32:18AM 14 issues on the enrollment.

09:32:21AM 15 MS. SHARKO: Great.

09:32:22AM 16 The Stern Law Firm has 60 opt-out plaintiffs who are  
09:32:28AM 17 substantially not in compliance. We're reviewing the fact  
09:32:31AM 18 sheets that they've submitted.

09:32:33AM 19 MR. STERN: I didn't hear the first part, excuse me.

09:32:36AM 20 MS. SHARKO: The Stern Law Group has 60 plaintiffs.  
09:32:40AM 21 They are substantially not in compliance. They have  
09:32:44AM 22 submitted fact sheets, which we're reviewing.

09:32:46AM 23 MR. STERN: Good morning, Your Honor. I'm Ken Stern  
09:32:48AM 24 on behalf of Stern Law. I appreciate the opportunity to  
09:32:51AM 25 address the court and I'm back in the courtroom today. I

09:32:55AM 1 apologize for that.

09:32:56AM 2 My understanding is that we're fully compliant. How  
09:33:00AM 3 much of that compliance has occurred over the past week and  
09:33:02AM 4 it may just be a data catch-up process, but I'll be  
09:33:06AM 5 cooperating here, and we'll find out what we're still missing  
09:33:09AM 6 --

09:33:09AM 7 THE COURT: And the reason I need the information is  
09:33:11AM 8 so I can send them back. I just don't want to keep you here  
09:33:16AM 9 forever. It's not fair to you all. It's not fair to your  
09:33:18AM 10 clients. So I need them -- I need you to fill out the  
09:33:22AM 11 material so when I send them back to the judges, they're  
09:33:24AM 12 ready to go.

09:33:27AM 13 MR. STERN: Understood, Your Honor.

09:33:28AM 14 THE COURT: Thank you for being here.

09:33:30AM 15 MS. SHARKO: Just a couple more. The Tuttle Law Firm  
09:33:33AM 16 has one plaintiff who is not in compliance.

09:33:39AM 17 THE COURT: Anybody? Andy? Do you know anything  
09:33:39AM 18 about that?

09:33:42AM 19 MR. BIRCHFIELD: (Shakes head.)

09:33:43AM 20 MS. SHARKO: The Tim Farris Law Firm has 11  
09:33:47AM 21 plaintiffs. They also are substantially not compliant. They  
09:33:51AM 22 have submitted fact sheets which we're reviewing.

09:33:54AM 23 MR. FARRIS: Your Honor, we have addressed that.

09:33:56AM 24 THE COURT: You want to give us your name, sir?

09:33:58AM 25 MR. FARRIS: Yes, Tim Farris on behalf of Farris Law



09:34:01AM 1 Firm. We sent out our preservation letters out. We're also  
09:34:05AM 2 getting affidavits back in. I know some of the issues are  
09:34:10AM 3 the same issues Ken has, it's a data catch up, but we'll be  
09:34:13AM 4 happy to work with --

09:34:15AM 5 THE COURT: Okay, fine. Good. Thank you very much.  
09:34:17AM 6 Thanks for being here.

09:34:18AM 7 MS. SHARKO: We have two *pro ses* and then finally we  
09:34:21AM 8 have the Hatcher Law Office and Boler Law Office with one  
09:34:25AM 9 plaintiff who has basically done nothing.

09:34:30AM 10 THE COURT: Anything on that, Andy?

09:34:32AM 11 MR. BIRCHFIELD: No, Your Honor.

09:34:40AM 12 THE COURT: Anybody?

09:34:40AM 13 MS. SHARKO: And Ms. Miller, who is the key person on  
09:34:42AM 14 compliance, who all you guys will get to know well, points  
09:34:49AM 15 out that our data is current as of last night. We went on  
09:34:53AM 16 BrownGreer and checked.

09:34:53AM 17 THE COURT: Okay.

09:34:55AM 18 MS. SHARKO: So that's a summary of CMO 11 compliance  
09:34:58AM 19 and noncompliance.

09:35:01AM 20 THE COURT: And give me the names of the lawyers who  
09:35:03AM 21 are not here so I can deal with that.

09:35:05AM 22 MS. SHARKO: Okay. Thank you.

09:35:08AM 23 MR. DAVIS: Your Honor, Item 3 of the Joint Report  
09:35:14AM 24 addresses new pretrial orders, and I would encourage  
09:35:20AM 25 individuals to look at Pretrial Order No. 33 that was entered

09:35:23AM 1 on December the 6th. It deals with communications in receipt  
09:35:27AM 2 of health information for the lien resolution administrator.

09:35:32AM 3 THE COURT: What I recognize in these cases is that  
09:35:36AM 4 these days there are many liens that are filed on the  
09:35:42AM 5 claimant. Had some involving Native Americans. There's an  
09:35:52AM 6 Indian lien. There's a social security lien. There's a  
09:36:01AM 7 Medicare lien. And the problem with these liens, they're not  
09:36:03AM 8 only against the plaintiff, they're against the plaintiff  
09:36:06AM 9 lawyer. So if the plaintiff lawyer settles the case and  
09:36:09AM 10 doesn't take into account the lien, the plaintiff as well as  
09:36:13AM 11 the plaintiff lawyer is responsible. So the lien has to get  
09:36:17AM 12 resolved. And it's been my experience that if we can package  
09:36:22AM 13 these liens together in some way, a lien administrator then  
09:36:29AM 14 can go to the lien holder and say I've got 10,000 of these  
09:36:32AM 15 cases, can you reduce the lien? And we've gotten liens  
09:36:38AM 16 reduced to 20, 30 percent of what they would ordinarily be.  
09:36:43AM 17 And it's good for the lien holder because the lien holder  
09:36:46AM 18 gets it immediately as opposed to having to go throughout the  
09:36:50AM 19 country finding these individuals. And, of course, it's good  
09:36:53AM 20 for the individual because it gets a substantial reduction on  
09:36:58AM 21 his lien. But we need some information in order to do that  
09:37:02AM 22 for the plaintiffs.

09:37:03AM 23 MR. DAVIS: Your Honor, moving along, the defendants  
09:37:10AM 24 filed a proposed scheduling order with respect to a CMO.  
09:37:15AM 25 That would be CMO 13, and I think the defendants are prepared

09:37:23AM 1 to address that with the court.

09:37:27AM 2 MS. SHARKO: Yes, looking forward to what happens  
09:37:29AM 3 next as we prepare these 200-some, 300-some individual cases  
09:37:35AM 4 for trial, we sketched out our vision of the next three  
09:37:40AM 5 months in the draft CMO 13. There were no comments or  
09:37:45AM 6 opposition filed to it.

09:37:47AM 7 THE COURT: Yeah. What I try to do there is to get  
09:37:51AM 8 from counsel, from plaintiffs as well as defendants, some  
09:37:55AM 9 idea as to what they see is necessary to go forward to the  
09:38:00AM 10 next step to try the case and the defendant has produced a  
09:38:07AM 11 draft of a CMO and I put it on the website and I invite the  
09:38:12AM 12 plaintiffs who are going to have to live with this pretrial  
09:38:18AM 13 order, so to speak, to give me some input so that I can  
09:38:21AM 14 design it with that input and take into account. So that's  
09:38:27AM 15 why I posted on the website. I'll keep it on the website  
09:38:33AM 16 until the next meeting, and if anybody, any plaintiff has any  
09:38:37AM 17 input in that web -- in that document, give it to me so that  
09:38:41AM 18 I can take that into account, because in moving to the next  
09:38:46AM 19 stage, the plaintiffs are going to need some material, the  
09:38:52AM 20 defendants are going to need some material, and I like to get  
09:38:56AM 21 input from both sides before I stamp the case management  
09:39:02AM 22 order. So take a look at it. And if I don't get any input,  
09:39:06AM 23 then I'll have to deal with just the defendant's impressions.

09:39:12AM 24 MS. SHARKO: Your Honor, could we set a January  
09:39:14AM 25 deadline for comment on the order?

09:39:17AM 1 THE COURT: Yes. Let's do that because my next  
09:39:19AM 2 meeting I'm going to have to make it in February. I can't do  
09:39:21AM 3 it in January. So let's do that by January the 15th. That  
09:39:28AM 4 will give you some time to think about it, to flesh out what  
09:39:32AM 5 you think you're going to need and give me your input and  
09:39:35AM 6 I'll take that into consideration.

09:39:37AM 7 MS. SHARKO: Thank you.

09:39:38AM 8 MR. DAVIS: Your Honor, I believe that's it for the  
09:39:43AM 9 Joint Report and that concludes 2019 reports to the Court.

09:39:50AM 10 THE COURT: Okay. Our next meeting then will be  
09:39:53AM 11 February the 6th and the following meeting on March 19th.

09:39:56AM 12 For those who are in the audience, you're invited. I  
09:40:01AM 13 have open court. You're invited to come. If you can't make  
09:40:05AM 14 it because of difficult schedules, we post on our website a  
09:40:12AM 15 call-in number so that you can call in and monitor what's  
09:40:15AM 16 happening. It's oftentimes helpful to you even though you  
09:40:20AM 17 may not be here the rest of the time, it's helpful at least  
09:40:24AM 18 to see what's happening in this jurisdiction and what  
09:40:29AM 19 information you can get from this forum to help you with your  
09:40:35AM 20 case as you proceed on. So the next meeting is February 6th.  
09:40:39AM 21 The following one is March the 19th.

09:40:42AM 22 We'll take a five-minute break here and come back and  
09:40:47AM 23 deal with the motions.

09:40:49AM 24 Thank you very much. And thank for those who are  
09:40:51AM 25 being here for the first time. Court will stand in recess.

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(WHEREUPON, the proceedings were adjourned.)

\* \* \* \*

REPORTER'S CERTIFICATE

I, Nichelle N. Drake, RPR, CRR, Official Court Reporter, 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/ Nichelle N. Drake            
Official Court Reporter