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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN)
PRODUCTS LIABILITY LITIGATION

Civil Action No. 14-MD-2592
Section "L"
New Orleans, Louisiana
October 11, 2018 at 9:00 a.m.

THIS DOCUMENT RELATES TO VARIOUS CASES

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.)

THE COURT: Good morning, ladies and gentlemen. We're here today for our monthly status conference. I met a moment ago with counsel for plaintiff and defendant, and I'll hear from them at this point.

Make your appearance for the record.

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

MR. IRWIN: Good morning, Your Honor, James Irwin for defendants.

THE COURT: We talked about the proposed agenda. We'll take them in the order presented. Let's hear from counsel.

MR. DAVIS: Your Honor, if I may, I want to begin with Section 4.

And I want to say thank you to Jim Irwin. And I want to begin by saying that it's been a pleasure to work with Jim, both professionally and personally, who is a tremendous lawyer and the teacher of many. And I wish him the best of luck in his future, in his retirement.

THE COURT: Yeah, Jim tells us he's retiring or trying to retire in any event. We wish him well. He's done a great job for the Court and for his clients of course.

1 MR. IRWIN: Your Honor, I often tell people about
2 many of your wise words, and one that comes to mind is how
3 you know that all trial lawyers have a good dog and a bad dog
4 inside, but you've always fed the good dog and didn't feed
5 the bad dog. And it is for that reason that it has been such
6 a pleasure and such an honor to serve in this courtroom for
7 many years now. And I can tell you, I know there are bad
8 dogs over here.

9 MR. MEUNIER: Don't point at me. Don't point at me.

10 MR. IRWIN: But they've also become very good
11 friends, personal friends, and that has been a marvelous sort
12 of journey. And so, again, Your Honor, I am so grateful for
13 having served in this court, and I know that my successor,
14 Kim Moore, will enjoy that service as much as I have.

15 THE COURT: You've done a great job and I appreciate
16 it. And I've always said that the reason this case -- these
17 types of cases work well is because the quality of lawyers
18 that handle them. They're the best of the best, and if I can
19 just keep them focused, that's -- they pull the wagon that's
20 for sure.

21 MR. OLINDE: Your Honor, John Olinde for Bayer
22 defendants. We -- I join in. I've known Jim for 30 years or
23 more, worked with him. Such a gentleman. I'll really miss
24 him in this litigation and just as professionally,
25 personally. You know, we've heard a lot of fish stories over

1 the years from Jim, but we're looking forward to hearing a
2 lot more, so we're really going to miss you, Jim.

3 MR. DAVIS: And, Your Honor, we look forward to
4 working with Kim Moore, and we expect that she will bring the
5 same quality and professionalism to the table.

6 As I go through this list, there are a number of
7 items on Pre-Trial Order No. 1, and I understand that
8 Pre-Trial Order 10C has now been signed.

9 And just so that folks are aware of that, Bayer
10 Healthcare Pharmaceutical has a new address where they are to
11 be served, which is Bayer Healthcare Pharmaceutical, Care of
12 SOP Department at 251 Little Falls Drive, Wilmington,
13 Delaware, 19808. And we have received a number of inquiries
14 regarding service of these issues, and people have had
15 concerns because of the change of address of where service
16 should be. And I understand that there are some matters
17 where people attempted to make service but were unable. I'm
18 hopeful that these will now be able to be cured, and if there
19 are any issues as a result of the delays, they'll be brought
20 to the Court.

21 THE COURT: I'll put something on the website too to
22 kind of flag it because we are getting -- we're still getting
23 cases. Not as many per month, but we're still getting cases
24 every month.

25 MR. DAVIS: On the next section, Your Honor, there

1 are a number -- and this is really for folks on the phone.
2 There are a number of revisions to CMOs, particular to CMO 6
3 on examination of prescribing and treating physicians, and I
4 encourage folks to look at those new CMOs as well as the CMO
5 6B which is addressing the necessity of not needing to file a
6 notice of appearance in order for counsel to participate in
7 case specific discovery.

8 And those folks who are in the Wave 1, Wave 2 matters
9 should be familiar with those. And if they have any
10 questions, they should feel free to call liaison counsel.
11 But there are new orders and people are encouraged to look at
12 those orders which are available on the Court's website.

13 THE COURT: What about a report on the cases, the
14 several hundred cases that are going back? What's happening
15 with that?

16 MR. DAVIS: Those cases are in the process of being
17 worked up in the discovery phase. They are actively being
18 worked, and if there are questions on those, Andy Birchfield
19 in particular, his office can address those issues, and if
20 you want Mr. Birchfield to speak about the status of that,
21 he's certainly available to do that.

22 THE COURT: Give us a status on that. We talked
23 about it a moment ago, but for those on the phone, in the
24 audience.

25 MR. BIRCHFIELD: The Wave 1 cases, there were

1 600 cases that were initially selected, 200 by the
2 plaintiffs, 200 by the defense counsel, and 200 by the Court
3 through random selection. And the discovery for those cases
4 is ongoing. It's a seven-month discovery period from the
5 time the defense fact sheet is due which is triggered by the
6 plaintiffs completing their fact sheet. That discovery
7 period for the -- at the early -- for the earliest cases,
8 those that were completed -- completed the fact sheets
9 initially will end in January.

10 So the plaintiffs, we've had a pretty good number of
11 the plaintiffs' depositions that have already been scheduled
12 and taken. We're also taking the prescriber and the treater
13 deposition, and then the last of the series will be the sales
14 or detail representative depositions. But that process is
15 working well so far. I mean, there are challenges along the
16 way just with scheduling, but the parties are working well
17 together to resolve those and get these depositions taken.

18 THE COURT: Susan, do you have anything to add on
19 that?

20 MS. SHARKO: Yes. We appreciate very much
21 Mr. Birchfield's cooperation in helping resolve problems.

22 Of the 600 Wave 1 cases, 192 have been dismissed with
23 prejudice. The rest are being worked up. We're down to two
24 cases that have not submitted a PFS yet, and those are on
25 orders to show cause before Your Honor.

1 We have -- we're down to one case with subject matter
2 jurisdiction issues, one case with service issues. All the
3 duplicate filed cases have been resolved thanks to
4 Mr. Birchfield's help and likewise the cases with missing
5 authorizations.

6 So now we roll into Wave 2. We just got the random
7 picks within the last week. So far, we have 34 cases with
8 subject matter jurisdiction issues, 32 cases missing
9 authorizations, 56 cases with service issues, and so far,
10 19 cases have been dismissed. I've been trading less with
11 Mr. Birchfield, and hopefully we'll have the same track
12 record as we did with Wave 1.

13 There are other issues with the docket that we're
14 discussing, cases that we believe have been improvidently
15 filed, the rule -- Federal Rule of Civil Procedure 25 cases.
16 There are some estate issue cases where authorizations are a
17 problem, and hopefully we'll be able to resolve all those
18 without your intervention.

19 THE COURT: Thank you.

20 MS. SHARKO: Thank you.

21 MR. DAVIS: And, Your Honor, we have encouraged
22 anyone who has a problem to reach out and speak to lead
23 counsel or liaison counsel so that we can hopefully assist
24 those folks if they have issues with respect to the waves. I
25 think BrownGreer is here to make a report.

1 MR. WOODY: Good morning, Your Honor, Jake Woody from
2 BrownGreer. I have a quick update on plaintiff fact sheets
3 in this case.

4 So far, we've received 22,345 plaintiff fact sheets.
5 Those are active open cases. We have actually received more,
6 but as cases are dismissed, we take them off this list.
7 That's an increase of 522 since our last report which I think
8 was in August. I think we skipped last month. We have
9 another 1,338 fact sheets in progress which puts our total at
10 23,683 plaintiffs in our database.

11 We have seen a decrease in our monthly totals as you
12 mentioned in the case filings. We've seen a corresponding
13 decrease in the plaintiff fact sheet filings. In the last
14 three months or so, we've dropped a few hundred a month.

15 In August, we had 298. September we had 286, and so
16 far, in October, we have 111. And this chart shows the
17 monthly totals for the last two years. You can see it was
18 typically more like four or five hundred a month, and it's
19 dropped a couple of hundred. Our average is still 435 a
20 month, but if the -- if this trend continues, that will
21 continue to drop as well.

22 We did make the final picks, the random selections on
23 October 1st. That was the last of the 1,200 CMO 6 cases. We
24 are tracking those in our system to make sure we can report
25 on them. We're also trying to keep track of the open versus

1 dismissed cases. There are 993 CMO 6 cases still open. I
2 think that number changes pretty frequently, but as of
3 yesterday, that's what it was. That's -- 83 percent of the
4 CMO 6 cases are still active, and 207 have been dismissed.
5 We do a breakdown here of the dismissed cases and who picked
6 them: 128 were defendant picks, 68 were random, and 11 were
7 plaintiff picks.

8 We do have CMO 6 plaintiffs from all 50 states. The
9 top five are Ohio with 87, North Carolina with 76, New York
10 with 62, Alabama with 54 and Texas 53. So they are spread
11 throughout the country, but many states have one or two as
12 you can see here. So it's distributed across the country but
13 spread around. I guess it's concentrated in a few states.

14 Lastly, I have a comparison of the CMO 6 attributes
15 with the MDL attributes. The age 70-plus is our most common
16 age in the MDL. 61 percent of all our plaintiffs are over
17 70. 73 percent of the CMO 6 plaintiffs are also over 70.
18 The most common indication is reduction of risk of stroke.
19 53 percent of the MDL list that as the reason they took
20 Xarelto, and 65 percent of the CMO 6 population list that as
21 well.

22 And, finally, the most common injury is the GI bleed.
23 49 percent of the MDL alleges that injury, and 58 percent of
24 the CMO 6 population does as well. So you can see that the
25 CMO 6 population to the extent it is important is

1 representative of the MDL as a whole, even -- maybe more so,
2 because we weighted the picks a little bit to get there.

3 That's my report, Your Honor.

4 THE COURT: Thank you, Jake.

5 MR. WOODY: Thank you, Your Honor.

6 MR. DAVIS: Your Honor, the next comment is on
7 paragraph 10 of the joint report, and we are working on the
8 appeal. And they are proceeding with respect to Section 12.
9 The *Rush* case in Philadelphia is proceeding along, and it is
10 set for trial December the 3rd of 2018. And there are
11 additional matters being worked up in Philadelphia state
12 court, and as things develop up there, we will report back to
13 the Court. And if there are questions of the Court, Mike
14 Weinkowitz who is from the Philadelphia state court is
15 present.

16 THE COURT: Mike, do you have anything to add?

17 MR. WEINKOWITZ: Good morning, Your Honor, Mike
18 Weinkowitz for the Pennsylvania plaintiffs.

19 As Mr. Davis indicated, the *Rush* trial is currently
20 scheduled for December 3rd. I believe that will probably be
21 changed to either February or March. We'll know that next
22 week. There's a set of our Group 4 cases which is the next
23 wave that's being worked up. They're currently being worked
24 up. The first trial after the defendant strikes, which are
25 in December, will be in June, and those cases will be tried

1 every 60 days.

2 We have also another group being worked up. It's the
3 first 50 filed cases. They are being subjected to limited
4 discovery at this point in time. I think there's 45 of the
5 50 left after some culling as a result of fact sheets, and
6 there's currently 2,000 cases on file.

7 THE COURT: How about in other states, Mike? Do you
8 have a feeling for that?

9 MR. WEINKOWITZ: I don't. All I know -- I know --
10 one thing I know is that we saw an increase in filings in
11 Pennsylvania as a result of some dismissals from Delaware
12 after the BMS decision. So we had an influx of cases in the
13 last probably two months or so that increased our inventory
14 of cases, so that -- cases that were dismissed from Delaware.
15 I don't have a sense of California, Your Honor.

16 THE COURT: Thank you.

17 MR. WEINKOWITZ: Thank you.

18 MS. SHARKO: I can speak for that, Judge.

19 We've essentially cleaned up Missouri and Delaware
20 with jurisdictional issues and worked out a way for
21 plaintiffs to refile in the appropriate jurisdictions without
22 prejudice to them. We have one case in New Jersey, one case
23 in Virginia. That Texas case that you remanded at the
24 beginning of the litigation, the plaintiffs have dismissed
25 the pharmaceutical companies with prejudice and decided just

1 to proceed as a med-mal case. And California, the docket has
2 narrowed a little because of jurisdiction, and they have a
3 very small coordinated proceeding that is pretty much
4 following what we're doing in the MDL, but it's months and
5 months behind. They're in the fact sheets stage.

6 THE COURT: Do you have any feeling for the judge?
7 Who is the judge over there? Do you know? Is it just one
8 judge or several?

9 MS. SHARKO: It is one judge. It's a coordinated
10 judge. I have his name written down. I'm blanking on it,
11 but he's moving things along at the appropriate pace I think.

12 THE COURT: Great. Thank you.

13 MS. SHARKO: Thanks.

14 MR. DAVIS: Your Honor, I believe that's it, and the
15 next issue is the next status conference.

16 THE COURT: The next one is November the 8th. The
17 following is December the 12th, December the 12th, both of
18 them at nine o'clock.

19 Anything from anyone else?

20 (Negative responses.)

21 All right, folks. We'll take just a five-minute
22 break, and we'll come back and deal with the rule to show
23 cause matters. The court will stand in recess.

24 * * * *

25 (WHEREUPON, the proceedings were adjourned at 9:25 a.m.)

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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