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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) Docket No. MDL-2592
PRODUCTS LIABILITY LITIGATION Section "L"
New Orleans, Louisiana
THIS DOCUMENT RELATES TO: Tuesday, March 12, 2019
ALL CASES

TRANSCRIPT OF MONTHLY STATUS CONFERENCE AND RULE TO SHOW CAUSE
PROCEEDINGS
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

(TUESDAY, MARCH 12, 2019)

(MONTHLY STATUS CONFERENCE AND RULE TO SHOW CAUSE PROCEEDINGS)

(OPEN COURT.)

THE COURT: Be seated. Good morning, ladies and gentlemen. Let's call the case.

THE DEPUTY CLERK: MDL No. 2592, *in re: Xarelto Products Liability Litigation.*

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

MR. DAVIS: Good morning, your Honor. Leonard Davis co-plaintiff liaison counsel.

THE COURT: Okay.

MS. MOORE: Kim Moore on behalf of Janssen.

MR. OLINDE: And John Olinde on behalf of the Bayer defendants.

THE COURT: I met with lead and liaison counsel a moment ago to discuss a proposed agenda. This is our monthly status conference. We'll take them in the order that's presented, Lenny.

MR. DAVIS: Your Honor, there are a few items on the joint report and I'll go through them, but there's not a whole lot and I know that there are matters after the status conference that are set.

THE COURT: Yes.

09:02:14 1 MR. DAVIS: With respect to item No. 1, Pre-Trial Order,
09:02:17 2 there were a few new matters that came up since the last report.
09:02:24 3 Pre-Trial Order 10C which deals with service on BACP and Bayer
09:02:30 4 Pharma AG. Just so that folks are aware that if a motion to
09:02:36 5 dismiss for failure to serve is made, a meet and confer requirement
09:02:43 6 is required unless there is leave of court. There were some issues
09:02:47 7 with respect to service that had arisen and parties should be aware
09:02:51 8 of that. And that's Pre-Trial Order 10C.

09:02:56 9 There was also issued Pre-Trial Order 23B which addresses
09:03:01 10 the protocol for telephonic depositions of CMO 6 Detail
09:03:09 11 Representatives, and there were some issues with respect to that.
09:03:12 12 And again, if there are questions regarding scheduling of
09:03:16 13 depositions, Jerry Meunier is the person on the plaintiff end to
09:03:20 14 deal with if there are some issues that arise with respect to that.

09:03:25 15 And then finally, on February 13th this Court reappointed
09:03:29 16 the PSC for an additional term, and we appreciate that, your Honor.

09:03:36 17 THE COURT: What about Pre-Trial Order 8 is it?

09:03:39 18 MR. DAVIS: Your Honor, CMO 8 was issued by the Court,
09:03:46 19 and I'll go through a number of the issues in CMO 8. It was just
09:03:51 20 issued, I believe, this past week, and it is something that all
09:03:56 21 counsel need to be aware of. It addresses expert trial
09:04:00 22 presentation depositions for both plaintiff and defendant experts,
09:04:04 23 as well as the time for submission of expert reports; and there are
09:04:09 24 certain dates that are set forth in CMO 8 which the parties
09:04:13 25 continue to discuss, plaintiff and defendants executive or lead

09:04:20 1 liaison counsel continue to address those matters.

09:04:23 2 It also sets discovery deadlines for both Wave 1 and
09:04:28 3 Wave 2 cases, and folks should be aware of that. It addresses the
09:04:33 4 time for selection of Wave 1 and Wave 2 remand cases, and that's
09:04:38 5 continuing to be discussed. It addresses Wave 3 selection for
09:04:45 6 remand.

09:04:47 7 It also introduces some new matters that people need to
09:04:51 8 be aware of, specifically the plaintiff profile and consent form is
09:04:56 9 a new requirement for Wave 3 cases and those cases that are filed
09:05:03 10 after the date of the order, which was March the 7th of 2019. And
09:05:11 11 important to note is that this will also, down the road, be a
09:05:14 12 requirement in other cases it's anticipated.

09:05:18 13 CMO 8 also addresses a short form plaintiff fact sheet,
09:05:23 14 which is a new requirement for Wave 3 cases. And a short form
09:05:29 15 defendant fact sheet which is to be completed, and it changes what
09:05:35 16 previously had been provided with respect to that.

09:05:37 17 Ultimately, what's contemplated under CMO 8 is that it's
09:05:42 18 expected to be extended to previously filed and transferred cases.
09:05:47 19 So it is important that individuals be aware of CMO 8 and they look
09:05:52 20 at that and pay attention to it.

09:05:54 21 THE COURT: So it will be applicable to all of the cases?

09:05:58 22 MR. DAVIS: That's what's anticipated, your Honor. And
09:06:01 23 so I do encourage individuals to look closely at CMO 8, and in
09:06:07 24 particular for those who are in the wave process right now.

09:06:11 25 THE COURT: What we've found in cases of this sort is

09:06:14 1 that oftentimes the profile forms need to be updated, just as
09:06:18 2 interrogatories occasionally have to be updated. And at a
09:06:23 3 particular point in the litigation the parties could or should or
09:06:29 4 do have information to answer those provisions. Early on they may
09:06:36 5 not, but now they should and, therefore, those profile forms will
09:06:43 6 have to be updated. Okay.

09:06:46 7 MR. DAVIS: Your Honor, I know that BrownGreer provided a
09:06:48 8 report.

09:06:49 9 THE COURT: Yes. I received a report from Jake Woody,
09:06:55 10 who was not able to be with us today. It's just basically the fact
09:07:01 11 sheets submitted 23,011 and the fact sheets in progress are 1,289.
09:07:11 12 The total registered plaintiffs in the case is 24,300. Of
09:07:18 13 particular note is that the numbers that came in this month are
09:07:28 14 considerably down, it's now 69 cases, whereas at the peak of the
09:07:33 15 litigation we received 590 in a month. The average is about two to
09:07:42 16 300 a month. So this month it was 69, so I think it's fair to say
09:07:47 17 that the case is pretty much solidified now. We may have some
09:07:56 18 additional but it's not going to be a lot. It looks like that the
09:07:59 19 census of the litigation will top out around 24,000, maybe
09:08:05 20 25,000 cases. But they're down substantially this month. That's
09:08:08 21 his report.

09:08:09 22 MR. DAVIS: Your Honor, we continue to work on the wave
09:08:12 23 remand workups. We had a meeting of plaintiffs' counsel yesterday,
09:08:19 24 and I encourage if any people have questions regarding the wave
09:08:24 25 process to reach out and we can try to answer those questions. But

09:08:29 1 that is moving along and we continue to work on that.

09:08:32 2 With respect to Item 9 in the report, with respect to the
09:08:41 3 appeals, briefs have been filed with the U.S. Fifth Circuit and the
09:08:46 4 briefing is now complete, that's since the last report.

09:08:52 5 THE COURT: And the briefing in the appeals are with
09:08:55 6 regard to the cases that have been tried?

09:08:57 7 MR. DAVIS: Correct. Correct.

09:08:59 8 With respect to State/Federal coordination, the briefing
09:09:07 9 in Philadelphia is due -- and I know Mike Weinkowitz is here if
09:09:12 10 your Honor has questions regarding the Philadelphia matter -- but
09:09:15 11 the briefing is due April the 10th, 2019, in the *Russell* appeal.
09:09:22 12 And the *Rush* case is scheduled for trial I believe it's May the
09:09:29 13 3rd, and then the *Lowe* case is scheduled October the 2nd of this
09:09:37 14 year.

09:09:38 15 THE COURT: Mike, do you have anything on that?

09:09:41 16 MR. WEINKOWITZ: Your Honor, for the *Hartman* case, the
09:09:43 17 first trial, we're just waiting for Judge Erdos to write his
09:09:48 18 opinion.

09:09:48 19 THE COURT: And when is that?

09:09:51 20 MR. WEINKOWITZ: At any time. Once he does, that starts
09:09:53 21 the briefing process. The reason we have a date in the *Russell*
09:09:56 22 case is because we received his opinion of the *Russell* case.

09:09:59 23 THE COURT: And how many cases are y'all working up at
09:10:03 24 this point in the state?

09:10:04 25 MR. WEINKOWITZ: We have worked up in the first 50 cases

09:10:07 1 and then we have a trial pool, and Lenny just gave you the dates
09:10:11 2 for the trials. We have trials May 2nd, October 21st,
09:10:16 3 January 20th, and then the last trial case will be set for March of
09:10:20 4 2020.

09:10:21 5 THE COURT: Okay. I've been working closely with
09:10:25 6 Judge New, and he is very, very helpful to us in this particular
09:10:29 7 case, he's done a fantastic job over there. Okay.

09:10:33 8 MR. DAVIS: Other than that, your Honor, I believe there
09:10:35 9 are matters after the status conference that need to be addressed.
09:10:40 10 And we have to address the next status conference.

09:10:43 11 THE COURT: Susan, do you have anything?

09:10:45 12 MS. SHARKO: Just an update on the wave cases. Wave 1,
09:10:51 13 we now have 283 cases dismissed, that's 47.2 percent of the pool.
09:10:58 14 The docket has really been cleaned up thanks to Mr. Birchfield's
09:11:03 15 help in particular. We are down to four cases that are still
09:11:07 16 tolled because of PFS issues, four cases with service issues.

09:11:12 17 In Wave 2, we have 243 dismissed, that's 40.6 percent of
09:11:19 18 the pool; 70 are on discovery tolling because of issues. Eighteen
09:11:26 19 of those belong to one individual law firm, and I've discussed that
09:11:31 20 with Mr. Birchfield. And then we have two jurisdiction issues, 12
09:11:36 21 service issues.

09:11:37 22 So that's the report on the waves, Wave 1 and 2.

09:11:42 23 I have a number of corrections as people cured their
09:11:46 24 issues on the cases listed in the status report for the non-CMO
09:11:52 25 cases, I don't know if you want me to read those into the record?

09:11:57 1 THE COURT: Sure.

09:11:58 2 MS. SHARKO: On the orders to show cause, Overdue PFS,
09:12:10 3 there's 32 cases listed, 13 of those plaintiffs have served a PFS:
09:12:17 4 No. 1, Anzalone; No. 3, Barker; No. 6, Bratcher; No. 10, Campbell;
09:12:30 5 No. 11, Fanchier; No. 14, Gueli; No. 15, Hamade; No. 18, Kearney;
09:12:45 6 No. 20, Manus; No. 28, Sias; No. 29, Smith, Hershhal; No. 30,
09:12:58 7 Taylor; No. 32, Yelton.

09:13:01 8 Eight plaintiffs have agreed to dismiss their cases and
09:13:05 9 will be filing steps: No. 4, Bass; No. 5, Bishop; No. 16, Harper;
09:13:11 10 No. 19, Lumpkin; No. 21, May; No. 22, McAlister; No. 25, Morris;
09:13:19 11 No. 27, Russell. And so there are 11 cases left for the hearing.

09:13:27 12 On the Core Deficient PFS's, there were 32 cases listed
09:13:32 13 at page 65; eight have been resolved, the discovery issues have
09:13:39 14 been resolved: No. 2, Boudreaux; No. 4, Collins; No. 6, Emberton;
09:13:50 15 No. 10, Herring; No. 12, Huacoto; 14, James; 23, Newer; 32, Wilson.
09:14:04 16 One plaintiff we'll be dismissing, No. 5, Daniels.

09:14:10 17 Then on the CMO 6 cases. A number of those have been
09:14:15 18 resolved and the rest Ms. Miller will deal with in argument.

09:14:24 19 On the Overdue PFS's at page 11, it's still the same 57
09:14:30 20 first time and it's still the same 79 second time at page 15. And
09:14:37 21 likewise, the Core Deficient PFS's - First Time Listed, there's 71
09:14:43 22 cases at page 20, they're still the same; and there's 101 second
09:14:47 23 time cases listed at page 35, and those are still the same.

09:14:52 24 THE COURT: Okay.

09:14:53 25 MS. SHARKO: Thank you.

09:14:54 1 THE COURT: Okay. Anything else? The next meeting will
09:14:57 2 be April the 11th, and that meeting will be at two o'clock in the
09:15:03 3 afternoon. I'll meet with the lead and liaison at 1:30. And the
09:15:10 4 next one is May 16th and that's at 9 o'clock, and I'll meet with
09:15:16 5 liaison and lead at 8:30.

09:15:19 6 Anything else? We'll take a couple of minute break and
09:15:22 7 we'll come back. Court will stand in recess.

09:15:25 8 THE DEPUTY CLERK: All rise.

09:15:27 9 (WHEREUPON, A RECESS WAS TAKEN.)

09:20:03 10 (OPEN COURT.)

09:20:04 11 THE COURT: Be seated. We have a number of motions
09:20:06 12 regarding cases in connection with the fact sheets, either failure
09:20:11 13 to file them or not properly answer them or not answered at all.
09:20:18 14 So we sent out a number of rules to show cause why the case should
09:20:24 15 not be dismissed. I'll hear from counsel at this time.

09:20:28 16 MS. DANIEL: Good morning, your Honor. Sindhu Daniel for
09:20:31 17 the plaintiffs.

09:20:31 18 MS. MILLER: Good morning, your Honor. Chanda Miller,
09:20:33 19 I'll be speaking on behalf of the defendants.

09:20:36 20 MS. DANIEL: Your Honor, we'll take the cases semi in the
09:20:42 21 order in which they were listed in the joint agenda. We tried to
09:20:45 22 group them as much as we could.

09:20:47 23 THE COURT: Okay.

09:20:49 24 MS. DANIEL: Your Honor, the first for CMO 6 cases.
09:20:52 25 There are 17 cases that we are going to discuss today. There was a

09:20:55 1 case James Embry for which a rec. doc. was not entered yet, so the
09:21:01 2 defendant -- we have agreed to pass that until the next hearing.

09:21:04 3 MS. MILLER: Alternatively, your Honor, we understand
09:21:06 4 from Plaintiffs' counsel that they're not opposing our motion. If
09:21:09 5 your Honor would prefer us to submit proposed orders to rule on the
09:21:13 6 papers, we can do that as well.

09:21:14 7 THE COURT: Either way.

09:21:15 8 MS. DANIEL: It's really up to your Honor.

09:21:18 9 THE COURT: Let's do it that way, we'll do it on the
09:21:21 10 papers.

09:21:21 11 MS. MILLER: Okay. We'll do that, your Honor.

09:21:21 12 MS. DANIEL: Thank you, your Honor.

09:21:22 13 On the first case, your Honor, Document 12580 is the case
09:21:26 14 of Reuben Cox. The defendant has already agreed to pass this until
09:21:31 15 the next hearing. Counsel is pursuing probate in this matter and
09:21:35 16 has encountered delays. They also filed a response, which is Rec.
09:21:40 17 Doc. 12796 confirming the same.

09:21:43 18 MS. MILLER: Yes, your Honor. And this case was
09:21:45 19 originally heard last fall, we agreed to pass it or they were
09:21:50 20 working on setting up a guardianship. In the interim Mr. Cox has
09:21:54 21 passed away and state law requires 60 days to pass before a probate
09:21:59 22 can be set up. So under those circumstances, defendants agree this
09:22:02 23 should be passed until the April hearing.

09:22:03 24 THE COURT: Okay. Let's pass it.

09:22:05 25 MS. DANIEL: Thank you, your Honor. The next Document

09:22:07 1 12583, which is Dorothy Lamar; Document 12584, which is Jacqueline
09:22:14 2 Matthews; Document 12646, which is Robert Sladick; through no fault
09:22:20 3 of their own counsel has done everything in their power to cure
09:22:24 4 these fact sheets and has kept in contact with the plaintiffs as
09:22:27 5 they are able, but have been unable to cure the fact sheets
09:22:32 6 pursuant to CMO 6 and have no basis to oppose the motions.

09:22:36 7 THE COURT: Okay. I'll grant the motion to dismiss with
09:22:39 8 prejudice.

09:22:39 9 MS. DANIEL: Thank you, your Honor.

09:22:40 10 MS. MILLER: Thank you, your Honor.

09:22:42 11 MS. DANIEL: The next case is Document 12693, which is
09:22:46 12 the estate of Shirley Griswold; 12581 in the case of Piper LeGrand;
09:22:53 13 Document 12679, Nellie Pitts; Document 12582, Doris Wallace; 12647,
09:23:06 14 Billy Owens; and 12694, Lena Giles; your Honor, by agreement those
09:23:13 15 cases are cured.

09:23:14 16 MS. MILLER: Yes, your Honor. For those six cases the
09:23:16 17 plaintiffs have addressed the deficiencies that were raised in the
09:23:19 18 motion. I just, so that there's no surprise, want to point out for
09:23:24 19 the record that in Giles, which is Doc. 12694; Owens, which is
09:23:30 20 Document 12647; and the estate of Griswold, Document 12693, the
09:23:37 21 defendants received documents late last night that addressed the
09:23:40 22 issues raised in the motion. Those documents did identify new
09:23:45 23 deficiencies, but as they were not raised in defendant's motion,
09:23:49 24 we've agreed that for purposes of today's hearing the cases can
09:23:54 25 move along and we'll work with plaintiffs to address the new

09:23:56 1 deficiencies.

09:23:56 2 THE COURT: Okay.

09:23:57 3 MS. DANIEL: Thank you, your Honor. Document 12667 is
09:24:00 4 the case of Anita Brown; Document 12695, which is Kathleen Donovan,
09:24:07 5 case on behalf of her deceased husband John Donovan; Document 12668
09:24:13 6 is the case of Ronald Grignol; and Document 12643 is the case of
09:24:18 7 Randall Rager. These cases have been previously dismissed.

09:24:24 8 Your Honor, the next case Document 12665, this is the
09:24:29 9 Gary Hellmer case. This is by the Mulligan Law Firm. This is an
09:24:35 10 issue that we will be bringing in front of the Court, your Honor.
09:24:38 11 It's in regards to a declaration. Chip, are you on the line? Did
09:24:43 12 you want to discuss it first? Chip?

09:24:59 13 MR. ORR: Oh, I'm sorry, I had my phone on mute. This is
09:24:59 14 Charles Orr, Mulligan Law Firm. Sorry about that.

09:25:02 15 MS. DANIEL: That's all right. You can go ahead.

09:25:05 16 MR. ORR: Your Honor, this is a case where Mr. Hellmer
09:25:08 17 has been very responsive and we had a series of deficiencies for
09:25:13 18 failure to provide addresses. Those arose through what I would
09:25:19 19 best characterize as a snafu. When we print out a PFS from MDL
09:25:27 20 Centrality, it omits some of the information that needs to be input
09:25:31 21 into the PFS. We had submitted Mr. Hellmer's PFS originally when
09:25:37 22 only Section 1 needed to be completed, but Mr. Hellmer had provided
09:25:41 23 us with information to answer the entire PFS. So when he was
09:25:45 24 selected as a CMO 6 case, we went ahead and put all of the
09:25:49 25 information he had provided us originally on to Centrality, printed

09:25:54 1 out the PFS, sent it to him to attest that it was accurate still,
09:26:01 2 and he provided us some minor changes and provided us with a new
09:26:06 3 signed declaration.

09:26:08 4 We uploaded that new PFS in a timely fashion, and just
09:26:14 5 because of the way that the PFS printed from Centrality, we had
09:26:20 6 failed to get some addresses put onto the PFS and a couple of
09:26:24 7 provider names. It looks like there's lot of deficiencies, but
09:26:29 8 they were really all of a similar kind and they all arose from that
09:26:32 9 type of issue. So we were able to put in many of the addresses
09:26:37 10 from information we already had from Mr. Hellmer. Others we had to
09:26:42 11 contact him and get.

09:26:44 12 So when it came time to answer the deficiencies, we
09:26:48 13 reached out to Mr. Hellmer. We had an undated declaration already
09:26:52 14 from his first amended PFS, and we asked him for his permission to
09:27:03 15 date the declarations for the response to the deficiencies since we
09:27:06 16 had secured his help in curing some of the deficiencies. He gave
09:27:10 17 us his express permission to date his declaration and submit it
09:27:14 18 with the cures to those deficiencies. And now the defendants are
09:27:19 19 asserting that there's something amiss with that.

09:27:22 20 MS. MILLER: Your Honor, the addresses that Mr. Orr was
09:27:27 21 speaking of were addresses and names associated with health care
09:27:30 22 providers who treated the plaintiff, which is why we need those so
09:27:35 23 that we can collect medical records.

09:27:37 24 The purposes of, as your Honor knows, the PFS is in lieu
09:27:41 25 of interrogatories. The purpose of the declaration that

09:27:43 1 accompanies the PFS is for the plaintiff to confirm that he
09:27:49 2 reviewed it and declares under penalty of perjury that everything
09:27:52 3 in the PFS is accurate.

09:27:56 4 We have always asked that every time an amended PFS is
09:27:59 5 submitted, that a new declaration be signed by the plaintiff
09:28:01 6 confirming that he did, in fact, review that PFS and can, in fact,
09:28:05 7 confirm that it is accurate. We have -- and that is something that
09:28:12 8 has been before your Honor before and we have all agreed. I think
09:28:13 9 under the circumstances here, we understand that the plaintiff has
09:28:17 10 been actively working with counsel to address the deficiencies. We
09:28:21 11 believe that what we've done in the past, which is giving them ten
09:28:25 12 days to submit a new declaration, would work here.

09:28:28 13 But we do need something from the plaintiff that confirms
09:28:31 14 in writing that he did in fact review these newly identified
09:28:37 15 providers and where they're from to confirm that they're accurate.
09:28:40 16 So ten days from the defense perspective would be sufficient.

09:28:45 17 MS. DANIEL: Your Honor, if I could. This is an issue
09:28:49 18 that is going to repeatedly come up throughout the hearing today.
09:28:51 19 It is a copy of the declaration that is signed by the plaintiff,
09:28:54 20 and we have the client's permission. As is done in many offices
09:29:00 21 across the country, it is Fed-Exed back and forth. Any change that
09:29:04 22 is made, any change that is made to a fact sheet creates an amended
09:29:08 23 fact sheet, even if you change the date from 2019 to 2018.

09:29:12 24 And so if we have the express permission of the plaintiff
09:29:16 25 and we are re-dating it for that express -- and we know the client,

09:29:21 1 the defendant certainly during the depositions that are taking
09:29:25 2 place can certainly ask the client, the plaintiff if they agreed to
09:29:28 3 this change or if this is their signature so they certainly will
09:29:31 4 have the opportunity.

09:29:32 5 In addition, your Honor, the defendant asks us all the
09:29:35 6 time, plaintiffs, to re-date an authorization to capture protected
09:29:40 7 health information, and they don't mind us putting a date in at
09:29:45 8 that time. So we think -- and, your Honor, in interrogatories, I
09:29:48 9 as the Plaintiffs' counsel would be signing this on behalf of the
09:29:52 10 plaintiff. So we do think that this is becoming more of an
09:29:55 11 administrative issue.

09:29:56 12 If there is some belief that counsel is not getting
09:29:59 13 permission or not seeking permission from their clients, we think
09:30:02 14 it's something that the defendant can bring up in court on an
09:30:05 15 individual basis. We just think it's becoming much more
09:30:08 16 administrative necessarily than it needs to be, because the
09:30:11 17 defendant is now saying it's a copy of a declaration that is
09:30:14 18 correctly and timely signed.

09:30:16 19 MS. MILLER: If I could just speak to a couple of things,
09:30:19 20 your Honor. First, interrogatories do, in fact, have to be
09:30:21 21 verified by the plaintiff.

09:30:24 22 Secondly, with respect to the HIPAA authorizations, I
09:30:27 23 agree that there is a process in place where those can be re-dated.
09:30:32 24 The big distinction is that the HIPAA authorizations got to the
09:30:35 25 release of information, they don't go to confirming the accuracy

09:30:38 1 and veracity of newly identified information.

09:30:41 2 Third, there have been circumstances under which an
09:30:44 3 amended PFS is purely administrative due to a date change. In
09:30:48 4 those circumstances, we are more than willing to work with
09:30:52 5 plaintiffs' counsel to determine whether an amended declaration is,
09:30:55 6 in fact, necessary. But where there are substantive changes, we do
09:31:00 7 need a signed declaration from the plaintiff confirming the
09:31:03 8 veracity and accuracy. If the plaintiff is giving someone else
09:31:07 9 permission to sign on his behalf, then you need a power of attorney
09:31:10 10 or something else confirming that the plaintiff has, in fact, given
09:31:14 11 that express permission.

09:31:15 12 In those circumstances, we don't have that. Here it's
09:31:19 13 permission to sign the Plaintiff's name that he's verified under
09:31:23 14 penalty of perjury, we would need more than an oral statement that
09:31:27 15 the plaintiff has, in fact, given that permission.

09:31:30 16 THE COURT: Let's see if we can figure out a method of
09:31:33 17 handling this. One way of doing it, Chip, is to simply write the
09:31:39 18 plaintiff saying, "It's my understanding from talking with you that
09:31:43 19 I have the authority to sign your name, that you verify that the
09:31:49 20 information is true and correct. Sign this document and send it
09:31:55 21 back to me," meaning a letter. I am okay with a copy as long as
09:31:59 22 there's some sort of something so that you don't get in a position
09:32:03 23 where the client says I didn't tell my lawyer that, I didn't give
09:32:07 24 him authority for it. I don't expect that this client will do
09:32:11 25 that, but you know and I know that that is potentially happening,

09:32:16 1 particularly where clients go to other lawyers later on in the
09:32:20 2 process.

09:32:20 3 So I don't have any problem with the document, but you
09:32:26 4 ought to have something confirming, you write a letter to the
09:32:32 5 client confirming that, let the client write on the bottom of your
09:32:36 6 letter, let him sign that, and then you'll have something in
09:32:47 7 writing and we'll have everybody satisfied with that hopefully.

09:32:50 8 MR. ORR: Your Honor, Charles Orr. We do that with HIPAA
09:32:54 9 authorizations and other authorizations. We do collect from our
09:32:59 10 clients a written permission to transfer their signature. We're
09:33:06 11 using PDF's and so the technology enables us to cut and paste
09:33:12 12 signatures from that document that we collect from our clients on
09:33:15 13 to the HIPAA forms. And in the CMO 6 process, in particular,
09:33:18 14 that's been very helpful because we receive frequent requests from
09:33:23 15 defendants to provide provider specific HIPPA forms, so we're happy
09:33:30 16 to do that.

09:33:31 17 We can certainly do the same thing with our declarations
09:33:33 18 for PFS's. It's not something that my firm has done in the past,
09:33:39 19 but it makes sense to do it and we're happy to do that.

09:33:43 20 I do want to point out to the Court that this is going to
09:33:46 21 be a recurring issue. I've counted the number of Core Deficient
09:33:51 22 PFS - First Time Listed cases where the sole act alleged deficiency
09:33:56 23 is failure to provide new declaration for amended plaintiff fact
09:34:00 24 sheet. Of the 71 cases listed from page 20 to page 35 of the
09:34:05 25 status conference report, 22 cases in total have just that alleged

09:34:11 1 deficiency. That's fully 31 percent of that 71 cases.

09:34:15 2 The second time listed cases, which go from page 35 to
09:34:20 3 page 62 of those 101, 22 of those cases, the only alleged
09:34:25 4 deficiency is failure to provide a new declaration for amended
09:34:29 5 plaintiff fact sheet submission.

09:34:31 6 I would propose to your Honor that we do something like
09:34:33 7 what we've done in *Taxotere* and the PFS process in *Taxotere*. The
09:34:39 8 case management order, it's actually a PTO that applies to PFS's,
09:34:44 9 has a provision that amendments or supplements to the PFS may be
09:34:51 10 verified by signature of the Plaintiffs' attorney, so long as the
09:34:54 11 original PFS was verified by the plaintiff. And I think that
09:34:58 12 process makes a lot of sense because most of the time I am curing
09:35:03 13 deficiencies without any input from my client. All that's needed
09:35:07 14 is a date that I am going to get from records that I've already
09:35:10 15 produced to the defendant.

09:35:11 16 Having the client do a new declaration under those
09:35:16 17 circumstances is just a hoop.

09:35:16 18 THE COURT: I agree with that. We ought to get something
09:35:18 19 in writing from the client though, Chip, to give you that authority
09:35:23 20 just like you do with HIPAA.

09:35:26 21 MS. MILLER: Your Honor, we would need to see that. And
09:35:28 22 I just point out that this is not the motion which we're arguing
09:35:32 23 the non-CMO 6 cases. But that non-CMO 6 cases, the only
09:35:37 24 information they have provided in the PFS are proof that they used
09:35:41 25 the product, proof that they were injured while using the product;

09:35:44 1 and if they are filling out the PFS on behalf of someone who is
09:35:48 2 deceased or incapacitated, their authority to do that. Those are
09:35:52 3 sort of the three big issues that plaintiff really does, in fact,
09:35:56 4 need to verify under penalty of perjury.

09:35:58 5 The other thing I'd point out is CMO 8 and the new
09:36:02 6 consent forms have different provisions regarding the signatures
09:36:06 7 that are required, those have already been fully negotiated between
09:36:10 8 the parties and approved by the Court. So under the new forms
09:36:14 9 there will be a different process in place.

09:36:18 10 MS. DANIEL: Your Honor, if we could just maybe table
09:36:20 11 this, and we could meet and confer with the defendants to try to
09:36:22 12 come up with an easier process.

09:36:25 13 THE COURT: Right. Let's do that. Get Chip's input,
09:36:28 14 too, on that, he's done it a bit. What I am trying to do is to
09:36:33 15 figure out something that's practical. We're getting bogged down
09:36:35 16 with issues that really don't deserve that kind of treatment. I
09:36:39 17 think that the defendant ought to have something in writing
09:36:45 18 verified by the client. The problem is that maybe the way of doing
09:36:50 19 that is to get the plaintiff to say I authorize my attorney to sign
09:36:56 20 something and then the attorney signs it under that letter and
09:37:07 21 we've got both the plaintiff and the attorney who has signed.
09:37:12 22 We've got to come up with some solution.

09:37:15 23 MS. MILLER: That's fine, your Honor. We can meet and
09:37:17 24 confer for the cases that won't be subject at least now to the new
09:37:21 25 forms under CMO 8.

09:37:23 1 MS. DANIEL: Thank you, your Honor. We'll move on.

09:37:25 2 Your Honor, Document 12644, is the case of Shirley
09:37:28 3 Johnson. An order has been filed in the court substituting -- no,
09:37:32 4 I think it's actually substituting the plaintiff because they were
09:37:36 5 in the process of getting letters of administration, and the
09:37:40 6 defendant has already agreed to pass this until the next hearing.

09:37:44 7 MS. MILLER: That's correct, your Honor. We are still
09:37:46 8 unable to collect some critical records due to missing estate
09:37:50 9 documents. We understand from Plaintiffs' counsel that they have
09:37:53 10 now just started working on them, and so we've agreed to pass this
09:37:57 11 to the next hearing.

09:37:59 12 THE COURT: Okay.

09:37:59 13 MS. DANIEL: Document 12664 is the case of Christopher
09:38:02 14 Worthington, your Honor. This was amended again this morning. I
09:38:07 15 haven't had a chance to check my e-mail to see if the defendant now
09:38:12 16 agrees. There was just Section 3B that was missing on the latest
09:38:17 17 deficiency.

09:38:19 18 MS. MILLER: Your Honor, we received notice less than
09:38:22 19 hour before the hearing started, so we will need the opportunity to
09:38:26 20 review.

09:38:26 21 THE COURT: Sure.

09:38:26 22 MS. MILLER: If they haven't, in fact, addressed the
09:38:29 23 issues raised in the motion, we would suggest ten days to do so.

09:38:32 24 THE COURT: Okay.

09:38:33 25 MS. DANIEL: Thank you, your Honor.

09:38:35 1 Your Honor, that is the end of the CMO 6 cases. We'll
09:38:40 2 now move on to the non-CMO 6 cases.

09:38:41 3 THE COURT: Okay.

09:38:43 4 MS. DANIEL: The first document is 12586. There are
09:38:45 5 three cases listed on this order that were held over from previous
09:38:49 6 hearings. The first one is a pro se plaintiff, your Honor,
09:38:52 7 Jennifer Christie. Ms. Christie, are you on the line?

09:39:01 8 THE COURT: Apparently not.

09:39:02 9 MS. DANIEL: Your Honor, pro se plaintiff's not on the
09:39:04 10 line. I have e-mailed her on numerous occasions.

09:39:08 11 MS. MILLER: This is at least the second hearing that
09:39:11 12 this case has been heard, and the PFS was due in March of 2018 so
09:39:17 13 at this point it's a year late. We would ask that it be dismissed
09:39:21 14 with prejudice.

09:39:22 15 THE COURT: I am going to have to dismiss this case with
09:39:24 16 prejudice. We've given the plaintiff every opportunity to respond
09:39:27 17 and they haven't done so. Even an opportunity to come on the line
09:39:33 18 and tell us on the phone, but she's not done so. So I am going to
09:39:38 19 dismiss it with prejudice.

09:39:40 20 MS. DANIEL: Thank you, your Honor.

09:39:41 21 For Nellie Harden, your Honor, this case was previously
09:39:45 22 dismissed.

09:39:45 23 And in regards to the last case on this document, Dorothy
09:39:49 24 Reese, is counsel on the line to address the court, the Stern Law
09:39:53 25 Firm?

09:39:54 1 MR. STERN: Yes. Good morning, your Honor. This is
09:40:00 2 attorney Ken Stern.

09:40:01 3 THE COURT: Go ahead, Ken.

09:40:03 4 MR. STERN: Judge, I regret to report to the Court this
09:40:05 5 is one of those painful circumstances where we had not heard from
09:40:11 6 the decedent's family for several months. And lo and behold,
09:40:14 7 within the past three days, quite literally, I was contacted by the
09:40:19 8 decedent's daughter. Her name is Sheryl Parker. Ms. Parker
09:40:23 9 informs me that she has been to the probate court, she has
09:40:29 10 submitted to me letters of administration, and she appears to be in
09:40:32 11 the process of securing appropriate authorization to permit her to
09:40:36 12 represent her mother's estate.

09:40:40 13 I am well aware that this matter has lingered for a
09:40:43 14 substantial period of time. I can offer no legitimate reason for
09:40:47 15 the delay. On the other hand, I am, as representative here,
09:40:53 16 feeling more compelled to request that she be given an additional
09:40:57 17 period of time to secure the appropriate letters of administration
09:41:01 18 and authorization to represent her mother's estate. Failing
09:41:07 19 that --

09:41:07 20 THE COURT: How long do you need, Ken?

09:41:09 21 MR. STERN: I would request 60 to 90 days, Judge. If it
09:41:13 22 doesn't happen within that period of time, I would totally
09:41:15 23 understand why the case should be dismissed.

09:41:17 24 THE COURT: Ninety days is too long.

09:41:19 25 MS. MILLER: It is, your Honor. If I could provide some

09:41:19 1 background?

09:41:19 2 THE COURT: Sure.

09:41:22 3 MS. MILLER: Ms. Reese, the alleged Xarelto user, passed
09:41:23 4 away on July 23rd, 2017; so at this point, more than 18 months ago.
09:41:29 5 What defendants are missing most notably is, one, there is no
09:41:33 6 documentation, no medical record to show that Ms. Reese actually
09:41:37 7 took Xarelto; and No. 2, we have no documentation, no medical
09:41:41 8 record to show that Ms. Reese suffered an alleged injury while she
09:41:44 9 was allegedly taking Xarelto. So the two big proof of use and
09:41:48 10 proof of injury are still missing. At this point they're two
09:41:53 11 hundred and -- almost 300 days overdue. It's 275 days since the
09:41:55 12 first notice. This is at least the second hearing in which this
09:41:59 13 case has been set for dismissal due to failure to provide proof of
09:42:03 14 use and proof of injury.

09:42:05 15 I appreciate that within the last three days the daughter
09:42:08 16 has offered that she is getting letters of administration, but
09:42:11 17 under the circumstances we think it's lingered way too long.

09:42:15 18 MR. STERN: I would only say in response, your Honor,
09:42:18 19 that I have not spoken with Sheryl Parker myself. In a
09:42:22 20 circumstance like this, sometimes it's difficult to reach the
09:42:25 21 appropriate family members that are willing and have the necessary
09:42:28 22 initiative to move forward. In this particular instance, this
09:42:32 23 having been my first contact with this particular woman Sheryl
09:42:35 24 Parker, I can't defend the delay here other than to suggest that
09:42:38 25 this is the first communication I've had from her, and I feel duty

09:42:42 1 bound to at least report all of this to the court. I do understand
09:42:45 2 and I am sensitive to the defendant's predicament here, but this is
09:42:48 3 one of those circumstances where I don't think this particular
09:42:51 4 individual necessarily could be charged with the delay.

09:42:53 5 THE COURT: Okay. Let's do this. Ken, I'll give you
09:42:56 6 30 days. Let's look at it in 30 days and see what's the situation.
09:43:00 7 I am mainly interested in use, some information from a doctor or
09:43:05 8 letter or prescription or something that shows that that's done.
09:43:11 9 I'll pass it for 30 days and we'll look at it in 30 days.

09:43:15 10 MR. STERN: I understand, your Honor. Thank you very
09:43:17 11 much.

09:43:18 12 MS. MILLER: Thank you, your Honor.

09:43:19 13 MS. DANIEL: Thank you, your Honor.

09:43:20 14 The next is Document 12640. There were 64 cases listed
09:43:27 15 on this order, your Honor. And while they have been listed on the
09:43:31 16 joint agenda now twice, this is their first time being heard in an
09:43:35 17 Order to Show Cause hearing.

09:43:36 18 The following 22 cases are cured, your Honor. And I know
09:43:40 19 Susan Sharko may have taken some of my job, but for the record to
09:43:45 20 be complete, we're going to read those cases that we believe are
09:43:47 21 cured. They are: Florence Anzalone, Gladys Barker, Thelma
09:43:53 22 Bratcher, Randy Brown --

09:43:56 23 MS. MILLER: So on Randy Brown, your Honor, defendants
09:43:59 24 don't have documentation. We understand maybe it was a late
09:44:02 25 submission. We would agree to meet and confer and have that

09:44:06 1 resolved within ten days.

09:44:07 2 THE COURT: All right.

09:44:08 3 MS. DANIEL: John Campbell, Alton Fanchier, Carol Gueli,
09:44:13 4 Fida Hamade, Faye Kearney, L.B. Manus, Cynthia Sias, Hershal Smith,
09:44:21 5 James Taylor, Edna Williams.

09:44:24 6 MS. MILLER: And with Edna Williams, again, defendants
09:44:28 7 have not had the opportunity to review to confirm the submission,
09:44:31 8 and we would agree to ten days.

09:44:32 9 THE COURT: All right.

09:44:34 10 MS. DANIEL: Eddith Yelton.

09:44:36 11 And for the core deficiency cases that were confirmed as
09:44:39 12 well as cured, they are: Ruth Boudreaux, Elizabeth Collins,
09:44:44 13 Wendell Emberton, Henry Herring, Ringer James, Vaughan Newer, and
09:44:50 14 Devran Wilson.

09:44:53 15 The next case, your Honor, is Donna Watanabe. This is
09:44:58 16 case by Douglas & London per their filed response, which is Rec.
09:45:02 17 Doc. 12801. The firm has done everything they can to cure this
09:45:07 18 fact sheet, and through no fault of their own have been unable to
09:45:10 19 cure. And even though they are aware of the practice of this
09:45:14 20 Court, they are asking for a dismissal without prejudice due to the
09:45:18 21 practices in their office.

09:45:19 22 MS. MILLER: I'm sorry, are you going in order? You're
09:45:22 23 not.

09:45:22 24 MS. DANIEL: I was trying to. Sorry.

09:45:24 25 THE COURT: That's okay. With regard to that last one,

09:45:26 1 I'll overrule their objection and dismiss with prejudice.

09:45:31 2 MS. MILLER: Thank you, your Honor.

09:45:32 3 MS. DANIEL: Thank you, your Honor.

09:45:37 4 Your Honor, the next case is Sharon Bonita Ross. Counsel
09:45:41 5 should be on the line. It is an overdue fact sheet. Is anyone on
09:45:46 6 the line for Marc Bern & Partners?

09:45:51 7 MR. KESSLER: Good morning, Gordon Kessler from Marc J.
09:45:55 8 Bern & Partners. Your Honor, we would request an additional
09:45:57 9 30 days to get in contact with Ms. Ross. The only deficiency is
09:46:01 10 the verified plaintiff fact sheet and getting the fact sheet
09:46:05 11 uploaded. We have some letters sent out to her and we've left her
09:46:12 12 some voicemails, but we have not yet heard back.

09:46:15 13 MS. MILLER: Your Honor, on this one we don't have a fact
09:46:17 14 sheet at all. The fact sheet was due in September. At this point
09:46:20 15 it's now almost 170 days overdue. This is, in fact, the third time
09:46:25 16 the case has been listed as being deficient, and it wasn't listed
09:46:32 17 until more than 20 days had passed since the defendants had sent
09:46:36 18 the overdue notice.

09:46:37 19 Under the circumstances, it sounds like counsel has been
09:46:39 20 trying and hasn't been able to get a response from their client.
09:46:44 21 We think 30 days is too long and it should be dismissed with
09:46:46 22 prejudice.

09:46:47 23 THE COURT: I think 30 days is too long. What I'll do is
09:46:49 24 give you 15 days. If you haven't gotten it by then, I'll dismiss
09:46:53 25 the case with prejudice.

09:46:55 1 MS. DANIEL: Thank you, your Honor.

09:46:55 2 And, Mr. Kessler, while you're on the phone, would you
09:46:58 3 also like to address Savannah Robinson, the same issue?

09:47:05 4 MR. KESSLER: Yes. Similar issue, we have not been able
09:47:07 5 to contact the client, and we would request 30 days to get in
09:47:10 6 contact with them to get the declaration page.

09:47:11 7 THE COURT: What's the situation there?

09:47:12 8 MS. MILLER: This one, your Honor, we have the fact sheet
09:47:14 9 but it's not been actually verified by the plaintiff. The
09:47:18 10 verification was due in -- was due last fall. We've been
09:47:22 11 attempting to get it from them since October. At this point in
09:47:26 12 time we do agree that 30 days is too long. Generally when we're
09:47:33 13 waiting for a declaration, I think the Court has asked for them
09:47:34 14 within ten days of the hearing.

09:47:36 15 THE COURT: That's all you need on that one, Gordon.
09:47:40 16 Let's get that done within 15 days. I'll give you 15 days to do
09:47:47 17 it.

09:47:50 18 MR. KESSLER: Thank you, your Honor.

09:47:50 19 MS. DANIEL: Thank you, your Honor.

09:47:50 20 The next case is Linda Jones, your Honor. The Driscoll
09:47:54 21 Firm I think is here per their response, which is Rec. Doc. 12813.
09:48:00 22 They are asking for additional time to locate the next of kin.
09:48:05 23 Counsel is here, your Honor.

09:48:06 24 MS. MORR: Good morning, your Honor. Kimberly Morr for
09:48:14 25 plaintiff. This situation I believe the only thing missing right

09:48:16 1 now is the plaintiff verification of the form.

09:48:20 2 We actually learned on February 19th that the plaintiff
09:48:21 3 is now deceased, and we would request additional time to try to
09:48:25 4 locate the next of kin. We have some letters to the estates. We
09:48:28 5 have believe we located a daughter, have not heard back yet.

09:48:31 6 MS. MILLER: When did the plaintiff pass away?

09:48:35 7 MS. MORR: We are not sure of the date of death.

09:48:38 8 MS. MILLER: That would be important to us to know in
09:48:41 9 terms of how to move forward. We are missing medical records that
09:48:45 10 show any alleged injury, so that's one of the key proof of injury
09:48:49 11 pieces that's missing here. We sent deficiency notices back
09:48:53 12 starting in September, so at this point in time we've been waiting
09:48:56 13 for them for about six months.

09:48:58 14 I understand that they just received notice that she
09:49:00 15 passed away, but we have no sense for when. We would maybe ask for
09:49:04 16 ten days to have a sense for where things stand in probate.

09:49:09 17 THE COURT: I'll do it for 30 days. Let her know more
09:49:14 18 about the information and see if we can clear it up. Pass it for
09:49:18 19 30 days.

09:49:20 20 MS. MORR: Of course. Will do, your Honor. Thank you.

09:49:21 21 MS. DANIEL: Your Honor, the next case Mary Hopper.
09:49:25 22 Defendants allege they are missing an amended declaration only.
09:49:30 23 Your Honor, there was a declaration uploaded yesterday, March 11th,
09:49:34 24 so I think what we would like to do is you guys can review it
09:49:38 25 again, I am not certain why there's still an issue.

09:49:43 1 MS. MILLER: We're still missing medical records that
09:49:45 2 demonstrate proof of injury in addition to the declaration.

09:49:53 3 MS. DANIEL: I would state that we -- that's not what's
09:49:58 4 on the -- it's just stated missing amended declaration only. So
09:50:02 5 this is Mary Hopper?

09:50:04 6 MS. MILLER: Yes.

09:50:06 7 MS. DANIEL: So, your Honor, we'd request ten days to
09:50:08 8 review this case because I think clearly we have some records were
09:50:11 9 uploaded and perhaps it was just late last night.

09:50:15 10 MS. MILLER: Perhaps it was. Ten days would be fine,
09:50:18 11 your Honor.

09:50:19 12 MS. DANIEL: The next case, your Honor, is Guadalupe
09:50:22 13 Morales. There is a core deficiency here, your Honor. The
09:50:25 14 remaining deficiency is just the authority to sign, meaning they
09:50:28 15 want the death certificate, next of kin, and counsel is working on
09:50:32 16 that, your Honor. We would ask for some additional time for them
09:50:35 17 to cure this matter.

09:50:36 18 MS. MILLER: Do you have any information on when she
09:50:38 19 passed away?

09:50:39 20 MS. DANIEL: I don't. Is anyone on the --

09:50:39 21 MR. HAMMERS: Your Honor, this is Rob Hammers. I
09:50:45 22 represent Guadalupe Morales. He passed away in June of 2018, right
09:50:51 23 around the same time we filed. We've been working with his primary
09:50:54 24 eldest heir Melinda Morales, and she is providing us with probate.
09:51:02 25 There are seven other heirs, so getting the consents and completing

09:51:06 1 it in East Texas is going to take a little time to get her subbed
09:51:11 2 in and get the suggestion of death and swap her out as the
09:51:16 3 administer, but we are in the process of doing that. And I will
09:51:20 4 get a death certificate with the exact date of death in June of '18
09:51:23 5 to defense counsel within ten days.

09:51:24 6 MS. MILLER: That's fine, your Honor. We can pass this
09:51:27 7 for 30 days to the next hearing.

09:51:29 8 THE COURT: Let's pass it for 30 days, Rob.

09:51:33 9 MS. MILLER: Thank you.

09:51:34 10 MR. HAMMERS: Thank you, your Honor.

09:51:34 11 MS. DANIEL: Thank you, your Honor.

09:51:34 12 The next case is Dianne Sunda. This case was for a
09:51:37 13 decedent and now the decedent has passed away. Actually, the next
09:51:44 14 of kin is now passed away, on February 23rd, 2019. And counsel has
09:51:50 15 filed a notice of death, your Honor, so I think this gets passed
09:51:54 16 because they filed a notice of death, it's quite recent.

09:51:56 17 MS. MILLER: So for this one, your Honor, the Xarelto
09:51:59 18 user actually passed away in November of 2015. We understand that
09:52:03 19 the next of kin just passed away. We are still waiting for
09:52:07 20 records, documentation, something to show that Ms. Sunda actually
09:52:13 21 used Xarelto; so that is pretty key missing component, and we've
09:52:17 22 been working on trying to get that since the fall. Under the
09:52:20 23 circumstances, 30 days would be fine; but in addition to working on
09:52:25 24 the probate, we do need proof of use.

09:52:27 25 THE COURT: Let's pass this one.

09:52:29 1 MS. DANIEL: Thank you, your Honor.

09:52:30 2 The next ten cases, your Honor, they were deficient fact
09:52:35 3 sheets, they were previously dismissed or agreed to stipulations of
09:52:38 4 dismissal with prejudice. Ms. Sharko read them into the record. I
09:52:43 5 don't probably need to read them again then.

09:52:44 6 But on the core deficiency cases, there were also agreed
09:52:49 7 to dismissal are Janet Daniels and Eugenia Huacoto. I think she
09:52:54 8 actually may have read those. I just didn't check them.

09:52:57 9 The next two cases, your Honor, Ronald Weeks and Kenneth
09:53:01 10 Williams. Mr. Kessler, are you on the line again?

09:53:04 11 This firm would like to withdraw as counsel on this
09:53:08 12 matter, your Honor. They are aware of the Court's practice in
09:53:13 13 these matters of withdrawal of counsel without substitution. Would
09:53:17 14 you like to address the Court on Ronald Weeks and Kenneth Williams?

09:53:22 15 MR. KESSLER: We intend to file motions to withdraw as
09:53:27 16 counsel. We informed defense counsel of this on March 8th. The
09:53:33 17 Bayer and Janssen defendants both informed us on the 8th that they
09:53:35 18 planned to object to those motions.

09:53:37 19 MS. MILLER: Your Honor, if we could take them one at a
09:53:39 20 time.

09:53:40 21 For Mr. Weeks, we don't have proof of use or proof of
09:53:42 22 injury. We have been working since June of 2018 to try to obtain
09:53:46 23 that information. We understand that Mr. Kessler has been working
09:53:51 24 trying to get that as well and the client has not been cooperating.
09:53:54 25 I think under the circumstances, given the length of time that has

09:53:57 1 passed, it should be dismissed with prejudice.

09:53:59 2 THE COURT: The record is clear that counsel has done
09:54:02 3 everything they possibly can to encourage this client to respond.
09:54:08 4 They've gone above and beyond their ethical and moral
09:54:13 5 responsibilities, they've done everything they possibly can. It's
09:54:17 6 unfair to that firm to be put in a position where they have done
09:54:24 7 what they can but still no response from the client. I understand
09:54:28 8 the client has a right to control their case and they've done so,
09:54:35 9 notwithstanding the response of the lawyer and everything that they
09:54:42 10 have done, so I am going to dismiss the case with prejudice.

09:54:45 11 MS. MILLER: Thank you, your Honor.

09:54:46 12 There's a similar circumstance with Kenneth Williams. We
09:54:49 13 don't have information regarding the dates of the use of Xarelto,
09:54:55 14 the name and address of the prescribing physician, the pharmacy
09:54:57 15 where the prescriptions were filled, any documentation of an
09:54:59 16 injury, and no declaration to verify the limited information we do
09:55:02 17 have. We've been working since September of 2018 to try to obtain
09:55:06 18 this information. We understand that Mr. Kessler has been working
09:55:10 19 as well and his client has not been responsive at this point.

09:55:13 20 THE COURT: It's clear to me that counsel has gone above
09:55:17 21 and beyond his responsibilities to get this information. It's
09:55:21 22 really basic information that the client, only the client is able
09:55:27 23 to furnish and the client refuses to do so, notwithstanding the
09:55:33 24 requests of the lawyer multiple times. We've this had matter
09:55:39 25 before, it's too long, I'll dismiss the case with prejudice.

09:55:42 1 MR. KESSLER: Thank you, your Honor.

09:55:43 2 MS. MILLER: Thank you, your Honor.

09:55:44 3 MS. DANIEL: Thank you, your Honor.

09:55:44 4 In the next 18 cases, your Honor, through no fault of
09:55:46 5 their own, counsel has done everything in their power to cure these
09:55:48 6 fact sheets and have been diligent in their attempts to resolve
09:55:52 7 this matter with the plaintiff, but have been unable to cure and
09:55:55 8 have no basis to oppose the motions.

09:55:57 9 I'll read them into the record. They are: Jonathan
09:56:00 10 Austin, Frances Bryant, Aubrey Bullock, Jim Franke, April Grove,
09:56:07 11 Kenneth Henderson, Wesley Meeks, and Alvin Miller.

09:56:12 12 The remaining cases are core deficiency cases, your
09:56:16 13 Honor. Same issue, they have been unable to cure the fact sheets
09:56:20 14 and have no basis to oppose the motions. They are: David
09:56:25 15 Anderson, Peter Graham, George Hart, Charles Jackson, Melissa
09:56:29 16 Johnson, Anthony Leary, Susan Luna, John Mancebo, Earnest Neal, and
09:56:37 17 Roy Rassi.

09:56:39 18 THE COURT: Let those cases be dismissed with prejudice.

09:56:41 19 MS. MILLER: Thank you, your Honor.

09:56:42 20 MS. DANIEL: Thank you, your Honor.

09:56:43 21 The last document today is Document 12762, your Honor,
09:56:47 22 which contained 55 cases where there were unpaid filing fees.
09:56:52 23 These have all been resolved, your Honor, and counsel apologizes
09:56:55 24 for any inconvenience of the court.

09:56:57 25 THE COURT: Okay. Thank you all both.

09:56:59 1 MS. MILLER: Thank you, your Honor.

09:57:00 2 MS. DANIEL: Thank you, your Honor.

09:57:01 3 THE COURT: The court will stand in recess.

09:57:03 4 THE DEPUTY CLERK: All rise.

09:57:04 5 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

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11 I, Karen A. Ibos, CCR, Official Court Reporter, United
12 States District Court, Eastern District of Louisiana, do hereby
13 certify that the foregoing is a true and correct transcript, to the
14 best of my ability and understanding, from the record of the
15 proceedings in the above-entitled and numbered matter.

16

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18 /s/ Karen A. Ibos

19 Karen A. Ibos, CCR, RPR, CRR, RMR

20 Official Court Reporter

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