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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

IN RE: XARELTO (RIVAROXABAN) MDL 2592 "L"
PRODUCTS LIABILITY LITIGATION

AUGUST 4, 2016

THIS DOCUMENT RELATES TO
ALL CASES

JUDGE ELDON E. FALLON

MAG. JUDGE MICHAEL NORTH

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

APPEARANCES:

FOR THE PLAINTIFFS'
LIAISON COUNSEL:

MR. LEONARD A. DAVIS
Herman, Herman & Katz, LLC
820 O'Keefe Avenue
New Orleans, LA 70113

MR. GERALD EDWARD MEUNIER
Gainsburgh, Benjamin, David,
Meunier & Warshauer
Energy Centre
1100 Poydras Street
Suite 2800
New Orleans, LA 70163-2800

PLAINTIFFS STATE
LIAISON COMMITTEE
CHAIR:

MS. DAWN BARRIOS
Barrios Kingsdorf &
Casteix, LLP
701 Poydras Street
Suite 3650
New Orleans, LA 70139

1 FOR THE DEFENDANTS'
2 LIAISON COUNSEL:

MR. JAMES B. IRWIN, V
Irwin Fritchie
Urquhart & Moore, LLC
400 Poydras Street
Suite 2700
New Orleans, LA 70130

5 FOR THE DEFENDANTS:

MS. SUSAN M. SHARKO
Drinker, Biddle & Reath, LLP
600 Campus Drive
Florham Park, NJ 07932-1047

8 MR. STEVEN JAY GLICKSTEIN
Kaye Scholer, LLP
250 West 55th Street
New York, NY 10019

11 FOR THE MOVANT
12 PORTOLA
13 PHARMACEUTICALS, INC.:

MR. MARK LAMBERT
Cooley LLP
3175 Hanover Street
Palo Alto, CA 94304-1130

15 FOR THE MOVANT
16 PHARMACEUTICAL RESEARCH
AND MANUFACTURERS OF
17 AMERICA:

MR. DANIEL S. PARISER
(Via telephone)
Arnold & Porter, LLP
601 Massachusetts Avenue NW
Washington, DC 20001

19 Official Court Reporter:

Lanie M. Smith, RPR, CRR
500 Poydras Street, B-275
New Orleans, Louisiana 70130
(504) 589-7782

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1 may see him down here because they try cases all over the
2 country. So I know he'll be getting a great experience, and I
3 thank him for all of his work. He started at the beginning of
4 this case and has done a yeoman's job.

09:30AM

5 (Applause.)

6 MR. MEUNIER: I know I speak for all involved when I
7 say to Thomas good wishes; and as you leave for the nation's
8 capitol, you've done a capital job in this case. We wish you
9 well.

09:30AM

10 Your Honor, we have a Joint Report to go through. The
11 first matter to discuss is pretrial orders; but we simply
12 reference the one pretrial order which has been entered since
13 the last status conference and that is PT0 12A, Record
14 Doc. 3726. It's indicated on Page 3 of the Joint Report and it
15 deals with disclosure of protected documents to prescribing and
16 treating physicians of bellwether plaintiffs.

09:30AM

17 Section 2 of the report on Page 5 addresses the
18 Case Management Orders 2, 3, 4 and 5 which have now been
19 entered by the Court.

09:31AM

20 And as Your Honor already has mentioned, pursuant
21 to CMO 5, which sets forth the process for selecting bellwether
22 trial cases, the parties have now had an opportunity to present
23 to Your Honor arguments as to why certain cases should be
24 removed from a selection process. And now that that's been
25 done, as I appreciate it, the nominations of trial cases will

09:31AM

1 proceed this coming Monday; strikes will take place Tuesday;
2 and then on Wednesday Your Honor will make selections of the
3 cases that will be tried on the four bellwether trials set for
4 next year.

09:31AM

5 THE COURT: As counsel mentioned, we have four
6 bellwether trials -- two in Louisiana and one in Mississippi
7 and one in Texas. We will soon be finalizing those next week
8 and going forward with those.

09:32AM

9 I also need to talk with counsel to take care of
10 the possibility that during the process, if the past is any
11 indication, some of them can get right up to trial and, like
12 we've all been conscious of in other cases, they settle. So
13 what do we do at that point? So I want you to be thinking of
14 that.

09:32AM

15 There's a couple of ways of dealing with it. We
16 can have some in reserve to fill in, or we can take the next
17 one up. But we need some process involved in that type
18 situation so that we just don't exhaust ourselves on the
19 pretrial aspect of the bellwether case and then settle at the
20 courthouse gate and then what do we do at that point?

09:32AM

21 So I'm interested and I'm not going to make any
22 decision on it, but I want you-all to be thinking about it in
23 the event -- Yes, Susan?

09:33AM

24 MS. SHARKO: We'll certainly talk to the plaintiffs
25 about it, but I don't see that there is any prospect of

1 settlement of this litigation.

2 THE COURT: Okay.

3 MR. MEUNIER: That move-up-in-line solution,
4 Your Honor, too, might be curtailed to some extent given that
09:33AM 5 the first two cases are Louisiana and the next two are not.

6 THE COURT: Keep an eye on it in any event so that we
7 will at least think about it. Okay.

8 MR. MEUNIER: Nothing further to discuss in Section 3
9 of the report dealing with bellwether selections.

09:33AM 10 In Section 4, we mention the Counsel Contact
11 Information Form that is required; and Lenny Davis and I
12 continue to encourage counsel to please be diligent in filling
13 out those forms so that we can maintain an accurate inventory
14 of counsel.

09:33AM 15 Under Section 5, Plaintiff Fact Sheets,
16 Your Honor, as you know, we continue with a process, which I
17 think has proven helpful, whereby the untimeliness and/or
18 deficiency of Plaintiff Fact Sheets can be addressed first by
19 counsel once we get a list of cases from the defendant and then
09:34AM 20 that allows us to work on those issues among ourselves before
21 having to present them to the Court. And, again, that process
22 is continuing.

23 Nothing further to report in the Defendant Fact
24 Sheet reference at Section 6.

09:34AM 25 Section 7 of the Joint Report at Page 8 refers to

1 the bundling of complaints. And we simply want to remind all
2 plaintiffs' counsel who are new to the case that -- or may not
3 be new to the case or may be monitoring the case for the first
4 time -- that bundled complaints no longer are accepted as of
5 this past May 20.

09:34AM

6 Section 8 of the report deals with preservation
7 orders; and, again, we continue to reference this in the Joint
8 Report, Judge, just to make sure that plaintiffs' counsel who
9 are new to the case become familiar with the provisions of
10 PTO 15B, which is Record Doc. 1477; and, in turn, remind their
11 plaintiff clients of the preservation obligations discussed in
12 that pretrial order.

09:35AM

13 Section 9 of the report at Page 9 is the issue of
14 interactions with plaintiffs' prescribing and treating
15 physicians. And I believe the only reason we continued to
16 reference this in the Joint Report this time, Judge, was
17 because of that new Pretrial Order 12A that I mentioned
18 earlier. Otherwise, this may be one of those sections of the
19 report which can be deleted going forward so we can continue to
20 keep these joint reports more current.

09:35AM

09:35AM

21 THE COURT: We'll certainly get involved in that if we
22 need to strike it. Okay.

23 MR. MEUNIER: Your Honor, the discussion of discovery
24 in Section 10 of the Joint Report at Page 9 covers a couple of
25 things. First, we do continue to have the telephone

09:36AM

1 conferences with Your Honor on a regular basis that allow us to
2 take up discovery issues and eliminate motion practice and I
3 think both sides feel that's continuing to be very helpful.

4 On the biological sample preservation, which is
09:36AM 5 discussed at the bottom of Page 9, top of Page 10, we mention
6 that the PSC has noticed a 30(b)(6) deposition of Janssen
7 regarding stored samples and I believe meet-and-confer
8 discussions about that issue are continuing.

9 MS. SHARKO: Yes.

09:36AM 10 MR. MEUNIER: We also mention here the German witness
11 personnel -- rather, the German personnel file ruling that the
12 Court made on May 16, 2016. It's Record Doc. 3237. And
13 following today's status conference in chambers, Mr. Barr, on
14 behalf of plaintiffs, and Mr. Glickstein, on behalf of Bayer,
09:37AM 15 will have further discussion with Your Honor about some of the
16 issues following up the effects of that ruling by Your Honor.

17 The only other thing, I think, that may need to
18 be mentioned in connection with discovery, Judge, is at the top
19 of Page 11 of the report, there is apparently a joint -- not
09:37AM 20 apparently. There is now a collaborative joint effort on
21 discovery of certain marketing information from the defendants
22 which is coordinated between the PSC and the Pennsylvania state
23 court counsel.

24 And I only mention it because in the event that a
09:37AM 25 joint discovery request results in the need for Court

1 attention, this may be, in our view, the first opportunity for
2 you and the presiding judge in the Pennsylvania case to jointly
3 address whatever motions or briefing might be presented by the
4 parties. It remains to be seen whether it's necessary, but I'm
09:38AM 5 just alerting the Court that it may come to that.

6 THE COURT: Who's the judge there?

7 MS. BARRIOS: Judge New.

8 MR. MEUNIER: Your Honor, the next section of the
9 report, Section 11 at Page 11, refers to the third-party
09:38AM 10 discovery efforts and they involve the FDA, the DCRI. I don't
11 think there's anything further or new to advise the Court about
12 in those respects.

13 The top of Page 12, there is reference to the PSC
14 attempt -- or not attempt -- the PSC's scheduling now of the
09:38AM 15 deposition of Robert Califf; and I understand that efforts are
16 underway to put that deposition on the calendar.

17 The further discussion of discovery, third-party
18 discovery refers to matters such as Alere, as to which we are
19 receiving documents and sharing with the defendants.

09:39AM 20 As the Court knows, we've had an issue with
21 respect to our subpoena to PhRMA; and that was the subject of a
22 prior hearing by Your Honor and a minute entry that was entered
23 by the Court July 28. It's Record Doc. 3730 and
24 meet-and-confer discussions are continuing as guided by the
09:39AM 25 minute entry ruling of the Court.

1 Mr. Davis may have more to say about that.

2 MR. DAVIS: Your Honor, you directed me to update the
3 Court at the status conference regarding PhRMA. And as an
4 update to the Court, following the hearing last week --

09:39AM

5 THE COURT: I think counsel for PhRMA is on the line
6 too. So he'll listen.

7 MR. DAVIS: I know they said they were going to be.

8 THE COURT: Yes. They're monitoring it.

09:39AM

9 MR. DAVIS: We understand that Janssen shipped and
10 delivered documents to PhRMA's counsel. We weren't copied on
11 those communications; but we understand that PhRMA did receive
12 the various Bates number examples that we spoke about at the
13 hearing. And I think that was helpful.

09:40AM

14 We had a meet-and-confer by telephone on August
15 the 2nd and they expressed appreciation for being in town last
16 week and meeting face-to-face, having discussions and also
17 having looked at the documents. What we understand is that
18 PhRMA is performing an investigation. They are addressing
19 search terms at this time and taking what I'll call a
20 step-by-step approach and process to identify responsive
21 documents.

09:40AM

22 On August 3rd, we had additional communications
23 and PhRMA suggested search terms that we are looking at and
24 we'll have further communications with PhRMA's counsel. So we
25 are speaking, and it's moving ahead.

09:41AM

1 THE COURT: Okay. I appreciate PhRMA's cooperation in
2 this. It's not my intention to make life hard on them. It's
3 just that if we can do it the easy way, I'm all in favor of
4 that and I appreciate their cooperation. I look forward to
5 having their cooperation throughout this situation.

09:41AM

6 MR. DAVIS: We appreciate their cooperation as well,
7 Your Honor.

8 MR. MEUNIER: Judge, the only other thing to mention in
9 terms of third-party discovery today is the subject of a motion
10 which will be argued following the conference and that is the
11 PSC motion to compel the production of materials from Portola
12 Pharmaceuticals, Inc. Counsel for Portola Pharmaceuticals is
13 in court today; and immediately following the conference, there
14 will be an argument on the PSC's motion to compel.

09:41AM

15 THE COURT: Any report on the state cooperation?

09:41AM

16 MS. BARRIOS: Yes, Your Honor.

17 Good morning, Your Honor. Dawn Barrios for the
18 State Liaison Committee.

19 Thomas, I also want to join Mr. Meunier and wish
20 you the best of luck. And when you are as old as I am, you
21 will look back and see the first few years of litigation are
22 really your best years because that's where you're learning
23 everything, but we appreciate -- I especially appreciate all
24 the help that you've given me.

09:42AM

25 And, Your Honor, I handed Thomas three documents;

09:42AM

1 and I've previously provided it to the plaintiffs and the
2 defendants. Prior to going through the general global list
3 that I usually provide the Court, there are two updates.

4 The first update is that California has now --
09:42AM 5 California has finally selected a judge for their JCCP, and
6 it's Judge Kenneth Freeman. Judge Freeman has experience with
7 MDLs before. I know that Judge Dougherty dealt with him in the
8 Actos MDL, and I mention that to you for whatever it's worth.

9 THE COURT: Okay.

09:43AM 10 MS. BARRIOS: Their first status conference is
11 September 12th and one of the matters he mentions in the order
12 is that he wants the parties there to get together to discuss
13 coordination of discovery with other proceedings. So that's
14 very encouraging from my point of view.

09:43AM 15 The other matter --

16 THE COURT: Do you have his telephone number for me?

17 MS. BARRIOS: Your Honor, I actually have two telephone
18 numbers for him and I called both yesterday and didn't get it.
19 So before I provide it to you, I want to make sure that I have
09:43AM 20 the right number.

21 THE COURT: Okay.

22 MS. BARRIOS: But you should get that this week.

23 THE COURT: Great.

24 MS. BARRIOS: The other matter I wanted to report is
09:43AM 25 the Pennsylvania matter. I've been given the information from

1 Mr. Gallucci who is co-lead counsel there and Judge New is
2 discussing with the parties the bellwether system and their
3 bellwether trial will not begin until after your four MDL
4 trials are done.

09:44AM

5 THE COURT: Take a look at the bellwether selection
6 process; and if you're comfortable with it, talk to your judge
7 about it. And you may want to tweak it a bit, but it's one way
8 of doing something. If you need any information; and I can
9 help out in any way, get to me.

09:44AM

10 MR. GALLUCCI: Thank you, Your Honor.

11 THE COURT REPORTER: Can I get your name?

12 MR. GALLUCCI: Daniel Gallucci.

09:44AM

13 MS. BARRIOS: Your Honor, turning to the state court
14 stats, I see that there are 32 California cases now, although
15 on the JCCP order, there are only about six or seven; but
16 obviously others hadn't been transferred there yet. And I
17 notice that I do have a telephone number for Judge Freeman
18 there, but I'm not sure that's the correct one because I hit a
19 wall yesterday trying to find that.

09:45AM

20 The other state that has a great number of cases
21 is Missouri. They have a hundred Xarelto users as of this
22 time, and then Pennsylvania has 874 cases. And on the last
23 page, we see that globally there are 1,077 state court cases
24 filed; and that the number of Xarelto users since our last
25 status conference has increased by 102.

09:45AM

1 THE COURT: So Pennsylvania has a thousand cases; is
2 that it?

3 MS. BARRIOS: No, Your Honor. I think it's 874.

4 THE COURT: Okay.

09:45AM 5 MS. BARRIOS: But it's a thousand around the country.

6 THE COURT: Users. Right.

7 MS. BARRIOS: If there's anything else, Your Honor --

8 THE COURT: No. That's it for me. Thanks very much,
9 Dawn. I appreciate your help.

09:46AM 10 MS. BARRIOS: Thank you.

11 MR. MEUNIER: Your Honor, I think all that remains is
12 the scheduling of the conferences.

13 The next is September 20th, and I think you have
14 to announce the October.

09:46AM 15 THE COURT: Right. What was it?

16 MR. MEUNIER: We have October 25th at 9:00 A.M.,
17 Your Honor.

18 THE COURT: September 20th is the next one at 9:00 A.M.
19 and October 25th at 9:00 A.M.

09:46AM 20 MR. MEUNIER: Thank you, Judge.

21 THE COURT: Thank you very much. Anything else?

22 How about the motions? Why don't we take the
23 motion now?

24 MR. DAVIS: Your Honor, we have the Portola motion.

09:46AM 25 Leonard Davis on behalf of the PSC.

1 THE COURT: Is counsel for the third party here?

2 MR. LAMBERT: Yes, Your Honor.

3 Mark Lambert for Portola.

4 THE COURT: Okay, Mark.

09:47AM 5 MR. DAVIS: Your Honor, I'm going to assume that the
6 Court has read the briefing.

7 THE COURT: Yes, I have.

8 MR. DAVIS: And so I don't need to really be redundant.

09:47AM 9 THE COURT: This is a third-party situation. The
10 plaintiffs request information from the third party. The third
11 party indicates that the information falls into two categories:
12 One is their communication with the defendant J&J or Bayer and
13 that they feel that the plaintiffs have access to that or
14 already have it because they're dealing with Bayer and J&J and
09:47AM 15 have gotten that information.

16 The other information, they feel has to do with a
17 new drug that they are designing that might be in competition
18 with Xarelto and they're resisting disclosing that information
19 on the proprietary patent basis and have some difficulty doing
09:48AM 20 that.

21 That's the two categories.

22 MR. DAVIS: That's correct, Your Honor. I can cut
23 through it, but I think I ought to give just a little bit of an
24 explanation.

09:48AM 25 On May 3rd, as you know, the subpoena and

1 deposition notice was issued. It basically asked for some
2 specific information from Portola which was involved with Bayer
3 and J&J for Factor Xa inhibitor antidote and Andexanet Alfa,
4 which were reversals and things like that and I think
09:48AM 5 Your Honor has that.

6 We had multiple meet-and-confers -- May, June,
7 July -- and we've had several discussions with counsel for
8 Portola specifically to address the collaboration agreement
9 which they did provide copies which was of assistance and they
09:48AM 10 also provided names of individuals. They identified 11 Janssen
11 folks that they had dealt with primarily, 10 Bayer folks and 11
12 people within Portola. So we know that the universe isn't
13 huge. We know that at this point. They then, after a
14 meet-and-confer, sent us formal objections.

09:49AM 15 In the course of the discussions, we identified
16 what we had received in the productions from Bayer and Janssen;
17 and the Court is well aware we're on a fast pace here. We're
18 limited with discovery from the defendants, and we're
19 proceeding as fast as we can. But we were able to identify 654
09:49AM 20 e-mails with Portola's, what I'll call, e-mail exchange. So
21 that's what we have.

22 Portola, in the course of the meet-and-confers,
23 asked us to provide them with the search terms that we provided
24 to J&J which we just didn't think was appropriate, quite
09:50AM 25 frankly. This is a third party. We thought it was different,

1 and it really was up to Portola because they weren't the
2 manufacturers of the drug. They really did something else, and
3 they had collaboration at all times. They had been in
4 communications at all times, especially with J&J.

09:50AM 5 Specifically, they made objections to two things: Relevance
6 and proportionality.

7 And I understand their argument, quite frankly,
8 with respect to the trade secret. We can deal with that and
9 that's something that we've always been able to deal with and
09:50AM 10 as the Court is well aware, early in this litigation, we dealt
11 with that with respect to a confidentiality order and we have a
12 heightened provision in there for highly restrictive. But this
13 Court dealt with those issues in other litigation, even in
14 Vioxx, as the Court is well aware; and there have been what
09:51AM 15 I'll call practical approaches to deal with issues like this.

16 For instance -- and we have no problem limiting
17 the number of people who will review particular materials,
18 giving added protection so that those concerns on trade secrets
19 aren't out in the public. That's something we certainly can
09:51AM 20 do. We know under the collaborative agreement, the study data
21 is jointly owned by Bayer and Janssen. So we have pursued our
22 discovery to Bayer and Janssen. That's not what we're looking
23 for here. We're looking for what Portola did, and they have a
24 lot of internal information that J&J and Bayer probably doesn't
09:51AM 25 have or may not have. I don't know. But when we got that

1 limited number of e-mails, we are concerned; and certainly we
2 have a right to get discovery from a third person. We
3 certainly have the right under the rules to take the 30(b)(6)
4 deposition. But weaning in and honing in on the documents
09:52AM 5 before that deposition and narrowing this really makes some
6 sense which is what we have attempted to do; but, quite
7 frankly, we've been met with objections.

8 And what we've been told is, "Go look at what you
9 have, and then tell us." And "We're not going to be able to
09:52AM 10 give you anything because it's half of our business, and we
11 really think that it's not something that we need to do."

12 Judge, I can get into the relevance. I can talk
13 about the two different drugs and what Portola did. It's in
14 our reply brief. I'm happy to do that. I don't know that I
09:52AM 15 need to. Roger Denton is here if we need to get into that
16 specific, but we have a drug that's still on the market and
17 there's an ongoing obligation to warn here and I can go through
18 that.

19 THE COURT: Let me hear what the other side says and
09:53AM 20 then I'll get back to you and you can respond if need be.

21 MR. DAVIS: Okay. Thank you.

22 THE COURT: Okay. We're talking primarily, as I
23 understand it, first of all, let's put the trade secrets for a
24 moment in the background.

09:53AM 25 The documents that they're talking about is that

1 you have been working on -- you, Portola -- has been working on
2 an antidote. We know that there's an issue that -- at least
3 that plaintiff raises and says there's an issue -- of an
4 antidote. And there's no antidote for this particular drug so
09:53AM 5 that if somebody starts to bleed, you get in the hospital as
6 quickly as you can. You can't just take a vitamin K pill or
7 shot or something of that sort. So they have been working with
8 you on producing or constructing an antidote and there's
9 communications back and forth and the plaintiffs feel they need
09:54AM 10 that information.

11 What do you say?

12 MR. LAMBERT: Your Honor, I think that our key issue
13 from the beginning has been grappling with a subpoena that is
14 truly a blunderbuss subpoena. It's all documents that relate
09:54AM 15 to 11 different descriptions of what we're doing with
16 Andexanet Alfa. And so because that's such a vast subpoena, we
17 think it's out of line with the restated rules and because this
18 is a unique situation where as a third party we have extensive
19 written collaboration agreements with parties that have
09:54AM 20 significant information-sharing provisions, when we look at the
21 proportionality aspects and when we look at the plaintiffs' or
22 the subpoenaing parties' obligations to minimize burdens on the
23 third parties, we wanted to see a lot more assurance that
24 documents that we think are sufficient to show the kinds of
09:55AM 25 things that they want to look into -- the data about the

1 effectiveness and the safety of this antidote drug, where it is
2 in its regulatory approval process, whether it works or not --
3 those kinds of things are fully in the possession of the
4 defendants because we're contractually obligated to provide
09:55AM 5 those documents to them and we have and we think that that
6 creates a unique situation where the subpoenaing party and, in
7 fact, the defendants are in a unique position to help minimize
8 the burdens on us so that if more is needed on us, it can be
9 focused, it can be perhaps articulated in documents sufficient
09:55AM 10 to show some aspect that isn't covered by what the defendants
11 already have.

12 And our difficulty in the meet-and-confer process
13 is that as much as we tried to give the plaintiffs the names of
14 the Portola personnel who interact with the defendant personnel
09:56AM 15 and the names of the defendant personnel who we're aware of who
16 are on other ends of those interactions so that they could take
17 up with the defendants any deficiencies in prior party
18 discovery relating to Portola documents, that they could. But
19 we just didn't see any action on that front; and, in fact, we
09:56AM 20 asked for a meet-and-confer with both sides -- both the
21 defendants and the plaintiffs. That e-mail request was never
22 responded to.

23 So what we're really concerned with on the
24 Andexanet Alfa is finding a scope where -- as we've tried,
09:56AM 25 nothing has changed on the document request. "The all

1 documents relating to" has not been distilled down or
2 compromised down to "documents sufficient to show" various
3 criteria. We've got no movement on that; and, in fact, the
4 motion to compel is really "Comply with the subpoena as
09:57AM 5 written," which we think is inappropriate.

6 And then on --

7 THE COURT: Yes. I hear you on that, and I think
8 that's significant. I do think that the materials are
9 relevant. I think the plaintiffs have a right to it. I think
09:57AM 10 we have to come up with some procedure that's sensible to get
11 it trimmed down. I don't think a subpoena "Give me all the
12 information" is very helpful. It's kind of like an
13 interrogatory "Tell me everything that you know about
14 something." It just doesn't work. So we've got to figure a
09:57AM 15 way. One way might be a 30(b)(6) deposition of somebody who
16 has knowledge of this type of information and then drill him
17 down to find out what the documents are and where they are
18 located or some method that Portola knows what documents you're
19 looking for as opposed to just a general comment that runs them
09:58AM 20 all around the place to try to fix it.

21 MR. LAMBERT: And I think that -- I do believe that if
22 we could look at the document requests that are in the document
23 subpoena and look at them from the standpoint of a document
24 sufficient to show, we could provide them with the data.

09:58AM 25 Again, this is setting aside our belief and our certainty that

1 the defendants have the data.

2 But if we can tailor things down to documents
3 sufficient to show aspects of the Andexanet that are of
4 interest, we think we could make some progress on that.

09:58AM

5 THE COURT: We may have to do this in stages, Lenny.
6 You may have to do one subpoena for some specific information
7 or a specific person and then another subpoena if you're taking
8 that 30(b)(6) and there's other documents and you've got them
9 listed, then another subpoena if necessary.

09:59AM

10 MR. DAVIS: Your Honor, we're happy to go take -- we
11 will go take a 30(b)(6) to get the lay of the land, so to say,
12 and understand who has knowledge and what documents exist and
13 go through that and take that as the first step and then go to
14 the next step to address the documents and then the next step
15 if we need a deposition of whoever it is as we set forth and
16 break it up in pieces. We can do that.

09:59AM

17 There's also another way that may be unorthodox
18 that we're willing to do; but I don't know if counsel for
19 Portola is willing to do that. We're willing to sit
20 face-to-face. We're willing to let you bring the documents up,
21 you look at them, you preserve your right to privilege and all
22 of that and we can talk to various search terms that you may
23 want to run, things like that. We're willing to sit and do
24 that to try to get through it because we know we are on a time
25 crunch.

09:59AM

1 THE COURT: Yes.

2 MR. DAVIS: So we'll do it however Portola really wants
3 to do that.

10:00AM

4 THE COURT: Also I think that J&J may have a dog in
5 this fight and you may know some information. And there's no
6 sense in him producing documents if you've already produced the
7 document. It seems to me that maybe you ought to have the
8 three people at a table.

9 MR. DAVIS: And we're limited, quite frankly --

10:00AM

10 THE COURT: Let's hear from Susan.

11 MS. SHARKO: So if the plaintiffs and Portola are going
12 to share documents informally, I submit that Janssen and Bayer
13 should be present and should have the opportunity to see those
14 documents.

10:00AM

15 THE COURT: Yes, I think that's fair. I think you
16 ought to. And give them some input. If there's a document
17 that they already have, tell them they already have it. They
18 don't have to submit it.

10:00AM

19 MS. SHARKO: So we've produced many, many, many
20 millions of pages of documents. So the odds that someone can
21 look at a screen and say, "Oh, you have that" is slim.

22 THE COURT: I understand that.

10:01AM

23 MS. SHARKO: It's important to note that we heavily --
24 we and Bayer had long, long negotiations with the plaintiffs
25 about the scope and format and how discovery would proceed. So

1 I definitely think this should not serve as an opportunity to
2 now reopen or redo the discovery process that we discussed.

3 MR. DAVIS: We're not looking to reopen or do that.

4 THE COURT: I don't want to do that.

10:01AM 5 MR. DAVIS: But we're limited because they're all
6 marked "confidential" so I can't share them with anybody, and
7 that's a problem because the defendants decided on that.

8 THE COURT: How do we do that?

9 MR. LAMBERT: The question that has not been
10:01AM 10 answered -- perhaps it's a question to both the plaintiffs and
11 maybe even more to the defendants -- is have the defendants
12 produced the information that we provide to them under these
13 collaboration agreements? If the answer is "no," then that
14 should happen before Portola is asked to shoulder the burdens
10:01AM 15 of basically a party; and it seems like a question that could
16 be answered pretty quickly.

17 Defendants, have you produced the documents that
18 Portola gave to you under the collaboration agreements? If
19 "yes," then they should be produced.

10:02AM 20 MS. SHARKO: I don't think it's appropriate now for a
21 third party, Portola, to be coming in and directing discovery
22 requests to us or adding to our discovery burden. We worked
23 out discovery with the plaintiffs, and they're the people at
24 issue in the case.

10:02AM 25 If Mr. Davis has documents that he wants to share

1 with counsel for Portola, it's the same thing that happened
2 last week. Just tell me what they are, and we'll see if we can
3 resolve it. We resolved the PhRMA issue in less than 24 hours
4 after it was raised. I had PhRMA sign off on the protective
10:02AM 5 order, and I immediately gave them the four documents at issue.

6 MR. DAVIS: But, Your Honor, that's precisely the
7 issue. And, as you know, the negotiation with defendants early
8 on for limited amount didn't preclude us from third parties for
9 this exact reason; and that's why we need to go to the third
10:03AM 10 parties to do this and it's a making of the defendants quite
11 frankly. And so I'm not looking to create more work, that's
12 for sure. We've got plenty and we've got a short time frame
13 here, but I've got to be able to get it and so I'm put in the
14 box is what happens here.

10:03AM 15 Now, separate and apart from that, what I just
16 heard, is another issue which is I don't know what may be
17 internal in Portola that's not shared; and I have to be mindful
18 of that. So I've got to make sure that I've covered what I
19 need to do in order to protect the plaintiffs here and the
10:03AM 20 clients.

21 THE COURT: Yes. But we've got to figure a way of just
22 drilling down a little bit. You can't ask Portola to give me
23 all documents concerning everything that you've ever done from
24 day one with J&J or with Bayer. That's just too broad of a
10:04AM 25 scope. They'll spend the rest of their life trying to find

1 documents, a sheet of paper here or an e-mail here or whatever
2 it is, because the relationship goes on for a year or two or
3 three or four and everybody starts to make comments about it
4 and they're in different groupings and there's no end to it.
10:04AM 5 The proportionality comes into play here. They've got to know
6 what information you need. I don't know how we do that and
7 you-all know --

8 MR. DAVIS: That's why I suggested maybe we sit and
9 look at these things, but I can't have the defendants filtering
10:04AM 10 what we're going to get. I mean, I certainly don't want a
11 repeat --

12 THE COURT: I agree with that.

13 MR. DAVIS: -- I don't want to repeat productions.
14 That's not in anyone's best interest; and, Lord knows, we don't
10:04AM 15 want to be doing that.

16 THE COURT: We don't have time for that.

17 MR. DAVIS: Right.

18 MR. LAMBERT: Your Honor, there was a mention made of
19 Portola's concerns about trade secret information, confidential
10:05AM 20 information. With respect to information that we've provided
21 to the defendants under the collaboration agreements, we
22 believe that the Court's existing discovery protective order is
23 adequate.

24 With respect to information that we have not
10:05AM 25 provided to them, we might want to negotiate a more heightened

1 protective order that is along the lines of an attorneys' eyes
2 only or experts' eyes only kind of basis. We think we can
3 solve that problem.

4 There is one issue that we, frankly, didn't meet
10:05AM 5 and confer about because there wasn't a document request for
6 these documents and those are the ones that pertain to
7 Betrixaban. In the document subpoena, there were 11
8 categories. None of them addressed Betrixaban. We saw it
9 mentioned in plaintiffs' motion for the first time -- in their
10:05AM 10 four-page motion; and we relegated our attention to it into a
11 footnote because there's no document request for it.

12 We explained that to the extent they're after
13 that, that is information of a different kind from the
14 standpoint of if they're looking for all documents, it still
10:06AM 15 has the same burdensomeness and proportionality problems.
16 Plus, since it is being developed as, frankly, a competitor
17 drug to Rivaroxaban, that is drug development information that
18 would be very perilous for us to place in access to defendants
19 other than their trial counsel.

10:06AM 20 But, honestly, we don't see a call to produce any
21 Betrixaban documents because they haven't been requested in the
22 document subpoena.

23 MR. DAVIS: I think it's in there. I was trying to
24 thumb through it; but, if not, I can certainly get them another
10:06AM 25 subpoena if that's what they want. I mean, we can address that

1 issue.

2 THE COURT: With that, I could do it a couple of ways.
3 One, if you-all can agree on some small number of eyes on it --
4 trial counsel or whatever it is. If you can't, then I have to
10:07AM 5 take a look at the documents so it's *in camera* and if I feel
6 there they're too sensitive or too whatever it is, I won't
7 disclose it. But I can't make that decision without at least
8 looking at them. So if you-all can't agree, then what I'm
9 going to require is that you file them *in camera* so I can look
10:07AM 10 at them.

11 Before I make a decision, I'll let you know and
12 counsel know so that if you have any interest in taking it
13 further, you have that opportunity before I disclose the
14 documents.

10:07AM 15 MR. LAMBERT: Okay.

16 THE COURT: Let's do this: Why don't you-all get
17 together. I would like to hear from you both by the end of
18 tomorrow to see whether or not we've made any progress; and, if
19 not, then I'll have to come up with some method.

10:08AM 20 I don't think relevancy is an issue in this
21 situation. I think the documents are relevant to the claims
22 and defenses so I think we're dealing primarily, if not
23 exclusively, with proportionality and proportionality comes
24 down to maybe fine-tuning the information that's required or
10:08AM 25 some method of collecting it that's easier than looking

1 throughout the whole company. I know you've got 200 employees
2 or whatever it is. It's not thousands of employees like we're
3 used to. But in any event, proportionality is the issue here.

4 MR. LAMBERT: Just for the record, this is a company
10:08AM 5 that is developing new drugs, innovative drugs. We don't have
6 a drug on the market yet and litigation -- certainly products
7 liability litigation -- is not part of what we do. So it's a
8 substantial burden on the company.

9 And I would hope that defendants would
10:09AM 10 participate in some of these talks with plaintiffs because I
11 think that our interest as a third party and the uniqueness of
12 the situation where there is a record and clarity, that
13 tremendous amounts of information have been placed into the
14 possession of the defendants. That is a way to help reduce the
10:09AM 15 burdens on us --

16 THE COURT: I don't have any problems with that except
17 that it's clear that the defendants are not going to have a
18 veto power in that type of situation. I'll listen to them, but
19 I think that they have an interest and I would encourage them
10:09AM 20 to participate in the discussion until we get it resolved.

21 MR. DAVIS: We're prepared after the conference today
22 to meet and sit down and address the issue.

23 THE COURT: Okay.

24 MR. LAMBERT: Your Honor, just to --

10:09AM 25 THE COURT: I'll hear from you by tomorrow, Lenny.

1 MR. DAVIS: Yes, we'll get back to you.

2 MR. LAMBERT: I will be happily leaving on a family
3 vacation tomorrow morning. I have time to stay and discuss
4 these issues now. I'll be gone for a week, but then I'm back
10:10AM 5 and happy to advance the process.

6 MR. DAVIS: Enjoy your vacation.

7 THE COURT: Maybe you can go with them.

8 MR. LAMBERT: If we can work the time zones, I'm happy
9 to get on the phone from the beach.

10:10AM 10 MR. DAVIS: Your family will love you, I'm sure.

11 MR. LAMBERT: They will love me for it.

12 MR. DAVIS: I have one other thing. I just want to
13 thank Thomas. We appreciate all the efforts and your work
14 throughout the period that you were here. Thank you, and good
10:10AM 15 luck.

16 THE COURT: Okay. Folks, anything else? Thank you
17 very much.

18 THE COURTROOM MANAGER: All rise.

19 (WHEREUPON, the proceedings were adjourned.)

20 REPORTER'S CERTIFICATE

21 I, Lanie M. Smith, CRR, RPR, Official Court
22 Reporter, United States District Court, Eastern District of
23 Louisiana, do hereby certify that the foregoing is a true and
24 correct transcript, to the best of my ability and
understanding, from the record of the proceedings in the
above-entitled and numbered matter.

25 /s/ Lanie M. Smith
Official Court Reporter