

MINUTE ENTRY
FALLON, J.
MAY 13, 2015

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

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

THIS DOCUMENT RELATES TO ALL CASES

A status conference was held on this date in the Courtroom of Judge Eldon E. Fallon. At the conference, Co-Plaintiffs’ Liaison Counsel (“PLC”), Gerald Meunier and Leonard Davis, and Defendants’ Liaison Counsel (“DLC”), James Irwin, reported to the Court on the topics set forth in the Proposed Agenda. (Rec. Doc. 380). This status conference was transcribed by Ms. Cathy Pepper, Official Court Reporter. Counsel may contact Ms. Pepper at (504) 589-7779 to request a copy of the transcript. A summary of the status conference follows.

1. **PRE-TRIAL ORDERS**

The Court has issued the following Pre-Trial Orders:

Pre-Trial Order No. 1 (Doc. 2) entered December 17, 2014 – Setting initial conference

Pre-Trial Order No. 2 (Doc. 38) entered January 16, 2015 – Appointing Plaintiffs’ Liaison Counsel

Pre-Trial Order No. 3 (Doc. 39) entered January 16, 2015 – Appointing Defendants’ Liaison Counsel

Pre-Trial Order No. 4 (Doc. 61) entered January 26, 2015 – Requiring Counsel to provide contact information to Liaison Counsel, and amending PTO No. 1 regarding docketing procedure

Pre-Trial Order No. 4A (Doc. 62) entered January 26, 2015 – Approving and attaching Counsel Contact Information Form

Pre-Trial Order No. 5 (Doc. 63) entered January 26, 2015 – Clarifying duties of transferor court under MDL Rule 1.6

Pre-Trial Order No. 5A (Doc. 149) entered February 3, 2015 – Amending PTO No. 5 to allow transferor court to retain original file

Pre-Trial Order No. 6 (Doc. 150) entered February 3, 2015 – Appointing Defendants’ Co-Lead Counsel

Pre-Trial Order No. 7 (Doc. 169) entered February 9, 2015 – Appointing Plaintiffs’ Steering Committee (PSC); Appointing Plaintiffs’ Co-Lead Counsel; Ordering that PLC and Plaintiffs’ Co-Lead Counsel shall comprise PSC Executive Committee; Appointing Chair of the State Liaison Committee, to be *ex-officio* member of PSC; and Listing responsibilities of PSC.

Pre-Trial Order No. 7A [Rec. Doc. 830] entered April 29, 2015 – Appointing Michael Weinkowitz, Daniel Galluci, and Gibson Vance to serve on the State Liaison Committee;

Pre-Trial Order No. 8 (Doc. 183) entered February 13, 2015 – Establishing standards and procedures for counsel seeking reimbursement for common benefit fees and costs.

Pre-Trial Order No. 9 (Rec. Doc. 356) entered March 24, 2015 – Providing for the Direct Filing of Complaints in the MDL;

Pre-Trial Order No. 10 (Rec. Doc. 357) entered March 24, 2015 – Providing for the Streamlined Service on Certain Bayer Defendants; and

Pre-Trial Order No. 11 [Rec. Doc. 893] entered May 4, 2015 – Providing for Bundling of Complaints, Answers and Responsive Pleadings, with attached Attorney Instructions for Filing Individual Severed Xarelto Cases [Rec. Doc. 893-1];

Pre-Trial Order No. 12 [Rec. Doc. 894] entered May 4, 2015 – Stipulated Protective Order;

Pre-Trial Order No. 13 [Rec. Doc. 895] entered May 4, 2015 – Governing the Form and Schedule for Service of Plaintiff Fact Sheets and Executed Authorizations for Release of Records;

Pre-Trial Order No. 14 [Rec. Doc. 896] entered May 4, 2015 – Governing the Form and Schedule for Service of Defendant Fact Sheets;

Pre-Trial Order No. 15 [Rec. Doc. 897] entered May 4, 2015 – Consent Order Regarding the Preservation of Documents and Electronically Stored Information;

Pre-Trial Order No. 16 [Rec. Doc. 898] entered May 4, 2015 – Filing Requests for Summons and Summons Returns.

2. **CASE MANAGEMENT ORDERS**

The Court has issued the following Case Management Orders:

Case Management Order No. 1 [Rec. Doc. 891] entered May 4, 2015 – Addressing Voluntary Disclosure and Production by Defendants, Plaintiffs’ Master Set of Requests for Production, Depositions and Subpoenas to Non-Parties, Plaintiff Fact Sheet and Defendants Fact Sheet, Science Day, State and Federal Liaison, Proposed Case Management Order No. 2, and Bundling of Complaints and Answers and Responsive Pleadings.

3. **COUNSEL CONTACT INFORMATION FORM**

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

4. **“MDL CENTRALITY”**

The Plaintiffs’ Steering Committee and Plaintiffs’ Liaison Counsel have agreed to use the BrownGreer MDL Centrality system to distribute pleadings and discovery documents to plaintiffs’ counsel in *In re: Xarelto (Rivaroxaban) Products Liability Litigation*, MDL No. 2592 (“MDL 2592”). Defendants have not agreed to use the MDL Centrality system for pleadings or

discovery documents. The parties are in the process of preparing a Joint Proposed Pre-Trial Order to be submitted to the Court for the use of MDL Centrality for Electronic Service/MDL Centrality, for Plaintiffs Only.

The Plaintiffs' Steering Committee and Defendants have agreed to use the BrownGreer MDL Centrality system for a secure web-based platform that provides for the electronic completion, storage and transmission of Fact Sheets and related documents. All Plaintiff Fact Sheets and Defendant Fact Sheets shall be located on the BrownGreer MDL Centrality system.

5. **PLAINTIFF FACT SHEETS**

On May 4, 2015, the Court issued Pre-Trial Order No. 13 [Rec Doc. 895], which governs the form and schedule for service of Plaintiff Fact Sheets and executed Authorizations for the release of records to be completed by plaintiffs in all individual cases. A copy of the Plaintiff Fact Sheet is attached as Exhibit "A" to the Order and is to be completed and served using the BrownGreer MDL Centrality system.

6. **DEFENDANT FACT SHEETS**

On May 4, 2015, the Court issued Pre-Trial Order No. 14 [Rec. Doc. 896], which governs the form and schedule for service of Defendant Fact Sheets to be completed by defendants in all individual cases. A copy of the Defendant Fact Sheet is attached as Exhibit "A" to the Order is to be completed and served using the BrownGreer MDL Centrality system.

7. **BUNDLING OF COMPLAINTS/ANSWERS/RESPONSIVE PLEADINGS**

On May 4, 2015, the Court issued Pre-Trial Order No. 11 [Rec. Doc. 893], which addresses Bundling of Complaints, Answers, and Responsive Pleadings.

8. **PRESERVATION ORDER**

On May 4, 2015, the Court issued Pre-Trial Order No. 15 [Rec. Doc. 897], a Consent Order Regarding the Preservation of Documents and Electronically Stored Information. Pre-Trial Order No. 15 modifies paragraph 13 of Pre-Trial Order No. 1 relating to preservation of evidence. Per paragraph I(B) of Pre-Trial Order No. 15, the parties continue to meet and confer regarding the obligation on all parties to preserve voicemail, instant messages sent or received on an instant messaging system, or text messages sent or received on a cellular phone, smartphone, tablet or other mobile device, and intend to propose a briefing scheduling regarding same to the Court.

9. **DOCUMENT PRODUCTION PROTOCOL**

The parties continue to meet and confer in an attempt to reach an agreement on a proposed Document Production Protocol Order. Discussions are ongoing; however, the parties disagree on the electronic format in which defense documents should be produced. On May 8, 2015, the parties filed letter briefs with the Court, with any replies due on May 12, 2015.

10. **DISCOVERY**

On May 7, 2015, the Plaintiffs' Steering Committee propounded Plaintiffs' First Request for the Production of Documents to Defendants.

11. **DISCOVERY ISSUED TO THIRD PARTIES**

On April 22, 2015, the Plaintiffs' Steering Committee issued a Subpoena Duces Tecum to the United States Food and Drug Administration ("FDA"). The production dated is set for May 27, 2015.

12. **SCIENCE DAY**

The Court has scheduled Science Day in the courtroom at 9:00 a.m. on June 11, 2015. On April 30, 2015, both Plaintiffs and Defendants provided the Court with their respective selections of relevant scientific publications for review in advance of Science Day. The parties have met and conferred and will be proposing to the Court a procedure and format for Science Day, together with an agreed upon agenda.

13. **STATE/FEDERAL COORDINATION**

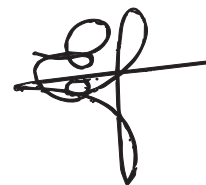
In accordance with Pre-Trial Orders No. 7 and 7A, as well as Case Management Order No. 1, PLC and DLC have had, and will continue to have, communications regarding the State Liaison Committee, as well as the status of coordination of MDL and state court actions.

14. **PROPOSED CASE MANAGEMENT ORDER NO. 2**

Per Case Management Order No. 1, the parties will meet and confer before June 15, 2015 to propose a Case Management Order to address issues of Discovery Plaintiffs, Bellwether Selection, Other General Discovery, Expert Discovery (including *Daubert* Motions) and Dispositive Motions. The Parties will submit a proposed Case Management Order No. 2 to the Court by June 30, 2015.

15. **NEXT STATUS CONFERENCE**

The Court has announced that the next status conference will be on Wednesday, June 10, 2015 at 9:00 a.m. The Court has set up a conference line for auditing the conference. To audit, call (800) 260-0702 and enter access code 360365.

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