

MINUTE ENTRY  
FALLON, J.  
JULY 9, 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

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**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”), Leonard Davis, and Defendants’ Liaison Counsel (“DLC”), James Irwin, reported to the Court on the topics set forth in the Proposed Agenda. (Rec. Doc. 1068). 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 [Rec. Doc. 2]** entered December 17, 2014 – Setting initial conference;

**Pre-Trial Order No. 2 [Rec. Doc. 38]** entered January 16, 2015 – Appointing Plaintiffs’ Liaison Counsel;

**Pre-Trial Order No. 3 [Rec. Doc. 39]** entered January 16, 2015 – Appointing Defendants’ Liaison Counsel;

**Pre-Trial Order No. 4 [Rec. 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 [Rec. Doc. 62]** entered January 26, 2015 – Approving and attaching Counsel Contact Information Form;

**Pre-Trial Order No. 5 [Rec. Doc. 63]** entered January 26, 2015 – Clarifying duties of transferor court under MDL Rule 1.6;

**Pre-Trial Order No. 5A [Rec. Doc. 149]** entered February 3, 2015 – Amending PTO No. 5 to allow transferor court to retain original file;

**Pre-Trial Order No. 6 [Rec. Doc. 150]** entered February 3, 2015 – Appointing Defendants’ Co-Lead Counsel;

**Pre-Trial Order No. 7 [Rec. 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 [Rec. 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;

**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. 11A [Rec. Doc. 923]** entered May 20, 2015 – Providing exemplar Joint Complaint and exemplar Short Form Complaint.

**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. 13A & 14A [Rec. Doc. 1040]** entered June 23, 2015 – Regarding Plaintiff Fact Sheets and Authorizations and 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.

**Pre-Trial Order No. 17 [Rec. Doc. 924]** entered May 20, 2015 – Electronic Service/MDL Centrality for Plaintiffs Only.

**Pre-Trial Order No. 18 [Rec. Doc. 925]** entered May 20, 2015 – Science Day.

**Pre-Trial Order No. 19 [Rec. Doc. 951]** entered June 4, 2015 – Protocol for Treatment of Privileged and Work Product Materials;

**Pre-Trial Order No. 20 [Rec. Doc. 1007]** entered June 15, 2015 – Regarding the Format for Production of Hardcopy Documents and Electronically Stored Information.

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

Lead Plaintiff Counsel and Lead Defense Counsel have had numerous meetings and ongoing discussions regarding Case Management Order No. 2. Pursuant to recent discussions

with the Court, on June 30, 2015, the PSC and counsel for Defendants each submitted spreadsheets of proposed timetables for discovery, document production, and bellwether trials. The parties submitted letter briefs to the Court on July 6 and will continue to meet and confer to discuss these issues.

4. **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.

5. **“MDL CENTRALITY”**

On May 20, 2015, the Court issued Pre-Trial Order 17 [Rec. Doc. 924], which governs the procedures for utilizing 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”), which system is in operation. The parties will continue to update the Court on this topic, but the parties currently suggest that this item may be removed from future Joint Reports and Agendas.

6. **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, as well as executed Authorizations for the release of records to be completed by plaintiffs in all individual cases. Pre-Trial Order No. 13A and 14A [Rec. Doc. 1040] provides the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System. The

Defendants have received many informal requests for extensions of the deadline set forth in Pre-Trial Order 13 to submit Plaintiff Fact Sheets.

7. **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. Pre-Trial Order No. 13A and 14A [Rec. Doc. 1040] provides the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System.

8. **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 and on May 20, 2015, the Court issued Pre-Trial Order 11A [Rec. Doc. 923], which provided an exemplar Joint Complaint and an exemplar Short Form Complaint. On June 18, 2015, in accordance with PTO 11 [Rec. Doc. 893], Omnibus Answers with Jury Demands were filed by the following defendants: Bayer Healthcare Pharmaceuticals, Inc.; Bayer Pharma AG; and Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC, Janssen Ortho, LLC (collectively, “the Janssen Defendants”), and Johnson & Johnson. On June 23, 2015, the parties submitted Proposed Pre-Trial Order 11B regarding the bundling of complaints and answers, which is currently under advisement by the Court. Since the filing of the Omnibus Answers, several plaintiffs have filed Notices of Dismissal. The Clerk’s office has since been designating these notices of dismissal as “Deficient”.

9. **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. The parties continue to meet and confer regarding the obligation of 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. On July 2, 2015, the PSC served Defendants with 30(b)(6) Deposition Notices relating to the ESI/Preservation matters scheduling the Janssen and Bayer depositions for July 15 and 16, 2015, respectively.

10. **DISCOVERY**

Pursuant to CMO 1, on April 30, 2015, Defendants provided voluntarily disclosures to Plaintiffs. On May 7, 2015, the Plaintiffs' Steering Committee propounded Plaintiffs' First Request for the Production of Documents to Defendants and Defendants served their written objections and responses on June 8, 2015. A component of the parties' discussions on CMO 2 includes the issue of rolling document production, and the parties continue to meet and confer on this issue. Defendants advised that they have produced, to date, approximately 33 million pages of documents consisting of the Xarelto IND and NDA files, organizational charts, the collaborative development agreements between defendants relating to Xarelto, a joint e-room related to Xarelto, and all or significant portions of 10 employee files. Defendants advise they will be making additional document productions within the next two weeks. The Plaintiffs' Steering Committee ("PSC") provided to Defendants draft 30(b)(6) Notices relating to corporate

structure and insurance (as to Bayer only). Bayer and Janssen have submitted written responses to the notices, and the parties continue to meet and confer to discuss the matters.

11. **DEPOSITION GUIDELINES**

The Plaintiffs' Steering Committee and Defendants continue to negotiate and prepare a proposed Pre-Trial Order governing the conduct of depositions in the Multidistrict Litigation.

12. **DISCOVERY ISSUED TO THIRD PARTIES**

On April 22, 2015, the Plaintiffs' Steering Committee ("PSC") issued a Subpoena Duces Tecum to the United States Food and Drug Administration ("FDA"). On May 11, 2015, the FDA responded to the subpoena and provided publicly available records. At the June 10, 2015 Status Conference, PLC provided to DLC a flash drive containing the FDA responses. The PSC and DLC have since communicated with the FDA regarding the status of further production and response to the subpoena.

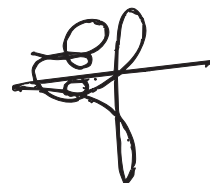
On June 4, 2015, the Plaintiffs' Steering Committee ("PSC") issued a Subpoena to Testify at Deposition to Duke Clinical Research Institute.

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. **NEXT STATUS CONFERENCE**

The Court has announced that the next status conference will be on Tuesday, August 4, 2015 at 9:00 a.m. The Court has set up a conference line for auditing the conference. To audit, call (866) 216-6835 and enter access code 555381.

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