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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 "L"
NEW ORLEANS, LOUISIANA
TUESDAY, JANUARY 30, 2018, 9:00, A.M.

THIS DOCUMENT RELATES TO
ALL CASES

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

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10 PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY. TRANSCRIPT
11 PRODUCED BY COMPUTER.

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M O R N I N G S E S S I O N

TUESDAY, JANUARY 30, 2017

(COURT CALLED TO ORDER)

THE DEPUTY CLERK: All rise.

THE COURT: Be seated, please. Good morning, ladies and gentlemen.

Dean, call the case.

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

THE COURT: Would counsel make their appearance for the record, please. Liaison.

MR. DAVIS: Good morning, Your Honor. Leonard Davis for Herman Herman and Katz, plaintiffs' coliaison.

MR. OLINDE: Good morning, Your Honor. John Olinde as liaison for the defendants.

Mr. Irwin gives his apologies for not being able to be here today.

THE COURT: Okay. All right. This is our monthly status conference. I've been delayed. I'm sorry to keep everybody waiting, but I was meeting the lead and liaison counsel.

The thing that I'm focused on now is to see where

1 we are in the MDL process. The MDL court is helpful in trying
2 to do the discovery aspect of the case and allow the parties to
3 get to know the case not only through discovery but also
4 through some bellwether trials.

5 It comes a point where the MDL has done
6 everything it can do, and we're close to that at this point.
7 The states have a number of cases set for trial in
8 Philadelphia. They've tried one case. They are going to try
9 that case again, perhaps, and several other cases that are set
10 for trial there. There are about maybe 1,200 cases in
11 Philadelphia that need to be tried. We have in the MDL about
12 20,000 cases, and we'll hear in a moment from Jake on the
13 status of those cases, at least logistically.

14 I'm to the point where I've got to devise some
15 end game, at least the beginning of an end game for the MDL. I
16 met with counsel a moment ago, and we're going to try to do 400
17 cases selected by the plaintiffs, 400 cases selected by the
18 defendants, and 400 cases selected by the Court randomly; so,
19 that will give us 1200 cases, at least in the first wave, to
20 focus on remanding or sending those back.

21 The parties plan to meet and confer to try to set
22 some criteria for those cases because I'm aware of the fact
23 that the census of the litigation indicates that there are
24 folks who are older than 60 or 70 or 80, even, and they ought
25 to have some resolution while they are with us, and that has to

1 be considered. Availability is another one. In any event,
2 they'll discuss some criteria with the help of MDL Centrality.

3 They'll also focus a bit on whether there is a
4 method of culling the cases. There is concern that the cases
5 may need some additional discovery, and it costs a lot of money
6 to discover these cases. To put a million dollars into a case
7 discovery-wise only to find out that the case has decided to be
8 dismissed is not fair to either of the parties.

9 So they are going to focus on some method of
10 trying to at least decide when the case is knowable enough to
11 make a decision as to whether or not to cull a case; and,
12 thereafter, there may be some consequences if the case is
13 dismissed at the last moment, shifting costs, or whatever.

14 Also, theories of liability, they'll focus on
15 some method of at least considering the time in which the
16 defendants at least ought to know what the theory of liability
17 is, just as the plaintiffs ought to know what the defense is
18 going to be. That's part of the discovery process, but there
19 may be a way of at least putting some kind of time frame in
20 that process to be able for at least each side to know what the
21 other side is going to be urging.

22 The defense side, they need to know what the
23 plaintiffs are going to be pitching, and from the defense side,
24 they need to know something about how the defendants are going
25 to propose to catch those balls; so, we're going to focus on

1 those three things.

2 I also mentioned to the parties that hopefully
3 we'll do the 1,200 cases at least in the first line, but I'm
4 not writing it in stone. If something comes up during that
5 process that we need to revisit it, I'll listen to you, but
6 it's got to be something that's a very serious aspect that has
7 been discovered in your discussions.

8 Okay. Let's take the proposed agenda in the form
9 that it's presented. Lenny.

10 MR. DAVIS: Thank you, Your Honor. We have submitted a
11 joint report. It's Joint Report Number 25. We have attempted,
12 at Your Honor's directive, to cull down the size of the joint
13 report, which I think we've done, about 50 percent of the size
14 it was before, and we'll do that even further in the next
15 report that's submitted.

16 What we'll do is we will not list the pretrial
17 orders in Section 1, as well as the case management orders in
18 Section 2. What we'll do in the future is just identify new
19 case management orders or pretrial orders that are issued.

20 I do point out to the Court that last night the
21 Court issued Pretrial Order 13B, which is not in the status
22 report, but it is a new report that can be found in the Court's
23 website, if folks are interested in looking at that.

24 As always, we suggest that individuals look at
25 the Court's pretrial orders, especially those who are new cases

1 coming in, because they do give guidance as to how the Court
2 proceeds, as well as the Court's website, which identifies
3 joint reports and transcripts of matters so that counsel can
4 familiarize themselves with various pretrial orders.

5 For instance, the one that's in Pretrial Order 3,
6 Counsel Contact Information Forms, as Your Honor mentioned,
7 there are now 20,000 approximate cases in the MDL, and more and
8 more are coming in on a regular basis. We do continue to
9 receive Counsel Contact Forms, and they are very helpful, and
10 we encourage people to continue to do that.

11 THE COURT: Maybe we ought to hear from Jake and see
12 what the scope of the litigation is at this point.

13 MR. DAVIS: Sure.

14 MR. WOODY: Good morning, Your Honor. Jake Woody from
15 BrownGreer.

16 I have a quick update for you on the status of
17 the PFS's in this case. So far we've received 19,825 fact
18 sheets. We have another 1,640 in progress, meaning the
19 plaintiffs' firms have started a fact sheet but haven't yet
20 submitted it. That gives us a total of 21,465 people in our
21 system for this MDL.

22 Of the submissions of the fact sheets that have
23 been submitted, 5,212 have been amended at least once so that
24 26 percent have been amended at least once. I do believe that,
25 as everyone's mentioned, there are something over 20,000 cases,

1 and the facts sheets sort of lag a little bit behind that but
2 generally track that number.

3 For the last year we've received an average of
4 472 fact sheets a month. That is in line with the numbers that
5 we received for the first couple of years of this MDL, so we
6 aren't really seeing any change in the acceleration of fact
7 sheets being submitted. It's sort of remaining at the same
8 number every month.

9 We have fact sheets from plaintiffs in all 50
10 states. I've listed the numbers for each state in this
11 presentation but I won't go through each. I will say that
12 Texas, Florida, and California are the top three with over a
13 thousand each, and then Hawaii is at the bottom with 14, and
14 every other state is somewhere in between those numbers.

15 The age range of the plaintiffs, according to the
16 Plaintiff Fact Sheets, we have 20 percent between 60 and 69,
17 30 percent between 70 and 79, 26 percent between 80 and 89, and
18 then 6 percent are over 90, which, when you add those all up,
19 that is 82 percent of the population in this MDL is over age
20 60.

21 Those percentages remain pretty much the same
22 every month. Obviously, as people age, the numbers go up a
23 little bit just by the natural progression.

24 THE COURT: The census of the litigation does seem to
25 be in the older category. You've only got, what, 3 percent

1 under 40 and 5 percent between 40 and 49?

2 MR. WOODY: That's correct.

3 THE COURT: Ten percent, so it's 18, 26 percent, the
4 rest of it is over 60 years old, 60 to 90 plus.

5 MR. WOODY: Yes, sir.

6 Finally, just some statistics on the alleged
7 injury: 48 percent of the plaintiffs allege GI bleed. That's
8 the highest injury that we see among all the injuries.
9 53 percent allege that they took Xarelto for the reduction of
10 the risk of stroke. Again, that's the highest indication that
11 we see. Then 92 percent alleged that they were hospitalized
12 for at least one day.

13 THE COURT: Jake, the next time you do it, let's see a
14 week or a month after that, at least one day, the next one at
15 least one week, and the next one month, something of that sort,
16 and we'll see what the percentage of that is.

17 MR. WOODY: We can add up all the -- some plaintiffs
18 have multiple stays, but we were able to add all of those up.
19 I can break that out in a little bit more detail next time.

20 THE COURT: Great.

21 MR. WOODY: Then finally, I just wanted to list our
22 contact information for anyone who doesn't have it yet or is
23 new to this case.

24 The portal is at www.MDLCentrality.com\MDL2592.
25 You can always e-mail us at MDLCentrality@browngreer.com if you

1 need help either getting started or if there is a question
2 about how to submit your fact sheet. Then call us at
3 (804) 521-7200.

4 THE COURT: Okay. The plaintiffs and the defendants
5 are going to be meeting and conferring to try and work out some
6 criteria and various other things. If you can work with them
7 on that and give them whatever information they need, I would
8 appreciate it.

9 MR. WOODY: Certainly, Your Honor.

10 THE COURT: Okay. All right. Mike, why don't you tell
11 us about the state cases.

12 MR. WEINKOWITZ: Good morning, Your Honor.
13 Mike Weinkowitz from Levin, Sedran & Berman.

14 In Pennsylvania we have about 1600 cases on file.
15 In the first bellwether case, the *Hartman* case, the jury
16 returned a verdict of 1.8 million in compensatory, 26 million
17 in punitive damages.

18 Posttrial motions were filed. The Court ruled
19 that there was -- during the posttrial motion phase that was
20 adequate and sufficient evidence of willful and wanton
21 misconduct to support the punitive damages claim.

22 However, unfortunately, the judge granted
23 judgment notwithstanding the verdict, indicating that we had
24 not met our burden on proximate cause under the learned
25 intermediary doctrine. As a matter of fact, I think a notice

1 of appeal is being filed today and will be going to our
2 superior court in that particular case.

3 There are three remaining bellwether cases that
4 are scheduled or tentatively scheduled for file. The first
5 case is the *Russell* case that's scheduled for March 19th.

6 The second case is the *Cooney* case. Counsel
7 reminded me that we have a tentative date of April 16th. We
8 have to submit a pretrial order to Judge New, but that was the
9 date that he indicated that he was going to set.

10 The *Rush* case is scheduled to go June 11th, and
11 the plan going forward, at least from Judge New's perspective,
12 was that he intended to set one or two trials per month in
13 perpetuity. We haven't really sort of fleshed that out. We
14 don't have a status conference scheduled, but I'm sure we will
15 soon, and we'll sort of come up with that plan with the judge.

16 That's the status, Your Honor.

17 THE COURT: All right. Well, thanks very much for
18 working closely with the MDL. I've been in touch with
19 Judge New, who is doing a great job in his state, and he and I
20 have been trying to coordinate matters.

21 MR. WEINKOWITZ: We'll continue to coordinate,
22 Your Honor.

23 THE COURT: Susan, you had some input?

24 MS. SHARKO: Yes.

25 I have to disagree with my friend,

1 Mr. Weinkowitz. Judge Erdos most emphatically did not rule
2 that there was substantial or adequate evidence, or whatever he
3 said, to support punitive of damages. In fact, the Court's
4 ruling was that we didn't get a fair trial on punitive damages
5 because of attorney misconduct on the plaintiff side but that
6 it was moot because he was granting the motion JNOV; so, we
7 take exception to that. The transcript of Judge Erdos' ruling
8 is publicly available, and I think it speaks for itself.

9 THE COURT: Okay.

10 MR. WEINKOWITZ: We can agree to disagree, Your Honor.

11 THE COURT: Okay. Fine. At least you all agree that
12 it's a JNOV that was issued in the case.

13 MS. SHARKO: Yes.

14 THE COURT: Okay. All right. Lenny.

15 MR. DAVIS: Your Honor, I think the only other item
16 that needs to be reported on relates to the bellwether cases,
17 and on all three of the MDL bellwether cases, *Boudreaux*, *Orr*,
18 and *Mingo*, appeals have been taken, so that the Court is aware
19 of that and that's an ongoing process. We have been working
20 with Dean on exhibits and things like that.

21 Other than that, as Your Honor is aware, we've
22 continued to have monthly orders to show cause. Just so folks
23 who may be on the phone are aware, we do encourage people to
24 complete their profile forms and do that timely, as well as to
25 submit the documentation that's required under

1 Pretrial Order 13, 27, and 31. It's been very helpful.

2 That process has worked, and it's really slimmed
3 down in recent times. We've gotten over the hurdle, I think,
4 from the consolidated complaints, and it is working, and we
5 appreciate the Court's dealing with those matters.

6 THE COURT: That's one problem, to some extent, with
7 the MDL process. You get some cases that are initially filed
8 that perhaps ought not to be filed in this MDL, maybe in
9 another MDL.

10 Early on, you can target some of those cases by
11 the fact sheets. The fact sheets are designed so that the
12 first stage of the fact sheet in a prescription drug case is
13 your name and whether you took the drug, when you took the
14 drug, some sort of proof that you took the drug, whether a
15 prescription, a letter, an affidavit from somebody, a priest or
16 a rabbi or anybody or anything at all that you took the drug.

17 If you can't show that you took the drug, then it
18 seems that that's a hurdle that has to be gotten over. If it
19 can't, then you ought not to be in this litigation. You ought
20 at least be able to show that you're taking the drug.

21 So we have been doing that, and it's not a
22 process where if they miss one filling in and they get cut, but
23 we give them 30 days, and we give them another 30 days and
24 another 30 days, and you get to the point where they cannot
25 show that they took the drug, and so I dismiss the case. We've

1 dismissed over a thousand or twelve, 1,500 cases so far in that
2 situation.

3 I don't think it's timely to have a *Lone Pine* or
4 anything of that sort, but some additional coloring is
5 appropriate in a case of this sort, because you will get some
6 folks who think they took the drug, and they to go a lawyer and
7 they sign up, and then it kind of turns out that they really
8 didn't take that drug, they took some other drug sort of
9 spelled the same way or at least sounds the same way, and they
10 shouldn't be in the litigation. That's what we're doing
11 initially.

12 MR. DAVIS: Your Honor, you've already reported on our
13 discussions with respect to CMO 6, so I won't get into that. I
14 think we will be reporting back to Your Honor on that in the
15 next few weeks. In the next status conference we ought to be
16 able to report something further, which I understand the Court
17 has set a date for that.

18 THE COURT: We set a date also to have a telephone
19 conference in a couple of weeks so I can keep in touch with the
20 parties.

21 The next meeting is February 27th, at 8:30 for
22 the meeting in chambers, nine o'clock for the Court meeting,
23 and then March 21st is the next meeting at nine o'clock in
24 court, 8:30 in chambers.

25 We dealt with the motion already, so I don't

1 think we need to go through that.

2 Anything else from anybody for the good and
3 welfare of the group?

4 John, do you have anything?

5 MR. OLINDE: No, Your Honor.

6 MR. MEUNIER: Your Honor, may I make one comment?

7 THE COURT: Yes.

8 MR. MEUNIER: I think it's important that the record of
9 this MDL accurately reflect what took place in Philadelphia
10 with respect to the *Hartman* case. You've heard completely
11 different statements from counsel about the basis or the nature
12 of the Judge's comments about the punitive damage verdict.

13 May I ask authority to submit to the Court the
14 transcript so that you will have a direct knowledge of what the
15 Judge said about the punitive verdict?

16 MS. SHARKO: We have no objection. It should be the
17 entire transcript of that motion argument and pro hac issues.

18 THE COURT: Susan, get with Jerry and make sure it's in
19 the form and fashion that you are comfortable with.

20 MS. SHARKO: I will.

21 MR. MEUNIER: Thank you, Judge.

22 THE COURT: All right. Folks, thank you very much.
23 Court will stand in recess.

24 THE DEPUTY CLERK: All rise.

25 (WHEREUPON, at 9:36 a.m., the proceedings were

1 concluded.)

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REPORTER'S CERTIFICATE

6

7 I, Cathy Pepper, Certified Realtime Reporter, Registered
8 Merit Reporter, Certified Court Reporter in and for the State
9 of Louisiana, Official Court Reporter for the United States
10 District Court, Eastern District of Louisiana, do hereby
11 certify that the foregoing is a true and correct transcript to
12 the best of my ability and understanding from the record of the
13 proceedings in the above-entitled and numbered matter.

14

15

s/Cathy Pepper

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