

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

IN RE: XARELTO (RIVAROXABAN))	MDL No. 2592
PRODUCTS LIABILITY LITIGATION)	
)	SECTION: L
_____)	
)	JUDGE FALLON
THIS DOCUMENT RELATES TO:)	MAG. JUDGE NORTH
ALL ACTIONS)	
)	
_____)	

PRETRIAL ORDER NO. 15B

**CONSENT ORDER REGARDING PRESERVATION OF VOICEMAIL,
TEXT MESSAGES AND INSTANT MESSAGES**

On December 17, 2014, the Court issued Pretrial Order No. 1 which addressed, *inter alia*, document preservation. Plaintiffs and Defendants advised the Court at status conferences of continuing discussions and negotiated a more case specific order (Pretrial Order No. 15) that the Court entered on May 4, 2015. In PTO 15, Plaintiffs and Defendants agreed that the parties “will 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.” The Parties have conducted such meet and confer following depositions of Defendants. The Court previously entered consent order PTO 15A on September 17, 2015. To clarify the preservation obligations of the parties, the Court hereby enters PTO 15B by consent of the parties. PTO 15A is hereby vacated and shall have no further effect.

By agreement of the parties, going forward from September 17, 2015, the Court Orders as follows:

- (1) Plaintiffs shall provide written notice of this Consent Order to individual plaintiffs with cases pending in this MDL proceeding instructing them to either (a) refrain from initiating text messages, instant messages or voicemail for substantive communications relating to Xarelto, the Plaintiffs’ medical condition or the Plaintiffs’ claims for damages; or (b) preserve or transcribe all such text messages, instant messages or voicemails if the Plaintiff initiates such a substantive communication.
- (2) Defendants shall provide written notice of this Consent Order to any current U.S. employee previously identified by Defendants in their Voluntary Disclosures or

requested by Plaintiffs as a document custodian instructing them to either (a) refrain from initiating text messages, instant messages or voicemail for substantive communications relating to Xarelto; or (b) preserve or transcribe all such text messages, instant messages or voicemails if the employee initiates such a substantive communication. Current U.S. employees who are requested as document custodians by Plaintiffs after the date of this order will be provided the notice following a request from Plaintiffs for their files. This paragraph will not apply to employees resident in foreign countries.

- (3) From September 17, 2015 forward, the only obligation to preserve newly created text messages, instant messages or voicemail is as required by paragraphs 1 and 2 above.
- (4) The parties will continue to meet and confer on any open issues regarding voicemail, text messaging and instant messaging, and will report to the Court at the November 2015 status conference whether they have resolved their differences, and if not the Court will set a briefing and hearing schedule to resolve any disputes.

NEW ORLEANS, LOUISIANA this 21st day of October, 2015.

A handwritten signature in black ink that reads "Eldon E. Fallon". The signature is written in a cursive, flowing style with a horizontal line underneath the name.

Honorable Eldon E. Fallon
United States District Judge