

MINUTE ENTRY
FALLON, J.
OCTOBER 11, 2018

**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, a representative from Plaintiffs’ Liaison Counsel (“PLC”), Lenny Davis, reported to the Court on the topics set forth in the Proposed Agenda; Susan Sharko and Andy Birchfield also provided updates on the CMO 6 cases. (R. Doc. 9610-1). This status conference was transcribed by Ms. Nichelle Drake, Official Court Reporter. Counsel may contact Ms. Drake at (504) 589-7775 to request a copy of the transcript. A summary of the status conference follows.

1. PRE-TRIAL ORDERS

Since the filing of Joint Report No. 31 on August 2, 2018, the Court has not issued any new Pre-Trial Orders.

Bayer Healthcare Pharmaceutical has a new service address and Pre-Trial Order No. 10 will be amended accordingly, but in the interim, Defendants have advised that the service address for Bayer Healthcare Pharmaceutical is 251 Little Falls Drive, Wilmington, DE 19808.

2. CASE MANAGEMENT ORDERS:

Since the filing of Joint Report No. 31 on August 2, 2018, the Court has issued Case

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Management Order No. 6A,¹ addressing parties' protocols for depositions conducted as part of CMO 6 case workups [Rec. Doc. 10660]. On September 13, 2018, the Court entered the Joint Stipulated Order Addressing Order of Examination for Certain Prescribing and Treating Physician Depositions Pursuant to Case Management Orders Nos. 6 and 6A. [Rec. Doc. 10882]. On October 2, 2018, the Court issued Case Management Order 6B addressing CMO 6 case-specific discovery and Notices of Appearance in the MDL. [Rec. Doc. 11051].

On April 16, 2018, pursuant to CMO 6 [Rec. Doc. 8717], Plaintiffs and Defendants each selected 200 cases for inclusion in the first group ("Wave 1") of cases for work-up and discovery. The Court made its random selection of an additional 200 cases on April 30, 2018. The Court extended for thirty (30) days the deadlines set forth in CMO 6 for the selection of the second group of cases ("Wave 2"). The deadline for Plaintiffs and Defendants to each select 200 cases for inclusion in Wave 2 was September 17, 2018. The Court randomly selected 200 cases for inclusion in Wave 2 by October 4, 2018. All provisions and deadlines in CMO 6 for the Wave 2 random cases shall now run from October 4, 2018 (as opposed to October 1, 2018).

¹ Formerly titled Pretrial Order No. 6A. [Rec. Doc. 10979].

CMO 6 provides that all of the cases selected for discovery must complete all sections of the Plaintiff Fact Sheet pursuant to Pre-Trial Order No. 13 within thirty (30) days of selection. Subject to Paragraph 6 of CMO 6, Defendants must serve an updated and completed Defendant Fact Sheet for each case selected in Wave 1 and Wave 2. Pre-Trial Order No. 27 (dealing with the completion of only certain sections of the Plaintiff Fact Sheet) shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall continue to govern cases not selected in either Wave 1 or Wave 2.

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. DEFENDANTS' LIAISON COUNSEL

Defendants Janssen Pharmaceuticals, Inc., Janssen Research & Development, LLC, and Janssen Ortho, LLC have filed a Motion to Substitute Kim E. Moore of the law firm of Irwin Fritchie Urquhart & Moore LLC (La. Bar No. 18653) as Defendants' Liaison Counsel in place of James B. Irwin, V, who will be relieved of his duties as Defendants' Liaison Counsel due to his retirement. [Rec. Doc. 11104].

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 ("PFSS"), 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.

Prior to filing a Motion for Extension of PFS Deadlines, plaintiff's counsel should contact Defendants' Liaison Counsel to determine whether there is any opposition.

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Plaintiffs' counsel in any filed cases as to which the PFS would be due after March 30, 2016 should consult Pre-Trial Order No. 27.

On January 25, 2017, the Court entered Pre-Trial Order No. 31, a Protocol to Assist in Addressing Plaintiff Fact Sheets Which Defendants Contend Are Not in Compliance with Court Orders. [Rec. Doc. 5183].

On February 27, 2018, the Court entered CMO No. 6. Pre-Trial Order No. 27 shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall remain in effect with respect to cases not selected in either Wave 1 or Wave 2.

On August 9, 2018, Defendants filed Order to Show Cause Motions regarding plaintiffs Defendants allege have failed to serve a Fully Complete or Updated Plaintiff Fact Sheet Pursuant to CMO 6 [Rec. Doc. 10429] or have Filed Duplicate Cases in MDL No. 2592 [Rec. Doc. 10430]. On August 15, 2018, Defendants filed an Order to Show Cause Motion regarding plaintiffs Defendants allege Failed to Cure Plaintiff Fact Sheet Deficiencies and Serve a Fully Complete and Updated Fact Sheet Pursuant to CMO 6 [Rec. Doc. 10522]. On August 17, 2018, Defendants filed an Order to Show Cause Motion regarding plaintiffs Defendants allege Have Failed to Submit an Updated Verification for a Previously Submitted Plaintiff Fact Sheet or a Fully Complete and Updated Fact Sheet Pursuant to CMO 6 [Rec. Doc. 10542]. On August 24, 2018, Defendants filed Orders to Show Cause Motions regarding plaintiffs which Defendants allege Failed to Cure

Plaintiff Fact Sheet Deficiencies and Failed to Serve a Fully Complete and Updated Plaintiff Fact Sheet Pursuant to CMO 6 [Rec. Docs. 10619, 10620, 10633, 10634, 10635, 10636, & 10637]. On August 28, 2018, Defendants filed Order to Show Cause Motions regarding plaintiffs Defendants allege failed to Cure Plaintiff Fact Sheet Deficiencies and Serve a Fully Complete and Updated Plaintiff Fact Sheet pursuant to CMO 6 [Rec. Docs. 10679 & 10680]. On August 31, 2018, Defendants filed an Order to Show Cause Motion regarding plaintiffs which Defendants allege have Failed to Serve a Plaintiff Fact Sheet [Rec. Doc. 10778]. On September 4, 2018, Defendants filed an Order to Show Cause Motion regarding plaintiffs which Defendants allege have Core Plaintiff Fact Sheet Deficiencies [Rec. Doc. 10795]. Oppositions have been filed to each of these various motions, and the parties continue to meet and confer in advance of the scheduled hearing dates on the various Orders to Show Cause that are set by the Court. On September 18, 2018, the Court held a Show Cause Hearing regarding the above motions [See Minute Entry, Rec. Doc. 10966]. The next Show Cause Hearings will be held Thursday, October 11, 2018 at 9:15 a.m., and thereafter on Monday, November 19, 2018 at 9:00 a.m.

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 defendant in all individual cases. Pre-Trial Orders No. 13A, 14A, and 14B [Rec. Docs. 1040, 1221, & 1847] provide the procedure for the online submission and service of Fact Sheets and Authorization forms through the BrownGreer MDL Centrality System, as well as for the release of information and data from IMS Health, Inc. Pursuant to paragraph 3 of PTO 14 [Rec. Doc. 896], it is the responsibility of the Plaintiffs' Liaison Counsel to send written notices of DFS deficiencies to counsel for Defendants. However, any needed follow-up addressing such deficiencies remains the

responsibility of individual counsel for plaintiff.

On April 21, 2016, the Court entered Pre-Trial Order No. 27, which modifies PTO Nos. 13, 13A, 14 and 14A. Defendants will complete a DFS for completed PFSs served as of March 30, 2016 and at this time Defendants have no obligation to serve a DFS for any PFS served after March 30, 2016.

On February 27, 2018, the Court entered CMO No.6, which provides in part that for those Plaintiffs selected in Wave 1 and Wave 2 who timely complete the Plaintiff Fact Sheet in compliance with Pre-Trial Order No. 13 within 30 days of selection, Defendants must serve a completed Defendant Fact Sheet pursuant to Pre-Trial Order 14 within 60 days of selection as to any selected plaintiff who timely submitted a complete PFS. Pre-Trial Order No. 27 shall no longer apply to those cases selected in Wave 1 and Wave 2, but shall remain in effect for cases not selected in either Wave 1 or Wave 2

7. SERVICE OF PROCESS ON DEFENDANTS

On March 16, 2018, the Court entered an Order [Rec. Doc. 8926] vacating and replacing the March 24, 2015 Order [Rec. Doc. 4217] and the February 15, 2018 Order [Rec. Doc. 8628] and relates to service of process, and addresses a filing backlog in the MDL over the last three months. For these backlogged cases, the March 16, 2018 Order extends the deadline for service of process, allowing the plaintiff-s, for that defendant to whom the summons was addressed, sixty (60) days from the date on which the Court issues the summons to serve that defendant. This extension only applies when the plaintiff presents or has presented the properly addressed summons to the clerk for signature and seal at the time of the filing of the complaint.

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. Further, the Court issued Pre-Trial Order No. 15B on October 21, 2015 [Rec. Doc. 1477] 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. Pre-Trial Order 15B vacated previously entered Pre-Trial Order 15A. [Rec. Doc. 1301].

9. **ORDER GOVERNING THE PARTIES' INTERACTIONS WITH MDL PLAINTIFFS' PRESCRIBING AND TREATING PHYSICIANS**

On April 28, 2016, the Court entered Pre-Trial Order No. 28 [Rec. Doc. 3156] Regarding Contact with Physicians. On January 10, 2017, the Court entered Pre-Trial Order No. 28A [Rec. Doc. 5018] regarding the parties' interactions with MDL Plaintiff's prescribing and treating physicians for the four bellwether cases through end of trial and regarding the maintaining of a record by Plaintiffs' counsel of their contacts *ex parte* with physicians for each of the other 36 discovery pool cases.

On February 27, 2018, the Court entered CMO No. 6, which modifies Pre-Trial Order No. 28 to require, for those Plaintiffs selected in Wave 1 and Wave 2, joint scheduling of physician depositions, i.e. both parties will contact physician's office together for purpose of scheduling a date for deposition. Pre-Trial Order No. 28's record-keeping and disclosure provisions are extended to all Wave 1 and Wave 2 selected cases. On September 13, 2018, the Court entered the Joint Stipulated Order Addressing Order of Examination for Certain Prescribing and Treating Physician Depositions Pursuant to Case Management Orders Nos. 6 and 6A. [Rec. Doc. 10882].

The parties have jointly submitted to the Court proposed Pretrial Order 28B, addressing the application of Pretrial Orders 28 and 28A regarding *ex parte* physician communication and retention of experts to the cases selected pursuant to Case Management Order 6.

10. **BELLWETHER CASES**

The following bellwether trials took place in the MDL:

- a. ***Joseph J. Boudreaux, Jr., et al. v. Janssen et al., Case No. 2:14-cv-02720***, which commenced in the Eastern District of Louisiana on April 24, 2017 and concluded on May 3, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7830). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7911).
- b. ***Joseph Orr, Jr., et al. v. Janssen et al., Case No. 2:15-cv-03708***, which commenced in the Eastern District of Louisiana on May 30, 2017 and concluded on June 9, 2017, resulted in a verdict for the Defendants. Plaintiffs' Motion for New Trial was denied on September 20, 2017 (Rec. Doc. 7644). Plaintiffs' filed a Notice of Appeal on October 18, 2017 (Rec. Doc. 7829). A Notice of Conditional Cross Appeal was filed by the Defendants on November 1, 2017 (Rec. Doc. 7912).
- c. ***Mingo v. Janssen Research & Development, LLC, et al., Case No. 2:15-cv-03367***, which commenced in the Southern District of Mississippi on August 7, 2017 and concluded on August 18, 2017, resulted in a verdict for the Defendants. Plaintiff's Motion for New Trial was denied on December 14, 2017 (Rec. Doc. 8145). Plaintiff filed a Notice of Appeal on January 12, 2018 (Rec. Doc. 8307). A Notice of Conditional Cross Appeal was filed by the Defendants on January 26, 2018 (Rec. Doc.8502).

On March 14, 2018, the United States Court of Appeals for the Fifth Circuit issued a Briefing Notice. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo filed their brief on April 23, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc. filed their brief on June 7, 2018. Appellants Cross-Appellees Joseph J. Boudreaux, Jr., Loretta Boudreaux, Kim Deagano, Joseph Orr, III, Joseph Orr, Jr., Kelli Walker and Dora Mingo's Reply briefing and Response to the contingent Cross-Appeal is due July 9, 2018. Appellees Cross-Appellants Bayer HealthCare Pharmaceuticals Inc., and Bayer Pharma AG, Janssen Research & Development LLC, and Janssen Pharmaceuticals, Inc.'s Reply briefing to the Appellants Cross-Appellees' Response to the contingent Cross-Appeal is due July 23, 2018. Appellants/Cross-Appellees filed a Motion

to Suspend Briefing, which was granted by the United States Fifth Circuit Court of Appeals on July 2, 2018 [Document: 00514537474], which directed the parties to notify the court immediately upon completion of the record. On September 19, 2018, the United States Fifth Circuit Court of Appeals directed the parties to file a motion to supplement the record on appeal and include all documents purported to be missing from the record. [Document 00514647196].

The following bellwether case was voluntarily dismissed with prejudice:

Henry v. Janssen Research & Development, LLC et al., Case No. 2:15-cv-00224, Order signed on November 2, 2017 (Rec. Doc. 7943).

11. CMO 6 CASES.

The parties will report to the Court on the status of the cases selected for work up under CMO 6. Thus far the Defendants advise that the data show that 184 of the 600 Wave 1 cases and 11 of the 600 Wave 2 cases have been or are represented will be dismissed.

12. STATE/FEDERAL COORDINATION

The case of *Cooney v. Janssen, et al.* (Case No. 02012) which commenced August 6, 2018, in the State Court of Pennsylvania (Philadelphia Court of Common Pleas), Judge M. Teresa Sarmina presiding, resulted in a defense verdict. Plaintiff has a pending Motion for New Trial in *Cooney*. Plaintiffs have appealed the judgments in favor of defendants in *Hartman et al. v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 160503416) and *Russell et al. v. Janssen Pharmaceuticals, Inc., et al.* (Case No. 150500362). The next scheduled trial is *Rush v. Janssen Pharmaceuticals, Inc. et al.* (Case No. 150202947) set for December 3, 2018. Additional cases will be set for trial in that Court, commencing in June 2019.

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. The parties will

report to the Court on recent developments in state court cases.

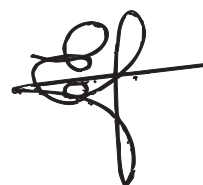
13. MATTERS SET FOR HEARING FOLLOWING STATUS CONFERENCE

No matters are set for hearing following the October 11, 2018 status conference.

14. NEXT STATUS CONFERENCE

The next monthly status conference is scheduled for November 8, 2018 at 9:00 a.m.

Additionally, a monthly status conference has been scheduled for December 12, 2018 at 9:00 a.m.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.