

P R O C E E D I N G S

(WEDNESDAY, MARCH 21, 2018)

(MONTHLY STATUS CONFERENCE PROCEEDINGS)

(OPEN COURT.)

09:00:46 6 THE COURT: Be seated, please. Good morning, ladies and
09:00:48 7 gentlemen. Let's call the case, please.

09:00:49 8 THE DEPUTY CLERK: MDL No. 2592, *in re: Xarelto Products*
09:00:53 9 *Liability Litigation.*

09:00:54 10 THE COURT: Counsel, make your appearance, please.
09:00:57 11 Liaison.

09:00:58 12 MR. DAVIS: Good morning, your Honor. Leonard Davis from
09:01:01 13 the law firm of Herman, Herman, Katz, plaintiffs coliaison counsel.

09:01:07 14 MR. IRWIN: And Jim Irwin for the defendants, your Honor.

09:01:10 15 THE COURT: Okay. We're here today for our usual monthly
09:01:16 16 status conference. I've had an opportunity to receive from the
09:01:18 17 parties a proposed agenda. I met with them a moment ago to discuss
09:01:22 18 it, and I'll hear from the parties in accordance with the agenda.

09:01:31 19 MR. DAVIS: Good morning, your Honor. We have an agenda
09:01:34 20 and a status report, Joint Report No. 27, that was submitted to the
09:01:38 21 Court that lays out the issues for today's conference, and I'll go
09:01:44 22 through them.

09:01:46 23 As you can see, your Honor, the Court's pretty packed
09:01:49 24 this morning. As you know and as we mentioned to you in the
09:01:52 25 earlier conference, we have a plaintiffs only meeting this

09:01:57 1 afternoon after the status conference. And we appreciate the Court
09:02:00 2 allowing us to use the courtroom for that meeting, where we will
09:02:05 3 address the Court's most recent orders and the status of the case.

09:02:09 4 THE COURT: Let me mention that. What I see as a method
09:02:18 5 in these cases, multidistrict litigation cases is that when I get
09:02:22 6 the case I try to establish some infrastructure and then we proceed
09:02:28 7 with the discovery aspect of the case.

09:02:30 8 As you all know, we pick about 40 cases, which are really
09:02:37 9 the discovery pool. Those cases are discovered and then from those
09:02:40 10 cases, the parties have an opportunity to pick bellwether cases.

09:02:45 11 The purpose of the bellwether cases, as I see it, is to
09:02:50 12 give the lawyers, as well as the litigants, an opportunity to see
09:02:53 13 the case in action. Those of us who've tried cases know that until
09:02:58 14 you see a trial, you really don't know the full scope of the case.
09:03:04 15 The witnesses that you thought were not going to do well turn out
09:03:08 16 to be the stars of the thing and vice versa.

09:03:12 17 So after the discovery and after the bellwether cases,
09:03:18 18 the MDL court has done about as much as it can with the litigation,
09:03:24 19 the motions, motion practice, a lot of depositions, and cases are
09:03:33 20 tried. We tried several cases in New Orleans, we tried one in
09:03:38 21 Mississippi, and one was being teed up in Texas, but the law was
09:03:45 22 such that the case did not go forward.

09:03:50 23 At this point the cases then are being tried at the state
09:03:56 24 level. We've got several cases in the mill to be tried by the
09:04:03 25 state. We've got one in April and May and June. I think there are

09:04:13 1 three cases teed up. But at this point I've done about as much,
09:04:20 2 with the exception of some motions that are substantive motions
09:04:24 3 that I'll be dealing with, but I've done about as much as I can do
09:04:28 4 for the parties to give them an opportunity to see the case in
09:04:32 5 discovery, to see them, to give them an opportunity to see the case
09:04:37 6 tried.

09:04:38 7 So at this point rather than keep the cases and have the
09:04:42 8 MDL become simply a black hole, I think it's appropriate to begin
09:04:46 9 sending them back.

09:04:48 10 Now, I have about 22,000 cases in this district, and I
09:04:54 11 don't think it's helpful for the parties for me to send the entire
09:04:58 12 22,000 back, with the exception of the ones that I'll be trying
09:05:02 13 here. So we do it in stages. This is the first stage. I have the
09:05:08 14 plaintiffs picking 400, the defendants picking 400, and then the
09:05:13 15 Court will pick 400 from various areas. And then we'll stage those
09:05:21 16 cases to go back.

09:05:23 17 And the reason for the meeting with the plaintiffs'
09:05:26 18 attorneys is to see if you all can coordinate that, because it's
09:05:30 19 important that you take an interest in it, select the cases that
09:05:34 20 need to be tried immediately, those that can be tried later on.
09:05:41 21 You all know that better than anyone else. So participate in the
09:05:45 22 meetings and give your input because that's very helpful to the
09:05:50 23 Plaintiffs Committee.

09:05:52 24 And also the defendants will have an opportunity to
09:05:56 25 logistically prepare for the onslaught of cases, and that's what

09:06:01 1 we're doing at this point.

09:06:04 2 MR. DAVIS: Thank you, your Honor. And you've touched
09:06:07 3 upon item No. 2, which is Case Management Orders that's in Joint
09:06:11 4 Report No. 27, which speaks about the waves of cases that'll come
09:06:18 5 in to this remand order pursuant to Pre-Trial Order No. 6, and that
09:06:24 6 is what we'll be addressing in this meeting. And we appreciate the
09:06:27 7 Court.

09:06:28 8 THE COURT: Does Jake have any input?

09:06:33 9 MR. WOODY: I have an update.

09:06:34 10 MR. DAVIS: Jake has an update with respect to Item
09:06:37 11 No. 4, Plaintiff Fact Sheets, and the status of the litigation.
09:06:41 12 And Jake is available.

09:06:42 13 THE COURT: Why don't you do that.

09:07:01 14 MR. WOODY: Good morning, your Honor. Jake Woody from
09:07:04 15 BrownGreer.

09:07:05 16 I have a quick update for you on the status of plaintiff
09:07:07 17 fact sheets in this case. So far we have 20,625 fact sheets
09:07:12 18 submitted, which is an increase of 331 since our last update at the
09:07:16 19 February status conference; we have another 1,655 in progress,
09:07:21 20 which gives us a total of 22,280 plaintiffs in our database. There
09:07:27 21 are probably a few more cases filed than that because there's a lag
09:07:30 22 time between the case filing and the plaintiff fact sheet, but we
09:07:34 23 do have 22,280 plaintiffs so far.

09:07:38 24 Our average over the last year has been 475 plaintiff
09:07:42 25 fact sheets submitted a month. So far in March we have 327, we

09:07:46 1 have another ten days or so left to get up to our average, so I
09:07:50 2 expect that we will. And in February we had 445. But that average
09:07:56 3 is pretty steady. There hasn't been really any changes over the
09:08:01 4 last year.

09:08:01 5 We have obviously plaintiffs from all 50 states. The top
09:08:07 6 five states are: Texas with 1,705 plaintiffs, Florida with 1,688,
09:08:14 7 California with 1,059, New York with 1,024, and then North Carolina
09:08:19 8 with 1,004. If it's important, we can use the zip code on the
09:08:24 9 plaintiff fact sheet to figure out the district that the plaintiff
09:08:27 10 resides in for purposes of remand.

09:08:29 11 And I won't go through the whole list, but we do have a
09:08:32 12 number of plaintiffs from all 50 states and territories.

09:08:36 13 As far as the age information of the plaintiff
09:08:41 14 population: 20 percent are between 60 and 69, 30 percent are
09:08:46 15 between 70 and 79, 26 percent are between 80 and 89; and that's
09:08:52 16 76 percent of the entire MDL is between 60 and 89. And those
09:08:57 17 numbers are steady. They actually didn't change at all since my
09:09:02 18 last report, despite the fact that we had a few hundred new
09:09:05 19 submissions.

09:09:05 20 Injury information. The most common alleged injury is
09:09:08 21 gastrointestinal bleeding, 49 percent of all of the plaintiffs
09:09:13 22 alleged that injury; the second most is the "other" category with
09:09:16 23 21 percent; and after that it drops down steadily. So the most
09:09:22 24 common is the GI bleed.

09:09:23 25 Indication. The most common indication or reason for

09:09:28 1 taking Xarelto is reduction of risk of stroke, that's 53 percent of
09:09:32 2 all plaintiffs list that indication; and then it drops down to
09:09:35 3 treatment of DVT at 16 percent and "other" at 16 percent. And
09:09:39 4 those numbers, along with the injury information, haven't changed
09:09:42 5 since my last update either.

09:09:44 6 That's my report. I've put our contact information here
09:09:50 7 for anybody who needs help or needs any assistance with the system.
09:09:53 8 But that's my update for March.

09:09:56 9 THE COURT: Okay. Just this observation of the fact
09:10:01 10 sheets. For those of you who may be visiting for the first time,
09:10:08 11 what we do in this type case -- I don't think interrogatories work
09:10:12 12 in this case. It's really a feeble discovery device, it's
09:10:18 13 questions asked by the lawyer and generally questions answered by
09:10:21 14 the lawyer, and it just generates a lot of motion practice and it
09:10:26 15 slows the whole thing down. So we try to meet early on with the
09:10:30 16 parties and have them indicate what information they need to get
09:10:37 17 started with the discovery, and from that input fact sheets are
09:10:43 18 generated and those fact sheets now can be filled out digitally.

09:10:49 19 And the neat thing is that we can search the fact sheets
09:10:52 20 to figure out various categories, as you've seen. Over the period
09:10:57 21 of time we've refined these categories, but we know the age, we
09:11:02 22 know the indication, we know the injury, and that helps us in
09:11:07 23 deciding and picking the discovery pool. And then from the
09:11:12 24 discovery pool, we have a large number of cases in the discovery
09:11:15 25 pool to kind of mimic the census of the whole litigation. And then

09:11:22 1 from that discovery pool, we try to pick the bellwether cases with
09:11:29 2 some eye toward the various groupings that we've set in place with
09:11:38 3 the fact sheets. And then we proceed that way.

09:11:42 4 And the same way with picking the cases. We try to pick
09:11:45 5 the cases both where they are and some attention given to the type
09:11:54 6 of case.

09:11:55 7 One thing that you need to recognize is that this is an
09:11:59 8 older population for this drug. It doesn't seem like it manifests
09:12:06 9 problems in the young area, so that is to some extent a challenge
09:12:12 10 with loss of wages and loss of future economics. That's just a
09:12:22 11 fact in those situations. Not always but at least it is apparent.
09:12:30 12 So in analyzing the cases, you kind of keep that in mind.

09:12:35 13 But we've used Centrality and it looks like it's working
09:12:41 14 for us and been a great help. So I appreciate it, Jake.

09:12:44 15 MR. WOODY: Thank you, your Honor.

09:12:46 16 THE COURT: Okay, Lenny.

09:12:46 17 MR. DAVIS: And, your Honor, just to follow-up on that.
09:12:53 18 We have throughout this litigation used the information that
09:12:56 19 BrownGreer has provided from fact sheets, on both sides, have used
09:13:02 20 that information and used it to discuss. And it's even more
09:13:06 21 important probably right now as we work on Pre-Trial Order No. 6,
09:13:11 22 because I remind folks that even though defendants are selecting
09:13:15 23 some cases and plaintiffs are selecting some cases, there are also
09:13:19 24 random selections. And so the more information that we can get,
09:13:24 25 it's very helpful.

09:13:25 1 And so I do encourage folks to complete the fact sheet
09:13:30 2 and complete it timely and get that submitted to BrownGreer. And
09:13:36 3 if there are any questions, Jerry Meunier, myself, Brian Barr, and
09:13:40 4 Andy Birchfield are certainly available and can answer questions if
09:13:45 5 folks have questions.

09:13:51 6 Again, I am going to go back to No. 3, Counsel Contact
09:13:55 7 Information. Your Honor, we continue to receive those submissions
09:13:59 8 under PTO4A from new lawyers that get in the case, and as we just
09:14:04 9 got in the report from Jake Woody, there are new lawyers that are
09:14:08 10 continuing to come in to the case. And so I encourage plaintiffs
09:14:12 11 lawyers to complete Pre-Trial Order 4A forms so that they can stay
09:14:17 12 abreast of what's happening in the case.

09:14:19 13 I don't know that there's anything on defendant fact
09:14:23 14 sheets, I don't know if defendants have any comment on that.

09:14:26 15 With respect to Item No. 6, Service of Process, the Court
09:14:36 16 issued an order on March 16 of this year which was due to the
09:14:44 17 backlog of cases in the clerk's office, and that extended the
09:14:49 18 deadline for service of process and allows the plaintiff for the
09:14:55 19 defendant for whom the summons was addressed 60 days from the date
09:14:58 20 on which the Court issues the summons to serve that particular
09:15:02 21 defendant.

09:15:03 22 That extension only applies when the plaintiff presents
09:15:06 23 or has presented the properly addressed summons to the clerk for
09:15:10 24 signature and sealed at the time of filing the complaint.

09:15:14 25 And so I do encourage individuals who are addressing

09:15:19 1 service to make sure that they comply with what's necessary in
09:15:23 2 order to get service. And that order was issued for that purpose.

09:15:32 3 Your Honor, the next item is Item No. 9, which talks
09:15:37 4 about Bellwether Cases, and those appeals are in process on each of
09:15:44 5 those cases, and they are pending and we are working on those
09:15:48 6 matters.

09:15:49 7 With respect to Item No. 10, your Honor, there are a
09:15:54 8 number of trials that are set in Pennsylvania. I've provided the
09:15:59 9 Court with an analysis of the state court matters, and we can make
09:16:05 10 that available if individuals want those statistics. But there are
09:16:11 11 four trials that are set in Philadelphia, four state court trials
09:16:15 12 which the MDL is assisting counsel in the state court matter
09:16:18 13 through the coordination efforts that your Honor asked us to get
09:16:23 14 involved in.

09:16:25 15 THE COURT: I've been in touch with the state judges, and
09:16:27 16 I give them whatever forms and whatever opinions that we've
09:16:34 17 generated. And in many of these cases I've used jury
09:16:41 18 questionnaires, which have been helpful, and they've gotten all of
09:16:46 19 that information.

09:16:49 20 And one of the things we do in these meetings, of course,
09:16:53 21 is to open it to the state courts. Oftentimes either the judge or
09:16:57 22 the law clerk will monitor our meetings here, as well as other
09:17:02 23 people. We have several hundred on the line at this time, that's
09:17:05 24 why we go through some of these matters. Some of the individuals
09:17:10 25 on the line may be there for the first time, so we keep that in

09:17:13 1 mind.

09:17:14 2 And of course we have a web site for this case. Those of
09:17:18 3 you who want to see what's on the web site, you can pull it up.
09:17:23 4 It's accessible by everybody, including litigants, they can see
09:17:28 5 what's going on with their case. We have a calendar on the web
09:17:36 6 site, they know what's coming up. I put all of the transcripts of
09:17:41 7 these meetings on the web site and anything else that might be
09:17:44 8 helpful.

09:17:46 9 MR. DAVIS: Your Honor, the first of the Pennsylvania
09:17:50 10 trials is scheduled to begin on April the 2nd, that's the *Russell*
09:17:56 11 case. The next trial that's in Pennsylvania is the *Rush* case,
09:18:01 12 which is June the 11th, I believe, 2018. And then the *Cooney* case
09:18:08 13 is the third one, which is scheduled sometime in August. And as we
09:18:14 14 hear more from the Pennsylvania courts, we'll report more on the
09:18:17 15 dates of those trials and what's happening.

09:18:21 16 I believe that concludes the report, unless defendants
09:18:24 17 have something to add.

09:18:26 18 MR. IRWIN: No, thank you, your Honor. We appreciate
09:18:28 19 Mr. Davis.

09:18:29 20 THE COURT: Go ahead, Steve.

09:18:31 21 MR. GLICKSTEIN: One thing, your Honor. We probably
09:18:34 22 should have put this in the report, but I would just comment that
09:18:38 23 Case Management Order 6 does modify a couple of Pre-Trial Orders,
09:18:46 24 it extends the -- relating to plaintiff fact sheets and defendant
09:18:52 25 fact sheets, it has provisions relating to the 1,200 selected

09:18:57 1 cases.

09:18:59 2 And with respect to the order on ex parte contacts with
09:19:02 3 physicians, it extends the record keeping and disclosure
09:19:09 4 requirements for plaintiffs' contacts with those physicians to the
09:19:14 5 1,200 selected cases.

09:19:16 6 THE COURT: Okay. And that restricts anybody from
09:19:18 7 contacting a physician other than the plaintiffs and the
09:19:21 8 plaintiffs' lawyers in those particular cases.

09:19:24 9 MR. DAVIS: And as we get into those cases that are
09:19:27 10 selected, we will be dealing with those issues.

09:19:29 11 THE COURT: Okay. All right, folks. Anything else?

09:19:32 12 MR. DAVIS: Your Honor, the next conference.

09:19:34 13 THE COURT: I'm sorry. The next conference is April 24th
09:19:37 14 at nine o'clock, and the following one is May 25th at nine o'clock.
09:19:43 15 I'll meet with liaison counsel and lead counsel at 8:30 on those
09:19:47 16 dates.

09:19:48 17 Anything else?

09:19:48 18 MR. DAVIS: No, your Honor, I think that's it. And
09:19:51 19 again, I request that we only have plaintiffs' counsel in the
09:19:54 20 courtroom afterwards.

09:19:55 21 THE COURT: Let's do that, we'll only have plaintiffs'
09:19:58 22 counsel.

09:19:59 23 MR. DAVIS: Thank you, your Honor.

09:20:01 24 MR. IRWIN: Thank you.

09:20:01 25 THE COURT: Thank you. The Court will stand in recess.

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THE DEPUTY CLERK: All rise.

(WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)

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REPORTER'S CERTIFICATE

I, Karen A. Ibos, CCR, 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/ Karen A. Ibos
Karen A. Ibos, CCR, RPR, CRR, RMR
Official Court Reporter