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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO *
(RIVAROXABAN) PRODUCTS * Docket No.: MDL-2592
LIABILITY LITIGATION * Section L
* New Orleans, Louisiana
* December 20, 2016
* * * * *

TRANSCRIPT OF MONTHLY STATUS CONFERENCE PROCEEDINGS
BEFORE THE HONORABLE ELDON E. FALLON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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PROCEEDINGS

(December 20, 2016)

(COURT CALLED TO ORDER)

THE COURT: Be seated, please.

THE DEPUTY CLERK: MDL-2592, *In re: Xarelto Products Liability Litigation.*

THE COURT: Will liaison counsel make their appearance for the record, please?

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

MR. IRWIN: And Jim Irwin for defendants.

THE COURT: All right. I met a moment ago with the lead and liaison counsel to discuss the agenda with them. I'll take it in the order presented.

Lenny?

MR. DAVIS: Your Honor, we are on Joint Report No. 22, and I'll go through the agenda and the items listed in the joint report.

With respect to pretrial orders, there are no new pretrial orders to report on this month.

With respect to case management orders, the parties have submitted to the Court a proposed case management

1 order, 2C, which addresses dispositive motions, and I believe
2 that's in the Court's hands. We're waiting action from the
3 Court.

4 There's nothing to report on No. 3, bellwether
5 selection.

6 On No. 4, I'd make the same comment that we've
7 made before, in particular to any counsel listening on the
8 phone, with respect to counsel contact information form, please
9 look at Pretrial Order 4A. I know we've done this on a regular
10 basis, but we are very much considering removing that from the
11 joint report in the future because I think people are getting
12 that idea.

13 **THE COURT:** Okay.

14 **MR. DAVIS:** But we want to remind people that that
15 form is something that's out there and needs to be updated.

16 With respect to plaintiff fact sheets, there are
17 motions set following this conference, and we'll be prepared to
18 address that with the Court.

19 Also, the parties are working on a draft
20 pretrial order to submit to the Court that addresses the
21 assistance that the PSC has been providing in respect to those
22 motions. We should have that to the Court relatively soon.

23 On the next item, defendant fact sheets, there's
24 nothing to report.

25 The next one is service of process on the Bayer

1 defendants. There's nothing to report.

2 Counsel are reminded with respect to the
3 preservation order, PTO 15, and to look at the Court's Web site
4 with respect to that matter.

5 The next item is the order governing the
6 parties' interaction with physicians. That issue is being
7 discussed further. The parties are addressing that, but
8 there's nothing to report at this time.

9 On discovery, which is Item 10 of the report,
10 the Court recently provided the parties biweekly dates for
11 calls going through March of 2017. We appreciate the Court
12 providing that, and the parties have noted those and will be
13 prepared to address the Court as needed in those calls. The
14 parties do appreciate those calls.

15 **THE COURT:** Yes. We've had some discovery issue with
16 regard to formatting of the documents that the Court's up to
17 speed on. I've talked to counsel, and, hopefully, we'll be
18 able to continue with our present schedule, but that's a
19 potential if it can't be resolved. I hope that it can be
20 resolved and we can continue on with our bellwether schedule.

21 Regarding the bellwether trials, I mentioned to
22 counsel in chambers that next time I'll be meeting with the
23 trial counsel for those particular cases to discuss a method of
24 getting the Court's ruling on objections for exhibits before
25 the trial starts so that we don't waste time dealing with

1 argument and the admissibility of exhibits. I'll take care of
2 that before the trial even starts.

3 Also, I talked to them about time limitations on
4 the trials. It's been my experience that if you don't have
5 some time set aside for the trials, they just go interminably.
6 So, generally, a couple of weeks, two weeks and a couple of
7 days is sufficient to get the trials underway. I'll go early
8 in the morning until the evening, and we'll get a full trial
9 schedule in. We can work on Saturdays if necessary. I'll give
10 them enough time, but we should have some time worked out.

11 Also, we may be able to have remote locations if
12 that's the interest of the parties as to transcripts can be
13 sent immediately to remote locations outside of the courthouse,
14 if that's necessary for the parties. But oftentimes in these
15 bellwether trials we have a full, packed courthouse and
16 sometimes remote locations is helpful with the ability of the
17 remote locations to write and send briefs directly to the
18 Court.

19 But at least I want them to be thinking about
20 that and other logistical matters that I can work with them on
21 to make this more efficient.

22 **MR. DAVIS:** And, Your Honor, the parties will be
23 prepared to discuss the trial issues at the January status
24 conference, and we will have some dialogue before that so we'll
25 be prepared.

1 **THE COURT:** Okay.

2 **MR. DAVIS:** With respect to various discovery
3 matters, just to give the Court an update, the funding issue
4 matter that's addressed in section 10 was resolved, a response
5 was provided, and we'll remove that from the agenda going
6 forward.

7 The collaborative development issue matter was
8 resolved. Defendants provided responses, and we'll remove that
9 from the agenda going forward.

10 The Alere INRatio discovery issue, I believe was
11 resolved. Again, that one will also be removed going forward.

12 With respect to the plaintiffs request for
13 admissions to defendants that we've spoken about in the past,
14 we're still working on that matter. It hasn't been lost, Your
15 Honor. But, obviously, we've had other issues that have been
16 pressing and we will get back to that. We'll report to the
17 Court at the next status conference on that.

18 Expert reports have been exchanged, as Your
19 Honor is aware, with respect to the bellwether trial cases.
20 The issue regarding certain documents requested and experts,
21 that was resolved, and we'll remove that one also from the
22 agenda going forward.

23 With respect to the motion to compel and for
24 protective order to require complete disclosure of documents,
25 that's the native TIFF issue that Your Honor was; addressing

1 earlier. That issue is still alive.

2 The parties did meet and confer just before the
3 conference as Your Honor asked us to do a few minutes ago.
4 We've agreed that that matter can be set on January the 10th.
5 The defendants (verbatim) will file a brief by January 5th, and
6 defendants, if they file a response, will file one by
7 January 9th, and we've agreed to a noon submission time on
8 that.

9 And as Your Honor is aware, the PSC views that
10 as a very important issue, and we may need discovery on other
11 issues with respect to that.

12 The next item are some Pennsylvania issues that
13 we discussed -- the next two items on the agenda are some
14 Pennsylvania issues that were discussed briefly. The PSC has
15 agreed to talk with Pennsylvania counsel to try to accommodate
16 coordination, but we do believe that those issues are
17 Pennsylvania state court issues. If there's further discussion
18 on that and the Court's needed, we'll let you know.

19 **THE COURT:** Yeah. Let me hear from Mike on that one
20 if that's a potential problem. I've been working closely with
21 the judge in Pennsylvania. He's doing a terrific job up there,
22 and I want to be coordinating with him. Hopefully, we can get
23 this done in a coordinated fashion so that both courts are
24 satisfied with what's necessary.

25 Check with liaison counsel up there, Mike, and

1 if we can help them, fine, but I would like them to coordinate
2 with our court.

3 **MR. WEINKOWITZ:** Good morning, Your Honor. This is
4 Mike Weinkowitz. I'm on the phone.

5 **THE COURT:** Yes, Mike.

6 **MR. WEINKOWITZ:** I'm working with MDL in coordinating
7 all of the discovery issues. So we're working hard and
8 cooperating together, and nothing to worry about on that end.

9 **THE COURT:** Good. Okay. Well, thank you, Mike. I
10 do look to you to coordinate. But if you need anything, you've
11 got to let me know, and we'll deal with it.

12 **MR. WEINKOWITZ:** I appreciate it, Your Honor.

13 **MR. DAVIS:** The next item on the agenda is discovery
14 issued to third parties. Your Honor, at this point I don't
15 think there's anything to report with respect to third parties.

16 State/federal coordination. Ms. Barrios is here
17 and she can report.

18 **THE COURT:** Okay.

19 **MS. BARRIOS:** Thank you, Mr. Davis.

20 Good morning, Your Honor. Dawn Barrios for the
21 federal/state committee.

22 I have previously provided to both sides, and to
23 your law clerk, the Xarelto state court stats as of yesterday.

24 In California, there are 35 cases with 77
25 plaintiffs. Judge Freeman is the JCCP judge, and he had -- a

1 couple of days ago, they had a status conference. And he was
2 going to hold -- pretty much hold everything until the end of
3 your bellwether trials -- your Louisiana bellwether trials, and
4 then they would really get going. They're working on initial
5 orders. But my read of the minute entry is that he is going to
6 allow the MDL to go forward and then he'll follow it.

7 **THE COURT:** He needs to know that I appreciate his
8 working with us on this. Whatever we can do to assist him, I
9 certainly will do that.

10 **MS. BARRIOS:** And I appreciate the information that I
11 get from Ms. Rothman's (phonetic) office on California.

12 In Delaware, there are 228 cases and the same
13 number of plaintiffs, and dispositive motions in 166 cases. So
14 I don't know how long that number will be that high.

15 In Illinois, there's seven cases and plaintiffs.

16 Missouri has four cases, but 282 plaintiffs. If
17 you recall, Missouri has a trial date. And I've asked
18 Mr. Vincent -- Gibson Vance of Mr. Birchfield's office, he's
19 checking with plaintiff's counsel there to see if there's
20 anything that we can do to be of assistance to them to get some
21 coordination going.

22 In New Jersey, the same five cases and
23 plaintiffs.

24 Pennsylvania actually hit the four-digit mark
25 this month. It's 1,142 cases. Mathematically, that's

1 80 percent of all -- out of the MDL cases that we have.

2 Your state court stat chart has all the new
3 judges in yellow so that you can feel free to reach out to
4 them.

5 **THE COURT:** Okay. Thank you very much.

6 **MS. BARRIOS:** Thank you, Your Honor.

7 **THE COURT:** Do you have anything, Jake?

8 **MR. WOODY:** Just briefly, Your Honor. I'll give you
9 a quick update on some of our numbers of fact sheets filed.

10 We have just under 15,000 plaintiffs registered
11 and about 13,300 fact sheets filed. It's been somewhat of a
12 slow month in terms of submissions. I suspect with the
13 holidays, that's normal. But we have about 280 fact sheets so
14 far. And there have been no changes to any of the percentages
15 that I usually go through, partly because there just haven't
16 been that many fact sheets filed. And I think because that's
17 sort of the norm for a plaintiff in this litigation.

18 **THE COURT:** All right. And the discovery pool and
19 the rest of it's --

20 **MR. WOODY:** All the percentages are identical to last
21 month, so nothing's changed. I'll keep an eye on it and update
22 as necessary.

23 **THE COURT:** All right. Thank you, Jake.

24 **MR. DAVIS:** Your Honor, the next item, No. 13, on
25 matters set for hearing following the conference. The parties

1 are prepared to address that following the conference.

2 And the final item is the next status
3 conference, which is on January the 20th at 9:00 a.m. As I
4 understand it, Your Honor has set the February conference.

5 **THE COURT:** Right. February 10th of 2017. So the
6 first one in January is January 20th, 2017, and then
7 February 10th, 2017, at 9:00, and I'll meet with liaison
8 counsel early on.

9 **MR. DAVIS:** I think that's it. I just want to wish
10 and your staff and all counsel a happy holiday season.

11 **THE COURT:** Thank you. The same goes for the Court.
12 All of you, and all of you on the phone, have a happy and
13 healthy holiday season.

14 * * * * *

15 *****

16 **CERTIFICATE**

17 I, Jodi Simcox, RMR, FCRR, Official Court Reporter
18 for the United States District Court, Eastern District of
19 Louisiana, do hereby certify that the foregoing is a true and
20 correct transcript, to the best of my ability and
21 understanding, from the record of the proceedings in the
22 above-entitled and numbered matter.

23
24 *s/Jodi Simcox, RMR, FCRR*
25 Jodi Simcox, RMR, FCRR
Official Court Reporter

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